



An  
Bord  
Pleanála

## Inspector's Report ABP-300662-18

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<b>Development</b>	(a) construct a porch to the front elevation of the existing dwelling with all associated site works (gross floor area 2.67sqm (b) permission to remove Condition 11 from planning permission granted under reference no. 01/1656.
<b>Location</b>	Shannafreaghoge County Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	17/712
<b>Applicant(s)</b>	Tom Burke
<b>Type of Application</b>	First Party
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Tom Burke
<b>Observer(s)</b>	Éamon O'Cuiv TD
<b>Date of Site Inspection</b>	10/05/18
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1. The subject site is located on the eastern side of a narrow country road, approx. 3km north of the Gaeltacht village of Furbo. The predominantly agricultural area has a number of one off-houses in a ribbon pattern leading from the crossroads. On site is a detached single storey bungalow with a detached single storey garage.

## 2.0 Proposed Development

- 2.1.1. On the 19<sup>th</sup> May 2017, permission was sought for the construction of a porch (2.67sq.m.) to the front of an existing dwelling and the removal of condition no. 11 from the previous planning permission reg. ref. 01/1656.
- 2.1.2. A cover letter submitted with the application states that the applicant no longer lives in the area and wishes to have the occupancy condition removed to allow him to sell the house.

## 3.0 Planning Authority Decision

### 3.1. Planning Authority Reports

- 3.1.1. **Planning Report:** Site is located in "Landscape Sensitivity Class 2" and Gaeltacht. Applicant should be requested to submit documentary evidence that the dwelling was occupied by the applicant full time for a minimum of seven years and evidence that they have complied with condition no. 10 of 01/1656 which required the payment of a financial contribution.
- 3.1.2. **Further Information:** On the 17<sup>th</sup> November 2017 the applicant responded to the request for further information. The cover letter stated that the applicant's brother lived in the house and utility bills for a seven-year period are submitted. Bank statement submitted. showing that the financial contribution required under condition no. 10 was complied with.
- 3.1.3. **Second Planning Report:** Front porch is acceptable. Documentary evidence regarding occupancy cannot be definitively linked to the dwelling permitted under condition no. 11 of 01/1656. Condition no. 11 does not extend to siblings. An inurement agreement was not entered into with Galway County Council and therefore condition no. 11 cannot be removed. Recommendation to grant permission.

### 3.2. Decision

- 3.2.1. Notification of intention to GRANT permission subject to 10 no. conditions. Condition no. 10 states

“Use of the proposed house shall be restricted to use as a dwelling by the applicant, applicant’s family, heirs, executors, administrators or persons involved in agricultural related activities in this rural area, unless otherwise agreed by the Planning Authority. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development) Act 1963.

Reason: In the interest of the proper planning and development of the area.”

### 4.0 Planning History

- 4.1.1. Planning Authority Reg. Ref. **00/2214**: Outline planning permission granted to Tom Burke for the construction of a dwelling, subject to 7 no. conditions. Condition no. 1 restricted the occupancy of the dwelling subject to a further agreement.

- 4.1.2. Planning Authority Reg. Ref. **01/1656**: Planning permission was granted to Tom Burke for the construction of a dwelling house and effluent treatment system. Condition no. 11 of the decision stated:

““Use of the proposed house shall be restricted to use as a dwelling by the applicant, applicant’s family, heirs, executors, administrators or persons involved in agricultural related activities in this rural area, unless otherwise agreed by the Planning Authority. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development) Act 1963.

Reason: In the interest of the proper planning and development of the area.”

### 5.0 Policy Context

#### 5.1. Galway County Development Plan 2015-2021

- 5.1.1. The subject site is in an unzoned rural area of County Galway. Of relevance to the subject appeal is **Objective RHO 13-Lifetime Enurement Clause** which states that “Lifetime enurement clauses will be considered to have expired after a period of

seven years of full time occupancy by the applicant. Actual removal of the enurement clause will have to be established by a planning application”

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. A first party appeal against the decision of the Planning Authority was submitted by an agent for the applicant. The grounds of the appeal can be summarised as follows:

- Given the duration of time that has passed since the dwelling was constructed it is irrational and unfair to re-impose an occupancy clause
- The applicant was approached by Galway County Council to sell the dwelling in order for it to be made available to a local family on the housing list. This sale was not completed due to the inurnment condition.
- The Planning Authority’s statement that “family” does not extend to siblings is not reflected in development plan policy. The applicants brother should be considered family.
- The applicants brother moved into the dwelling shortly after completion and is a valued member of the local community. His farming land surrounds the property in question. Sufficient evidence has been submitted showing compliance with the 7-year post construction requirement.
- Permission has been granted for a number of 60m high wind turbines in the immediate area. The applicant no longer wishes to return to this area due to the visual and noise disturbance caused by the turbines.
- The Board is requested to remove the inurnment condition attached to permission 01/1656 and re-imposed under the subject application.

### **6.2. Observations**

#### **6.2.1. Éamon Ó Cuív:**

- Wishes support the request for the removal of condition no. 10
- For genuine reasons the house was not occupied by the applicant when it was constructed 16 no. years ago. The Council did not pursue the matter and the

enforcement proceedings time frame has passed. The applicant is now in a Catch-22 situation.

- The applicant wishes to sell the house to Galway County Council for use in the HAP or RAS scheme. People on the housing list in this area will have a housing need and therefore the spirit of the condition would be respected.
- The condition should be removed or amended.

## 7.0 **Assessment**

### 7.1. **Principle of Development**

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I have assessed the proposed development including the various submissions from the applicant, the planning authority and the Observer. The single issue raised in the first party appeal is the inclusion of an occupancy clause on the original permission, and the refusal of the Planning Authority to remove this clause in the subject application.
- 7.1.2. In terms of the planning history of the subject site, under Planning Authority reg. ref. 00/2214 the applicant Tom Burke sought outline planning permission for a dwelling on the subject site. The application form submitted with the application stated that Mr Thomas Burke, of Tullamore, Co. Offaly was seeking a family dwelling on the family farm which was in the ownership of the applicant's brother James Burke. Thomas Burke stated that the dwelling would be the home of his wife and children. He noted that another brother Michael Burke had received permission for a dwelling on the family lands and that he Thomas Burke had a dwelling in Tullamore.
- 7.1.3. The applicant was requested to clarify how his housing need related to an area "far removed from" his existing dwelling and place of employment. The response to the request was that Mr Burke was returning to reside in the area and take up employment with his brother. Permission was granted on the 30<sup>th</sup> November 2000 subject to 7 no. conditions. Condition no. 1 restricted the occupancy of the dwelling subject to a further agreement. A letter dated 28<sup>th</sup> February 2001 from the Planning Authority refers to a signed and sealed Enurement Agreement to be sent to the applicant's solicitor for attachment to the property folio.

- 7.1.4. In May 2001 the applicant Tom Burke sought permission consequent on outline for the construction of a dwelling of 166sq.m. Mr Burkes address was listed as Tullamore in the application form. On the 3<sup>rd</sup> December 2001, permission was granted subject to 11 no. conditions. Of relevance to the subject application is condition no. 11 which states: *“Use of the proposed house shall be restricted to use as a dwelling by the applicant, applicant’s family, heirs, executors, administrators or persons involved in agricultural related activities in this rural area, unless otherwise agreed by the Planning Authority. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 38 of the Local Government (Planning and Development) Act 1963.”*
- 7.1.5. By letter to the Planning Authority Mr. Burke sought to have the condition – referred to by both the applicant and the Planning Authority as an enurement condition – removed in 2006. He stated that his work had been transferred to Tullamore and that he needed to sell the dwelling to facilitate the purchase or build of a further dwelling in Tullamore. A letter from the Planning Authority on the 15<sup>th</sup> June 2006 states that the clause could not be lifted as it was specifically attached to the permission to facilitate the granting of permission in this restricted area.
- 7.1.6. In the subject appeal the applicant makes the case that the occupancy condition should be removed due to the length of time since the construction of the dwelling and to facilitate the sale of the dwelling to Galway County Council. I note that the Council have not commented on the appeal and therefore no further information on this attempted purchase has been presented.
- 7.1.7. The housing need of the applicant appears not to have changed since his primary application was made in 2000. In the 2000 and 2001 applications Thomas Burke stated that he owned a dwelling in Tullamore but would be returning to reside in the subject dwelling in Furbo, Shannafreaghoge once completed.
- 7.1.8. As noted above the applicant was requested to provide documentary evidence of his occupation of the subject dwelling for a period of seven years. This would facilitate the removal of the occupancy clause / enurement clause in accordance with Objective RHO 13 of the Galway County Development Plan. The objective states that “lifetime enurement clauses will be considered to have expired after a period of

seven years of full time occupancy by the applicant. Actual removal of the enurement clause will have to be established by a planning application”.

- 7.1.9. When requested to provide evidence of having lived in the dwelling, Thomas Burke stated that a local family that included his brother lived in the permitted dwelling. He submitted utility bills in the name of his brother Michael Burke, for a dwelling in Shannafreaghoge. The applicant made the case that a sibling of the applicant qualifies as a family member and therefore this complied with condition no. 11 of the planning application.
- 7.1.10. The Planning Authority did not accept this submission, stating that it could not definitively be declared that the utility information submitted referred to the subject dwelling permitted under 01/1656. The Board will note that in the 2000 outline planning application reg. ref. 00/2144 Thomas Burke acknowledged that his brother Michael Burke had a dwelling on the family landholding in Shannafreaghoge.
- 7.1.11. I am minded to agree with the finding of the Planning Authority, that evidence of the applicant having lived in the subject dwelling has not been definitively demonstrated. It is not possible to declare to which dwelling occupied by Michael Burke the utility documentation submitted to the Planning Authority refers. I note that the Observation submitted to the Board acknowledges that the applicant did not reside in the dwelling after completion. With regard to the applicant’s case that his brother qualifies as a family member, the Board will note that Objective RHO 13 requires the applicant to have resided in the permitted dwelling. It does not provide the flexibility of condition no. 11 which allows members of the applicant’s family to live in the permitted dwelling.
- 7.1.12. I am satisfied that the applicant has not demonstrated compliance with Objective RHO 13 of the County Development Plan, which would facilitate the removal of the enurement clause entered into by the applicant upon receipt of planning permission in 2000.
- 7.1.13. In relation to the length of time since the imposition of the occupancy clause, it is considered that no argument has been made for its removal. The sensitivity of the site has not diminished in the period since construction. As noted by the Planning Authority, the condition was attached to the planning to facilitate a stated rural need in an area stated by the Planning Authority to be restricted. I see no reason why the

condition should be removed based on length of time that has elapsed since the permission was granted.

7.1.14. The Board will note that when deciding the current application (reg. ref. 17/712) to remove condition no. 11 of the parent application (reg. ref 01/1656), the Planning Authority restated the conditions of the parent application. The enurement clause condition in the current application is no. 10. For the purposes of clarity, my recommendation is to refuse permission for the removal of condition no. 11 of the parent application reg. ref. 01/1656, as repeated in condition no. 10 of the current application.

## 7.2. **Proposed Porch**

7.2.1. The proposed porch of 2.67sq.m. to the front of the existing dwelling is in keeping with the dwelling and is acceptable.

## 7.3. **Appropriate Assessment**

7.3.1. Having regard to the nature and scale of the proposed development and / or the nature of the receiving environment, and / or proximity to the nearest European site, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## 8.0 **Recommendation**

8.1.1. I have read the submissions on file, visited the site, and have had due regard to the provisions of the Galway County Development Plan 2015-2021 and all other matters arising. I recommend a split decision issue as follows:

8.1.2. **GRANT** permission for the proposed porch of 2.67sq.m. to the front elevation of the existing dwelling, subject to the following reasons and conditions:

### **Reasons and Considerations**

Having regard to the pattern of development in the vicinity and the nature, scale and design of the proposed extension, it is considered that the proposed development, subject to compliance with the conditions set out below would not seriously injure the



residential amenities of the existing or neighbouring property. The proposed development 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 20<sup>th</sup> day of November 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.

8.1.3. **REFUSE** permission for the removal of Condition no. 11 from Planning Authority reg. ref. 01/1656, as repeated in condition no. 10 of the subject application

1. The proposed development which seeks the removal of the lifetime enurement clause imposed by condition no. 11 of Planning Authority reg. ref. 01/1656 does not comply with Objective RHO-13 of the Galway County Development Plan 2015-2021 which requires that a period of seven years of full time occupancy by the applicant elapse before a lifetime enurement clause can be considered to be expired. The applicant of reg. ref. 01/1656 has not demonstrated a period of seven years of full time occupancy of the subject dwelling and therefore does not comply with Objective RHO-13. The proposed removal of the lifetime enurement clause is not in accordance with the development plan and therefore is not in keeping with the proper planning and sustainable development of the area.

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Gillian Kane  
Planning Inspector

15th May 2018