



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307666-20

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<b>Development</b>	Retention of revised location of house, wastewater treatment system, percolation area, car park area, storage shed previously granted under planning ref. no. P16/541 and ABP number 248292.
<b>Location</b>	Doolin Td , Doolin , Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	19836
<b>Applicant(s)</b>	Marian & Frank Sheedy
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Pat, Joan, Bernice & David O'Connor
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19/11/2020
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The appeal site is located Doolin in west County Clare and the surrounding area is rural in character. The site is located within a village settlement which contains several houses, hotels and B&Bs, a craft centre and a campsite.
- 1.1.2. The site is located on the north-western side of the local road and to the rear of the Doolin Irish Crafts Centre. It bound to the southeast by the craft centre car park and a detached B&B and to the north by the Aille River with O'Connor's campsite, hostel and beyond. Access to the site is via a long narrow driveway off the public road which is located between the craft centre car park and the B&B. The roadside boundary to the south-east is undefined, the side boundaries are defined by a mix of hedges and fences whist the riverside boundary to the north is defined by riparian vegetation. The site slopes down from the public road towards the Aille River.

## 2.0 Proposed Development

- 2.1.1. On the 31<sup>st</sup> October 2019 planning permission was sought to retain a development that comprises alterations to a permitted development (PL03.248292) comprising: revisions to location, FFL and elevation of main building, location of WWTS, percolation area and car parking area and retention of storage shed and wall surrounding car park.

## 3.0 Planning Authority Decision

### 3.1. First Planning Authority Reports

- 3.1.1. **Planning Report:** Driveway and low wall / safety barrier are in the open space zone. Notwithstanding this infringement, the extent of the open space zone is intact. Revised car parking location may cause issues of run-off having regard to the area of hard surfacing and the proximity to the river. Applicant should be requested to address. Revised location of the percolation area is acceptable, having been assessed by the Environmental Scientist in Sept 2019. Alterations to the dwelling (FFL, location, omission of chimney and some windows, alteration to some windows and change in façade treatment) are acceptable. A revised FRA and a Surface Water Management Plan is required given the alterations. Recommendation that FI be requested.

- 3.2. **Prescribed Bodies.** None on file. One representation from an elected representative.
- 3.3. **Third Party Observations:** One objection to the proposed development from the subject third-party appellants. Issues raised as per the appeal.
- 3.4. **Unsolicited Information**
- 3.4.1. On the 18<sup>th</sup> December 2019, the applicant submitted unsolicited information, addressing some of the issues raised in the Objection. The submission refers to the dates compliance details were submitted for the parent permission, to surface water management, flood risk assessment, fire safety and control of pesticides.
- 3.5. **Further Information**
- 3.5.1. On the 18<sup>th</sup> December 2019, the Planning Authority requested the applicant to provide a revised FRA and a Surface Water Management Plan.
- 3.5.2. On the 3<sup>rd</sup> June 2020, the applicant responded to the FI request and submitted an addendum to the original FRA and a SWMP.
- 3.5.3. **Second Planning Report:** Tarmacadam surfacing with drainage channels to the soakpit (capacity 48m<sup>3</sup>) , 5m from the soil polishing filter on site. No discharge to the Aille River. Surface water provisions on site area adequate. Safety barrier on site does not impact the riverbank and does not increase flooding. An interceptor was not installed as permeable paving was proposed in the last application. Surface water management on-site are such that none are required given the small scale of the buildings. Recommendation to grant permission.
- 3.6. **Decision**
- 3.6.1. On the 26<sup>th</sup> June 2020, the Planning Authority issued a notification of their intention to GRANT permission subject to 2 no. conditions. Condition no. 2 refers to surface water management.

## 4.0 Planning History

- 4.1.1. **PL03.248292:** Planning permission granted for the construction of a bed and breakfast, with part private accommodation use and install a waste treatment plant and all associated ancillary and site works at Doolin Townland, Doolin, County Clare.

## 5.0 Policy Context

### 5.1. The Planning System and Flood Risk Management, 2009

- 5.1.1. This document provides guidance on the identification, assessment and management of flood risks in areas of potential development and they recommend a precautionary approach in relation to flood risk management. They require the planning system to: - avoid development in areas at risk of flooding, particularly floodplains, unless there are proven wider sustainability grounds that justify appropriate development and where the flood risk can be reduced or managed to an acceptable level without increasing flood risk elsewhere; adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk; and Incorporate flood risk assessment into the process of making decisions on planning applications and planning appeals.

### 5.2. County Clare Development Plan 2017 to 2023

- 5.2.1. The site is located in a rural area that is covered by the County Clare Development Plan which includes settlement plans and zonings for the settlements of the county. The area was previously covered North Clare Local Area Plan 2011-2017 which was deemed to be revoked with effect from 21st January 2017. Doolin is now covered by the West Clare Municipal District Area Settlements (MDAS) which is contained in Volume 3(d) of the current Development Plan.
- 5.2.2. The following general Development Plan provisions apply:
- Doolin is a designated Large Village
  - The site is located within the settlement of Doolin
  - The site is located within a Rural Area Under Strong Urban Pressure
  - The surrounding area is a Heritage Landscape (excluding Doolin settlement)
  - The site is located to the east of a coastal SAC
  - The northern section of the site is located within Flood Zone A

- The rest of the site is located within Flood Zone C
- The site is located along a Walking & Cycle Route
- There are several Recorded Monuments & Protected Structures in the area.

5.2.3. The following specific provisions of the West Clare MDAS apply:

- The overall Strategy for Doolin is to provide for small scale, well-designed residential, commercial and community developments which have regard to the character of the village itself.
- The General Objectives for Doolin include the following:
  - To make provision for the sustainable growth of the village which will support existing services and encourage further expansion of the service base, whilst retaining its distinctive character.
  - To provide for the further development of a diverse tourism product which supports the year round tourism activity and enhances employment and economic activity.
- Site is located within/or close to a Tourism Growth Centre which comprises the centre of the village encompassing the area around Fitz's Cross.
- The site is mainly zoned for Tourism:
  - B&Bs are normally acceptable in principle
  - Dwellings for permanent occupation are not normally be acceptable
- The N section of the site along the Allie River is zoned Open Space.
- The encroachment of Flood Zone A on some zoned land is limited to the riverside margins and buildings should be limited to Flood Zone C.

5.2.4. Development Plan objectives:

5.2.5. **Objective CDP9.5 (a)** (Tourist accommodation) seeks to promote, encourage and facilitate the provision of new visitor accommodation and the expansion/upgrade of existing hotels, guesthouses, B&Bs and other tourist accommodation at appropriate locations throughout the county.

5.2.6. **Objective CDP14.14** (River Corridors) seeks to: - protect and manage river corridors and their floodplains; protect riparian zones and their associated habitats & species; protect and improve appropriate access to river corridors whilst conserving and

protecting natural resources & water quality; and to encourage development proposals to maintain an appropriate width for the riparian zone to be protected.

5.2.7. Development Plan standards (rural residential development):

- **Siting and Design:** PA seeks to achieve a high standard of house design and siting in the countryside and regard should be had to the Rural House Design Guide.
- **Road Frontage:** A minimum frontage of 30m is normally required.
- **Plot Size:** Minimum site area of 0.2ha required to accommodate a rural dwelling.
- **WWTS:** Site conditions must be suitable for the treatment & disposal of effluent.
- **Car parking:** should be located to the rear of building lines where possible.
  - 1 space per 1 or 2-bedroom unit (apartment)
  - 1 space per bedroom & 1 space per 3 staff on duty (B&B)

### 5.3. Natural Heritage Designations

5.3.1. The site is located with 15k of the following European sites:

- Black Head to Poulsallagh Complex SAC & pNHA
- Cliffs of Moher SAC

### 5.4. EIA Screening

5.4.1. Having regard to nature and scale of the development 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 to grant retention permission has been lodged by O'Connor Riverside Camping & Park. The grounds of the appeal can be summarised as follows:

- It is submitted that there has been a disregard for conditions attached to the permission for the subject development.

- A complaint regarding non-compliance was made to the Planning Authority and a warning letter was issued to the applicants regarding condition no.s 1,9, 12 and 13.
- The applicants response to the warning letter ignored condition no. 1. The response indicates development that was not permitted on the buffer zone, permeable parking and a fire-engine turning circle which is not permitted.
- In March 2019 a submission with condition no. 12 regarding flood mitigation was submitted to the Planning Authority. In April 2019 a submission regarding condition no, 3 WWTS was submitted. It is submitted that the certification is worthless and meaningless . It is submitted that the environment section are not entitled to determine compliance with a planning condition. It is submitted that the system encroaches into the buffer zone and that the site layout does not reflect the as-built development.
- The development as built is demonstrably not in compliance with that permitted. Development cannot be retained within the 10m riverside zone classified as open space as it is a material contravention of the development plan.
- The ridge height of the as-built dwelling is materially higher than that submitted.
- The applicant wished to build the car-parking where it is, rather than where it was permitted (to the south-west). This directly impacts the appellants property and their guests. Lights from cars shine into the appellants property.
- The paved surface of the car parking is a flood risk and should be replaced with a surface that will alleviate storm-water run-off.
- The development is too big for the site and the WWTS must be remedied.
- The construction of concrete foundations and base for a conservatory have been laid on the south-western side of the development.
- The concrete block boundary walls were not permitted and are objectionable in a scenic rural location.
- The requirement for a turning point emphasises that the development is over-development.

- The presence of Japanese knotweed on the riverbank could have been avoided if condition no. 13 of the application was complied with.
- The subject application is an attempt to circumvent the previous permission. the appellants have the right to expect that permission would be enforced.
- The appellants have previously declared that they have no objection to an appropriately scaled development on zoned land. The development as built has an impact on the appellants family business.
- The Board is requested to refuse permission.

## 6.2. Applicant Response

6.2.1. The applicant responded to the third-party appeal, as follows:

- Much of the appeal is not relevant. The main issues are zoning, visual impact, flood risk and on-site wastewater treatment.
- Condition no. 3 – This was considered the most important act of compliance. the report prepared by a suitably qualified person was accepted by the Council in Sept. 2019.
- Condition no. 9 was not complied with before development began. The signage and entrance details as constructed are to an acceptable standard.
- The compliance submission for condition no. 12 (flood mitigation measures) was not accepted due to a deviation from the permitted plans in the norther east corner of the site (where the visitor parking is sited). Concerns raised in October 2018 are addressed by a further flood relief assessment and a surface water management plan which form part of this planning application.
- Condition no. 13 required a landscaping plan. This was complied with but not before development began.
- A site-inspection will reveal that the as-built situation presents a satisfactory end-result in respect of condition no.s 9 and 12. The Council is fully satisfied with the wastewater treatment system, the flood risk assessment and the surface water management plan.



- The de minimus rule should be applied to several of the matters raised by the appellant. Eight elements of the application require assessment.
  - revised location and height of the building – imperceptible, building is 3m above highest flood level,
  - revised elevations – imperceptible
  - new patio area – minor departure, applicants are aware an extension needs permission
  - location and specification of WWTS – new location exceeds separation distances and a compliance letter has issued.
  - Revised parking location – no adverse impact
  - Storage shed and gas tank – exempted development, their location with the 10m buffer is not significant,
  - Low wall – visual impact is negligible, wall is essential
  - Driveway changes – revised FRA concluded that a permeable surface is not necessary.
  - Over-use of building – the building has five bedrooms and ten bed-spaces.
- Guest parking is located in the 10m wide open space zone. The development plan requires the space to be retained as undeveloped open space. The 10m strip on both sides of the river accommodates parking, hard standing, embankment works. the location of guest parking in the permitted plan is impractical and unsafe.
- The storage shed and gas tank are exempted development. Alternative locations for the gas tank are limited by requirements for gas delivery by tanker lorry. The shed is for garden equipment and is required near to the main garden area.
- the low wall is also within the 10m open space zoned. The wall is an essential safety feature due to the steep river bank and the height of the river several metres below the site level. There is no visual impact.
- As there is no discharge of surface water there is no need for a permeable surface. The FRA and surface water management reports demonstrate that the

tarmacadamed surface and on-site surface water system are adequate and do not pose a flood risk.

- The Board is requested to grant permission.

### 6.3. Planning Authority Response

6.3.1. Planning Authority notes the third-party appeal and requests the Board to take the following into account:

- Site is primarily zoned for Tourism purposes with a buffer of open space along the river bank. B&B's / guest houses are acceptable in principle.
- The area of open space is the riparian zone, a small area of the driveway and part of the low wall / safety barrier. The natural vegetation is in-situ in the 4m-9m zone.
- A 10m separation distance between the percolation area and the river has been maintained. The revised dwelling location has fractionally increased the separation distance from the permitted development. The system as installed is compliant with EPA standards.
- The revised location is 1.1m, this is small in scale and does not impact on the amenities of the area.
- The changes to the FFL and overall ridge height are imperceptible to a lay person. They serve to reduce the overall height of the building.
- The proposed elevational changes do not alter the overall design concept of the dwelling, reducing the number of windows facing residential properties.
- There is no discharge of surface water from the site to the Aille River. The soak pit has a capacity of 48m<sup>3</sup> and is 5m from the soil polishing filter. Surface water provisions installed on site are adequate for the property as constructed.
- The barrier wall at the riverbank is not a flood mitigation measure it is to keep vehicles from the river bank. Its presence does not increase the risk of flooding on the site or elsewhere.
- The Board is requested to uphold the Planning Authority's decision to grant permission.

## 6.4. Observations

6.4.1. None on file.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Revised location and FFL of the main building
- Revised elevation of main building
- Revised car parking with safety wall
- Retention of storage shed and gas tanks,
- Revised location of WWTS and percolation area

## 7.2. Principle of Development

7.2.1. As noted above, permission was granted under PL03.248292 for the construction of a B&B with a private apartment and the construction of a WWTS. The public notices for the subject development state that permission is being sought to retain the following elements of the development that differ from that approved.

7.2.2. Issues relating to the enforcement of the parent permission on site, compliance submissions for that permission and / or speculation about what may occur on the site at a future date are not matters for this appeal.

## 7.3. Revised location and FFL of the main building,

7.3.1. As per the permitted development, the proposed building was to be located 13m from the eastern boundary wall and at a FFL of 99.9m (see drawing no. MFS-01-PL17 of PL03.248292, submitted to the Planning Authority on the 03/02/2017 in response to a request for clarification of further information). The as-built dwelling is located 14.1m from the wall and at a FFL of 99.78 as per the drawing submitted with this subject application. The decrease in the overall height of the dwelling arising from the lower FFL is not detectable, is not material and is acceptable.

7.3.2. The location of the dwelling 13m from the western boundary was to facilitate a 28m separation distance from the WWTS on the adjacent site. The revised location, being further from that system is acceptable.

#### **7.4. Revised elevation of main building**

7.4.1. The elevations and roof profile as-built building differs from that permitted in the following ways: omission of the chimney, change in front door area external finish, change in the size of two windows and the replacement of three dormers with rooflights. These elements are considered in minor in nature and extent. The as-built changes do not adversely impact the appearance of the dwelling and are acceptable.

#### **7.5. Revised Car Parking area with surrounding wall.**

7.5.1. Permission was received for car parking to the west of the dwelling. Parking has been constructed to the east of the dwelling, separated from the Aille River by a wall. The wall along the eastern boundary of the site is stated to be a safety barrier, protecting vehicles from the steep drop to the riverbank and river. The wall is visible from within the site only and is acceptable in principle. It has however, been constructed in the 10m buffer zone running along the riverbank.

7.5.2. The development plan states that buffer spaces are intended to provide a buffer of undeveloped land for the conservation of biodiversity, visual amenity or green space. Buffer spaces may include natural features such as floodplains, riparian zones, turloughs, valuable biodiversity areas including designated sites, amenity areas, woodlands, hedgerows, green spaces and archaeological features. Regarding the 'open space' zone, the development plan states that it is intended that lands zoned 'open space' will be retained as undeveloped open space, mainly for passive open space related activities. Car parking is not permitted on open spaces zoned lands.

7.5.3. This mirrors Section 7.10 of the Flood Risk Guidelines for Planning Authorities which states that "It is recommended that, where possible, and particularly where there is greenfield land adjacent to the river, a 'green corridor', is retained on all rivers and streams. This will have a number of benefits, including: Retention of all, or some, of the natural floodplain; Potential opportunities for amenity, including riverside walks and public open spaces; Maintenance of the connectivity between the river and its floodplain, encouraging the development of a full range of habitats; Natural attenuation of flows will help ensure no increase in flood risk downstream; Allows

access to the river for maintenance works; Retention of clearly demarcated areas where development is not appropriate on flood risk grounds, and in accordance with the Planning System and Flood Risk Management. The width of this corridor should be determined by the available land, and topographically constraints, such as raised land and flood defences, but would ideally span the fully width of the floodplain (i.e. all of Flood Zone A).”

- 7.5.4. As the subject site is located in Flood Zone A, the original application on site was accompanied by a Flood Risk Assessment. The impact of the revised car parking on the overall flood risk of the site was raised as a concern by the Planning Authority. They requested the applicant to carry out a FRA of the as-built development. An addendum to the original FRA was submitted to the Planning Authority in June 2020. The report notes that the original FRA proposed a permeable surface across the site as a mitigation measure against the direct discharge of surface / storm water to the Aille River. The as-built development has a tarmac surface on the driveway and parking areas. The addendum report states that falls to gulleys and a large soakpit were constructed as tarmac is not a permeable material. The addendum report states that this system provides adequate attenuation and sufficiently mitigates against the direct discharge to the river.
- 7.5.5. The construction of the hardstanding car parking area and the safety wall necessitated by the relocation of the car parking on lands zoned for open space is not ideal. Notwithstanding that it was raised as a concern by the Planning Authority in the first application on site (PL03.248292) the applicant has acknowledged that they always intended to place the car parking in this area. The appellants objection to this is understandable.
- 7.5.6. Notwithstanding this, car parking is a less vulnerable use and the extent of the hard-standing area is not significant. Given that the River Aille is not at risk from discharge or an increase in flooding, it is considered on balance that the development to be retained is acceptable.
- 7.6. Retention of storage shed and gas tank**
- 7.6.1. As with the car parking area, the existing storage shed and gas tank are located in the open space zone. The visual impact of both structures is not significant and the extent of development is not such that permission should be refused.

### 7.7. Revised location of WWTS and percolation area

7.7.1. The percolation area as built is 10m from the riverbank of the Aille river. Both the WWTS and the percolation area comply with the EPA Treatment manual for Treatment Systems for Small Communities, Businesses, Leisure Centres and Hotels. I note that the system was inspected by the Environment Department of Clare County Council and deemed compliant. This is considered acceptable.

### 8.0 Recommendation

8.1. I recommend permission to retain be GRANTED for the following reasons and considerations and subject to the following conditions

### 9.0 Reasons and Considerations

9.1.1. Having regard to the village center location of the subject site, the planning history of the site, the design, layout and scale of the as-built development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development to be retained would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development for which permission to retain is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 10.0 Conditions

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.  <b>Reason:</b> In the interest of clarity
2.	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>Reason:</b> In the interest of public health.

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Gillian Kane  
Senior Planning Inspector

03 December 2020