



An
Bord
Pleanála

Inspector's Report ABP 304402-19

Development	Dwelling House Garage and Associated Works.
Location	Ballingaddy West, Ennistymon, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	18971
Applicant	Alan O'Rourke,
Type of Application	Permission
Decision	Grant Permission
Type of Appeal	Third Party X Grant
Appellant	Ann Waters
Date of Inspection	26 th June, 2019.
Inspector	Jane Dennehy

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1.0 Site Location and Description

1.1. The site has a stated area of 1.4 hectares and is at a prominent and elevated location circa 2.5 kilometres to the north west of Ennistymon and circa three kilometre to the north east of Liscannor. It is steeply sloped rising from the north west towards the from south and south east and has an extensive frontage on the south side of a minor road (LS 5124) a short distance from a cross roads to the north east.

2.0 Proposed Development

2.1. The original application lodged with the planning authority on 29th November, 2019 which was supplemented by further submissions lodged on 24th January, 2019 and 24th January, 2019, (a time extension having been agreed) indicate proposals for construction of a dwelling and garage, the total stated floor area of which is 297square metres along with a private effluent treatment system, new entrance and site works. The application includes a site characterisation form in which it is stated that the site is suitable for a septic tank or advanced system with discharge close to the surface to provide for groundwater protection.

2.2. Supplementary submissions were lodged in which the garage is omitted in entirety, finished floor levels and heights are reduced. In the submission some observations on the proposal and on the development for which Outline Permission had been granted are also provided in the submissions. (Details of the grant of Outline Permission are in section 4 below.)

3.0 Planning Authority Decision

3.1. Decision

3.1.1. By order dated 12th April, 2019 the planning authority decided to grant permission subject to conditions which include the following requirements.

- Condition No 1 (b) Design and layout to accord with the details lodged on 26th February, 2019. (Further information submission)

Condition No 2. Relocation of (footprint) three metres minimum to the north to north west providing for finished floor levels of 104.5 at the front and 105.5 at the rear. (Revised plans to be submitted for agreement)

Condition No 3 (a) Occupancy Condition. (seven years – applicant only.)

Condition No 3 (b) Occupancy on a permanent residential basis only.

Condition No 12. Removal of exempt development entitlements.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. The report of the planning officer dated 18th January, 2019 indicates a recommendation for refusal of permission on grounds that the proposed development represents a visually obtrusive feature in the landscape resulting in serious injury to the visual amenity and character of the landscape in the area and in conflict with Policy Objective 13.2 of the CDP. (See section 5 below for relevant details of CDP)
- 3.2.2. The report of the planning officer dated 9th April, 2019 indicates a recommendation for a grant of permission for the revised proposals shown in the further information submissions, the prior grant of outline permission having been taken into account.

Other Technical Reports

- 3.2.3. The report of Irish Water indicates no objection to the proposed development.
- 3.2.4. The report of the Executive Engineer dated, 7th December, 2019 indicate a recommendation for the existing open drain at the entrance to be piped with a 300 mm “twin wall drainage pipe” to allow for unobstructed flow and for surface water from the site to be directed towards this drainage system.

Third Party Observations

- 3.2.5. A submission from Ann Waters, (Third Party Appellant) indicates concern about visual impact on the landscape, negative impact on the landscape character and, potential for overlooking of her property. Ms Water’s property is is downslope to the north west of the proposed location of the dwelling.

4.0 Planning History

P. A. Reg Ref 16/299: Outline Permission was granted for a house and garage on the site.

P. A. Reg. Ref. 17/558: An application for Permission Consequent on foot of the prior grant of Outline Permission was withdrawn prior to determination of the decision.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative development plan is the Clare County Development Plan, 2017-2023.

5.1.2. The site location is within an “Area of Special Control” for which it is the policy of the planning authority under Objective 13.11 to permit single house development for permanent occupation by persons from the locality and/or working full or part time in rural areas, or who have exceptional health or family circumstances.

5.1.3. The site location is within an a “Settled Landscape” and according to Objective 13.2 it is the policy of the planning authority to permit development in ‘settled landscapes’;

- that sustain and enhance quality of life and residential amenity and which promotes economic activity subject to conformity with the CDP provisions,
- that has appropriate site selection with regard to landscape, minimisation of visual impacts and avoidance of intrusion on scenic routes, ridges or shore lines.
- that demonstrates avoidance of selection of prominent site locations, to avail of existing topography and vegetation in reducing viability from walking trails, water bodies and public amenities and roads and,
- that has design that reduces visual impact by careful choice of form finishes and colours and involves site works that reduces visual impact.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. An appeal was received from Ann Waters who resides at the property to the north west of the application site. She states that it is essential the rural North Clare and similar areas in the county be protected. She considers that the rural house development should be based on local need and support for vibrant sustainable communities, as provided for in the CDP in respect of protection of settled landscape and sustaining rural communities.

6.1.2. According to the appeal:

- The proposal contravenes Policy Objective 3:11 of the CDP which restricts rural house development to local residents and employees. It is not clear how the applicant fulfils these criteria as he is not and has never been resident in the locality or in the country. He is a returning emigrant who has not been a resident for a considerable period.
- The location is within five hundred metres of the Innagh River Estuary SAC (000036) which include the Ballymacraven River catchments adjacent to the site. The conservation objectives and AA and EIA considerations have not been addressed by the planning authority and no screening report was prepared having regard to competent authority requirements of Clare County Council.
- The River Lickeen/Ballymacraven water body which is under pressure from rural housing and agriculture is close to the site location and is a Priority Area for Action (PAA) under the River Basing Management Plan, 2018-2021. The planning authority did not take this into consideration in the assessment and decision.
- The planning history is complex. Unsolicited additional information was lodged with the planning authority after the preparation of the planning officer's report according to which permission was to be refused. The percolation test, the results of which were provided with the application, was undertaken three years ago, in 2016. Compliance with the EPA Code of

Practice is not demonstrated, and an additional concern is the location's proximity to the PAA. It is likely that the prior application (under p. A. Reg. Ref. 17/588) was withdrawn because permission was to be refused. This would be the case with the current application if the unsolicited additional information had not been received. A thorough review is required.

- The elevation of the site, (having regard to the settled landscape designation) is most apparent in long range views to the west and in views from the south. A visual impact assessment report (VIA) should have been carried out and should include montages from several vantage points. It is noted that the planning officer remarked that the roof ridge height was at a scale that is unacceptable. The reductions in the further submissions are inconsequential given the scale and the unsuitability of the site. It is contrary to the Section 13.2 of the CDP. Hedgerow planting required by condition No 4 is an ineffective ameliorative measure.

6.2. Applicant Response

6.2.1. A submission was received from Pat Hogan on behalf of the applicant on 4th June, 2019 according to which:

- The applicant was born in Ennistymon in 1984 and he resided at the family home which is eight km from the site location until 2009. He emigrated to Australia where spends seventy percent of his time. His partner was also born in the area having resided for most of her life at Cahersherkin which four kilometres from the site location. She would qualify as a local rural person as well. They are eligible in an area under Urban Pressure under Objective 3.11 of the CDP which defines a rural person as someone who has resided locally for seven years, within then kilometres of the sit location and who does not own a house in the area.
- It is the responsibility of the planning authority as competent authority to undertaken screening for AA. It prepared a screening for Appropriate Assessment and Determination in which it was conceded that no potential for significant effects to European sites would occur.

- The dwelling would not adversely affect the landscape as it is more or less the same as the dwelling for which Outline Permission was granted, having regard to the measurements that were accepted for the single storey dwelling. They are reflected in the reductions in the unsolicited additional information which was considered acceptable and, which required, under Condition No 2 repositioning of the dwelling to the north west by three metres to further reduce the finished floor levels, ridge height and floor levels. As a result, the floor levels permitted are 104.5 and 105.5 metres which are a metre lower than those provided for in the grant of Outline Permission. The ridge height now equates to the original grant of permission at 5.8 and 6.4 metres with ridge levels of 110.9 metres to the front and 111.3 metres to the rear.
- The “H” shaped split-level dwelling as permitted, is in keeping with the rural location, cut and fill is minimised and, the need for retaining walls is avoided. From the west in long range views, there is no adverse visual impact on the skyline as the contour levels rise to sixty to seventy metres to the east, the site being between the twenty-five and thirty metres contours.
- In short range views there is no adverse visual impact due to retention of the natural boundaries, furze growth to the west and proposed additional planting of native species, a landscaping plan is also to be prepared .

6.3. Planning Authority Response

- 6.3.1. A submission was received from the planning authority on 16th May, 2019 according to which the revision in the supplementary submissions and the objections by the Appellant were taken into consideration. The revisions were considered adequate in addressing issues highlighted in the initial assessment by the planning authority and they are considered to be reflective of the grant of outline permission.

6.4. Further Responses

- 6.4.1. A further submission was received from the Appellant on her own behalf on 4th July, 2019 in which she confirms her view that Permission should be refused. She reiterates objections raised in the appeal and states that the response to the appeal does not address these issues. According to the submission.

- Project splitting has taken place having regard to the planning history of three different applications.
- The proposal is contrary to Policy Objective 13.2 of the CDP. The statement and contour map provided are misleading and fail to address the impact on lands west south west and south east. The reductions fail to reduce the impact on the landscape. Condition No 4 would not be included if the visual impact was not being to be adverse. A substantial VIA with photomontages is essential. An inappropriate ridge height, scale, and nature of the proposal were noted in the planning officer report of 22nd January, 2019.
- The applicant is ineligible for consideration for a house at the location and it is contrary to Objective 3.11 of the CDP. He has not resided in the country for non or ten of the last ten years as he is not a local resident or employee and the site is not the home farm of the applicant. It is a parcel of land that was purchased.
- There is complete failure to address the proximity to the Innagh Estuary SAC in the response to the appeal. The screening was conducted by the planning authority inadequate and it has no NPWS, Heritage Officer or Biodiversity Officer input. The onus is on the applicant and planning authority to address these matters. Full AA and EIA may be required.
- There is complete failure to address the issue of the identified Lickeen. / Ballymacraven river system defined as a PAA and the obligation of the Water Framework Directive regarding the River Basin Management Plan in the response to the appeal, especially in view of the unsatisfactory results of the percolation tests taken in 2016.

7.0 **Assessment**

7.1. The issues central to the appeal and determination of the decision and considered below are:

- Planning History – Project Splitting.
- Rural Housing Policy. (Objective 3.11 CDP)
- Visual Impact and Impact on Landscape Character. (Objective 13.2 CDP.)

- Drainage and Environmental Protection.
- Environmental Impact Assessment
- Appropriate Assessment Screening.

7.2. **Planning History – Project Splitting.**

7.2.1. While there is an extant grant of outline permission for a rural house development on the site which expires in November, 2019 and which is indicative of possible positive consideration of an appropriately designed single house development proposal, there is no mandatory requirement for favourable consideration of a new application for permission, (as opposed to Permission Consequent.) The grant of outline permission is also close to expiry and there is a change in the planning context in so far as a new policy objective have been brought into effect in view of the review of the CDP. The current extant development plan being the Clare County Development Plan, 2017-2023.

7.2.2. The observations and contentions of the appellant as to ‘project splitting’ and commitment to the protection of the rural landscapes of North Clare restricting positive consideration of development applications to those in which local need and support for vibrant sustainable communities is demonstrated are noted. While her account of the prior applications, comprising that of the Grant of Outline Permission and the Withdrawal of the application for Permission Consequent prior to the determination of a decision are noted. Similarly, it is also noted and acknowledged that supplementary submissions were lodged in connection with the current application prior to the determination of the decision. It is unclear as to how it can be contended that ‘project splitting’ has occurred. The current proposal, before the Board on Appeal is considered on the basis of its own merits below.

7.3. **Rural Housing Policy. (Objective 3.11 CDP)**

7.3.1. It is agreed that the details provided in connection with the application and the appeal are indicative that that the principle place of residence of the applicant over the past ten years has been in Australia. It is also accepted that he has not severed his family connections with the area and noted that he intends to return to North Clare to take up residency on a permanent basis, the family home being at Ballyea North circa ten kilometres from the site location. It is noted however that for the applicant who would be in his thirties, having been born in 1984, there are no

available details of applicant's intentions with regard to employment and a livelihood on return to take up residency in North Clare. The applicant has also provided some details of his partner's connections with the area, but this information has been disregarded in that she is not named in the applicant party.

7.3.2. The planning authority has previously satisfied itself that the applicant satisfies the criteria for development of house in the countryside and it is considered that there are insufficient grounds to support refusal of permission due to conflict with the policies and objectives set out under Section 3.11 of the CDP or to reject the view of the position arrived at by the planning authority in this regard.

7.4. **Visual Impact and Impact on Landscape Character. (Objective 13.2 CDP.)**

7.4.1. There is uncertainty with regard to the nature and extent of visual impact and impact on the landscape character in the immediate and in the wider context of the site location. It is highly elevated above Lisconnor and Lisconnor Bay and the R478 on the Atlantic Way, circa three kilometres to the south west and intervening countryside. This is somewhat indicative by way of the revisions shown in supplementary submissions and, by way of the inclusion of further requirements to ameliorate potential adverse impact by condition attached to the planning authority decision. The omission of the garage reduces the cluster rendering the building more compact. The highly elevated location and significant earth works and introduction of hardstanding to provide for the driveway etc. affect the rural characteristics in addition to the proposed dwelling itself.

7.4.2. The concerns of the appellant as to potential adverse impact on views from the south and south west are considered reasonable. As is noted by the Appellant, that the planning officer in her initial report indicated a recommendation to refuse permission on grounds of serious injury to the visual amenities and character of the rural landscape and contravention of Policy Objective 13.2 of the CDP. The applicant sought to address these concerns in the modifications shown in unsolicited further information submissions, but it is considered that the concern is not resolved.

7.4.3. An informed assessment of the impacts is compromised by the lack of comprehensive visual impact assessment in which an appropriate methodology is employed further to which photomontages and accompanying statements as to extent and nature of impact is available for consideration. The statements and

references to the contours are insufficient in addressing impact on lands west, south west and south.

7.5. Drainage and Environmental Protection.

- 7.5.1. With regard to the concerns as to the adequacy or otherwise of the percolation tests and to the resubmission of the results for the tests undertaken in 2016 indicating acceptability of a generic septic tank of advanced treatment and disposal system, there is no objection and there is no necessity for tests to be repeated. There is general compliance with EPA Code of Practice Standards notwithstanding the recommendation included for discharge close to the surface to protect ground water. It is noted that surface water is by condition to be directed for collection within the open drain at the road frontage which is to be piped.
- 7.5.2. It has been established that the location is not within an area identified in OPW records and is not known to have a history or risk of flooding. Drainage is towards the north west and is not in the direction of the Innagh River and the Lickeen River and Lough is north east of Ennistymon and not in direct proximity the site location. According to the Fish Stock Survey conducted by Inland Fisheries Ireland in September, 2016 (viewed on the internet) analysis of the results confirmed no significant deterioration in the stock and quality of selected fish species surveyed relative to data from preceding years. Given the size of the development notwithstanding some potential change to greenfield drainage patterns during and post development it is not apparent that the proposed development would have significant adverse impact on this watercourse.

7.6. Environmental Impact Assessment.

- 7.6.1. With regard to environmental impact assessment it is note that the proposed development is relatively minor in scale and nature and that the statutory requirements for undertaking environmental impact assessment, and to prepare an environmental impact statement are confined to certain major large scale developments, which are mainly industrial or infrastructure developments. Otherwise where relevant for all other development proposals, should it be determined necessary, an environmental assessment report may be warranted to facilitate assessment of an application. In the case of the current proposal it is agreed with the applicant and planning authority that there is no requirement for

submission of environmental reports or essential that further input from local level biodiversity or heritage officers, or the NPWS be sought.

- 7.6.2. Having regard to the nature and scale of the proposed development, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 **Appropriate Assessment.**

- 8.1. The Inagh River SAC extends from south east of Ennistymon and flowing to Liscannor Bay is downstream to the south and south west of the site and is within a kilometre of the site location. The qualifying interests/conservation interests are some coastal species including salicornia and Atlantic salt meadows, Mediterranean salt meadows, shifting dunes with ammophila arenaria and fixed coastal dunes with herbaceous vegetation – grey dunes.
- 8.2. The site is at an elevated location and there an open drain along the road frontage of the site. The project is a for a dwelling connected to the public water supply, a private effluent treatment and disposal system which is compliant with the EPA code of practice and collection and direction of surface water to a piped drain which is to replace the existing open drain. Potential threats would be by means of polluted storm and foul waters reaching the waters and affecting its quality and the habitats in the SAC but there is no hydrological links providing for direct flow in the direction of the SAC.
- 8.3. In the case of the current proposal it is agreed with the applicant and planning authority that there is no requirement for submission of a Natura Impact Statement or Stage 2 appropriate assessment is required and, that further input from local level biodiversity or heritage officers, or the NPWS should not be sought.
- 8.4. Having regard to the small-scale nature of the proposed development, no Appropriate Assessment issues proposed development would not 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. In view of the foregoing, it is recommended that permission be refused for reasoning related to adverse impact on the visual amenities and rural character of the landscape and contravention of Policy Objective 13.2 of the CDP applicable to designated “Settled Landscapes” to this end. Draft Reasons and Considerations and Conditions follow.

10.0 Reasons and Considerations

The site location is within an area designated as a “Settled Landscape” in respect of which it is the policy of the planning authority under Policy Objective 13.2 of the Clare County Development Plan, 2012-2023 to satisfy itself that development proposals within designated “settled landscapes”:

- have appropriate site selection with regard to landscape, minimisation of visual impacts and avoidance of intrusion on scenic routes, ridges or shore lines;
- demonstrate avoidance of selection of prominent site locations, to avail of existing topography and vegetation in reducing visibility from walking trails, water bodies and public amenities and roads and,
- have design that reduces visual impact by careful choice of form, finishes and colours and involves site works that reduces visual impact.

The Board is not satisfied, based on the submissions made in connection with the application and with the appeal, that the proposed development, by reason of the elevated and highly prominent and exposed location, the height, scale, mass and design of the proposed dwelling and, the associated ground works, hard landscaping and other interventions required, that the proposed development would not result in an insertion into the landscape of a significant suburban type feature which is visually obtrusive and out of character with the rural landscape from a wide range of vantage points to the south west, west and north west in and in the vicinity of Liscannor. As a result, the proposed development would seriously injure the visual

amenities and landscape character in the area and would be contrary to a development objective of the development and would be contrary to the proper and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
23rd July, 2019.