



An
Bord
Pleanála

Inspector's Report

ABP-305274-19

Development	To change design of dwelling house approved under Planning Permission P11-96 together with all associated site development works and services.
Location	Reaskaun, Larchill, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	19/452
Applicant(s)	William & June Cahir.
Type of Application	Permission
Planning Authority Decision	Grant Permission with conditions
Type of Appeal	First Party v Condition 3
Appellant(s)	William & June Cahir
Observer(s)	None
Date of Site Inspection	28 th November 2019.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 1.76 hectares is located within the rural townland of Reaskaun which is located circa 2km to the north of Ennis in Co Clare. The site comprises agricultural land in two field patterns. The front field is relatively flat wetland incorporating a central pond area. The rear field is more elevated slopes upward and includes two overgrown building ruins located towards the western boundary. Field boundaries are defined by a mix of walling and trees. There is an established dwelling located adjacent to the public road to the west of the site and a dwelling set back from the roadside to the east. A woodland area provides a backdrop to the north of the site.
- 1.2. The site includes Recorded Monument CL025-245 Fulacht Fia.

2.0 Proposed Development

- 2.1. The proposal involves permission to change design of dwellinghouse approved under Planning Permission P11/96 together with all associated site development works and services. The proposed design is a two storey 297.5m² dwelling and is to be sited as per original permission which is set back 134m from the roadway.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 By order dated 30th July 2019 Clare County Council issued notification of its decision to grant permission and to which three conditions were attached. Condition 3 which is the subject of this appeal requires the payment of a development Contribution to Clare County Council of €7,499 in accordance with the Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000 as amended.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Planner's report outlines the planning history on the site and expresses the view that the proposed design is aesthetically and visually better than the previously approved design. Permission is duly recommended.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

No submissions

4.0 Planning History

16/417 Permission granted to William & June Cahir to Extend the appropriate period of planning permission P11.96 to construct a 2 storey dwellinghouse, treatment plant, polishing filter and associated garage. Extension to 2 September 2021.

P11/96 Permission granted to William & June Cahir to construct a two storey dwellinghouse with treatment plant and polishing filter and associated garage together with all necessary site works and services. Permission was subject to 15 conditions which included.

Condition 1 Occupancy.

Condition 2 Development Contribution of €642.80 in accordance with the Development Contribution Scheme.

Condition 14. Existing ruined buildings shall be retained and renovated as appropriate and used for the purpose of storage. Details with regard to the renovation of same shall be agreed prior to commencement of development.

Condition 15. The area on site which contains the Fulacht Fia shall be fenced off during construction period as per the recommendations as set out in page 8 of the Archaeological Assessment Report.

5.0 Policy Context

5.1. Development Plan

The Clare County Development Plan 2017-2023 refers.

5.2. Natural Heritage Designations

The site is not within a designated site. There are a number of such sites in the area including

Ballyalia Lake SAC c 400m to the southeast

Ballyalia Lough SPA c 400m to the southeast.

Lower River Shannon SAC 1.8km to the southeast

Dromore Woods and Loughs SAC c2.9km to the northeast

Slieve Aughty Mountains SPA 8km to the northeast

Oysterman's Marsh NHA 8.6km to the northeast

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development and to the nature of the receiving environment, 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 The appeal relates to Condition 3 which requiring payment of a Development contribution of €7,499 .
- Application relates to change of house design in respect of a development already commenced.

- Financial contribution €642.80 imposed was discharged to Clare County Council on 25th February 2014.
- The imposition of fresh development levies in respect of the modification of an existing planning on foot of which contributions have already been paid is not applicable.

6.2. Planning Authority Response

6.2.1 The Planning Authority response acknowledges that levies applied on P11-96 were paid on 24th February 2014. No dwelling has been built on site and no ground works are completed on site. Levies were applied in accordance with the current Development Contribution Scheme 2017-2023. As the dwelling was not built under P11-96, the levies paid on that are now deductible from the new amount now owed.

6.3. Further Responses

6.3.1 Further response from Cahir & Co Solicitors in response to the Council's response to the appeal is summarised as follows:

- Clare County Council are mistaken with respect to the site.
- Significant enabling works were carried out on site by heavy machinery following the Commencement Notice Served on 24th February 2014 pursuant to Planning P11-95.
- These works then ceased and following a decision to revise of the overall project by way of reduction of the footprint of the dwelling.
- The site falls outside the development contribution scheme 2017-2023 and has already been assessed pursuant to Planning P11096.
- No review of the planning contributions was made under Planning Application P16-417 to extend the time for completion.
- Notably the timeframe for completion has not been extended.
- Contributions have been rightly assessed on the site and discharged prior to the commencement of enabling works.

- Once the commencement notice has been served and work has commenced on the site, it is not then open to the Council to review the development contributions subject to an application to redesign especially when such a redesign is an actual reduction in the footprint of the overall development.

7.0 Assessment

- 7.1. As the appeal is solely against the contribution condition, the Act provides that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal, in effect the condition being appealed against, and to considering the proper implementation of the Clare County Council's Adopted scheme.
- 7.2. In the appeal against the contribution levied against the development under the terms of the development contribution scheme at condition 3, the first party contends that no such contribution should apply based on the fact that a contribution levied on the governing permission was discharged to Clare County Council on 24th February 2014 at which time a commencement notices was also lodged. The first party contends also that 'enabling works' were subsequently carried out by heavy machinery on the site. I note that having visited the site I did not note any visible evidence of such works.
- 7.3. According to the Act, S48 a development contribution may be applied by the Planning Authority when granting a permission under Section 34 of the Act in respect of public infrastructure and facilities benefitting development in the area of the planning authority and that is provided, or that is intended will be provided, by or on behalf of a local authority. I note that Section 48.3(c) of the Act provides that " A scheme may allow for the payment of a reduced contribution or no contribution in certain circumstances, in accordance with the provisions of the scheme."
- 7.4 I have reviewed Clare County Council's Development Contribution scheme 2017-2023 which was adopted on 24th April 2017. It sets out the basis for determination of development contribution charges at a rate of €5,549 up to 200sq.m and a rate of €20 per m2 greater than 200sq.m. The proposed dwelling has a floor area of

297.5sq.m therefore the calculation of €5,549 +(97.5x€20) =€5,549+€1,950 = €7,499.

- 7.5 In relation to implementation it is set out at page 12 of the scheme “(a) *The scheme shall come into operation following the adoption of the Development Contribution Scheme 2017-2023 and will be applied to all decisions to grant permission made on or after that date, irrespective of when the planning application was submitted.*”

I note that as the current proposal involves a permission therefore it is not open to the Board to disregard the terms of the scheme. The question of whether enabling works were carried out is also irrelevant in consideration of the matters raised in the appeal. The scheme applies to a grant of permission and the nature of the permission as a variation of the previous permission or its limited duration which is tied to the expiry of the governing permission does not preclude the application of the terms of the scheme. I note that as outlined by Clare County Council it is appropriate that monies previously paid in respect of the governing permission should be deducted from the amount now payable. Having regard to the foregoing I consider that the provisions of the Clare County Council’s Development Scheme have been properly applied.

8.0 **Recommendation**

- 8.1 Having regard to the nature of the proposed development, it is considered that the terms of the Clare County Council Development Contributions Scheme were correctly applied by the planning authority and there is no provision within the Development Contributions Scheme for exemption from any part of the amount payable. The Board considered that the terms of the Development Contributions Scheme for the area had been properly applied in respect of Condition Number 3 and directs the said Council, under subsection 10(6) of Section 48 of the Planning and Development Act, 2000, to attach the said condition for the reason set out below.

9.0 **Reasons and Considerations**

Having regard to the nature of the subject application the Board considered that the terms of the Clare County Council Development Contributions Scheme 2017-2023 were correctly applied by the planning authority.

Bríd Maxwell
Planning Inspector

29th November 2019