



An
Bord
Pleanála

Inspector's Report ABP-301586-18

Development	For alterations to the rear of dwelling house, namely increase in floor area and minor changes to position of windows previously granted under P17-133
Location	Fintra More, Miltown Malbay, Co. Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	P17/760
Applicant	Martin Haran
Type of Application	Retention and completion
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant	Siobhan Hughes
Date of Site Inspection	31 July 2018
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1.1. The site is located at Fintra More, Miltown Malbay, Co. Clare c 1.5km north of Miltown Malbay where it fronts onto the R 482, west of the junction with the N67. The site is one of three adjoining sites. It sits between two sites on which one-off houses have been built in the relatively recent past. A house is under construction on the subject site. The ground falls towards the road and from east to west. The house to the east being on higher ground and that to the west being on lower ground.
- 1.1.2. The houses are individual but are all single storey, T shaped on plan, with large projections to the rear and with side facing windows.
- 1.1.3. The third party house is to the east. It has many windows and doors facing west towards the subject site, including two windows in the gable. A large outhouse with a window and door and a garage door, faces towards the road at the rear of the house, near the common boundary with the subject site. A post and rail timber fence divides the properties. The driveway continues past the house to the outhouse. There is also a small hedge planted to the west of the rear portion of the house which divides the house from the driveway.
- 1.1.4. The house to the west has a window and door facing east towards the subject site but none in the gable. A post and wire fence divides the properties.
- 1.1.5. The building on the subject site has been constructed in blockwork to wall plate level with ceiling joists above. It has an east facing window and a door in the rear portion; and a west facing window.
- 1.1.6. To the rear of the dwelling, along the eastern boundary and in line with the outbuilding on the adjoining site, the low wall of a structure has been built.
- 1.2. The site is given as 0.22ha.

2.0 Proposed Development

- 2.1. The proposed development is the retention of alterations to the rear of the dwelling house: an increase in floor area and minor changes to the position of windows previously granted under P17-133.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to grant permission subject to 2 conditions.
- 3.1.2. Condition no. two requires the developer to provide fences with hedging along both side boundaries extending from the rear boundary to the front building line.

Exact details of the treatment of those boundaries shall be submitted in writing and accompanied by a site layout plan, cross-section drawings and elevation drawings of the proposed boundary treatment, to the Planning Authority. Full details shall be agreed with the Planning Authority prior to the implementation of boundary treatments. The agreed boundary treatments shall be implemented within the period governing permission for the development of this site, planning reference no. P14-21 which shall expire on the 11th April 2019.

Reason: To preserve the residential amenities of neighbouring properties.

- 3.1.3. The decision was in accordance with the planning recommendation.

3.2. Planning Authority Reports

- 3.2.1. Planning Report

There are two planning reports on the file.

- 3.2.2. The first recommending a request for further information on 3 points:

- 1 Requesting a revised floor plan drawing which delineates, in red, all additional floor areas for which retention is sought, where those floor areas are additional to those authorised under 17/133.
- 2 Noting that there is a separate structure under construction and that the front boundary has been removed, which is contrary to conditions and inviting the submission of proposals as to how these issues are to be regularised.
- 3 Noting the potential for overlooking into the neighbouring property to the southwest and requesting proposals to mitigate overlooking.

- 3.2.3. The report notes the changes to the permitted layout as:
- An increase in floor area c32 sqm.
 - On the southwest facing gable of the main block a large window in the kitchen/ dining now altered to two smaller windows occupying the same location on the gable.
 - On the south west facing wall of the rear annex, enlarged kitchen window (from 1m to 1.8m width) replaces a smaller window serving a utility room.
 - On the south west facing wall of the rear annex, an additional small kitchen window.
 - On the south east facing wall of the rear annex, double doors and a large window proposed to replace a single door permitted on the elevation.
- 3.2.4. The separation distance to the house to the north-east is c 27m between opposing windows. Negative effects on residential amenities will not occur. The third party submission came from the occupants of that house. The finished floor level of that house is 1m above that of the house subject of the application.
- 3.2.5. The separation to the house to the southwest is 22m between opposing ground floor windows, which is an acceptable separation distance. The additional enlarged windows on the rear annex, proposed for retention, may result in overlooking of the adjoining rear private open space. Proposals to mitigate to be sought.
- 3.2.6. A separate structure under construction, next to the completed garage on the adjoining site does not have planning permission and cannot rely on the exempted provisions until the host dwelling is completed.
- 3.2.7. The front boundary has been removed, which is contrary to conditions of 14-21.
- 3.2.8. Submission of proposals as to how these issues are to be regularised is required.
- 3.2.9. 14-21 permitted a dwelling of 138.76 sq m, development contribution paid, no further development contribution required.

3.3. **Response to Further Information Request**

- 3.4. Response received (23/2/2018) to the request for further information, accompanied by drawings and other details.

3.4.1. Further Report

3.4.2. The second planning report recommends permission.

3.5. **Prescribed Bodies**

3.5.1. Irish Water no objection.

3.6. **Third Party Observations**

3.6.1. An observation on the file has been read and noted.

4.0 **Planning History**

17-133 extend dwelling and revise front elevation Ref No P14-21, permission granted.

14-21 construct dwelling house and associated site works to include septic tank percolation and reed bed system, permission granted.

12-733 extend the appropriate period of planning permission P07-1154 for a dwelling house septic tank and treatment plant, permission refused:

Not in accordance with S 42 of the Planning and Development Act 2000-2010 as per S 42(1) (A)(ii) (II). There have been significant changes in the development objectives in the development plan for the area in terms of waste water treatment, specifically objective CDP 8.8 which requires compliance with the Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses' EPA 2009, since the date of the permission. The details submitted with the application do not demonstrate compliance with the EPA Guidelines 2009 and would no longer be consistent with the proper planning and sustainable development of the area.

08-1447 to revise and raise floor level PI Ref P07-1154, permission granted.

07-1154 to erect a dwelling, septic tank and foul treatment plant, permission granted.

East

14-90 to erect a dwelling, septic tank and foul treatment plant, permission granted.

West

08-1933, to erect a dwelling, septic tank and foul treatment plant, permission granted.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Development Plan proposes that future planning policies for rural areas in County Clare be integrated by considering the County to comprise three types of landscapes: Settled Landscapes, Working Landscapes and Heritage Landscapes. The site is located in an area designated a settled landscape – an area where people live and work.

5.2. Natural Heritage Designations

The nearest Natura sites are the Mid Clare Coast SPA 004182 and the Carrowmore Point to Spanish Point & Islands SAC 001021, which are located in excess of 1 ½ km from the subject site.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The third party appeal against the decision to grant permission has been made by Siobhán Hughes.

The grounds includes:

- The extension as designed will significantly interfere with third party's residential amenity by causing direct overlooking into the private part of her house.
- The conditions attached with the decision to grant permission are not sufficiently clear in regard to the treatment of the front boundary walls and the proposed connection between the party boundary and the proposed entranceway. There is lack of clarity concerning the privacy fencing.

- The decision to accept the application to accommodate variations while the building was in course of construction does not constitute proper planning and facilitates a developer who was carrying out works not in accordance with planning permission.
- Third party examined the plans for P14/21 and P17/133 and was not concerned. When construction commenced, not in conformity with the plans she lodged a complaint and a warning letter was issued. The work continued to wall plate level, then stopped, and retention was sought.
- The permission accepted a timber fence and hedge as a screen. Due to the very windy and saline atmosphere, hedges rarely grow successfully to the eight required to protect third party's residential amenity. The provision of a timber fence will be entirely inadequate. She requests the Board, if minded to grant permission, to attach a condition requiring a stone wall 1.6m in height, between points 'A' and 'B', shown on a site layout plan attached.
- She notes condition 1(d) that the garage is not included. She requests that any future structure within the curtilage of the house be de-exempted to ensure the continued protection of her amenity. The garage which is proposed will significantly tower over her amenity area.
- On 16/5/17 the first party created an entrance by demolishing a portion of the boundary wall between the sites indicated 'X'- 'Y', shown on a site layout plan attached. The first party undertook to reconstruct the wall, which has not been done. She requests a condition requiring the reconstruction of the section of wall and tying it into the proposed wing wall. A general condition requiring reconstruction of any demolitions carried to boundaries during construction would be sufficient.
- Rather than retention she considers that a new permission should be sought. The Board should refuse permission for the alterations and require the permission to be completed as recently granted.
- She requests refusal or the imposition of the suggested conditions.
- A layout drawing, photographs (including some taken from within the subject development) and copies of correspondence, are attached to the grounds.

6.2. Applicant Response

6.2.1. The first party has responded to the grounds of appeal which includes:

- He requests that the third party does not trespass on his property, without formal permission.
- He is seeking an early decision, due to having sold his dwelling in Quin Gardens, Quim in 2017 and having been twice refused planning permission for a new family home on his land in Quin Gardens, based on sight distance and being zoned for residential development. He is currently without a home. As a father of young kids this is difficult.
- He received planning permission in 2014 and was advised by his agent in 2017 to submit designs and that it would be in order to amend the rear of the house as it would be exempted development. The agent also revised the finished floor levels in error, which was later regularised.
- Re impact on residential amenity – he has professional information that hedging will thrive in saline areas – Ligustrum vulgare is a well rooted hedge that can tolerate in seaside poor soil and extreme cold. He recommends that he bears the cost of planting this along the entire boundary.
- There are no objections from other neighbours.
- Prior to the third party locating there in 2016, access for a mechanical digger was required, which necessitated the removal of the wall referred to by third party. It was rebuilt with blocks and stones on numerous occasions and a gate installed temporarily. This area is outside third party's boundary and is Council property. He proposes to comply with his site layout as per planning permission granted, which does not stipulate a wall to the edge of the road.
- Retention – He assumed that a 40sqm extension to the rear of his house was exempted. If he assumed wrong, he will concede to the requirements of Bord Pleanála.
- He considers the objection to a domestic garage is selfish. The third party has constructed a garage, in excess of the exemption size and operates a private dance studio there.

- He does not wish to erect a wall between 'A' and 'B'.
- He attaches a map which he obtained when he purchased the site which, he states, indicates that the boundary between the sites is not accurate. He has drawn a green broken line to highlight the fact that the boundary between the properties is a straight line, which is far from evident on the ground. The third party's boundary is encroaching on his property by 2.4m and until this matter is regularised in the courts he suggests that no fixed boundary structure be put in place.
- The delay is costing the first party money, and materials have been taken, and he is concerned at the structure being open to the elements.
- A map, photographs and copies of correspondence are attached to the response.

6.3. **Planning Authority Response**

- 6.3.1. No Planning Authority response to the grounds of appeal was received during the relevant period.

6.4. **Observations**

- 6.4.1. No valid observation on the grounds of appeal was received during the relevant period.

7.0 **Assessment**

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, non-compliance with permission, overlooking, boundary treatment, front boundary and domestic garage and the following assessment is dealt with under those headings.

7.2. **Appropriate Assessment**

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

7.3. Non-compliance with Permission

- 7.3.1. The third party is concerned that the application for retention allows a development which does not comply with the existing permission to be retained; and requests the Board to refuse permission.
- 7.3.2. The subject application is the mechanism by which the merits of the development can be assessed and the fact that the development carried out does not comply with the previous permission should not therefore be a reason to refuse permission.

7.4. Overlooking

- 7.4.1. Overlooking is of particular concern to the third party, she refers to interference with her residential amenity, by causing direct overlooking into the private part of her house.
- 7.4.2. The third party house to the east has an entrance door French doors and other windows on the west facing elevation of the rear part of the house as well as two windows in the gable. The accesses to both houses, both the third party's house and to the subject house, extend close to the common boundary, past the rear of the main buildings, and potentially impacts on the amenity areas of the houses.
- 7.4.3. The planner's report points out that the distance between opposing windows is c 27m and that the house to the east is on higher ground.
- 7.4.4. The proposed house is single storey, therefore securing the privacy of the third party's house and the associated outdoor area can be achieved relatively easily by any form of screening of up to 2m height. The request for a condition requiring a stone wall only 1.6m in height, is reflective of the fact that the finished ground level of the third party's site is considerably higher than the subject site.
- 7.4.5. The house to the west is at more of a disadvantage vis a vis ground levels, nevertheless provision of screening, by means of landscaping or other methods can be achieved relatively easily, if desired, having regard to the distances between the houses.
- 7.4.6. In my opinion overlooking should not be a reason to refuse permission, the issue of screening is dealt with under the heading boundary treatment below.

7.5. Boundary Treatment

- 7.5.1. The treatment of the boundary between the sites is of particular concern to the third party, she is not satisfied with condition 2 of the planning authority's decision which requires the developer to provide fences with hedging along both side boundaries extending from the rear boundary to the front building line, subject to details to be agreed. She requests the Board, if minded to grant permission, to attach a condition requiring that a stone wall 1.6m in height be erected between points 'A' and 'B' which she indicates on a copy of the first party's site layout plan.
- 7.5.2. The first party states that he has professional information that hedging will thrive in saline areas – *Ligustrum vulgare* (common privet) is a well rooted hedge that can tolerate, seaside, poor soil and extreme cold; he recommends that such be provided by him. He does not wish to erect a wall between points 'A' and 'B' as requested by the third party. In addition he states that the boundary between the sites is not accurate as set out on the ground. He states that the third party's boundary is encroaching on his property by 2.4m and until this matter is regularised in the courts he suggests that no fixed boundary structure be put in place.
- 7.5.3. In my opinion the erection of a stone wall is unnecessary and would put an undue and misplaced burden on the first party. In my opinion having regard to the distances between the houses to either side of the subject site, the provision of any screening which individual householders may consider desirable should be a matter for the individual householders.

7.6. Roadside Boundary

- 7.6.1. The roadside boundary has been raised by the third party. She states that on 16/5/17 the first party created an entrance by demolishing a portion of the boundary wall between the sites which she has indicated as 'X'- 'Y' on a copy of the first party's site layout plan; the first party undertook to reconstruct the wall, which has not been done. She requests a condition requiring the reconstruction of the section of wall and tying it into the proposed wing wall; and that a general condition requiring reconstruction of any demolitions carried to boundaries during construction would be sufficient.

- 7.6.2. The first party states in response that prior to the third party locating there in 2016 access for a mechanical digger was required which necessitated the removal of the wall referred to by her. It was rebuilt with blocks and stones on numerous occasions and a gate installed temporarily. This area is outside third party's boundary and is Council property. He proposes to comply with his site layout as per planning permission granted which does not stipulate a wall to the edge of the road.
- 7.6.3. Two different situations are presented in the planning application documents vis a vis the entrance. The site layout submitted on the 5th October 2017 indicates a front roadside boundary set-back, showing sightlines of 180m to the east and improved sight distance of 160m to the west. That submitted in response to the further information request on the 28th February indicates no roadside boundary set-back, such that it ties in with the roadside boundary to the west rather than the roadside boundary to the east.
- 7.6.4. P14-12 has a condition referring to the roadside boundary and the documents on the file show a front boundary set-back and sight distances of 180m + to the east and 130m to the west. That site layout submitted with the application P14-12, showed the front boundary tying in with that to the east and west. In my opinion the boundary proposed and conditioned in P14/12 should be followed as it forms the basis for the current development. Details of the roadside wall and treatment of the roadside area should be agreed with the planning authority.
- 7.6.5. In my opinion the permission should be conditional on the front boundary line being per P14-21.

7.7. Domestic Garage

- 7.7.1. The third party refers to the domestic garage noting per condition 1(d) that the garage is not included in the permission. She requests that any future structure within the curtilage of the house be de-exempted to ensure the continued protection of her amenity. She considers that the garage which is proposed will significantly tower over her amenity area.
- 7.7.2. The first party in response notes third party has constructed a garage.

- 7.7.3. The planner's report refers to a separate structure under construction, next to the completed garage on the adjoining site, which does not have planning permission and cannot rely on the exempted provisions until the host dwelling is completed.
- 7.7.4. The location is in line with the outbuilding on the adjoining site and if completed as a domestic garage in compliance with the planning regulations would have no impact on the adjoining property.
- 7.7.5. No condition de-exempting exemptions available to development within the curtilage of a dwelling should be attached.

8.0 Recommendation

- 8.1.1. In the light of the above assessment I recommend that planning permission be granted for the following reasons and considerations and in accordance with the following conditions.

9.0 Reasons and Considerations

- 9.1. The proposed retention of alterations to the rear of the dwelling house, to increase floor area, and other minor changes to the dwelling previously granted under P17-133 and P14-21 are minor amendments to the permitted development and it is considered that subject to the following conditions, the proposed development would accord with the County Development Plan, would not unduly impact on the residential amenities of adjoining properties, and would accordingly be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

- 1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 28 day of February 2018 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. Subject to the modifications hereby permitted, the development shall otherwise be carried out and completed in accordance with the previously permitted amendments Reg Ref P17-133 and the permission for the subject dwelling Reg Ref P14-21 including the period during which it can be implemented, 11th April 2019.

Reason: In the interest of clarity.

3. A roadside boundary shall be provided in compliance with Reg Ref P14-21. Details of the boundary, roadside area and entrance shall be submitted for the prior written agreement of the planning authority.

Reason: In the interest of clarity.

Planning Inspector

29 August 2018

Appendices

- 1 Photographs
- 2 Extracts from the Clare County Development Plan 2015-2021