



An
Bord
Pleanála

Inspector's Report ABP303281-18

Development	Construction of two-storey extension to the side of existing building.
Location	Aillebrack, Ballyconnely, County Galway.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	18/621.
Applicant	Connemara Smokehouse Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	Third Party -v- Grant.
Appellant	Noreen Muprhy.
Observers	None.
Date of Site Inspection	22 nd March, 2019.
Inspector	Paul Caprani.

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1.0 Introduction

ABP303281-18 relates to a third party appeal against the decision of Galway County Council to issue notification to grant planning permission for the construction of an extension to the Connemara Smokehouse in Ballyconnely West, Galway. The grounds of appeal argue that the subject site is a flood risk and could impact on the public use of a right of way. It was also suggested that the extension to business hours will have an adverse impact on the local community and it is suggested that the applicant in this instance who works for Galway County Council will inevitably secure planning permission regardless of whether or not it is in accordance with the proper planning and sustainable development of the area.

2.0 Site Location and Description

- 2.1. The Connemara Smokehouse is a small fish processing and smoking facility located in the townland of Aillebrack approximately 5 kilometres south-west of the small village of Ballyconnely in West Connemara. The appeal site is located on a small headland along the western shores of Bunowen Bay. The area surrounding the smokehouse is characterised by ribbon development and holiday homes along the access road leading to the pier and smokehouse. There are a number of dwellinghouses in the immediate vicinity of the subject site. The site is located adjacent to a rocky shoreline which is exposed at low tide.
- 2.2. To the immediate west of the smokehouse is a building comprising of a terrace of four modestly sized two-storey dwellings. The dwelling at the eastern end of the building under Reg. Ref. 15/1486 was granted planning permission for a change of use from a residential unit to commercial use. This commercial use comprised of reception area, toilets, staff room and storage space to be used in conjunction with the smokehouse building.

3.0 Proposed Development

- 3.1. Under the current application before the Board planning permission is sought for a new two-storey extension to be located at the eastern end of this commercial unit adjacent to the smokehouse. The proposed extension is slightly smaller than the width of the existing building on site being 11.62 metres in width and 2.3 metres in depth. The total area of the two-storey extension amounts to just over 44 square metres. The purpose of the new two-storey extension is to provide a new entrance access, bin storage, internal storage and room to accommodate a new staircase. A covering letter submitted with the application argues that this will allow for a better flow to the building in terms of overall internal design. The storage and bin area is to be located to the rear at ground floor level. A new entrance is to be provided at the gable end comprising of a new PVC door and a local stone finish. The remainder of the extension is to incorporate a nap plaster finish with pitched roof tiles to match existing.

4.0 Planning Authority's Decision

4.1. Decision

- 4.1.1. Galway County Council issued notification to grant planning permission subject to 4 conditions.

4.2. Documentation Submitted with Planning Application

- 4.2.1. The planning application was accompanied by a completed planning application form, details of public notices, drawings, planning application fee and a brief covering letter submitted by Enda O'Malley Chartered Engineer and Planning Consultant outlining details of the proposed development.

4.3. Observations

- 4.3.1. Two letters of objection were submitted the contents of which have been read and noted. Also submitted was an observation from the Department of Culture, Heritage and the Gaeltacht. It notes that the proposed development is located adjacent to the

Slyne Head Peninsula Special Area of Conservation with the potential to impact on Natura 2000 sites. The Department is of the view that the proposed development could affect some of the qualifying interest habitats for which the SAC is being designated and these are listed. The potential impacts would be caused by either damage and destruction to adjacent habitats in the special area of conservation due to poor site management and poor site preparation and construction techniques and could result in disturbance to local wildlife during the preparation and construction of the development.

4.3.2. The initial planner's report notes that the Environment Section have raised no objection to the development as proposed and also notes that the Connemara Smokehouse is one of the most compliant discharge licenced holders. The Department's submission in relation to the site's proximity to an SAC has been noted and it is further noted that the site is located in a coastal flooding area adjacent to the Slyne Head Peninsula SAC. The initial planner's report requests additional information for the above reasons.

4.3.3. On 6th July, 2018 Galway County Council requested that the applicant submit the following:

- A preliminary Flood Risk Assessment.
- The submission of an NIS.

4.4. **Further Information Submission**

4.4.1. On 11th October, 2018 further information was submitted on behalf of the applicant by Enda O'Malley Chartered Engineer and Planning Consultant. The additional information submitted includes:

- A Flood Risk Assessment which is carried out in accordance with the National Guidance Document on Flood Risk Management for Planning Authorities dated 2009. The Flood Risk Assessment notes that the general area of Ballyconnely has a history of flooding. Coastal flooding is identified as the main threat in terms of flooding on the subject site.
- It is stated that the finished floor level of the proposed development has a freeboard of 3.026 metres against 0.1% chance (1:1000-year return period)

flooding. The proposed development is in Flood Zone C as per the planning system and flood risk management guidelines. Furthermore, it is proposed as a precautionary measure that the proposed entrance door to the east on the new extension will have watertight seams in order to protect against water seepage. The proposed development as detailed is suitable when tested against the planning system on flood risk management guidelines and as such the development will have no adverse effect on flood risk to adjacent properties.

- A Natura Impact Statement was also submitted. I note that there is some discrepancy in the information contained on file with regard to the description of the proposed development. However, the European site in the vicinity has been correctly identified as the Slyne Head Peninsula. The main impact of the project on the site in question may come from works during the construction phase and from the production of wastewater from the site thereafter. However, the project is small and within the confines of the site and therefore the impacts can be minimised. It is also noted that the construction period is relatively short.
- A construction and environmental management plan is attached to the NIS which sets out a series of mitigation measures. This should ensure that any potential impacts identified will be avoided. It is noted that there is no net loss of area or change to the structure of the Natura 2000 site in question.
- A further planner's report notes the existing development on site and the planning history associated with the site (see below) the existing uses in this location and the contents of the planning application. It is considered that subject to conditions set out below, the proposed development would not be injurious to the residential, visual or general amenity of the area and would therefore be in accordance with the proper planning and sustainable development of the area. It is therefore recommended that planning permission be granted subject to four standard conditions.

5.0 Planning History

- 5.1. No history files are attached. Details of the planning history relating to the site and its surroundings are set out in the planner's report and is briefly summarised below.
- 5.2. Under Reg. Ref. 16/1486 Galway County Council granted planning permission on the subject site for a change of use of one of the residential apartments previously granted under PL Ref. No. 65367 to commercial use as an office/ancillary room, reception, toilets, staff room and storage area to be used in conjunction with the smokehouse building adjacent. The proposal also incorporated some minor internal alterations.
- 5.3. Under Reg. Ref. 17/217 planning permission was granted to replace existing septic tanks with a new proprietary wastewater treatment system as well as all ancillary site works to the existing houses previously granted under PL Ref. No. 65367 and the commercial unit granted under 15/1486. It appears that no decision was made on the above application.
- 5.4. A similar application was lodged under 17/561 where planning permission was granted on the 24th April, 2017.
- 5.5. The Board also determined a wastewater discharge licence under PL07.WW0407 which permitted Connemara Smokehouse Limited a licence to discharge to coastal waters from the fish processing plant in the adjoining building. This waste discharge licence was issued by the Board in early 2013. The file is not attached.

6.0 Grounds of Appeal

- 6.1. The decision was the subject of a third party appeal by Noreen Murphy of Harbour View, Aillebrack, Ballyconnely, County Galway. The grounds of appeal are outlined below:
 - The proposal seeks to build further out towards the seashore where there is regular flooding.
 - The proposal also seeks to build on an existing right of way.

- It is suggested that the applicants have used the private dwelling in question to run part of Connemara Smokehouse for many years.
- In seeking planning permission for a change of use of one of the units from residential to commercial the applicants should have known what the requirements were in terms of space and it is not appropriate to seek an extension in order to accommodate further commercial development. It is suggested that the current application is taking place for the preparation of another business in the pipeline. It is argued that there is little regard to local residents have to live with this existing commercial activity.
- It is argued that the lands surrounding the buildings are inundated with flood waters on a regular basis.
- The applicants are also seeking to extend the opening times which the appellant strongly object to.
- The appellant does not want any more of the right of way and the access to the shoreline taken away.
- It is suggested that the local business does not benefit the local community as only one person is employed part time. It nevertheless has a serious impact on local community and amenities.
- The appellant does not accept the conclusion of the Environmental Section of Galway County Council which suggests that the applicants are one of their most compliant discharge licence holders. The appellant has been in touch with the Environmental Section of Galway County Council on many occasions regarding problems with discharge. It is also suggested that much of the waste from the Smokehouse is been discarded illegally.
- Various documentations attached to the grounds of appeal including a number of annotated photographs.

7.0 Appeal Responses

- 7.1. It appears that Galway County Council did not submit a response to the grounds of appeal.

7.2. The following response is received from Connemara Smokehouse Limited.

- It is argued that the appellant has submitted objections to every single planning application made by the applicants to Galway County Council. It appears that no matter what planning application is lodged an objection will follow and this has a considerable impact on the applicant's small business and family life. The applicants are very mindful of the planning and building regulations in such a scenic and environmentally sensitive area and have at considerable cost commissioned independent planning engineering, environmental and hydrology reports for these applications. The applicants simply want to improve the family business which employs between 10 and 14 people locally.
- It is noted that there are two rights of way registered in the vicinity of the proposed extension and neither of these rights of way will be affected.
- In relation to flooding it is noted that in 2014 most of Ireland's west coast sustained some damage in the severe winter storms. While seaweed was thrown up around the area no water entered the building. There was no flooding in October, 2018 as suggested.
- The Connemara Smokehouse factory has no restrictions on opening hours but currently No. 4 Grainne's Cove is only permitted to be open Monday to Friday during normal business hours. The applicant would likely use this on Saturday also.
- It is suggested that one of the owners of the Connemara Smokehouse works for Galway County Council. This is not the case. It should also be noted that the person in question is not the applicant.

8.0 Observations

8.1. There are no other observations on file.

9.0 Development Plan Provision

9.1. The site is governed by the policies and provisions contained in the County Galway Development Plan 2015 – 2021. The site is not located in an area governed by any

land use zoning objective. In terms of landscaping sensitivity, the site is located in an area designated as Landscape Sensitivity Class 4 (where Class 1 is least sensitive and Class 5 is most sensitive). Section 3.5.3 specifically relates to extensions to buildings. The construction of an extension to an existing house would be encouraged generally as it usually provides a less resource intensive method of expanding living space than a new structure. Primarily the design and layout of the extension should have regard to the amenities of adjoining properties, particularly as regards daylight, sunlight, overshadowing and privacy.

9.2. The Slyne Head Peninsula is designated as being of “outstanding” landscape value rating in the Plan.

9.3. **Natural Heritage Designation**

The subject site is located adjacent to and surrounding by but not within the Slyne Head Peninsula Special Area of Conservation Site No. SAC00274. The features of interest include:

- Coastal lagoons.
- Large shallow inlets and bays.
- Reefs.
- Annual vegetation of drift lines.
- Perennial vegetation of stony banks.
- Atlantic salt meadow.
- Mediterranean salt meadows.
- Embryonic shifting dunes.
- Shifting dunes along the shoreline with *ammophila arenaria*.
- Machairs.
- Oligotrophic waters containing very few minerals of sandy plains.
- Oligotrophic mesotrophic standing waters with vegetation.
- Hard oligo-mesotrophic waters with benthic vegetation.
- European dry heaths.

- Juniperus communis formations on heath or calcareous grasslands.
- Semi-natural dry grasslands and scrub facies on calcareous substrates.
- Molinia meadows on calcareous peaty or clay silt laden soils.
- Lowland hay meadows.
- Alkaline fens.
- Petalworth.
- Slendernaiaid.

10.0 Planning Assessment

I have read the entire contents of the file, visited the site in question and have had particular regard to the issues raised in the grounds of appeal. I consider the following issues to be pertinent and _____ to the current application and appeal before the Board.

- Issues with Regard to the Proposed Right of Way
- Flooding Issues
- Scale of Development
- Extension of Opening Hours
- Applicant's Relationship with Galway County Council
- Applicant's History of Compliance and Waste Issues

10.1. Proposed Right of Way

10.1.1. The grounds of appeal suggest that the proposal would impinge on an existing right of way providing access to the shore. No details of any right of way have been submitted in support of this contention. The applicant in his response to the grounds of appeal states that there are two rights of way registered near the area of the proposed extension. One is in favour of John Roberts which provides access to the house to the rear of the subject site (see site layout plan). The other provides access to agricultural land which appears to be under the ownership of the appellant's brother according to the applicant's response. The proposed extension is located

within the red line/planning boundary of the site. One can only assume therefore that the lands to which the subject application relate are under the ownership of the applicant. The modest size of the extension ensures that there is sufficient residual land to provide access to both Mr. Robert's house and the appellant's brother's land.

10.1.2. As no evidence has been provided to support the assertion that the proposed development will impact on existing rights of way and the fact that the applicant appears to have sufficient legal interest in the lands in question and this point does not appear to be disputed by the appellant, I do not consider that the Board should refuse planning permission for this reason.

10.1.3. Any issues in relation to landownership/wayleaves/rights of way are civil matters between the parties involved and are required to be determined in a Court of Law and not under the planning code.

10.1.4. Finally, in relation to this matter the Board will be aware in accordance with the provisions of Section 34(13) a person shall not be entitled solely by reason of permission under the section to carry out any development.

10.2. **Flooding Issues**

10.2.1. The grounds of appeal also suggest that the lands in which the site is located is situate on lands which are subject to periodic and frequent flooding. OPW maps would support this contention. The issue of flooding was raised in the Planning Authority's request for further information and specifically the applicant was requested to submit a flood risk assessment. This assessment was duly submitted and it concluded that the finished floor level of the building incorporates a freeboard of over 3 metres against the 0.1% flood. The freeboard of the finished floor levels of the proposed extension is 2.55 metres above a 0.1% 1,000-year return period. The finished floor level of the building in question therefore appears to be significantly above the level associated with 1:1000-year flood event. The lands in which the proposed extension is to be located is manmade ground and the overall footprint of the building is modest at 22 square metres. The potential therefore for the displacement of floodwater into adjoining properties is in my view negative having regard to the modest size of the development. The proposed development should not be refused on the grounds that the proposal will exacerbate flooding. It is also noted that a significant portion of the ground floor space is to be given over to bin

storage and general storage and such uses would not be severely affected by a flooding event. The flood risk assessment also states that as a mitigation measure it is proposed that the entrance door on the east of the new extension will have watertight seals in order to protect against water seepage.

10.3. **Scale of Development**

10.3.1. The change of use from residential to commercial has already been established on site. It was granted under Reg. Ref. 15/1486. What is proposed in this instance is a modest sized extension extending the overall length of the building by 2.3 metres. The purpose of the extension is not to provide per se additional office space associated with the commercial enterprise. It does not extend office accommodation associated with the commercial activities taking place. The proposal in this instance seeks to facilitate “a better flow” to the building in terms of entrance and storage arrangements. Having regard to the modest nature of the size of the extension it cannot be reasonably argued in my opinion that the proposal constitutes a significant development which could impact on surrounding residential and visual amenities.

10.4. **Extension of Opening Hours**

10.4.1. With regard to the issue of extending the opening time there appears to be some ambiguity in relation to this issue raised. There is no reference in the public notices seeking an extension to the opening hours of the commercial premises. The covering letter submitted with the application states:

“It is proposed to use this commercial unit on Saturday and we note Condition No. 3 of the Planning Ref. No. (15/1486) which permits the use of the building between Monday and Friday only. We would be most obliged if you could kindly let the owners use this building on a Saturday which will allow their business to expand.”

10.4.2. The extension of opening hours would materially contravene a condition set out with the parent permission. While the altering of this condition may be acceptable in principle such a material alteration of the parent permission should have been referred to in both the planning application and the public notices associated with the development. For this reason, I do not consider it appropriate that the Board would extend the commercial opening hours which would materially contravene a condition associated with a parent permission and for this reason the Board in my opinion should not alter the opening hours without the submission of a new application or at

the very minimum a request under the current application for revised public notices seeking the use of the commercial unit on Saturdays.

10.5. Applicants Relationship with Galway County Council

10.5.1. The grounds of appeal imply that Galway County Council granted planning permission on the basis that the applicant in this instance works for Galway County Council. The applicant in his response to the grounds of appeal clearly and unambiguously states that John Roberts does not work for Galway County Council and has never done. Furthermore, it is stated that John Roberts is not the applicant in this instance. Whether or not the applicant does or has worked for the Council is not a material consideration in my opinion. I am satisfied based on the information contained on file that Galway County Council have undertaken a comprehensive and objective evaluation of the application before it and only took the issues of the common good and the proper planning and sustainable development of the area into consideration in adjudicating and determining the appeal before it.

10.6. Applicants History of Compliance and Waste Issues

10.6.1. There is an email contained on file from Galway County Council Environment Department which states that the Environment Section have advised that Connemara Smokehouse is “one of their most compliant discharge licence holders”. The grounds of appeal take issue with this assertion and suggests that the applicants have been involved in the dumping of waste associated with the Smokehouse at sea. No evidence of same has been provided as part of the grounds of appeal. Galway County Council Environment Section are most likely to be made aware of any non-compliance issues associated with the enterprise and it appears that they are generally satisfied with the operations conducted on site. On the basis of the foregoing I have no reason to believe or conclude that the applicant is not fully compliant with licensing and other environmental commitments.

11.0 Appropriate Assessment

11.1. The site is not located in but is adjacent to and surrounding by a designated Natura site namely the Slyne Head Peninsula SAC (Site Code: 00274).

11.2. The features of interest associated with the SAC are set out below:

- Coastal lagoons.
- Large shallow inlets and bays.
- Reefs.
- Annual vegetation of drift lines.
- Perennial vegetation of stony banks.
- Atlantic salt meadow.
- Mediterranean salt meadows.
- Embryonic shifting dunes.
- Shifting dunes along the shoreline with *ammophila arenaria*.
- Machairs.
- Oligotrophic waters containing very few minerals of sandy plains.
- Oligotrophic mesotrophic standing waters with vegetation.
- Hard oligo-mesotrophic waters with benthic vegetation.
- European dry heaths.
- *Juniperus communis* formations on heath or calcareous grasslands.
- Semi-natural dry grasslands and scrub facies on calcareous substrates.
- *Molinia* meadows on calcareous peaty or clay silt laden soils.
- Lowland hay meadows.
- Alkaline fens.
- Petalworth.
- Slendernaiaid.

11.3. The proposed extension is c.20 metres from the boundary of the Slyne Head Peninsula SAC. The closest part of the SAC constitutes the rocky foreshore located between the high and low watermark adjacent to the Smokehouse. The SAC has a

host of qualifying interests. Some of these qualifying interests which are likely to be located in the immediate vicinity of the subject site include:

- Large shallow inlets and bays.
- Reefs.
- Perennial vegetation of stony banks.
- Atlantic salt meadows.
- Mediterranean salt meadows.
- Embryonic shifting sand dunes.
- Shifting dunes along the shoreline.
- Machairs.

11.4. Having regard to the close proximity of the subject site to the designated Natura 2000 site there may be the potential to impact on the integrity of the Natura 2000 site. It was for this reason that Galway County Council requested an NIS.

11.5. The NIS submitted reasonably concludes in my opinion that the only Natura 2000 site in the vicinity that could be potentially impacted upon by the proposal is the Slyne Head Peninsula SAC. Having regard to the size and scale of the proposed development it is unlikely that the proposal could potentially impact on the integrity of Natura 2000 sites further afield.

11.6. It is considered that any potential impact which could arise would occur principally during the construction as little impact is expected to arise during the operational phase as the proposed extension seeks to provide a more spacious arrangement associated with the existing commercial unit on site.

11.7. During the construction phase a construction environmental management plan has been prepared. It sets out a suite of mitigation measures to ensure that any hydrological connection between the construction works to be undertaken and the adjoining SAC is curtailed. As the project is small potential impacts will be temporary and can be minimised. The proposal will not result in any direct loss or fragmentation of habitat and measures will be put in place to avoid any construction material, wastewater, especially concrete, the adjoining watercourses or groundwater so as to ensure that no contamination or pollution arises. A suite of mitigation measures are

set out under the construction environmental management plan which are all contained on file.

- 11.8. With regard to indirect effects no indirect effects are anticipated as all construction works will be contained within the confines of the site and therefore will not impact on the adjacent SAC.
- 11.9. With regard to in combination effects there are no other plans or projects which could result in cumulative or in combination effects which could potentially impact on the integrity of the SAC in question.
- 11.10. On the basis above I consider it reasonable to conclude from the information on file which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of a European Site 002074 or any other European site in view of the site's conservation objectives.

12.0 EIA Screening Determination

Having regard to the nature of the development comprising of small extension to an existing commercial unit in a rural area it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment report can therefore be excluded by way of preliminary examination.

13.0 Conclusions and Recommendation

Arising from my assessment above I consider that the Board should uphold the decision of Galway County Council in this instance and grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

14.0 Decision

Grant planning permission based on the reasons and considerations set out below.

15.0 Reasons and Considerations

Having regard to the modest size and scale of the extension to the existing commercial unit it is considered that, subject to conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the vicinity, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

16.0 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 plans and particulars received by the planning authority on 11th day of October, 2018.

Reason: In the interest of clarity.

2. The development hereby granted is limited to that proposed in the public notices namely the two-storey extension to the side of the existing commercial unit. The grant of planning permission shall not include the extension of operating hours to Saturday without a separate grant of planning permission.

Reason: In the interest of clarity.

3. Water supply and drainage arrangements, including the attenuation of surface water shall be agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of public health.

4. The applicant or developer shall enter into a water and/or wastewater connection agreement if necessary with Irish Water prior to the commencement of development.

Reason: In the interest of public health.

5. Only clean uncontaminated stormwater shall be discharged to the soakaway system or surface water. The development shall not impair on existing land or road drainage.

Reason: In the interest of public health.

6. The developer shall pay to the planning authority a financial contribution of €441 (four hundred and forty-one euro) in respect of works and 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, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, 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.

Paul Caprani,
Senior Planning Inspector.

XX March, 2019.