



An
Bord
Pleanála

Inspector's Report ABP-300634-18

Development	To construct a new extension to private dwelling house, replace existing septic tank/soakpit with new packaged waste water treatment system and polishing filter along with all associated site works and services.
Location	Shallee Tld, Kilnamona, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/810
Applicant(s)	John McGrath & Teresa O'Gorman
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Seamus & Susan Guinnane
Observer(s)	None.
Date of Site Inspection	17 th April 2018
Inspector	Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The site is located on the N85 and is occupied by a detached cottage which has recently been renovated. The dwelling itself is on an elevated position on the site with the site sloping down as one moves towards the N85.
- 1.2. The front boundary with the public road is delineated by a stone wall and a wide green margin with an existing tarmac access lane.
- 1.3. The ruins of Shallee castle are located to the south-west of the subject site and are visible from the appeal site, as is a relatively large residential dwelling located to the south of the site.

2.0 Proposed Development

- 2.1. To construct a new extension to private dwelling house, replace existing septic tank/soakpit with new packaged waste water treatment system and polishing filter along with all associated site works and services.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant permission. Conditions of note include:
 - Condition No. 6 – Landscaping of the site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority.

Points of note include:

- No objection to the principle of an extension
- No objection on the grounds of traffic safety given the access is already in place.
- No objection on grounds of public health.
- Not considered that the visual impact will be obtrusive.

- Applicant has submitted copy of Deeds to show lands between the public road and front boundary within the control of Clare County Council.
- Recommendation that planning permission be granted.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

3.3.1. Transport Infrastructure Ireland – No observations.

3.4. Third Party Observations

3.4.1. One observation was received. The issues raised are covered in the Grounds of Appeal.

4.0 Planning History

4.1.1. None relating to this site. However of relevance is the following appeal related to a site 20m to the south of this site, on the opposite side of the N85.

4.1.2. PL03.245643 (15/415) Outline permission for a house. Refuse for 3 no. reasons, two relating to road safety and one relating to housing need.

5.0 Policy Context

5.1. Clare County Development Plan 2017-2023

The following provisions of the Development Plan are relevant:

- Section 8.2.3.3 Access onto National Roads including Objective CDP 8.4 'Direct Access onto National Roads'.
- Section 8.3.3 Water Resources including CDP 8.22 'Protection of Water' Resources'/Section 8.4 Water and Wastewater Services including Objectives CDP 8.26 'Ennis and Environs Water Supply' and CDP 8.27 'Waste Water Treatment and Disposal'.

- Chapter 13 Landscape including Landscape Character Areas – Area is within the Kilnamona High Drumlin Farmland Character Area and is also designated as being in the Western Corridor Working Landscape. Objective CDP 13.3 ‘Western Corridor Working Landscape’ is applicable.
- Chapter 17 Design and Built Environment including Objectives CDP17.2 ‘Universal Design’ and CDP 17.4 ‘Design and the Built Environment’.

5.2. **Spatial Planning and National Roads Guidelines for Planning Authorities 2012**

- 5.2.1. The Minister for the Environment, Community and Local Government has issued these guidelines under section 28 of the Planning and Development Act 2000 (as amended). Planning authorities and An Bord Pleanála are required to have regard to the guidelines in the performance of their functions under the Planning Acts. The guidelines set out planning policy considerations relating to development affecting national roads (including motorways, national primary and national secondary roads) outside the 50/60 kmh speed limit zones for cities, towns and villages.
- 5.2.2. Section 1.4 refers to need to ensure the strategic traffic function of national road network is maintained and Section 1.5 provides that proper planning is central to ensuring road safety.
- 5.2.3. Section 2.5 provides the following policy approach for ‘Lands adjoining National Roads’ to which speed limits greater than 60 kmh apply: The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.
- 5.2.4. Section 2.6 provides the criteria for Exceptional Circumstances where a less restrictive approach may apply.
- 5.2.5. Chapter 3 relates to the Development Management of Roads and notes that this is the Key to Plan Implementation. Section 3.6 refers to Road Safety Audits for a new or significant changes to an existing access.
- 5.2.6. Chapter 4 concerns Implementation of these guidelines including by ABP.

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Grounds of Appeal, as submitted by the Third Party Appellants, are as follows:

- Council failed to follow proper planning procedure when dealing with the planning file.
- Site notice was located approximately 30m from the public road.
- Means of access to the site was incorrectly shown/no letter of consent from owner of the lands/no legal access exists.
- Works carried out prior to making the application were unauthorised.
- Use of the building was abandoned and was classed as derelict.
- Re-use of a derelict building requires planning permission.
- Dwelling fronts onto the N85 roadway at a location where visibility is clearly restricted.
- This concern is back up by notes on pre-planning where traffic safety was highlighted as a concern.
- No change in Council policy since this advice was given in 2011.
- If the use of the dwelling was considered unauthorised then the entrance would be considered as a new entrance, and Council policy 3.15 would apply. TII and the Council would have commented negatively on the application.
- Appellants are the owners of the entire landholding surrounding the site. Solicitor's letter and land registry and deeds map are included an Appendix to the appeal submission.
- Applicant has no right of way across lands to the site/applicant purchased the site knowing they had no legal access.

- If they wanted legal access to the land they should have applied for permission to construct an entrance on the western end of their site, where it adjoins the N85 public road.
- Planner's report refers to a copy of deeds to show lands dedicated to the Council in 1962- these deeds are not on the planning file, nor are they available electronically.
- Decision to grant refers to additional information submitted on 29/11/2017 – the only unsolicited information on file are drawings of the dwelling received on 27/10/2017.
- The only deed of ownership with any legal standing is that issued by the Property Registration Authority – states that appellants are owners of the land.

6.2. Applicant Response

6.2.1. A response to the Third Party Appeal has been submitted on behalf of the applicant. This is summarised below:

- Site notice was erected 'on or near the main entrance to the land' in accordance with the regulations/The appellant saw the notice/adjacent road is national secondary road with a 100km speed limit/planning officer considered that the notice complied.
- Council has concluded that previous works to refurbished the cottage were exempted development/Council have not raised any objection in pre-planning to the principle of renovation and extension.
- Local Property Tax table shows an active LPT for several years.
- Access is across a road reserve which has been owned by Clare County Council since 1962.
- There are public services; a group water scheme pipe and telecoms duct in this reserve.
- Dwelling is not a protected structure, is not in or near an architectural conservation area/Not in or near any SAC, SPA, scenic view or landscape of special note/Not subject to flooding.

- Proposal utilises an existing vehicular entrance and existing water supply/includes replacement of a substandard wastewater treatment system.
- Reasonable to anticipate a presumption in favour of the development.
- Given the character of existing development in vicinity, predominant large detached houses of conventional design, the proposal would not have a significant visual impact.

6.3. **Planning Authority Response**

- Do not agree that the application should have been made invalid by virtue of the location of the site notice.
- State that the area to the front boundary of the site and the public road was dedicated to Clare County Council in 1962.
- Previous works were deemed exempted development.

6.4. **Observations**

6.4.1. None.

6.5. **Further Responses**

6.5.1. None.

7.0 **Assessment**

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of the proposed development.
- Traffic Safety Issues.
- Design, Visual Amenity and Impact on Landscape.
- Waste Water and Water Supply.
- Other Issues.

- Appropriate Assessment.

7.2. Principle of the Proposed Development

- 7.2.1. There is no objection in principle to an extension to an existing residential dwelling, subject to the considerations below.

7.3. Traffic Safety Issues

- 7.3.1. The appellants have raised the issue of restricted visibility in their appeal submission. The applicants note that Transport Infrastructure Ireland were consulted and had no observations to make on the planning application.
- 7.3.2. Section 8.2.3.3 'Access onto National Roads' notes that it is the policy of the Planning Authority will be to avoid the creation of any additional access points from new developments or the generation of increased traffic from existing accesses to national roads to which speed limits of greater than 60km/h apply in accordance with 'Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)', subject to the exceptional circumstances as set out in the development plan. These exceptional circumstances include *inter alia* the nature of the proposed development and the volume of traffic that will be generated by it, the suitability of the location compared to alternative locations and the pattern of development in the area.
- 7.3.3. Objective CDP 8.4 'Direct Access onto National Roads' seeks to assess development proposals having regard to the above criteria.
- 7.3.4. I note that Transport Infrastructure Ireland had no observations to make at planning application stage and there are no comments on file from the Roads Department of the planning authority. Notwithstanding this, and while I acknowledge that there is an existing access lane serving the dwelling, this, in my view, is sub-standard due to the severely constrained sightlines and the narrowness of the existing access lane, combined with the prevailing 100km speed limit on this road. Access onto this lane when travelling from the north-west is made difficult and dangerous, in my view, by the sharp left turn one must take to access the site. Accessing from the south-east also creates a traffic hazard by virtue of the need to stop and turn right, close to a bend in the road. I also consider that the significant increase in floorspace would invariably result in an intensification of the use of this access, which is contrary to the

CDP and is contrary to the guidance as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

- 7.3.5. I refer also to an appeal decision on the site to the south of the appeal site (ABP Ref PL03.245643) which related to an outline application for a new dwelling house, utilising an existing access lane off the N85, directly opposite the access to this appeal site. This was refused for three reasons, two of which refer to the creation of a traffic hazard. As such it has been recognised by the Board that this location, close to a bend on the road, is compromised as a result of the restricted sightlines, and the restriction on the intensification of existing accesses onto national roads.

7.4. **Design, Visual Impact and Impact on Landscape**

- 7.4.1. In terms of scale and massing, the extension adds significantly to the existing dwelling, increasing the floor area from 58.7 sq. m. to 183.5 sq. m. While there is some scope for an extension to the dwelling, that would reflect the requirements of a modern dwelling, the scale of the proposed development, combined with the significant visibility towards the site, results a negative impact on the visual amenity of the area in my view.
- 7.4.2. The appeal site is located within the Western Corridor Working Landscape, which is defined as all lands within 10km of either side of the N18/M18 with the exclusion of Heritage Landscapes.
- 7.4.3. Objective CDP 13.3 'Western Corridor Working Landscape' applies in this instance which allows for development that will enhance social well-being and quality of life but also requires selection of appropriate sites in the first instance within the landscape, with the requirement to minimise visual impact.
- 7.4.4. I do not consider the proposed development has fulfilled the criteria above. The existing dwelling's location on a relatively elevated site, together with an extension that is over scaled, and is dwarfs the original dwelling on site, results in a visually prominent development that has a negative impact on the landscape character in my view.
- 7.4.5. However, this is a **New Issue** in the context of this appeal, and the Board may wish to consider cross circulation on same.

7.5. **Waste Water and Water Supply**

- 7.5.1. It is proposed to replace the existing wastewater treatment system with a packaged wastewater treatment system and polishing filter. A Site Characterisation Form was submitted with the application and I have had regard to same.
- 7.5.2. The GSI Groundwater maps show that the site is located within an area with an aquifer category of 'Regionally Important' with a vulnerability of 'Extreme', and is also within the inner source protection area of the Drumcliff springs water source for Ennis Town. This represents a GWPR response of R3² under the EPA Code of Practice (COP).
- 7.5.3. According to the response matrix, on-site treatment systems are acceptable in such areas subject to normal good practice and conditions relating to a minimum thickness soil/subsoil as well as exiting groundwater source quality and cumulative impacts on the groundwater source.
- 7.5.4. The trial hole was excavated to a depth of 2.2m. Silt loam and gravelly silt were encountered. There was no bedrock or watertable encountered.
- 7.5.5. A T Value of 19.28 was found indicating that the site is suitable for a secondary treatment system such as the one proposed here.
- 7.5.6. I note the recommendation set out in Section 5 of the Site Characterisation Form which notes that the invert of the percolation trench is to be at 400mm below existing ground level and constructed in accordance with EPA Guidelines.
- 7.5.7. The section shows the polishing filter at a depth of 0.8m below ground level with at least 1.8 m of suitable soil beneath the invert of the percolation pipe.
- 7.5.8. In relation to existing groundwater quality, the EPA report on Ennis-Drumcliff water source notes the source is at risk of contaminants¹, and the groundwater vulnerability is classed as extreme. However, given the demonstrated suitability of the site for the proposed wastewater treatment plant proposed here, I do not consider that this proposed development will increase this risk significantly. It is further noted that the proposal seeks to upgrade an existing wastewater treatment system.

¹ https://www.epa.ie/pubs/reports/water/ground/gwmpinfo/EPA_GWMP_Ennis%20-%20Drumcliff.pdf (accessed 26/06/2018)

7.5.9. Having regard to the above, I am satisfied that it has been demonstrated that the site can accommodate the effluent treatment proposal in its entirety.

7.5.10. Other Issues

7.5.11. The appellants have raised the issue of land ownership and contend that the applicant does not have the legal right to utilise the existing access to the site, as the appellants are the legal owners of the between the front boundary of the dwelling and the N85 Road. The applicant and the local authority contend that the land in question was dedicated to Clare County Council in 1962.

7.5.12. The issue of ownership relative to third party lands/boundaries is a civil matter and I do not propose to comment on this issue. I note here the provisions of S.34 (13) of the Planning and Development Act and Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007).

7.5.13. Issues relating to the site notice and validation of the application have also been raised by the appellants. In relation to the site notice, the LPA has accepted the validity of same in validating the application and the Board does not have any remit in this regard.

7.5.14. Enforcement Issues have also been raised by the appellants, citing previous works to the existing building on site. In relation to Enforcement Issues relation to works on the structure, the planning authority has ruled such works were exempted development. In any case, is the Board does not have a role in Enforcement and in this respect regard is had to Section 10.1 of the Development Management Guidelines 2007 which provides: *Enforcement of planning control is the responsibility of the planning authority and this is the case, of course, whether the planning decision, including conditions, was made by the planning authority or the Board.*

7.6. Appropriate Assessment

7.6.1. No information in relation to Appropriate Assessment was submitted with the application. The planning authority carried out AA Screening and determined that no appropriate assessment issues arise.

7.6.2. I note that there are 20 no. Natura 2000 sites within 15km of the appeal site. With the exception of three sites, I am satisfied that the remainder can be 'screened out' on

the basis that significant impacts on these European Sites could be ruled out on the basis of a lack of a source-pathway link to these European Sites and/or distance to the European Site. There is a potential direct and indirect source-pathway to the three sites in the table below by way of groundwater.

7.6.3. In relation to the three European noted above, these sites are selected for following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive.

Ballyallia Lough SPA (004041) 3.4km N.E. of site	Ballyallia Lake SAC (000014)) 3.4km N.E. of site	Lower River Shannon SAC (002165) 4.6km west of site
<p>Wigeon (<i>Anas penelope</i>) [A050] Gadwall (<i>Anas strepera</i>) [A051] Teal (<i>Anas crecca</i>) [A052] Mallard (<i>Anas platyrhynchos</i>) [A053] Shoveler (<i>Anas clypeata</i>) [A056] Coot (<i>Fulica atra</i>) [A125] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Wetland and Waterbirds [A999]</p>	<p>Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150]</p>	<p>Sandbanks which are slightly covered by sea water all the time [1110] Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Coastal lagoons [1150] Large shallow inlets and bays [1160] Reefs [1170] Perennial vegetation of stony banks [1220] Vegetated sea cliffs of the Atlantic and Baltic coasts [1230] Salicornia and other annuals colonising mud and sand [1310]</p>

		<p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho- Batrachion</i> vegetation [3260]</p> <p><i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</p> <p>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</p> <p><i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029]</p> <p><i>Petromyzon marinus</i> (Sea Lamprey) [1095]</p> <p><i>Lampetra planeri</i> (Brook Lamprey) [1096]</p>
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		<p>Lampetra fluviatilis (River Lamprey) [1099]</p> <p>Salmo salar (Salmon) [1106]</p> <p>Tursiops truncatus (Common Bottlenose Dolphin) [1349]</p> <p>Lutra lutra (Otter) [1355]</p>
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7.6.32. Having regard to the scale and nature of the proposed development, an extension to a domestic dwelling, with a waste water treatment system that presents no significant risk of ground water pollution, I consider it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No.s 004041, 000014, 002165, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. REFUSE permission in accordance with the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The "Spatial Planning and National Roads - Guidelines for Planning Authorities" issued by the Department of the Environment, Community and Local Government (2012) seek in Section 2.5 "to avoid the...generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 km/h apply." The proposed development of an extension of substantial scale to an existing dwelling would result in the intensification of use of an existing substandard access on to the N85 national road, close to a bend to the east,

having restricted sightlines, with a continuous white line on the road, and where a speed limit of 100 km/h applies. It is, therefore, considered that the additional and conflicting turning movements generated by the proposed development would endanger public safety by reason of traffic hazard, would interfere with the free flow of traffic on this national road, would compromise the level of service and carrying capacity of the road at this location, and would fail to protect public investment in the national road network, both by itself and by the undesirable precedent it would set for similar such development. The proposed development would be contrary to the provisions of the said Guidelines, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Ronan O'Connor
Planning Inspector

27th June 2018