



An  
Bord  
Pleanála

## Inspector's Report ABP-300269-17

### Development

Change of use of existing retail to a private dwelling house. Extensions to ground floor and first floor. Alterations to existing roofs, windows, doors and building elevations & construction of dormer windows to front and rear elevations. Construction of a 12ft wide entrance including 7ft high piers and plastered blockwalls along Eastern site boundary of dwelling house. Raising of existing stone walls and piers along Northern and Eastern Site Boundaries.

### Location

Lissycasey , Ennis , Co Clare

### Planning Authority

Clare County Council

### Planning Authority Reg. Ref.

P16/836

### Applicant(s)

Paul K Connellan.

### Type of Application

Permission.

### Planning Authority Decision

Grant permission subject to conditions

### Type of Appeal

Third Party

**Appellant(s)**

John Ronan

**Date of Site Inspection**

18<sup>th</sup> February 2018.

**Inspector**

Bríd Maxwell

## 1.0 **Site Location and Description**

- 1.1. The appeal site has a stated area of 0.243 hectares and is located within the village of Lissycasey approximately 15km west of Ennis in Co Clare. The site is occupied by a two storey building with single storey annexes formerly used as a convenience store and currently disused. The site occupies a corner plot to the south of the N68 national secondary road and a local road (L2148) runs along the north-eastern site boundary. There are individual residential sites to the south and south west and the Cúl Daire residential estate is located to the east. Appeal site boundaries are defined by a mix of walling and hedging.

## 2.0 **Proposed Development**

- 2.1. The application seeks permission for change of use of existing retail shop to a private dwellinghouse involving extensions and alterations to the existing structure. The proposal includes the creation of an entrance and provision of boundary walls and piers along the northern and eastern roadside boundaries. I note that the exact detail of the proposed extension were revised in response to a request for additional information whereby pattern of fenestration and roofscape was simplified.

## 3.0 **Planning Authority Decision**

### 3.1. **Decision**

Following a request for additional information in respect of wastewater treatment proposals, extension design specifications and boundary details, Clare County Council by order dated 2<sup>nd</sup> November 2017 decided to grant permission to which 8 conditions were attached including the following:

Condition 2. The construction of the pumphouse and borehole water well system shall be omitted from the development.

Condition 3. The north-eastern boundaries of the site shall not exceed 1.2m in height. Poles to be relocated at the outer face of the new front boundary wall.

Condition 4. Development Contribution €119.42.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

- Planner's initial report notes the location in an area surrounded by residential development and asserts that the change of use would not be out of character. The retention of the roadside hedgerow is desirable. Further information required regarding wastewater treatment system and design amendments and surface water proposals.
- Final report recommends permission subject to conditions.

#### **3.2.2. Other Technical Reports**

- Environment Section report notes that the previous public house was served by a septic tank which was subsequently replaced after complaints regarding discharge onto the public road. The established nature of development on site is noted however applicant should endeavour to meet EPA Code of Practice requirements as far as practicable. The report notes that the spring well on site contains high levels of iron and other constituents and may not be suitable for domestic use. Following submission of additional information notes that the existing system appears to be adequate.
- Road design report notes that the sight distances are in compliance with DMURS. Applicant should be required to set back the existing boundary hedge to the southeast of the development to take account of the existing adjacent property boundary wall and be consistent with the policy on setting back boundary walls to cater for future footpath installation.

### 3.3. Prescribed Bodies

- Transport Infrastructure Ireland TII submissions indicate that it has no observations to make on the case.

### 3.4. Third Party Observations

3.4.1 Submissions from the appellants Mr John and Eileen Ronan, Valley View express concerns regarding boundary wall to secondary road L2148. Site layout is inaccurate in relation to location of wastewater treatment system which has been an ongoing source of concern on the site. Request that system be altered to comply with EPA Guidelines as it is located within 1m of the site boundary. Concerns regarding footpath design and construction and surface water runoff.

3.4.2 Cllr PJ Kelly made representations in respect of the application.

## 4.0 Planning History.

4.1 There is an extensive planning history on the appeal site which includes the following:

- **10/679** Refusal of permission to erect 5 no advertising banner poles.
- **PL03.236768 10/185** Permission to retain ancillary use as off licence which is ancillary to primary use as convenience store.
- **PL03.228905 07/2003** Permission for retention of certain developments relating to the reopening of a former licensed premises as a shop.
- **PL03.218491 PA ref. 06/850** Planning permission was granted by the Planning Authority for relocation of car park from rear to front of premises, provision of additional parking spaces and ancillary site works. The application was withdrawn subsequent to a request for additional information by ABP, following a third party appeal against the decision to grant permission.
- **PA ref. R07-13** In August 2007, the planning authority determined that the following works were development and were not exempted development:
  - Full demolition of stores and sheds to the rear of the property and their full

reconstruction;

- Change of use from a public house and residential unit to two shop units and one flat;
- Construction of a 2.5-meter (approx) high wall along the western site boundary; & • Installation of a new septic tank in the south/eastern corner of the site to replace original septic tank in the south/western corner of the site.

The Planning Authority also concluded that the removal of the grassed area to the front of the property; the filling of this area with gravel and the construction of a road through the middle of this area, was development and was exempted development:

- **PL03.RL2573 (PA ref. R08/14)**

The Board concluded that;

(a) the change of use of the public house to a shop is a material change of use and is, therefore, development,

(b) the said change of use from a public house to a shop would come generally within the scope of the exempted development provisions of class 14(b) of Part 1 of Schedule 2 to the said Regulations,

(c) but the change of use in the instant case includes use as an off-licence,

(d) the definition of “shop” as set out in article 5(1) of the Regulations (as amended) does not include off-licence use, as the said article 5(1) defines a “shop” as including the sale of alcohol only as limited by the provisions of paragraph (d) to the said article 5(1), and (e) therefore, the said change of use, which includes use of the premises as a shop with ancillary off-licence use, cannot avail of the exempted development provisions of the said class 14(b) and is not exempted development.

The Board therefore determined that the change of use of the ground floor of the premises formerly known as Kearneys public house from use as a public house with ancillary off-licence element to use as a convenience store with ancillary off-licence element is development and is not exempted development.

## **5.0 Policy Context**

### **5.1 Development Plan**

The Clare County Development Plan 2017-2023 West Clare Municipal District refers. The site is zoned Commercial. Zoning matrix in Appendix 2 indicates that residential use single dwelling for permanent occupation will not normally be permitted. However, the Development plan provides that the lands use zoning matrix is indicative and each proposal submitted to the council for consideration will be assessed based on its individual merits.

Development Management Guidelines are set out in Appendix 1

### **5.2 Natural Heritage Designations**

Lough Acrow Bogs NHA (Site Code 002400) 1.6km north

Cragnashingaun Bogs NHA (Site Code 002421) c7km west

River Shannon and River Fergus Estuaries SPA (Site Code 004077) 6.1km to the southeast.

Newhall and Edenvale Complex SAC (Site Code 002091) 11km east.

Lower River Shannon SAC (Site Code 002165) 7km southeast.

## **6.0 The Appeal**

### **6.1 Grounds of Appeal**

The appeal is submitted by Mr John and Mrs Eileen Ronan, Valleyview Lissycasey, who reside at the dwelling adjacent to the southeast of the appeal site. Grounds of appeal are summarised as follows:

- Details of footpath to be constructed along the L2148 are inadequate with regard to width and construction. The feasibility of construction of the footpath whilst retaining hedgerow is questioned.

- Ongoing issues with regard to sewerage system since the late 1980s. The existing system is within 1m of the site boundary and 11.5m from the nearest habitable dwelling house.
- Inadequate details with regard to the prevention of pollution discharge onto adjoining roads and properties.
- Request that permission be refused pending resolution of these matters.

## **6.2 Applicant Response**

6.2.1 The response of the first party is summarised as follows:

- Condition 3c requires the construction of the footpath in accordance with revised plan submitted on 15<sup>th</sup> September 2017 which shows footpath varying between 2.5m to 1.5m. The footpath will consist 100mm depth of concrete reinforced with A393 mesh with joints at 1.5m centres on 50mm of blinding on 225mm of well compacted hard-core.
- Confirm that the existing treatment system is located as shown on site layout The system comprises a BA6 BioDisc treatment unit with tertiary polishing treatment area. In 2012 Clare County Council requested that the existing percolation area be upgraded. A new polishing filter was constructed and certified by the EPA certified site assessor. The site assessment report dated 26/7/2017 certifies that the system is suitable to service the proposed development.
- Condition 7 relates to surface water. Road gullies running along the edge of the footpath will be piped to the existing watercourse. Stormwater arising on site will be piped to rainwater gullies and to storm water manhole.
- The appeal raises no substantive issues and it is requested that the Board uphold the decision of Clare County Council to grant permission



## **6.3 Planning Authority Response**

6.3.1 Response from Local Authority includes individual reports from the road design Engineer, and Environment Section and is summarised as follows:

- A 1.8m wide footpath is required and this will require the setting back of the existing boundary / hedge.
- The treatment system installed on site was as a result of various enforcement mechanisms. It includes an Envirocare Aeration Plant, 2 reed beds and a polishing filter, and was installed in and around Autumn 2012. As the system was existing full compliance with the 2009 code of practices was not readily achievable and an extract from the pollution report in 2012 indicates that “the polishing filter is approximately 1.5m from the boundary fence. The reed beds are approximately 2m from the boundary with the treatment plant 4 to 5m from the boundary. The location on the site was dictated by the location of the tarred hardstanding area which was deemed to be unsuitable for the polishing filter. It remains that the view of the Environment Section that there is nothing to be gained from moving the onsite system less than 2m.

## **7.0 Assessment**

7.1 The key issue arising in this appeal are:

- Principle of development.
- Impact on the amenities of the area with particular reference to detailed matters of wastewater treatment, surface water run off and boundary treatment.
- Appropriate Assessment.

## **7.2 Principle of Development**

7.2.1 I have noted that the site is on lands zoned commercial where in accordance with the zoning matrix as set out in the Clare County Development Plan 2017-2013, residential use for single dwelling for permanent occupancy will not normally be permitted. The development plan, however outlines that the zoning matrix is

indicative and thus provides for a degree of flexibility whereby individual applications should be assessed on their merit. I note the location of the site within the village of Lissycasey and the previous uses of the site as a shop and formerly as a public house. The current vacant status of the building is an important consideration. In light of the location within the village and adjacent to a number of established residential properties, I would concur with the view of the local authority planner that the proposed use as a residential dwelling would be in keeping with the pattern of development in the immediate vicinity. I also refer to the current vacant nature of the structure on site, and the uncertain outlook with regard to the pattern of the retailing in rural villages. Clearly from a proper planning and sustainable development viewpoint an active use of the established structure is desirable. As regards the impact on planning, I note that there are a number of additional pockets of commercially zoned lands within the settlement of Lissycasey, therefore the retreat of the appeal site from commercial use would not in my view unduly compromise the opportunities for future commercial development within the village. On this basis, I consider that the proposed change of use is acceptable in principle therefore the issues for consideration relate to the detailed matters in regard to the proposed development.

### **7.3 Impact on the amenities of the area and particularly issues of wastewater treatment, surface water disposal and boundary treatment.**

7.3.1 As regard the design of the proposed extensions and alterations, I consider that the revisions as set out in response to the Council's request for additional information are appropriate. Having regard to the siting and orientation of the structure, the size of the site and separation distance to adjacent properties issues of undue overlooking do not arise.

7.3.2 On the matter of the wastewater treatment system, the third party appellant contends that the location of the wastewater treatment plant does not comply with EPA Code of Practice and should therefore be relocated on the site. The documentation on the appeal file demonstrates historical difficulties with regard to the wastewater treatment on the site. I note the site assessment form submitted in response to the

Council's request for additional information, which includes details of the advanced treatment unit with pumping to reed bed and discharge to overground polishing filter. The details indicate that the system is designed for the equivalent of a six-person household. I note the response of the Planning Authority to the appeal which outlines that the existing system was installed in around Autumn 2012. The system provides for a polishing filter which is within approximately 1.5m of the property boundary and reed beds approximately 2m from the boundary whilst the treatment plant is 4-5m from the boundary. It is outlined that this was deemed to be an appropriate solution for the site having regard to the nature of the remainder of the site which comprise a tarred and hardstanding area therefore not suitable for the polishing filter. On this basis it was determined that strict compliance with the separation distances in the EPA code of Practice were not required.

7.3.3 Having reviewed the submitted details and having regard to the history on the site I am inclined to concur with the view of the Local Authority environment section report that relocation of the system on site to achieve minimum separation distances as set out in the EPA code of practice is not practicable and I consider that a condition regarding ongoing monitoring and maintenance of the system is appropriate, to ensure it is functioning correctly.

7.3.4 As regards the construction of the footpath along the eastern boundary of the site I consider that the setting back of the roadside boundary to achieve a 1.8 wide footpath is appropriate. As regards surface water runoff this can be appropriately addressed by condition. On this basis I consider that the development is acceptable and will not impact unduly on the amenities of the adjacent dwelling or the amenities of the area.

## **7.4 Appropriate Assessment**

7.4.1 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed

development would be likely to have a significant effect either individually or in combination with other plans or projects on a European Site.

## **8.0 RECOMMENDATION**

- 8.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

### **REASONS AND CONSIDERATIONS**

Having regard to the nature and scale of the proposed development and the unique circumstances of the appeal site, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the amenities of adjoining neighbours or the character of the area. The proposal would therefore be in accordance with the proper planning and sustainable development of the area.

### **CONDITIONS**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 15<sup>th</sup> day of September 2017 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Water supply and drainage arrangements, including the disposal of surface water shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

3. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs paved areas or otherwise shall discharge onto the public road or adjoining properties.

**Reason:** In the interest of traffic safety and to prevent pollution.

4. a) The treatment plant and polishing filter shall be maintained in accordance with the details submitted and in accordance with the requirements of the "Wastewater Treatment Manual; Treatment Systems for Single Houses " EPA 2000.  
  
b) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to and agreed in writing with the planning authority within four weeks of the occupancy  
  
c) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.  
  
d) Within 3 months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance, certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner.

**Reason:** In the interest of public health.

5. A footpath 1.8m wide shall be provided along the roadside boundary and shall comply with the detailed standards of the planning authority for such road works.

Roadside boundary wall to the south east of the proposed entrance shall not exceed 1.6m in height and to the northwest of the proposed entrance shall not exceed 1.2m in height.

**Reason:** In the interest of amenity and of traffic and pedestrian safety.

6. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of residential and visual amenity.

7. The external finishes of the proposed extensions including roof tiles / slates shall be the same as those of the existing dwelling in respect of colour and texture.

**Reason:** In the interest of visual amenity.

8. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution scheme made under Section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions to the scheme at the time of payment, Details of the application of the terms of the Scheme shall be

agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

---

Bríd Maxwell  
Planning Inspector  
07/03/2018