



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308100-20

---

<b>Development</b>	Construction of a house and garage.
<b>Location</b>	Behbaun, Ballina, Co Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	2028
<b>Applicant(s)</b>	David and Clodagh O' Mahoney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission subject to conditions
<b>Type of Appeal</b>	First Party v. Conditions
<b>Appellants</b>	David and Clodagh O' Mahoney
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27 <sup>th</sup> November 2020
<b>Inspector</b>	Máire Daly

## 1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.195ha is located in townland of Behbaun, along a local road, off the N26 national primary road on the southern side of Ballina Town, Co. Mayo. The local road to the front of the site is within the 50km/h speed limit.
- 1.2. The site is serviced and zoned 'existing residential' (Low Density) and is the last site on the northern side of the local road, with three other dwellings to the east, between it and the junction with the N26. The dwelling to immediate east is a Bed and Breakfast. The trainline which links Ballina to Manulla Junction runs along the western boundary of the site on an embankment and a railway bridge (listed on the National Inventory of Architectural Heritage (NIAH) Reg. No. 31303016) travels over the local road approximately 10m west of the site boundary.
- 1.3. The site is bound to the front by an existing lacken stone wall which matches that of the neighbouring properties to the east. Two existing dwellings are located across the local road to the south of the proposed site, these sites are also bound to the front by stone boundary walls. Five mature Alder trees are located along the front of the site to the inside of the existing stone wall and access to the site is to be provided between two of these trees. A row of semi mature ash trees is planted along the western boundary of the site just below the railway embankment.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - A 2-storey detached dwelling house (248.65sq.m).
  - Single storey garage to rear (32sq.m).
  - New entrance off public road and access road.
  - Existing 5ft high chainlink fencing to western boundary along railway track embankment to be securely upgraded and augmented with new hedgerow.
  - All ancillary site works including connection to public utilities.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to grant permission subject to 9 conditions, most of which are of a standard nature, but also including the following:

2.

*(i) The external finish to the proposed development shall be nap plaster or wet dash with no colour component. No brick shall be permitted and any stone used shall be natural stone indigenous to the area.*

*(ii) Roof slates/tiles shall be blue/black in colour.*

*(iii) The front door shall be of simple design.*

*(iv) Gutters, fascia and eaves details shall be black in colour and shall project no more than 75mm proud of the main masonry finish.*

*(v) The window frames shall be finished in timber effect or powder coated aluminium or as otherwise agreed. No white PVC shall be permitted.*

*Reason: in the interest of visual amenity.*

3. *The whole site frontage shall be set back in line with the neighbouring properties and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled with topsoil and seeded. Where the public footpath is damaged by works the full bay will be removed and re-laid subject to a road opening licence and the conditions therein. The new walls shall match the existing neighbouring walls. If the new wall is in conflict with the existing service, the wall shall be set back away from the service in question.*

*Reason: In the interest of public safety.*

4. *A 2 metre wide (minimum) footpath shall be maintained along the frontage of the site. Between the wall and near edge of the footpath a grass strip will be permitted. Details shall be submitted for written agreement with the Ballina Municipal District Engineer prior to the works to set back the wall.*

*Reason: In the interest of pedestrian safety.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

- The planning authority requested further information in relation to flood risk. The site is located within Zone B with a ‘moderate probability’ of flooding as outlined under The Planning System and Flood Risk Management Guidelines 2009. As such the A/Senior Executive Engineer requested a ‘justification test’ be submitted in line with Table 5.1 of the guidelines. The applicants submitted the requested ‘site specific justification test’ on 17<sup>th</sup> July 2020 which concluded that the proposed development is not likely to be at risk of flooding up to and including the 0.1% AEP due to the proposed height of the finish floor level (FFL). It also stated that there is sufficient scope on site to offset or compensate for any potential reduction in the flood storage capacity at the 0.1% AEP.
- Following the assessment of the applicant’s response to the Request for Further Information, a grant of permission subject to 9 no. conditions was recommended as per the Notification of the Decision to Grant Permission.

### 3.2.2. Other Technical Reports

- Mayo County Council (MCC) Water Services - response received 12th March 2020, no objection subject to conditions.
- MCC – Flood Risk Management Engineer – email dated 10<sup>th</sup> March 2020 recommended further information as detail under Section 3.2.1 above.
- MCC Ballina Municipal District Engineer – email response received 11<sup>th</sup> February 2020 – No objection subject to conditions.
- MCC Road Design – report dated 11<sup>th</sup> February 2020 – no objection.

## 3.3. Prescribed Bodies

- National Roads Office MCC – response dated 07<sup>th</sup> February 2020 stated no issues to raise with NRO.

- Transport Infrastructure Ireland (TII) response dated 06<sup>th</sup> February 2020 stated that planning authority should abide by official policy in relation to development/affecting the national roads.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

- 4.1. Ballina Town Council Ref: PD2559 - Previous application on site granted by Ballina Town Council in 2005.

## 5.0 **Policy Context**

### 5.1. **Ballina and Environs Development Plan 2009-2015**

- 5.1.1. The appeal site has a zoning objective 'R2 - Existing Residential (Low Density)' within the development plan, with the following objective '*To provide for low to medium residential densities*'.
- 5.1.2. The following relevant stated objectives are listed primarily for Residential Use (R1 & R2):
- To provide for residential development;
  - To protect residential amenity;
  - To promote the development of attractive residential communities with good pedestrian access to amenities and neighbourhood facilities.
- 5.1.3. Chapter 3 – Development Management Standards
- Section 3.1 Residential Use Standards
  - Section 3.1.2 Plot Ratio - B) Suburban Areas (R1 & R2 Zones)
  - Section 3.2 Standards on Design and Layout
  - Section 3.4 Standards for Infill development

## 5.2. Natural Heritage Designations

The River Moy SAC (Site Code 002298) is located approximately 0.6km east of the site.

## 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, comprising 1 no. residential dwelling house, 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 first-party appeal has been lodged against conditions no.2 parts (i) (iv) and (v), condition no.3 and condition no.4, which were attached to the Planning Authority's notification of a decision to grant planning permission. The following grounds of appeal are raised:

- 6.1.2. In relation to Condition no.2 the following concerns were raised:

- Part (i) - The applicants state that neighbouring properties currently have brickwork and white dry dash or colour plaster external finishes. The appellants argue that to require their house be finished with no colour nap plaster or wet dash would be out of character with the existing finishes in the area and not blend in with the neighbouring properties and therefore would go against the reasoning of the condition which was stated to be '*In the interest of visual amenity*'.
- Part (iv) - The applicants state that facias on neighbouring properties are white in colour and therefore a black facia would be out of character with the houses in the locality.

In addition they state that the eaves of neighbouring properties are a minimum of 250mm and that the requirement for 75mm eaves is a concern, as eaves of

this depth would provide no shelter for the walls and or protection from water will ingress into the roof structure. The condition presents serious construction difficulties which would undermine the longevity of the build and would be clearly not sustainable.

- Part (v) - the applicants argue that all the neighbouring properties have white PVC windows and that these type of windows are required to achieve the necessary requirements for the air to water heating system serving the house. The area in which the house is located does not have any particular conservation status or important features to be protected for their visual amenity. The appellants state that to finish the house as per the condition would result in the house not blending in with neighbouring houses and would not be in the interest of visual amenity.

6.1.3. Condition no. 3 – The applicants state that the existing front wall of the site is in fact in line with existing neighbouring properties and that it also matches that of neighbouring walls as it is finished in lacken stone. The applicants state that the location of this wall was previously agreed with Mayo County Council in 1988. The applicants also highlight that there are 5 mature alder trees located inside the existing front wall which they hope to retain. The condition refers to ‘new walls’ but the applicants highlight that they intend to use the existing wall as a front boundary. The applicants state that the condition would not address public safety concerns in anyway, therefore the condition is unnecessary and should be omitted.

6.1.4. Condition no. 4 – The applicants state that the repercussions of this condition would require that a 0.75m grass strip be installed along the inside of the existing 2.75m wide footpath. The condition fails to recognise the existing footpath and to undertake this new grass verge would be out of character with the existing street landscaping. The applicants also have concerns in relation to the root system of the five mature alder trees along the front of the site which may be impacted if these works were to be required. The applicants state these requirements are unreasonable and therefore ask that this condition be omitted.

## 6.2. Planning Authority Response

- No response received to the grounds of appeal.

### 6.3. Observations

- None.

### 6.4. Further Responses

- None.

## 7.0 Assessment

7.1. This is a first-party appeal against the following conditions attached to the Planning Authority's decision to grant permission:

- Condition no.2 parts (i) (iv) and (v) only;
- Condition no.3; and
- Condition no.4.

7.2. Having regard to the nature and scale of the proposed development and the nature of the conditions listed above, it is considered that the determination by the Board of the application, as if it had been made to it in the first instance is not warranted and a de novo assessment is not required. I am satisfied that the proposed development is otherwise in accordance with the proper planning and sustainable development of the area. Therefore, the Board should determine the matters raised in the appeal only, in accordance with Section 139 of the Planning and Development Act 2000, as amended.

### 7.3. Condition No.2 parts (i) (iv) and (v) only

#### 7.3.1. Part (i)

Condition no.2 part (i) refers to the external finishes of the dwelling and states that these finishes shall comprise of nap plaster or wet dash with no colour components. No brick shall be permitted and any stone used shall be a natural stone indigenous to the area. I note the applicants' concerns regarding the restrictions imposed on them by the current condition and the fact that the surrounding dwelling in the area have a variety of finishes including brick and white dry dash and coloured plaster.



The applicants propose to finish the external walls of the dwelling, by scudding them in sand and cement and then rendering in a lime and sand and finishing in a painted knapped plaster with feature bands and reveals around the external opes. The current condition no.2 has been attached 'in the interest of visual amenity'. It is my opinion that the finishes proposed by the applicants, as detailed on the submitted plans, will not impact on the visual amenity of the area and that the proposed finishes will compliment the existing character of dwelling houses in the area. I would therefore recommend to the Board that condition no. 2 part (i) be omitted.

#### 7.3.2. Part (iv)

Condition no. 2 (iv) states that gutters, fascia and eaves details shall be black in colour and shall project no more than 75mm beyond the masonry finish. The applicants have raised an issue with the constrained size of the eaves and state that neighbouring properties have a minimum eaves of 250mm and that the conditioned 75mm eaves will not provide the adequate shelter and protection from water ingress and may lead to damage to the roof structure in future. I agree with the applicants that 75mm is too restrictive and would see no issue with allowing an eave width of 250mm. However, I do see the planning authority's logic in insisting on gutters, fascia and eaves of a darker colour, as in my opinion fixtures of this darker colour would marry more appropriately with the other finishes on the dwelling i.e. the roof slates etc, though I do not believe it should be limited to just black. Therefore, I would suggest to the Board that condition no.2 (iv) be amended to allow for eaves of up to 250mm and that the proposed gutters, fascia and eaves shall be limited to a black or dark grey in colour.

#### 7.3.3. Part (v)

Condition no.2 (v) states that window frames shall be finished in timber effect or powder coated aluminium or as otherwise agreed. The planning authority have specifically stated that no white PVC shall be permitted. The applicants argue that all neighbouring dwellings have white PVC windows and that PVC windows are required to achieve the necessary requirements for the proposed air to water heating system serving the house. In addition, they state that the dwelling is not in a conservation area and therefore white PVC would have no adverse impact on the visual amenity of the area. In this case I believe the planning authority have

restricted the colouring of the window frames appropriately. White PVC, though a common finish on dwellings within the vicinity of the site, can appear severe against the other finishes on dwellings and in this case I believe the planning authority have allowed for a sufficient degree of flexibility for the applicant to choose an alternative. The term '*or as otherwise agreed*' has been included in the condition to allow for in my opinion PVC finishes of different colours and styles, whether this be wood effect or a darker colour. In order to allow the applicants the flexibility of choosing specific coloured PVC, if the Board are minded I would suggest a minor amendment to this condition as outlined under Section 8.2 below.

#### **7.4. Condition no. 3**

- 7.4.1. The planning authority request that the existing site frontage should be set back in line with neighbouring properties and the area between the new wall and the carriageway be excavated, levelled with topsoil and seeded. Having carried out a site visit and examined the plans submitted with the application, I see no logical reason for the inclusion of this condition.
- 7.4.2. The Board should note that the existing boundary wall on site, follows the line of the adjoining property boundary to the immediate east and is of the same height and finish (lacken stone) also. In addition, there is no grass strip within the vicinity of the site or in front of the immediate adjoining property to the east. In fact, the nearest grass strip is outside of 'Whitestream House' B&B which is located approx. 60m east of the site. The footpath outside the site boundary measures approximately 2.75m, which matches that to the east along the local road. In addition to the above, I note that setting back the front boundary wall would also have an impact on the existing mature alder trees which are planted to the front of the site, just to the north of the existing boundary wall. I see no issue with the proposal as outlined by the applicant on the submitted plans and therefore would recommend to the Board that this condition is omitted in its entirety.

#### **7.5. Condition no.4**

- 7.5.1. This condition requires the applicant to maintain a 2m wide (minimum) footpath along the frontage of the site and that a grass strip shall be permitted between the wall and near edge of the footpath, details of which are to be submitted to the Ballina Municipal District Engineer prior to works involving the set back of the wall

commencing. The applicants state that this condition fails to recognise the existing footpath to the immediate east of the site. In addition, having visited the site I see no reason to reconfigure the existing footpath layout to the front of the site. An existing 2.75m footpath is in place along the southern boundary of the site and as the existing boundary wall is sufficient and requires no set back (as discussed under section 7.4 above) then apart from the works that are required to construct the entrance to the site, no further works should be necessary. Therefore I would suggest that if the Board are in agreement, Condition no.4 should be amended to remove any mention of the requirement for a grass strip and should instead focus on retaining the existing footpath to the front of the site and completing any works required to the entrance in line with the requirements of the planning authority and the Ballina Municipal District Office.

## 7.6. **Appropriate Assessment**

- 7.6.1. I note the location of the River Moy SAC (Site Code 002298) approximately 0.6km east of the site and that an existing stream located approximately 25m north of the site boundary connects to this site. However, having regard to the nature and scale of the proposed development within a serviced urban area, the fact that the stream does not directly connect to the site and the separation distance to the River Moy, I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 **Recommendation**

- 8.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:
- 8.2. Modify Condition no.2 as follows:
- 1) **REMOVE** condition number 2 part (i)
  - 2) **AMEND** condition number 2 part (iv)

3) **AMEND** condition number 2 part (v)

The revised condition shall read as follows and the reason therefor as follows:

2. (i) Roof slates/tiles shall be blue/black in colour.

(ii) The front door shall be of simple design.

(iii) Gutters, fascia and eaves details of all structures shall be black or dark grey in colour and the eaves shall project no more than 250mm beyond the main masonry finish.

(iv) The window frames of all structures shall be finished in either timber effect, powder coated aluminium or coloured PVC. No white PVC shall be permitted.

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

8.3. **REMOVE** condition no.3.

8.4. **AMEND** condition number 4 as follows:

The footpath along the frontage of the site shall be maintained, apart from the area where works are necessary to construct the site entrance. The footpath shall be dished at road junctions in accordance with the requirements of the planning authority. The alteration works to the footpath for the provision of the entrance and any connections to services in the public road/footpath will require a road opening licence. Details of all works involved shall be submitted for written agreement to the planning authority prior to commencement of development.

**Reason:** In the interest of pedestrian safety.

## 9.0 **Reasons and Considerations**

9.1. Having regard to the nature and scale of the proposed development within a R1 'existing residential' (Low Density) zoning and the existing pattern of development in the area, it is considered that, the removal of condition 2 part (i) and amendments to parts (iv) and (v) would not seriously injure the visual amenities of the area or property in the vicinity and would not result in any significant negative impact on the character of the area. The removal of condition number 2 (i) and amendments to

parts (iv) and (v) would, therefore, be in accordance with the proper planning and sustainable development of the area.

- 9.2. Having regard to the existing public footpath to the front of the site and the established boundary wall which is set in line with that of the adjoining property to the east, it is considered that the removal of condition 3 would not result in any significant negative impact on public safety. The removal of condition number 3 would, therefore, be in accordance with the proper planning and sustainable development of the area
- 9.3. Having regard to the existing public footpath to the front of the site and the established stone boundary wall, it is considered that the amendment of condition number 4 to allow for the necessary works to construct an entrance to the site and the connection to necessary services would be acceptable and would not seriously endanger pedestrian safety or injure the amenities of the area and would, therefore, be in accordance with the proper planning and sustainable development of the area.

---

Máire Daly  
Planning Inspector

09<sup>th</sup> December 2020