



An
Bord
Pleanála

Inspector's Report ABP 301761-18.

Development	Retention and extension to dwelling (permitted under P. A. Reg. Ref. 69206). New wastewater treatment system and revised boundaries.
Location	Aillebrack, Ballyconnelly, Co. Galway.
Planning Authority	Galway County Council.
P. A. Reg. Ref.	17/1251
Applicant	Ed and Joanna Colleran
Type of Application	Permission and Permission for Retention.
Decision	Refuse Permission
Type of Appeal	First Party X Refusal
Appellant	Ed and Joanna Colleran
Date of Site Inspection	30 th August 2018
Inspector	Jane Dennehy.

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1.0 Site Location and Description

1.1. The site of the proposed development has a stated area of 2,227 square metres and the location is circa four kilometres to the west side of Ballyconneely at Aillebrack. The Connemara Golf Links is a short distance to the west of the site. The area is coastal, and the locality is characterised by single plot road frontage development some of which appears to be holiday home development. The location comes within the Slyne Head Peninsula Special Area of Conservation SAC. (002740)

1.2.

1.3. There is a single storey unoccupied house on the site which is partially landscaped, a vehicular entrance and hard and soft landscaping. The stated floor area of the existing structure is 99.4 square metres. A septic tank wastewater system is located at the rear of the house and connection to the public mains is available. The front garden area is subject to pluvial flooding. At the time inspection some surface water was evident on the inner side of the front boundary wall.

2.0 Proposed Development

2.1. The application lodged with the planning authority indicates proposals for permission for retention of the existing dwelling, and permission for construction of an extension. (The existing development is previously permitted under P. A. Reg. 69206. Details are available under See Planning History, Paragraph 4 below.) The total stated floor area of existing and new build is 144 square metres, taking into account the proposed demolition of an area of 16.4 square metres and construction of the proposed extension. Also included are proposals for installation of a waste water treatment system, revisions to the site boundaries

3.0 Decision

3.1. By order dated, 9th May, 2018 the planning authority decided to refuse permission for three reasons as outlined below:

- (1) Material contravention of Condition No 6 (an occupancy condition) attached to the grant of Permission under P. A. Reg. Ref. 58429.
- (2) Material contravention of Objective WW5 of the CDP, endangerment of safety and health of the occupants, public health, and risk to receiving waters as the proposed development does not provide for safe disposal of effluent in accordance with the EPA Code of Practice: Wastewater Treatment, 2009.
- (3) Potential for likely significant effect on the integrity and conservation objective of the Slyne Head Peninsula SAC (0002074) having regard to the lack of satisfactory information to demonstrate satisfaction of the EPA Code of Practice: Wastewater Treatment, 2009.

3.2. Planning Authority Reports

3.2.1. Planning Reports

An additional information submission was requested on 10th October, 2017 further consideration of the original application. The applicant was requested:

- to clarify the relationship with the original applicant who obtained planning permission under Reg Ref. 58429. (Condition No 6 of which refers to an Enurement Clause.
- Comprehensive details for the proposed wastewater treatment system.
- An Appropriate Assessment Screening report (The site comes within the area of the Slyne Head Peninsula Special Area of Conservation.

A further information submission was received from the applicant on 12th April, 2018. The planning officer commented that information regarding the enurement clause was not available in the documentation received, that the Site characterisation form for the proposed wastewater treatment system contained discrepancies and that it was not possible to demonstrate satisfaction that the SAC would be unaffected by the proposed development because it had not been demonstrated that the waste water can be treated in accordance with the EPA Code of Guidance.

3.3. Prescribed Bodies

- 3.3.1. A letter issued by Transportation Infrastructure Ireland (TII) is on file indicating that it has no observations on the proposed development.

4.0 Planning History

P. A. Reg. Ref.58429: Permission was granted to Tina O'Neill for a dwelling house on the site. Condition No 6 is an occupancy condition which includes a requirement for an agreement to be entered into pursuant to Section 38 of the Local Government, Planning and Development Act, 1963.

P. A. Reg. Ref. 69206. (PL 092207): Following Appeal, Condition No 6 of the decision to grant Permission to Tina O'Neill for change of house type was revised: The revised condition is reproduced below.

"The house, when completed, shall first be occupied as a place of permanent residence by the applicant and/or members of her immediate family

Reason: to secure in the interest of orderly development, that the proposed development meets the housing need of the applicant."

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway County Development Plan, 2015-2022.

The site location is within a rural area categorised as a structurally weak area and within the Gaeltacht (Rural Housing Zone 4) to which Objective RHO 4 applies. It is the objective of the planning authority to allow for applicants who are from an original family home is on the coastal strip west of Spideal to locate a dwelling up to eight kilometres closer to the city from the family home. Alternatively, there is provision to facilitate speakers who can demonstrate long commitment to traditional cultural and language networks of the Gaeltacht to provide for a permanent dwelling within Landscape Character Categories 1-3 and 4 if not in a scenic location and subject to a language enurement clause.

The site location is within a rural area which is classified as Landscape sensitivity class 5 in the landscape character assessment and it is the policy of the planning authority to protect these areas according to section 3.8.2.

5.2. Natural Heritage Designations

The site location is within the area of the Slyne Head Peninsula Special Area of Conservation. (002074)

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was lodged by the applicant, Ed and Joanna Colleran on 5th June, 2018. It is submitted that:

- The proposed development relates to an existing dwelling the construction of which was carried out in 2002. It is now the applicant's intention to renovate it.
- As regards the rural housing policies for the location, Joanna Colleran has connections to the area. She and her relatives have been visiting the Ballyconneely area since the 1970s and have been staying and working during three-month periods in summer months in the area. Her parents renovated a derelict store in Aillebrack forty years ago and they spend three to four months in the area each year. Extended family own properties in the area. Ms Colleran wants to maintain the connection and bring her three children to the area. The applicant was unable to respond to the request for additional information from the planning authority regarding the enurement clause.
- The existing property came under the control of the Bank of Ireland and has been vacant. Ownership is likely to have been transferred from the original property owner/developer, (Ms Tina O'Neill) to another party, prior to transfer to the Bank of Ireland. The applicant purchased the property in 2015 on the understanding that the waiver requirement would be waived.

(Correspondence issued by a planning authority official to the applicant indicating willingness to waive the enurement requirement (under Condition No 6 of the prior grant of permission) if the Bank is repossessing and disposing the property to secure the value of its security) is included in the appendices to the appeal.

- As regards the proposed foul drainage arrangements the testing was carried at the rear of the dwelling, instead of the front of the site in error. The front area is the proposed location on the original drawings.
- A copy of the site characterisation form lodged with the planning authority in connection with the application is included in the appendices to the appeal. (Appendix F) It is stated that discrepancies are addressed in Appendix H attached to the appeal.¹
- The application is not for a 'new build' property and the proposed extension is modest. The existing system is in place for sixteen years but is in poor repair and substantial upgrade is required. The applicant seeks to regularise these matters to comply with current standards. The upgrade works to the system and to the house will not take place if permission is refused.
- The flood plain is two metres below the level of the surrounding terrain. Flooding risk is not at issue.
- A copy of the appropriate assessment screening report submitted with the application is included with the appendices. This report indicates no negative findings, none of the protected flora and fauna being present within the site. If the issues relating to the waste water treatment system are resolved any concerns regarding the SAC would be addressed.

6.2. Planning Authority Response

There is no submission from the planning authority on file.

¹ There is no appendix H included in the appeal submission.

7.0 Assessment

7.1. There are three considerations central to the appeal which are considered below under the following sub-categories followed by other observations and appropriate assessment screening. They are:

Eligibility - Rural Housing policy.

Waste water treatment and disposal arrangements.

Impact on the natural heritage – European sites.

7.2. Eligibility – Rural Housing Policy.

- 7.2.1. Based on the information available in connection with the application and the appeals it is understood that the applicant, Mr and Mrs Colleran, purchased the property in 2015 having previously obtained a letter of comfort from an official at Galway County Council. It indicates that the occupancy requirement attached by condition to the prior grants of permission for the existing development would be waived in the event of a further grant of permission to the applicant. It appears that Title transferred from the original owner, who obtained planning permission in the first instance, to another party and subsequently to the Bank of Ireland and that the Bank disposed of the property, to Mr and Mrs Colleran to secure its value.
- 7.2.2. The circumstances of the current proposal are therefore atypical in that the application is not a proposal for development of a new dwelling in a rural area on a greenfield site. The applicant wishes to upgrade, extend and use the property as a holiday home. The family of Mrs Colleran have visited and stayed in the area during the summer period over the forty years. (Her parents renovated another property for use as their holiday home.)
- 7.2.3. Condition No 6 attached to original and amendment grant of permission does not specify that the duration of required restricted occupancy is a lifetime commitment. It is stated that the dwelling, *“shall first be occupied as a place of permanent residence by the applicant and/or members of her immediate family”*. However, clearly the intent or purpose for the attachment of the condition is to ensure that qualified applicants establish domicile at the permitted dwelling. This is also to ensure consistency with the criteria for development of a dwelling at a rural location not designated for residential development to prevent urban generated and holiday

home development. As it appears that the dwelling has not been occupied the requirement of the occupancy condition would not have been fulfilled. Application of the terms of the occupancy condition is justified and a waiver in this regard is not supported. Furthermore, there would be further implications with regard to the application of the eligibility criteria for a house in the locality, if the occupancy condition is waived in that the property, further to a grant of permission, could, potentially be transferred to another party with no connections to the area.

7.2.4. Furthermore, the site location is within a rural area categorised as a structurally weak area and within the Gaeltacht (Rural Housing Zone 4) to which Objective RHO 4 applies according to the Galway County Development Plan, 2015-2021. It is the objective of the planning authority to allow for consideration of proposals for residential development by applicants who are from an original family home is on the coastal strip west of Spideal to locate a dwelling up to eight kilometres closer to the city from the family home or, alternatively, are Irish Language speakers who can demonstrate long term commitment to traditional cultural and language networks of the Gaeltacht within Landscape Character Categories 1-3 and 4 if it not in a scenic location, subject to a language enurement clause. The site location is within Landscape Category 5 and the applicant is resident in Dublin and is not from an original family home in the area and who has not demonstrated competency in the Irish Language and commitment to the traditional, cultural and language networks of the Gaeltacht. It is considered that the proposed development is in materially contravention of Policy Objective RHO 4 of the Galway County Development Plan, 2015-2021.

7.2.5. There is considerable road frontage development in this popular holiday home destination in which the landscape sensitivity is particularly high, being classified as Landscape Sensitivity Category 5, resulting in serious implications as to capacity to accept development. As such there are also serious implications for potential precedent for relaxation of the application of the eligibility criteria for single house development in the area. It is therefore not agreed that the circumstances whereby the property came under the control of the Bank of Ireland, has exceptional considerations that might warrant setting aside the requirements of condition No 6 of the prior grant of permission. The applicant does not satisfy the eligibility criteria, notwithstanding the association with the area since the 1970s. It is not the intention

of the applicant occupy the dwelling as a permanent place of residence and establish domicile in that it is the intention of the applicant to use the property to use it as a second home / holiday home.

- 7.2.6. The waiver of the occupancy requirement in Condition No 6 attached to the prior grants of permission would amount to authorisation of the use of the dwelling as a holiday home by the applicant, notwithstanding the strong connections with the locality attributable to repeated visits and long summer time holiday stays over a period of forty years and, the ownership of another property which is used for summer holiday occupation by the parents of Ms Colleran applicant. The effect of favourable consideration, would be to facilitate a holiday home development at a property which was authorised as a permanent place of residence by a person who satisfies the eligibility criteria for the area. To render the development consistent with these criteria allowing for occupation as principal place of residence by an eligible party who might otherwise intend to develop a new dwelling on undeveloped lands would be a favourable from a planning perspective.
- 7.2.7. To this end Reason 1 attached to the decision to refuse permission is considered reasonable and consistent with local development plan policies and criteria for residential development in the area which is subject to pressure for development, but which has low capacity to accept development due to the high landscape sensitivity, notwithstanding the designation as an SAC. In addition, the development would materially contravene the development plan policy objective RHO1 regarding eligibility criteria for residential development in the area in that the landscape sensitivity is Category 5, in that the original family home is not in the area and has not demonstrated competency in the Irish Language and commitment to the cultural, traditional and language of the Gaeltacht.
- 7.2.8. There is no objection to the proposed works to the existing house and to the proposed extension to it included in the application.

7.3. **Waste water treatment and disposal arrangements.**

- 7.3.1. It is stated in the appeal that discrepancies in the site assessment characterisation form included in application submission can easily be addressed and eliminated and reference is made to "Appendix H" of the appeal. It is also stated that the original submission lodged with the application in a further information submission on 9th

April is in “Appendix F”. While the Appendix F and the accompanying documentation attached to the appeal is available, the Appendix H with the documentation referred to in the appeal was not available in the appeal submission.

7.3.2. The deficiencies in the application submission that were identified in the assessment of the application have therefore not been addressed. As a result, both the application and appeal submission does not include sufficient information to facilitate consideration of the proposed proprietary treatment system. As a result, the second reason for the decision to refuse permission on grounds that it is not demonstrated that satisfactory disposal of effluent, consistent with the recommendations in, “*EPA Code of Practice: Wastewater Treatment Manual, 2009*.” can be provided has not been addressed and is supported. Issues of concern specific to the site relate to the location within flood risk area (pluvial) risk of pollution to receiving waters, and the location within the Slyne Head Peninsula Special Area of Conservation.

7.4. **Impact on the natural heritage – European sites.**

7.4.1. As there is insufficient information in the submissions made in connection the application and the appeal to demonstrate that arrangements for the treatment and disposal of effluent can be provided for at a standard consistent with the recommendations in, “*EPA Code of Practice: Wastewater Treatment Manual, 2009*” and given the presence of a water course within the site, the location within a flood risk area (pluvial), the location within the Slyne Head Peninsula Special Area of Conservation and close to several other European sites it is considered that it has not been demonstrated to the satisfaction of the competent authority, (i.e. Galway County Council or An Bord Pleanála) that all risks of adverse impact on the integrity of the conservation objectives of the European sites are eliminated. To this end, Reason No 3 for the decision to refuse permission by the planning authority is considered reasonable.

7.5. **Appropriate Assessment**

7.5.1. An appropriate assessment screening report has been included with the application and the appeal which has been consulted.

7.5.2. The project is for completion of the retention of a development of an existing house, entrance, driveway and gardens and a proposal for an extension to the house, for

replacement of the previously permitted septic tank system with a private waste water treatment system for effluent treatment and disposal emanating from the development and revisions to the site boundaries. There is a watercourse, on the inner side of the front boundary of the site. The site comes within an area recorded as a pluvial flooding area on Floodmaps.ie

- 7.5.3. The location of the site is within the Slyne Head Peninsula Special Area of Conservation. (002740) The Slyne Head SAC and the West Connacht Coast SAC are three and four is three kilometres respectively from the site location The Slyne Head Ardmore Special Protection Area (SPA) is 1.5 kilometres to the south. There are several qualifying interests and conservation interests in respect of there are conservation objective and for which these sites have been designated. Several other sites are over five but within fifteen kilometres of the site.
- 7.5.4. No qualifying interests for the Slyne Head SAC were recorded within the site area.
- 7.5.5. Threats direct or indirect include possible contamination of the ground and ground cover and pollution of waters within the site during construction and operational stages.
- 7.5.6. Possible sources and pathways are escape of polluted waters to the ground resulting in contamination of groundwater and or watercourses in the vicinity, and to watercourses which could result in fragmentation and loss of habitats.
- 7.5.7. Notwithstanding the small scale nature of the project, it is considered that risk of adverse impact on the site cannot be eliminated because it has not been demonstrated satisfactorily that effluent from the proposed development can be satisfactorily collected, treated and disposed of to a satisfactory standard. This is of concern having regard to the location of the front section of the site within an area recorded as an area subject to pluvial flooding, in which there is a watercourse and, close proximity to other developments connected to individual private effluent treatment and disposal systems. Further information in this regard would be required to facilitate Appropriate Assessment Screening so that it can be established whether Stage 2 Appropriate Assessment would be required.

8.0 Recommendation

- 8.1. In conclusion it recommended that permission be refused based generally on the Reasons attached to the decision and that the appeal should be rejected. Draft Reasons and considerations which include, (in addition to Reason No 1 relating to material contravention of Condition No 6 attached to the prior grant of permission), Reason No 2 relating to the eligibility criteria set out in the development plan objectives for Rural Housing Zone 4 (An Gaeltacht) follow.

9.0 Reasons and Considerations

1. The applicant who wishes to upgrade the dwelling and use it as a holiday home does not intend to occupy the dwelling as a place of permanent residence. The proposed development would materially contravene condition No 6 attached to the grant of permission under P. A. Reg. Ref. 69206 (PL: 092207) and P. A. Reg. Ref. No 5849 according to which the dwelling, when completed, shall first be occupied as a place of permanent residence by the applicant and or members of her immediate family
2. The site location is within a rural area categorised as a structurally weak area and within the Gaeltacht (Rural Housing Zone 4) to which Objective RHO 4 applies according to the Galway County Development Plan, 2015-2021. It is the objective of the planning authority to allow for consideration of proposals for residential development by applicants who are from an original family home is on the coastal strip west of Spideal to locate a dwelling up to eight kilometres closer to the city from the family home or, alternatively, are Irish Language speakers who can demonstrate long term commitment to traditional cultural and language networks of the Gaeltacht within Landscape Character Categories 1-3 and 4 if it not in a scenic location, subject to a language enurement clause. The site location is within Landscape Category 5 and the permanent place of residence of the applicant is in Dublin and the applicant has not demonstrated competency in the Irish Language and commitment to the traditional, cultural and language networks of the Gaeltacht. As a result, the proposed development would materially contravene a development objective of the

Galway County Development Plan, 2015-2021 and would be contrary to the proper planning and sustainable development of the area.

3. On the basis of the information available in connection with the application and the appeal, the Board is not satisfied that the treatment and disposal of effluent emanating from the proposed development would accord with the standards set out in: *EPA Code of Practice: Wastewater Treatment and Disposal Systems for Single Houses*” EPA. As a result, the proposed development would be prejudicial to public health.
4. On the basis of the information available in connection with the application and the appeal, the Board is not satisfied that the proposed development individually, or in combination with other plans and projects would to be likely to have significant effect on the Slyne Head Peninsula Special Area of Conservation. (002740) in view of its conservation objectives.

Jane Dennehy
Senior Planning Inspector
18th September, 2018.