



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304980-19

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<b>Development</b>	Demolish House, Build House and replace wastewater treatment system
<b>Location</b>	Carrowntreila, Ballina, Co. Mayo.
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	19166
<b>Applicant(s)</b>	Keith Ruane.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Nealon
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> October 2019.
<b>Inspector</b>	Suzanne Kehely

## 1.0 Site Location and Description

- 1.1. The site is located in a populated rural area about 3km south of Ballina town. It is at a corner location at the junction of local road L1127 (Ballina to Foxford) and a more minor road linking N26 to the west.
- 1.2. The site contains a modest extended dwelling of 71 sq.m. and sheds which extend deep into the site. The site is part of a larger landholding as outlined in blue which wraps around an adjacent dwelling to the north. There is an adjacent dwelling to the south which is part of the wider landholding.
- 1.3. Existing vehicular access is via a laneway at the northern end of the site frontage along L1127 (as delineated in red) . At time of inspection this was gated with a timber fence across the laneway.
- 1.4. The boundary of the adjacent house along the northern side of the laneway is marked by intermittent hedging. A row of wire mesh screens line the boundary up to a shed.
- 1.5. The adjacent house to the north has an existing vehicular access directly onto the road.
- 1.6. The site slopes from around 15mOD down to the road dipping to 11mOD. It is low lying and about 1km west to the River Moy.
- 1.7. The site is served by a public mains water supply.

## 2.0 Proposed Development

- 2.1. It is proposed to demolish the dwelling and to construct a larger house to the front of the existing house . A new wastewater treatment system is also proposed to rear of the proposed dwelling in replacement of an existing septic tank. Based on the information provided and using SR6 and the EPA Code of Practice, the appropriate solution for treating wastewater on the site is a septic tank with a Tricel Puraflo modules followed by a percolation area. This will be further west and on slightly higher ground.

### 3.0 Planning Authority Decision

#### 3.1. Decision

The planning authority decided to grant permission subject to 9 conditions.

Condition 2 – FFL at 103.5m to avoid flooding [Note: This is an error based on reports and ground levels]

Condition 3 requires alteration to boundary for sightlines and future road works.

Condition 5 requires compliance with Section 5 of the EPA report submitted to MCC 11/3/19. [Note: There is no EPA report submitted but there is a Tricel Site Recommendation Report. Page 5 of this sets out Treatment Performance Results. ]

Condition 8 requires specific finishes

Condition 9 requires screen planting

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

Further information was sought in respect of:

- Compliance with Table 4 (Access) of the Development plan whereby access shall be 40m from a junction.
- Revised plan showing sightlines from the nearside of the adjacent carriageway.
- Site Specific Flood Risk Assessment as site is within a distance of 25m from Benefiting Lands (section 5,8 of the FRA guidelines is considered applicable where it states that Assessment of minor proposal in Areas of Flood risk a commensurate assessment of the risks of flooding should be submitted to demonstrate the proposed development would not have adverse impacts or impede access to watercourse, floodplain or flood protection and management facilities.
- Indication of an existing right of way on the site.

The applicant submitted details to the satisfaction of the planning authority.

3.2.2. Other Technical Reports: Engineer's report notes the proximity of entrance to the junction but that it is an existing entrance and the roads are quiet.. Revised boundary required to achieve improved sightlines. Drawings not to scale.

### 3.3. **Third Party Observations**

Objection from appellant on similar grounds as set out below.

### 4.0 **Planning History**

No record stated for site.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

5.1.1. The site is governed by the Mayo county Development Plan 2014-2020. It is about 800m south of the Ballina Town and Environs Plan area. The appeal site is located within an area identified as being under strong urban influence.

5.1.2. Re-use of buildings: Section 1.2 states that the planning authority will also encourage reuse of an existing building/ structure other than a house for residential development subject to proper planning and sustainable development. Section 1.3 states that Replacement dwellings or development of other structures to habitable homes will be considered in all areas, subject to normal planning considerations such as availability of services, adequacy of ground conditions for disposal of effluent from the development, traffic safety, residential amenity, visual amenity etc. Where it is proposed to replace a dwelling, the replacement dwelling may require to be located on the footprint of the existing structure and the scale and character of the existing building may require replication or of similar scale and design, depending on the location of the development (e.g. sensitive or vulnerable locations such as coastal, lakeside or upland areas).

5.1.3. Rural housing policy

- RH-02 – It is an objective of the Council to require rural housing to be designed in accordance with the Design Guidelines for Rural Housing (Mayo County Council).

Consideration will be given to minor deviations from the guidelines where it can be demonstrated that the deviation will not have an adverse visual impact on the landscape or on local residential amenity in the Area.

5.1.4. Access visibility requirements:

- 16.3.1 The minimum visibility requirements from a development onto the public road in a rural or urban setting shall be as set out in Table 3.
- 16.3.2 The visibility shall be measured from a minimum of 3m from the edge of the road or as determined by Mayo County Council. In limited instances this may be reduced to 2.4m and to 2.0m in difficult circumstances on urban roads. Illustrations and additional information on access visibility requirements are set out in Appendix 1 of this guidance document. Site visibility requirements shall be provided within the development boundary of the site.

5.1.5. Access and Proximity to Road Junctions

- 16.5.1 Where an access to/from a new development onto a local road is in close proximity to a road junction the new access shall meet the minimum standards set out in Table 4. Minimum distance of 40m is required for a local road junction

5.1.6. Wastewater treatment: Section 20.2.4 Where it is proposed to extend/renovate a structure with an existing septic tank system, the applicant will be required to demonstrate to the satisfaction of the planning authority that the existing septic tank is in working order and is suitable for the proposed development. This shall be by way of a report carried out by a suitably qualified person (as above) with professional indemnity insurance. The planning authority may require upgrades to existing septic tank systems to facilitate the proposed development or require relocation of septic tank systems where they are not located on the proposed site.

5.1.7. Mayo Rural Housing Design Guidelines 2008 : The rural house design guide aims to encourage the use of traditional forms, scale and materials that have a proven history of blending into the landscape.

5.2. **Sustainable Rural Housing, Guidelines for Planning Authorities (2005)**

- The subject site is located within an area designated as being ‘Rural Areas under Strong Urban Influence’ within these Guidelines.
- Section 3.3.3 deals with ‘Siting and Design’.

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

River Moy SAC is 500m east of the site.

## 6.0 **The Appeal**

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

- Applicant has denied right of way to appellant who claims an established right of way for over 70 years by his family. It is submitted that the appellant has right of way over the access road that serves the existing and proposed dwelling house and that this access has been blocked by way of new fencing erected during construction.
- While it is accepted that the right of way is not documented as was indicated in the further information submitted to the planning authority, this does not mean no rights of way exist.
- Unauthorised development has taken place and permission should not therefore have been granted.
- It is claimed that the fence that exceeds 1.2m in height is not exempted development by reference to the conditions of class 13 under the PDR 2001 as amended.
- Incorrect information has been submitted to the planning authority in regard to the works associated with fencing,

## 6.2. Applicant Response

- On examination of registered legal folios there is no evidence of a right of way – Folio details attached.
- The fencing is temporary on health and safety grounds . No construction works pertaining to PL19166 have commenced.

## 6.3. Planning Authority Response

- No further comments on planning issues

## 6.4. Observations

- None

## 6.5. EIA Screening

6.6. Having regard to the existing development on site, the nature and scale of the proposed development and the location of the site, 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.

## 7.0 Assessment

### 7.1. Issues

7.1.1. This appeal relates to an application for a replacement dwelling in a small rural settlement south of Ballina town. While it is an area under development pressure, the issue of a new single rural dwelling house does not arise. Furthermore, as it is a very small dwelling that has been already extended and has a total area of 72 sq.m., I see no issue with the principle of constructing a replacement dwelling notwithstanding the policy of re-using existing buildings. The issues in this case relate to standards of development and impact on amenity. The planning authority, in its assessment has raised issues of access and flooding in addition to the concerns about rights of way and entitlement as raised by the appellant. There is also an issue of unauthorised

development. While the Board may give its consideration to dismissing the appeal due to the nature of grounds heavily reliant on rights of way, there are I consider amenity issues and accordingly do not consider dismissal entirely appropriate.

## **7.2. Access**

- 7.2.1. The planning authority raised concerns about the proximity to the junction being of a distance less than the guided 40m as per its development plan. However the Area Engineer notes the established vehicular access that presently serves the existing dwelling and the proposed continuance of same. It is further noted that the local road network in this immediate area is lightly trafficked. I also note that the condition to set back the boundary provides for enhancement of sightlines to the south in the direction of the crossroads junction. I note the drawings indicate sightlines of 120m and 160m north and south of the entrance respectively as measured from about 2m from the carriageway edge. While I note an alternative option would be to provide a new entrance on the more minor road to the south where a setback in excess of 40m could be achieved, I do not consider the continued use of the established entrance for a replacement dwelling would give rise to intensification of use nor would it be prejudicial to public safety and would therefore be acceptable from a safety perspective. As this entrance serves additional lands, the opportunity to upgrade the access is a positive step. I also consider the continued use rather than a new entrance would serve to protect the character of the area, minimise hard surfaces and be more sustainable.
- 7.2.2. The appellant makes the case that the gating of the proposed access and effectively exclusive use of same for the proposed dwelling serves to obstruct his right of way over the same laneway and this is the basis of his appeal.
- 7.2.3. There are three aspects to the objection; lack of legal entitlement, interference with enjoyment of property, and unauthorised development.

## **7.3. Legal entitlement**

- 7.3.1. There is a dispute as to whether or not there is a Right of Way over the access lane that serves the existing and proposed development. While the appellant claims an established use for over 70 years by his family, the applicant has submitted details of legal folios which clearly indicate legal entitlement to make the application. Planning permission does not override private property rights and so planning permission



does not entitle the applicant to carry out works on land in which the applicant does not have sufficient legal interest. In this case however the submitted details do not show any obstruction of the laneway and in the event that a right of way does exist, this would not require alteration of the submitted plans. It is not as if the proposed house is sited to obstruct the laneway. The issue of rights of way is a civil matter, the resolution of which should not be materially impacted by a grant of permission. Accordingly, I do not consider a refusal of permission on the basis of obstruction of a right of way to be reasonable.

7.3.2. Similarly the proposed dwelling is not reliant on the construction or retention of fencing. Permission is not being sought for the construction or retention of fencing across the laneway. This is a separate enforcement matter – the outcome of which would I consider have no material bearing on the construction of the replacement house. The applicant clarifies that the fencing is a temporary measure. A condition could clarify this matter to ensure that temporary structures associated with the proposed development are only that.

7.3.3. Accordingly, while I do not consider the grounds of appeal constitute a basis for refusal, I do consider a condition relating to the boundary treatment should address temporary fencing in the interest of visual enmity.

#### 7.4. **Drainage**

7.4.1. While there is no dispute in regard to drainage, there are two issues in this that merit consideration in a de nova assessment.

7.4.2. Firstly there is the issue of flooding. In a site-specific flood risk assessment report it is explained that no section of the site is prone to flooding following consultation with locals with particular reference to heavy rainfall levels in November 2009 and winter of 2015/2016, nor were lower lying houses in the area flooded. The FFL would be more than 4m above the bank of the river. At a 1% AEP the river would attain a level of 6.06m and this would rise to 6.93m at the 0.1% AEP and take 35 hours to raise from the lower of these levels. A Justification Test is stated to not be warranted as the calculations and CFRAM maps indicate that the footprint of the proposed development, at a level of 13.5m, is unlikely to be located in either Flood Zones A or B. Given the location it would not impact or reduce the storage capacity of any flood plain nor would it restrict the flow in any otic system. It is reasonable to conclude that

the proposed dwelling is not at risk of flooding based on the submitted information, however, I note the condition states in error a required FFL of 103.5mOD and this should be corrected to 13.5m .

- 7.4.3. The second issue relates to the proposed wastewater treatment system. While the ground conditions indicate poor percolation characteristics, regard has to be had to the provision of a mains water supply and also to the fact that the proposed new treatment system constitutes an upgrade. Page 5 of the Site Recommendation report attached with the application refers to the treatment performance results. A condition to comply with its quality is appropriate and reasonable in view of the aquifer vulnerability. The wording of condition 5 appear to be erroneous and should be clarified as there is no EPA report on file. A more general condition of compliance with the EPA guidelines in addition to installation and management requirements would be appropriate.

## 8.0 **Appropriate Assessment**

- 8.1. The existing house site is about 500m west of a small lake that is part of the River Moy SAC. I note the land to the east is low lying and includes drainage channel. There is a small drain at the lower portion of the site and the proposed footprint overlaps this channel. In this case the proposal involves the replacement and upgrading of the waste water treatment system on slightly higher ground and at greater distance from this channel and away from the River Moy SAC. Surface water is managed with a soak pit. The site is in an area described as benefitting lands in relation to the flood plain of River Moy. The planning authority sought a Site-specific Flood Risk Assessment and this report clarifies that the site is not at risk of flooding. The proposed finished floor level at 13.5m is clear of the flood levels.
- 8.2. Having regard to the relatively minor nature of the proposed development which is comparable to a domestic extension and involves the upgrading of the wastewater treatment plant and also having regard to the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the 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. Having regard to the foregoing, I recommend that permission be granted based on the following reasons and considerations.

## 10.0 Reasons and Considerations

Having regard to the scale and nature of the proposed replacement dwelling and to the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or property in the area and would be in accordance with the provisions of the Mayo County Development Plan 2014-2020. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### Conditions

1. The proposed development shall be in accordance with the plans and particulars lodged with the application and as amended by further information lodged on 19<sup>h</sup> June 2019, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The existing house on site to be replaced shall be demolished prior to occupancy of proposed dwelling or with eighteen months from date of commencement of works, whichever is the sooner date.

**Reason:** In the interest of orderly development.

3. The finished floor level of the proposed dwelling shall be constructed at 13.5mOD.

**Reason:** To prevent risk of flooding.

4. (a) The existing front boundary shall be set back as necessary to provide for improved sightlines at the vehicular entrance to the site in accordance with the detailed requirements of the planning authority.

(b) All temporary fencing shall be removed prior to occupancy of the dwelling

Details, demonstrating compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of traffic safety and orderly development.

5. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include:

- (a) the establishment of a hedgerow along all side and rear boundaries of the site, and
- (b) details all boundary treatment including details of height, materials and finishes.

Any plants which die, are removed or become seriously damaged or diseased, within a period of 3 years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

6. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). No system other than the type proposed in the submissions shall be

installed unless agreed in writing with the planning authority.

- (b) Certification by the system manufacturer that the system has been properly installed and compliant with the treatment performance criteria shall be submitted to the planning authority within four weeks of the installation of the system. A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwelling house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (c) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (d) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

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

- 7.
  - (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.
  - (b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.
  - (c) The existing drainage channel traversing the site shall be diverted in accordance with the requirements of the planning authority.

All details including timescale and for such works shall be submitted for the prior written agreement of the planning authority.

**Reason:** In the interest of traffic safety and to prevent pollution.

8. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material in accordance with the provision of the Waste Management Plan for the Region in which the site is situated.

**Reason:** In the interests of sustainable waste management.

9. Details of external finishes shall comply with the following criteria:
  - (a) The front door and windows shall be simple in design.
  - (b) The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tiles shall be the same as the colour of the roof.
  - (c) The external walls shall be finished in neutral colours such as grey or off-white.
  - (d) Stone, where used shall be indigenous to the area.

**Reason:** In the interest of visual amenity.

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Suzanne Kehely

Senior Planning Inspector

27<sup>th</sup> November 2019