



An  
Bord  
Pleanála

## Inspector's Report ABP-303655-19

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<b>Development</b>	Single-storey rear and side extensions to bungalow and upgrade of the wastewater treatment system to serve the two existing houses
<b>Location</b>	Carrownagreggaun, Ballyglass, Claremorris, County Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	P18/262
<b>Applicant(s)</b>	James Lally
<b>Type of Application</b>	Retention Permission & Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third-Party
<b>Appellant(s)</b>	Thomas Golden
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	17 <sup>th</sup> May 2019
<b>Inspector</b>	Colm McLoughlin

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## 1.0 Site Location and Description

- 1.1.** The appeal site is located in the rural townland of Carrownagreggaun, approximately 450m southeast of Carnacon village and 13km west of Claremorris in County Mayo. The surrounding area comprises undulating agricultural fields and wooded areas, bordered by hedgerows and trees, interspersed with rural housing and agricultural buildings. The National Monuments Services (NMS) has identified a ringfort (Ref. MA100-058) and a souterrain (Ref. MA100-058001) located 50m to the north of the appeal site, which are scheduled for inclusion in the next revision of the Record of Monuments and Places. These archaeological features are described in the NMS records as being located in 'low-lying rough pasture, between two ridges'.
- 1.2.** The site measures a stated 0.48ha and is accessed by a single lane private road, which connects with the local road network 150m to the southwest and serves the two residences subject of this appeal and a farmyard. On the northern side of the site is a four-bedroom bungalow dating from the 1990s, which has been extended to the rear and side to feature a single-storey conservatory and a garage. Immediately to the south of this is a two-bedroom cottage. The boundaries to the appeal site include hedgerows and a timber fence, while the southeastern and eastern boundary are not marked on the ground. There is approximately a 2m fall in ground levels from the northern boundary to the southern boundary of the appeal site.

## 2.0 Proposed Development

- 2.1.** The proposed development for retention comprises the following:
- single-storey rear conservatory extension and side garage extension with a stated gross floor area (GFA) of 87sq.m to the bungalow on the northside of the site.
- 2.2.** The proposed development comprises the following:
- connection of the two-bedroom cottage on the southside of the site to an upgraded on-site wastewater treatment system serving both houses on site.
- 2.3.** In addition to the standard planning application documentation and drawings, the application was accompanied by a site suitability assessment report addressing on-site disposal of effluent.

- 2.4.** Following a request for further information the applicant submitted land registry details and a folio map for the subject landholding.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. The Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to seven conditions, including the following:

Condition No.2 – the granny flat (cottage) and main house (bungalow) are not to be sold or let separately and occupancy of the granny flat shall be restricted to the immediate family of occupants of the main house;

Condition No.3 – the granny flat is not to be sold or let separate from the main house.

#### **3.2. Planning Authority Reports**

- 3.2.1. Planning Report

The initial report of the Planning Officer (June 2018) noted the following:

- further information is required with respect to land registry details, the location of the existing septic tank to be decommissioned, scope to acquire additional adjoining lands and flood risk.

The final report of the Planning Officer (January 2019) reflects the decision of the Planning Authority to grant planning permission and noted the following:

- the Environment Section of the Planning Authority issued a Section 12 notice instructing the applicant to improve the wastewater treatment system serving both houses on site;
- the site suitability assessment submitted reveals that the proposed wastewater treatment system can meet the Environmental Protection Agency (EPA) Code of Practice standards, including minimum separation distances;
- the applicant acknowledged that the cottage would need to be assessed as a 'granny flat', thereby restricting its sale and ownership from the main house;

- the design and scale of the garage and conservatory extensions are acceptable;
- the Planning Authority Executive Engineer has noted that there is no risk of flooding to the appeal site based on Office of Public Works (OPW) maps.

#### 3.2.2. Other Technical Reports

- Executive Engineer (Flood Risk) – no objection;
- Environment Section – grant permission, subject to conditions;
- Area Engineer – no objection, subject to conditions and agreement with the Environment Section.

### 3.3. Prescribed Bodies

- Department of Culture, Heritage and the Gaeltacht – no response;
- An Taisce – no response.

### 3.4. Third-Party Observation

- 3.4.1. Two third-party submissions, both from the same adjoining landowner and local resident, were received during consideration of the application by the Planning Authority. The issues raised in these submissions are covered in the grounds of appeal below.

## 4.0 Planning History

### 4.1. Appeal Site

- 4.1.1. The Planning Authority refer to a closed enforcement case (Ref. PE 143/15) relating to the site and pre-planning discussions between a representative of the applicant and the Planning Authority. I am aware of the following planning applications for development on the appeal site:

- Mayo County Council (MCC) Ref. 91/1153 – permission granted in February 1992 for a four-bedroom bungalow with connection to the septic tank system serving the adjacent two-bedroom cottage. Condition 5 of the permission

required the cottage to be disconnected from the septic tank upon occupation of the bungalow;

- MCC Ref. 83/783 – permission granted in July 1983 for a septic tank to serve the two-bedroom cottage.

## **4.2. Surrounding Sites**

- 4.2.1. Reflective of the rural character of the area, there have been numerous recent planning applications for residential and agricultural developments in the neighbouring area, none of which are of particular relevance to this appeal.

## **5.0 Policy & Context**

### **5.1. National Guidance**

- 5.1.1. National guidelines relevant to this appeal include:

- Code of Practice - Wastewater Treatment and Disposal Systems serving Single Houses (p.e. ≤) (EPA, 2009);
- The Planning System and Flood Risk Management Guidelines for Planning Authorities (OPW, 2009).

### **5.2. Mayo County Development Plan 2018-2024**

- 5.2.1. The policies and objectives of the Mayo County Development Plan 2014-2020 are relevant. Section 20.2.2 of the Plan states that in unserved rural areas, where a proposed house cannot connect to the public sewer, a site suitability assessment will be required. The assessment must be carried out in accordance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses (population equivalent ≤10), taking into account the cumulative effects of existing and proposed developments in the area.
- 5.2.2. Section 10 of Volume 2 to the Development Plan provides guidance with respect to ancillary buildings, including garages, requiring such buildings to complement the host house.

### **5.3. Natural Heritage Designations**

- 5.3.1. The nearest designated sites to the appeal site include Towerhill House Special Area of Conservation (SAC) (Site Code: 002179), which is located approximately 500m to the south, as well as Moore Hall (Lough Carra) SAC (Site Code: 000527), Lough Carra/Mask Complex SAC (Site Code: 001774) and Lough Carra Special Protection Area (SPA) (Site Code: 004051), each of which are located approximately 1.7km to the southwest of the site.

#### **5.4. Environmental Impact Assessment - Preliminary Examination**

- 5.4.1. Having regard to the limited nature and scale of the proposed development and of the proposed development for retention, and the absence of any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **6.0 The Appeal**

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

- 6.1.1. A third-party appeal against the decision of the Planning Authority was submitted by a neighbouring resident and landowner. The appeal was accompanied by folio details and land registry maps, edited copies of the application site layout plans, and correspondence from a legal representative. The issues raised can be summarised as follows:

##### Wastewater Treatment

- the existing septic tank serving the cottage has not been functioning correctly, leading to ponding on the appellant's property. This matter was raised with the Planning Authority and follow-up action to address this resulted in the preparation and submission of the subject planning application and the necessity for the proposed development;
- the existing wastewater is pumped from the septic tank, but it is not clear where this is being pumped to as there is no percolation area;

- planning permission for the bungalow dating from 1992 required the cottage to be disconnected from the septic tank, which would then serve the permitted bungalow, but this did not occur;
- each house on site should be served by separate wastewater treatment systems;
- should the cottage be extended in the future, this would lead to increased potential for pollution arising from the resultant increase in wastewater;
- even with a grant of planning permission, the applicant may not actually connect both houses to the wastewater treatment system;

### Land Ownership

- part of the appeal site is in control of the appellant and they have not given permission to allow use of this area;
- the southern boundary for the appeal site, between the entrance road and the location for the proposed septic tank, is not accurately delineated on the plans submitted;
- the applicant has been refused adverse possession for part of the appellant's landholding.

## **6.2. Applicant's Response**

6.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- the applicant is attempting to resolve a planning issue raised by the Planning Authority with respect to effluent treatment on site;
- no element of the subject development is within the disputed area of land, which is before the Courts.

## **6.3. Planning Authority Response**

6.3.1. The Planning Authority did not respond to the grounds of appeal.

## **6.4. Observations**

6.4.1. None received.



## **6.5. Further Submissions**

6.5.1. None received.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Wastewater Treatment;
- Siting & Design of Extensions;
- Legal Ownership.

### **7.2. Wastewater Treatment**

7.2.1. In 1992 the Planning Authority granted planning permission (MCC Ref. 91/1153) for the bungalow on the appeal site, including a connection to the septic tank that was serving the two-bedroom cottage. Condition 5 of this permission required the cottage to be disconnected from the septic tank upon occupation of the bungalow. The cover letter submitted with the planning application clarifies that the current residents of the two-bedroom cottage, the applicant's parents, utilise toilet facilities in the bungalow. The grounds of appeal assert that the houses are not been served by an adequate system for wastewater treatment and that the appellant previously contacted the Planning Authority to alert them regarding same. In assessing the proposed development, the Environment Section of the Planning Authority stated that the existing septic tank serving the bungalow has not been functioning correctly, and that a Section 12 notice under the Local Government (Water Pollution) Acts, 1977 & 1990, was served on the owners of the appeal site, in order to resolve water pollution concerns. This Section 12 notice required the owners to install a wastewater treatment system with sufficient capacity and treatment properties to cater for the residents of both the cottage and bungalow, and for the existing septic tank to be decommissioned.

7.2.2. The Site Suitability Report submitted with the planning application notes that the site is located in an area with a regionally-important aquifer category and where

groundwater vulnerability is extreme. This report notes that no watercourses are located within 250m of the site and that bedrock was not encountered in the 2.3m-deep trial hole. Two T-values of 14 and 12 for the site have been calculated based on tests undertaken in March and July 2017. The trial hole test results indicate that the site is suitable for the treatment and disposal of domestic foul effluent to groundwater by means of a conventional septic tank system. Details submitted clarify that a conventional septic tank with percolation area would be installed and that the trench invert level for the percolation area would be 0.8m below ground level. Details on the proposed site layout plan (see Drawing No. L-3\_191218 Rev. D) indicate that wastewater would initially feed by gravity from the houses to a septic tank unit and would be subsequently pump-fed to a distribution box on higher ground to the east, prior to discharge to ground via three outlets connecting to percolation pipes.

7.2.3. There are four bedrooms in the bungalow and two in the cottage and the cover letter submitted outlines that the wastewater treatment system would be designed with capacity to serve ten persons. The EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ ) provides guidance where an existing system is proposed to be upgraded. Where existing on-site domestic wastewater treatment systems fail to meet the performance requirements, as set out in the Code of Practice, corrective actions are necessary. Variances to the Code of Practice may be considered by the Planning Authority when it is satisfied that the proposed upgrade would provide improved treatment and a reduced environmental impact. The Environment Section of the Planning Authority recommend that planning permission should be granted for the development, subject to conditions in relation to the installation and operation of the wastewater treatment system in line with Code of Practice requirements.

7.2.4. I am satisfied that the subject location for the wastewater treatment system to serve both houses is in the most appropriate location on the site and the subject landholding (Folio no. MY70539F). As the wastewater treatment system would serve both the cottage and bungalow on site, the applicant outlined that they would be satisfied for a condition to be attached to a permission restricting the sale of the cottage from the bungalow. Given the intention to share the wastewater treatment system, I am satisfied that such a condition would be necessary and reasonable to attach. Based on the information on file, the proposed wastewater treatment system

to serve both houses would improve the existing situation on site and is intended to address ongoing environmental concerns and, accordingly, the proposed development would accord with the provisions of the EPA Code of Practice.

- 7.2.5. The grounds of appeal assert that the location of the proposed wastewater treatment system is subject to flooding, however, in commenting on the application an Engineer within the Planning Authority noted that the subject area was not prone to flooding based on flood maps available from the OPW (floodinfo.ie). Having reviewed these maps and visited the area, I am satisfied that the proposed development would not lead to a risk of flooding of lands outside the subject site, would be in an area at low risk from flooding and would be appropriate for this area.
- 7.2.6. In conclusion, the proposed development would not be prejudicial to public health and would not be likely to cause a deterioration in the quality of waters in the area. Permission should not be refused for reasons relating to wastewater treatment.

### **7.3. Siting & Design of Extensions**

- 7.3.1. The site is not visible from scenic routes, scenic views or viewing points identified in the Mayo County Development Plan 2014-2020. The extensions proposed for retention are not visible from the local road network. The finishes of the extensions complement those of the host house, the design and scale of the extensions are subsidiary to the host house and the extensions, therefore, comply with the provisions outlined within Section 10 of Volume 2 to the Development Plan. Consequently, I am satisfied that those elements of the development proposed to be retained, should not be refused for reasons relating to siting and design, and the resultant impact on the visual amenities of the area.

### **7.4. Land Ownership**

- 7.4.1. The grounds of appeal primarily centre on issues relating to land ownership, asserting that the existing septic tank is within the appellant's landholding and referring to the precise location of the property boundary directly to the south of the cottage on the appeal site. Question 10 of the planning application form states that the applicant is the legal owner of the site and in response to the Planning Authority's further information request, the applicant claims that they have been in possession of the land accommodating the existing septic tank for over 12 years.

The grounds of appeal include land registry details identifying both the applicant's landholding and the appellant's landholding and in response the applicant also provided land registry details. As noted by the Environment Section of the Planning Authority, the proposed wastewater treatment system, including the proposed septic tank and associated piped infrastructure would be situated entirely within the applicant's landholding.

- 7.4.2. In addressing 'issues relating to title to land', Section 5.13 of the Development Management Guidelines (2007) outlines that the planning system is not designed to resolve disputes about title to land. The Guidelines also advise that where there is doubt in relation to the legal title of an applicant, and following the clarification sought in additional information, some doubt still remains, the Planning Authority may still decide to grant permission. However a grant of permission is the subject of Section 34(13) of the Planning and Development Act 2000, as amended, which states that 'a person shall not be entitled solely by reason of permission under this section to carry out any development'. Should the Board decide to grant planning permission, the onus is on the applicant to ensure that they have adequate legal interest to carry out the proposed development, and an advice note to this effect should be attached in the event of a permission arising.

## **8.0 Appropriate Assessment**

- 8.1. Having regard to the nature and scale of the proposed development and of the proposed development for retention, the nature of the receiving environment and the proximity to the nearest European site, 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.

## **9.0 Recommendation**

- 9.1. I recommend that permission be granted for the proposed development and the proposed development for retention, subject to conditions and for the reasons and considerations, as set out below.

## 10.0 Reasons and Considerations

**10.1.** Having regard to the existing development on site, including the nature, form, appearance and scale of the proposed development for retention and the wastewater treatment system, it is considered that subject to compliance with the conditions below, the proposed development would not be prejudicial to public health, would not be likely to cause a deterioration in the quality of waters in the area and would be in accordance with the Environmental Protection Agency's 'Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)'. Furthermore, the design and siting of the extensions proposed to be retained would complement the host house, would not injure the visual amenities of the area and would be in accordance with the provisions of the Mayo County Development Plan 2014-2020. The proposed development and the proposed development for retention would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be retained, carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further information received by the Planning Authority on the 21<sup>st</sup> day of December 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 the 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. The existing cottage and bungalow shall be jointly occupied as a single residential unit and the cottage shall not be sold, let or otherwise transferred or conveyed, save as part of the bungalow.

**Reason:** To restrict the use of the cottage in the interest of public health.

3. The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled 'Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)' – Environmental Protection Agency, 2009 and subsequent clarifications issued by the Environmental Protection Agency.

**Reason:** In the interest of public health.

4. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services.

**Reason:** In the interest of public health.

5. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

**Advice Note:** Under Section 34(13) of the Planning and Development Act 2000, as amended, 'a person shall not be entitled solely by reason of permission under this section to carry out any development'.

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Colm McLoughlin  
Planning Inspector

22<sup>nd</sup> May 2019