



An
Bord
Pleanála

Inspector's Report ABP – 307120-20

Development	Retention of House, garage and wastewater treatment system.
Location	Muckinish, Spancilhill, Co. Clare.
Planning Authority	Clare County Council
P. A. Reg. Ref.	20/86
Applicant	Daire O'Connor
Type of Application	Permission for Retention.
Decision	Refuse Permission.
Type of Appeal	First Party X Refusal
Appellant	Daire O'Connor
Date of Inspection	19 th June, 2020.
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site has a stated area of 720 square metres and is a backland site located at the rear of two detached houses on the west side of a local secondary road (LS8162) a short distance to the north east of Spencilhill. Access to the site is off the public road is via a lane between the two dwellings and it has fencing and hedgerow planting on either side. The site itself is surrounded by timber panel fencing along the boundaries. To the north side there are trees and woodlands.
- 1.2. A single storey dwelling, (subject of the application) which is a prefabricated structure finished in timber with a metal clad roof is located on the site within a fenced off curtilage along with a wastewater treatment system on adjoining lands with the site. The ground level is relatively flat, the surface is partially cleared and covered in aggregate. An open drain is along the north and north west boundaries of the site. Timber panel fencing and hedgerow planting are located along the frontage towards the two road frontage dwellings.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for the retention dwelling, a garage, and the waste-water treatment system inclusive of a pump and raised bed polishing filter. (The proposed not evident on the site at the time of inspection.) The stated floor area is seventy-three square metres. Reference s also made to two car spaces on the application form. It is stated that the water supply is from an existing connection the source of which is not indicated.
- 2.2. The application includes:
 - A specification of works and materials list for the wastewater treatment system including a site-specific section drawing of the proposed system.
 - A letter indicating confirmation of consent from Gerry O'Connor, The Oaks Spencilhill, to lodgement of an application for "retention permission for a dwelling on site wastewater treatment an ancillary works on our lands at Knockreagh, Maurice Mills, Co. Clare". The applicant is stated to be the son of the landholder who operates a family farm on a landholding of sixteen

hectares in the area. On the application form it is stated that the applicant is an engineer employed in Ennis and that he used to reside with his parents. `

3.0 Planning Authority Decision

3.1. Decision

By order dated, 1st April, 2020 the planning authority decided to refuse permission based on the following two reasons:

“Having regard to the soil conditions and high water table encountered on site and notwithstanding the proposed use of a septic tank and raised polishing filter, the Planning Authority is not satisfied, on the basis of the information available that the existing on site system in this area of the site is suitable for the disposal of foul effluent. Therefore the Planning Authority considers that the posed development would conflict with the provisions of the Environmental Protection Agency’s Code of Practice “Wastewater Treatment and Disposal Systems serving Single Houses (2009), would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.”

“Having regard to the location and close proximity to the proposal site to the rear of the two existing dwellings, the means of access to the site via the existing lane between these dwellings and the views available from the site towards the private amenity areas of the adjacent dwellings it is considered that the proposed development would result in haphazard backland development that would seriously injure the residential amenities of the area by reason of loss of privacy and general disturbance and as such would be contrary to the proper planning and sustainable development of the area.”

3.2. **Planning Authority Reports**

The report of the **Environment Department** indicates concerns having regard to:

The poor draining nature of the soil and extremely high-water table,

The location for the system above ground level being reflective of lack of attenuation and inability to treat water and,

Surface water ponding observed at the site during inspection on 19th March, 2020 which is indicative of no hydraulic movement.

Refusal of permission for retention is recommended because in inability to treat wastewater and the potential impact on public health and the environment.

4.0 **Planning History**

- 4.1. The development subject of the application is subject of a Warning Letter issued by the planning authority. (The planning authority's file, UD18-028 refers.) An appeal was withdrawn prior to determination of a decision. (P. A. Reg Ref 18/666 (PL307061) refers.)
- 4.2. Under P. A. Reg. Ref. 01/1876 Permission was granted on 11th February, 2002 (further to issue of and receipt of additional information) to the applicant's father, Gerry O'Connor, to retain and complete landfill and construction of the two dwelling houses and garages and proprietary treatment systems. The application details and conditions attached are not available on the planning authority's electronic register for review.
- 4.3. However, there is a statement in the planning officer reports on P. A. Reg. Refs. 07/1409 and 07/1410 (applications for outline permission for two houses for a third party on adjoining lands,) that the grant of permission under 01/1876 to Gerry O'Connor included a requirement, by condition to enter into a section 38 agreement for sterilisation of the landholding.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Clare County Development Plan, 2017-2023. The site comes within an “Area of Special Control” according to the rural settlement strategy and as being “under strong urban pressure” and, within the “Western Corridor Working Landscape”.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from Michael Duffy on behalf of the applicant on 28th April, 2020 attached to which is a copy of a planning officer report on a planning application under P. A. Reg. Ref. 08-567 for a garage, (115 square metres in area) at the rear of dwelling just to the north of the Spencilhill Cluster and a copy of the manager’s order for a the grant of permission in 2014 for a hose and garage with proprietary treatment system at Muckinish under P. A. Reg. Ref.08/622.

6.2. According to the Appeal:

- The reasons for refusal of permission attached to the planning authority decision refer to issues but the reasoning lacks specificity and is unclear.
- The statements as to an information deficit are disputed because the application was validated and accords with statutory requirements and, additional information could have been requested.
- As described in the application, effluent from the septic tank passes through the peat modules where it is treated, passing through 900 mm of aerated soil for polishing before discharge to the ground water of surface waters to which discharge of treated polished effluent is legitimate, accords with the EPA Code of Practice and, good practice. Discharge to surface waters is a separate matter. The water table is 200 m mellow surface level which is consistent with details for two prior grants of permission on adjoining sites under P. A. Reg. Ref. 07/1409 and 07/1410. There is no statutory requirement

for compliance with the EPA Code of Practice and a disclaimer is included in the document. Therefore, there is reliance on good professional advice that wastewater can be treated to an appropriate standard and will not pollute waters. Discharge route to surface or ground waters and a discharge route must be determined.

- The proposed dwelling has separation distances of sixty and sixty-five metres from the two dwellings to the front and their gardens are well screened off from the site and the access lane. There are no views towards these dwellings and gardens.
- The access lane is a, long established agricultural lane. No significant increase in traffic on the lane and at the access to the road will arise.
- There was a request for combination of the two accesses initially proposed into a shared access in the case of the two adjacent grants of outline permission on adjoining lands forty metres from the application site under P. A. Reg. Refs. 07/1409 and 1410. Therefore, it is disingenuous to raise issues about the shared access in relation to the current application.
- The proposed development is not backland development. It is seventy metres from the designated cluster boundary for Spencilhill and there are the two existing houses. The planning authority granted permission for similar development 280 metres from the site outside this cluster boundary under P. A. Reg. Ref. 08/622 which was extended under P.A. Reg. Ref. 13/660.
- There is a contradiction between the environmental assessment by the planning authority which indicates no likely impact on the environment and the technical reports on the application.

6.3. Planning Authority Response

A submission from the planning authority was received on 9th June, 2020 according to which:

- The reasons for refusal of permission attached to its decision are clear, unambiguous, and as substantive as possible. The planning authority had a fundamental objection to the proposed development on the backland site

along with the significant waste water treatment issues therefore, in accordance with statutory guidance, an additional information request was not issued so as to avoid unnecessary or expense on the part if the applicant if refusal is likely.

- Reference is made to the planning officer's comments and those of the Environment Report on the proposal on the inability of the site to provide for drainage and treatment in accordance with the EPA Code of Practice.
- Reference is made to the backland site, the narrow access laneway between the two existing dwellings to the rear of which there are views of their private amenity areas.
- It is stated that the planning officer did take note of the planning history within the environs.
- It is also noted that the redline boundary had been altered to include the percolation area shown for a prior grant of permission, the duration of which had expired.

It is requested that the decision to refuse permission for retention be upheld.

7.0 **Assessment**

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

Effluent treatment and disposal

Residential and visual amenities

Development on lands not designated for development

Other issues:

Development on lands not designated for development.

Detached Garage

Clarity in Reasons for Refusal of Permission for Retention.

Environmental Impact Assessment Screening

Appropriate Assessment Screening.

7.2. Effluent treatment and disposal.

- 7.2.1. Residential use is included among the vulnerable land use categories specified in the within 'The Planning System and Flood Risk Management' guidelines' issued in 2009. Although the site is not within an identified Flood zone A or B area for which residential use would not be acceptable having regard to the guidelines, further to visual inspection, it is agreed with the planning officer that there are serious concerns as to the capacity of the site to accept treated effluent owing to the very high water table and, therefore its shallow depth to the underlying ground water, wet and marshy ground conditions within the site and the reported observations of ponding.
- 7.2.2. It can be concluded that due to nature of the soil and the consequent lack of hydraulic movement, as evidenced in the report of the Environment Section on the application, the site lands lack capacity for collection, treatment and disposal to the ground, in accordance with the guidance and standards within the EPA Code of Practice for single dwellings so as to ensure prevention of pollution and public health implications.
- 7.2.3. A further concern is as to any potential cumulative impact attributable to an agglomeration of private effluent treatment systems within a confined area in the environs, including the facilities serving the two dwellings to the front of the site and the adjoining sites for which permission was granted for under P. A. Reg. Refs. 07/1409 and 07/1410. It is noted that the application documentation does not include details of the presence and layout of private effluent treatment and disposal systems on lands within the site's environs.
- 7.2.4. The application does not include a completed site characterisation form for the proposed septic tank and proprietary treatment system although a specification of works materials list, copies of GSI maps and a section drawing are provided.

7.3. Residential and Visual Amenities.

- 7.3.1. The dwelling is a modest sized, low profile, single storey timber clad structure and while not directly visible from the public road, it is backland development accessed by an agricultural lane between the two dwellings and their front and rear gardens which were permitted under P. A. Reg. Ref. 01/1876. Irrespective of screening along the side boundaries of the two dwellings the proposed use of the lane diminishes the

attainable residential amenities of these properties by reason of disturbance, loss and perceived loss of privacy and amenity. Backland development such as that proposed is also haphazard, disorderly, and inappropriate cluster development. The observations of the planning officer in his report are considered reasonable and is fully supported in this regard.

7.4. Other Issues.

Development on lands not designated for development.

- 7.4.1. The applicant is stated to be the son of the landholder, Gerry O'Connor and employed in Ennis and it is also stated that he used to reside with his parents. There are no details of his current place of residence. It is noted that the letter of consent provided indicates consent to development on lands at "Knockreagh, Maurice Mills" instead of the application site. However, there is no record of any application on the Council's planning register of prior applications for those lands.
- 7.4.2. The application files details reports and manager's order on the prior application by Gerry O'Connor under P. A. Reg. Ref. 01/1876 in relation to the grant of permission for the two dwellings to the front of the application site are not available, for review. However, there is reference to sterilisation of the landholding, to be by condition attached to the grant of permission for these two houses in the planning officer's report, on the applications by a third party under P. A. Reg. Ref. 07/1409 and 07/1410. Clarification regarding this matter would be advisable prior to determination of a decision in the event of possible positive consideration of the current proposal, especially given the location of the site within the area under "Strong Urban Pressure" and the "Area of Special Control".
- 7.4.3. This matter was not raised in connection with the application and the appeal so it would warrant consideration as a New Issue under a section 132 notification if it is to be taken in to account in determining the appeal with it being necessary for a further notification being issued to the applicant.

Detached Garage.

- 7.4.4. Should permission be granted, the garage structure referred to the descriptions on the notices, can be omitted by condition, for reasons of clarity, given that no details are available in the application and no garage has been erected on the site.

Clarity in Reasons for Refusal of Permission for Retention.

7.5. The reasoning provided for the planning authority decision and the relevant observations in the planning authority reports are considered clear and sufficiently substantive. It is considered that the decision by the planning authority not to issue a request for additional information prior to determination of a decision based on the view that there is no scope for the issues to be addressed so as to facilitate possible positive consideration of the proposal was appropriate. The applicant was therefore not requested to engage in unnecessary expense and associated inconvenience and delay with regard to issue of the planning authority's decision.

7.6. Environmental Impact Assessment Screening.

7.6.1. Having regard to the minor nature and scale of the development proposed for retention and its location in an area 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.

7.7. Appropriate Assessment Screening.

The nearest European site is the Slieve Aughtey SPA which is circa 3.5 km from the site. The qualifying interests are the Hen Harrier (*Circus cyaneus*) [A082] and Merliin (*Falco columbarius*) [A098]. Having regard to the scale and nature of the development proposed for retention, it is reasonable to conclude that on the basis of the information available, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on these European Sites in view of the sites' conservation objectives and a Stage 2 Appropriate Assessment is not required.

8.0 Recommendation

Given the foregoing, it is recommended that the planning authority decision to refuse permission be upheld. Draft reasons and considerations are set out below.

9.0 Reasons and Considerations

1. The Board is not satisfied based on the information available in connection with the application and appeal that the proposed development is not prejudicial to public health having regard to the on-site arrangements for treatment and disposal of foul effluent emanating from the proposed development, the recommendations and standards set out in the Environmental Protection Agency's Code of Practice, "Wastewater Treatment and Disposal Systems serving Single Houses, (2009) and, the soil composition, high water table, hydraulic conditions within the site. The proposed development is therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development constitutes substandard backland development by reason of the site location to the rear of existing road frontage single house development on individual plots with access from the public road via a farm lane to the side and rear of these properties resulting in loss of privacy and attainable amenity to the occupants by reason of disturbance and overlooking. The proposed development therefore seriously injures the residential amenities of these adjoining properties and is contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
1st July, 2020.