



An
Bord
Pleanála

Inspector's Report

ABP-309047-20

Development	Alterations to previously approved extension 12/1637 as extended by 18/415 to include height and rear balcony. Other alterations include a proposed front door canopy, widened front door enlarged side window to original house.
Location	Kylebroghlan, Moycullen, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	20881
Applicant(s)	Gillian and Robert Shaw
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Gillian and Robert Shaw
Observer(s)	None
Date of Site Inspection	12 th of March 2021
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is located in Kylebroghan, Moycullen in County Galway, c. 1.2 km south west of the centre of Moycullen. The appeal site is stated to measure 0.18ha.
- 1.2. The site is accessed off a narrow private road that serves three houses including the subject site. The private road adjoins another narrow local road that then joins the L-1320 local road linking Moycullen to Spideal.
- 1.3. The site falls away significantly from the local private road and it is noted there are a number of mature trees along the eastern and northern site boundaries. The site does not appear to be visible from public areas and can be described as secluded.
- 1.4. The site includes a single storey style house with a ground level front protrusion and a high roof space appearing to accommodate first floor accommodation. To the east of the house is an existing garage with gable to front elevation with a first floor window.
- 1.5. The house to the immediate west can be described as a similar style house to the subject house with a central front protrusion. The second house on the cul de sac is a very contemporary style house with a flat roof and detached garage and is located on higher grounds.

2.0 Proposed Development

- 2.1. The proposed development comprises the following-
 - Alterations to an existing permitted side extension as granted (12/1637 & 18/415) to include-
 - Three floors and ridge height of 8.705m
 - a new rear first floor balcony c. 9.03 sq.m facing north and west
 - revised window proportions,
 - The proposed gross floor space of works is 169 sqm
 - The existing gross floor area of the house is 315 sq.m
 - Other alterations include a front door canopy, a widened front door and enlarged side window to the existing house.

2.2. On the 26/08/20 the Planning Authority sought further information in relation to the following matters-

- The scale and massing of the extension is not acceptable as it is not reflective of the established built form associated with the existing house and would not be able to assimilate by reason of its obtrusive nature. A revised proposal should include for reducing the massing of the composition focusing on decreased height so that it does not protrude above the established roofline.
- The primary chamber and the scale of the new build do not appear to adhere with the minimum separation distance criteria of the EPA code of practice. This should be addressed to ensure the proposal does not lead to overdevelopment of the site.

2.3. The applicants responded to the FI request on the 06/11/20 as follows-

- The massing of the proposal is the same as that granted under 12/1637 and 18/415
- The ridge height has been reduced by 500mm by lowering the finished floor level.
- A revised layout has been submitted showing the existing septic tank and the location for new tertiary treatment system to be constructed as granted under 12/1637 and 18/415.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 02/12/20, for the following reason-

- Having regard to the following-
 - the excessive scale and massing of the proposed extension spanning three levels and protruding above the existing established ridgeline,
 - the overall scale of the development relative to the site curtilage,

- the proximity of the wastewater infrastructure relative to the development footprint,

It is considered that the proposed development, if permitted, would constitute an overdevelopment of this site, would be out of character with the existing forms and pattern of development in the vicinity, would seriously injure and detract from the visual and general amenities of the area, would be prejudicial to public health, would contravene Objective RHO 6 & RHO9 and DM Standard 6 & 7 of the county plan.

4.0 Planning Authority Reports

4.1. Planning Reports

The report of the Planning Officer (dated 27/11/20 & 01/12/20) reflects the decision of the Planning Authority. The following is noted from the report:

- There is no bedroom provision increase associated with the application from that granted under file reference number 12/1637
- The layout drawing on file illustrates the infrastructure permitted under 12/1637 to serve the amended extension. The primary chamber does not appear to comply with the minimum separation distances of the EPA code of practice with respect to the building footprint.
- The Planning Authority has no objection to the canopies and enlarged window alterations. Similarly, the balcony element is not considered prominent from the public domain and will not detract from the general amenity associated with the wider area given the orientation of the development in the context of adjoining properties.
- The amendment proposed to be approved extension in terms of its excessive scale is not considered sympathetic to the existing house.
- Following the submission of further information, the planning authority is of that opinion that that proposal constitutes an overdevelopment of an unserviced site and therefore to permit the proposal would detract from the general amenity associated with the area.

4.2. Other Technical Reports

- None on file

4.3. Prescribed Bodies

- None on file

4.4. Third Party Observations

One third party submission was received. The observations can be summarised as follows-

- Impact on residential amenity from overlooking and reduced privacy as a result of the enlarged ground floor window and the proposed balcony.

5.0 Planning History

This Site

- 18/415- Extension of Duration of 12/1637, **granted** 30/05/2018, expires 2023
- 12/1637- 169 sq.m extension incorporating existing garage and upgrading of the existing septic tank/percolation area, **granted** 24/06/2013

Condition 3 stated-

- i. The mechanical aeration treatment system shall be designed, installed and operated in accordance with manufacturer details submitted to the Planning Authority on the 28/12/2012 and the 23/04/2013, and with the Environmental Protection Agency publication " Code of Practice Manual 2009 "Wastewater Treatment and Disposal Systems Serving Single Houses" or otherwise in accordance with alternative proposals submitted by the applicant and approved by Galway County Council.
- ii. Within three months of the completion of the development, the developer shall submit to the planning authority 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 (to the satisfaction of the planning authority), is working in a satisfactory manner in accordance with the standards set out in the EPA document.

- iii. A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of 3 years from the first occupancy of the house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be made available on request to the Planning Authority.

Reason: In the interest of public health.

- 00/71- house, garage and waste water treatment plant, **granted**
25/04/2000

6.0 Policy Context

6.1. Guidelines- EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) and the Code of Practice - Design Capacity Requirements August (2013),

The CoP provides guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses (p.e. less than or equal to 10). Table 6.1 sets out minimum separation distances.

6.2. Galway Development Plan 2015-2021

Section 3.5- Location for Residential Development in Built-Up Urban Areas

Section 3.5.3 Extension to a Dwelling House

The construction of extensions to existing houses will be encouraged generally as it usually provides a less resource intensive method of expanding living space than building a new structure. Primarily the design and layout of extensions should have regard to the amenities of adjoining properties, particularly as regards sunlight, daylight, overshadowing and privacy.

Section 3.9- Rural Housing Objectives-

RHO 6- Replacement Dwelling

RHO 9- Design Guidelines

Section 6.17 Wastewater Policies and Objectives

Objective WW 5 – Waste Water Treatment Associated with Development in Un-Serviced Areas

Permit development in un-serviced areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed waste water treatment system is in accordance with the Code of Practice Treatment and Disposal Systems Serving Single House EPA (2009)/ EPA Wastewater Treatment Manuals – Treatment Systems for Small Communities, Business, Leisure Centres and Hotels (1999) (or any superseding documents) and subject to complying with the provisions and objectives of the EU Water Framework Directive.

Section 13.4 Rural Residential Considerations

DM Standard 6 Assimilation of Development into Landscape

DM Standard 7 Site Size for Single Houses Using Individual On-Site Waste Water Treatment Systems

A minimum site size of 2000m² is generally required for a single house so as to provide for adequate effluent treatment, parking, landscaping, open space and maintenance of rural amenity. For house sizes greater than 200m² the site size shall be increased by 10m² for each 1m² of house area above 200m². Special consideration will be given to existing houses and to proposed developments who can demonstrate Rural Housing Need and comply with EPA guidelines where the minimum size is not totally achievable.

6.3. Maigh Cuilinn (Moycullen) Local Area Plan 2013-2023

The site is zoned 'R' Residential (Phase 2) with an objective to-

Promote the development of appropriate and serviced lands to provide for high quality, well laid out and well landscaped sustainable residential communities with an appropriate mix of housing types and densities, together with complementary land uses such as community facilities, local services and public transport facilities, to serve the residential population of the area.

Protect existing residential amenities and facilitate compatible and appropriately designed new infill development, in accordance with the proper planning and sustainable development of the area.

A Phasing Scheme shall apply to residential uses on Residential (R) zoned lands, as set out under Objective RD1 in Section 3.2.2.

3.2.2 Policies and Objectives

Residential Development Policies

Policy RD 1 – Residential Development

It is the policy of Galway County Council to support the creation of sustainable communities and high quality residential areas at appropriate locations, with a range of housing options and adequate support services, facilities and amenities.....

Policy RD 2 – Phased Development on Residential Zoned Lands

It is the policy of Galway County Council to encourage orderly, sequential and phased residential development in accordance with the Preferred Development Strategy and the land use management and zoning provisions set out in this Local Area Plan. This shall include a positive presumption in favour of the sequential development of suitably serviced Residential (Phase 1) lands in order to align the Local Area Plan with the Core Strategy/Settlement Strategy in the current Galway County Development

Plan, subject to compliance with the policies and objectives in this Local Area Plan and the principles of proper planning and sustainable development.....

Objective RD1 – Phased Residential Development (Refer to Map 1A/1B Land Use Zoning)

Support the development of lands designated as Residential (Phase 1) within the lifetime of the Local Area Plan, subject to normal planning, access and servicing requirements, and reserve the lands designated as Residential (Phase 2) for the longer term growth needs of the village.....

6.4. Natural Heritage Designations

- None relevant

7.0 The Appeal

7.1. Grounds of Appeal

A first party appeal has been received. The grounds of appeal can be summarised as follows-

- The subject site is located within the urban area of Moycullen Village as defined by the Local Area Plan (LAP). The lands are zoned for Residential Use (R) and the proposed development is not in conflict with the zoning objective.
- Permission was granted for a contemporary flat roof extension and upgraded tertiary treatment system under 12/1637. An Extension of Duration to 12/1637 was subsequently granted under 18/415.
- Therefore there is a live/extant permission for a 3 storey domestic extension and upgraded effluent treatment system on site.
- It has been discovered that it would not be possible to construct the height of the permitted extension in accordance with the previous permission and this has prompted the current application.

- The Planning Authority appear to be raising concerns retrospectively with regards to the scale of the extension even though it is the same footprint and floorspace as the extant permission.
- The applicants have decided to proceed with the upgrade of the proprietary treatment system under 12/1637 and have submitted a Commencement Notice in this regard.
- The subject application is effectively a change of house plan to the existing planning permission on site.
- The nearest adjoining residential property is to the west of the site and the extension is proposed to the east side of the subject house. The extension will not generate any adverse impacts that would affect adjoining amenity of the neighbouring dwelling. No new issues would be generated by the proposed balcony as the principle of a north facing upper floor window at first and second floor has been established under the extant permission.
- The minor increase in overall height by 0.55m would not constitute 'excessive scale and massing' as stated by the Planning Authority.
- Under the extant permission the Planning Authority had no difficulty with an extension spanning three levels. The Planning Authority's assessment of 12/1637 is equally applicable to the revised extension and can be justified on this basis.
- Given the secluded nature of the site at the lowest point between two conical hills and fully screened by trees the visual impact of the roof height would be imperceptible from the public realm or from the nearest neighbours to the west.
- Corrected drawings accompany the appeal and demonstrate the ridge height of the extension is 0.55m above the main roof ridge line of the existing house.
- Reference is made to a precedent of higher ridge lines permitted on the adjoining site to the east under 06/5454 and now expired.
- The scale of the proposed extension is 169 sq.m and the permitted extension under 12/1637 is 169 sq.m.

- 12/1637 permits the upgrade of the existing septic tank and/percolation area. Condition 3 of 12/1637 controls this. The subject application does not seek to amend the previously permitted effluent disposal arrangements on site. The proximity of the wastewater treatment system to the proposed footprint will remain the same as previously permitted. The proximity of the permitted wastewater treatment infrastructure is not relevant to the assessment of the minor building height revision.
- The application does not consist of a replacement dwelling, is not a proposal for a new house and is not located in a rural area. It is on zoned land. Objectives RHO 6 and 9 and DM Standards 6 and 7 are not applicable in this instance.
- A proposed plot ratio standard of 0.26 is consistent with the plot ratio for (R) Zone as set out in the LAP.
- A report accompanying the appeal is provided from Stephen Walton Architectural & Interior Design detailing that it was not possible to build the permitted extension under 12/1637 using minimum ceiling heights. This report also details an error in the drawings submitted at FI stage where the dimensions were correct but the roof levels were incorrect. Revised drawings are submitted with the appeal.

7.2. Planning Authority Response

- None received

7.3. Observations

- None received

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file, including the appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance where relevant.

8.1.2. I consider that the main issues for this appeal are as follows-

- Zoning and Principle of the Development
- Design and Visual Impact
- Wastewater Treatment
- Appropriate Assessment

8.2. Zoning and Principle of the Development

8.2.1. The subject site is located within the defined settlement boundary of Moycullen as per the 2013-23 Local Area Plan. The site is zoned 'R' Residential (Phase 2) with an objective which can be summarised as -

'to promote the development of appropriate and serviced lands to provide for high quality, well laid out and well landscaped sustainable residential communities with an appropriate mix of housing types and densities.....

Protect existing residential amenities and facilitate compatible and appropriately designed new infill development, in accordance with the proper planning and sustainable development of the area.

8.2.2. The appellants have highlighted that the planning authority appear to have considered the application as a rural house and point to the refusal reason which refers to objectives RHO 6 & RHO9 and DM Standard 6 & 7 of the county plan.

8.2.3. Objectives RHO 6 and RHO 9 relates to 'Replacement Dwelling' and 'Design Guidelines'. Both of these objectives are clearly identified as Rural Housing Objectives in Section 3.9 of the County Plan. I also note that DM Standard 6

Assimilation of Development into the Landscape' and 'Site Size for Single Houses using Individual On-Site Wastewater Treatment Systems' are identified in section 13.4 of the County Plan as Rural Housing Considerations.

- 8.2.4. The application is for alterations to an already approved extension to an existing house located on zoned lands within a defined settlement boundary. I do not consider it reasonable to consider the proposed development within the confines of objectives RHO6 & RHO9 and DM Standard 6 & 7 of the county plan which are clearly rural housing considerations.
- 8.2.5. The Moycullen LAP appears silent in relation to extensions to existing residential houses. Section 3.5.3 of the County Plan does deal with extensions to houses and encourages such proposals as they provide a less resource intensive method of expanding living space than building a new structure. Section 3.5.3 details that the design and layout of extensions should have regard to the amenities of adjoining properties, particularly as regards sunlight, daylight, overshadowing and privacy.
- 8.2.6. Having regard to all of the above and notwithstanding the zoning objective generally relating to new residential development, the house on the site is existing and the proposed development does not conflict with the 'R' Residential (Phase 2) zoning objective. The proposed development is, therefore, acceptable in principle.

8.3. Design and Visual Impact

- 8.3.1. The application is essentially for a change of design from that already permitted under 12/1637 which was subsequently extended under 18/415. The application also proposes some elevational changes to the existing house and a first floor balcony to the rear of the extension.
- 8.3.2. The development permitted under 12/1637 is for a 169 sq.m. extension to the east side of the existing house. The ridge height of the existing house was identified as 7.169m high and the flat roof of the proposed extension was identified as approx. 7.5m. at its highest point i.e. c. 0.331m higher than the existing ridge level. The permitted extension provided for an office room at second floor level.
- 8.3.3. The applicants have explained in the current application that it was not possible to build the permitted extension and achieve minimum ceilings heights. To address this they have submitted the proposed application.

- 8.3.4. The proposed development is also for a 169 sq.m. extension to the east side of the existing house. The ridge height of the existing house is identified in the appeal drawings as 7.65m high and the flat roof of the proposed extension is identified as 8.52m at its highest point. The application proposes dropping the ground levels of the extension to 0.45m below the existing finished floor level of the house giving a finished flat roof level to the extension that will be a stated 0.553m above the ridge level of the existing house. The proposal provides for a study room at second floor level. The proposed extension can be described in two blocks transitioning from west to east as two storey to three storey. The two storey element is significantly below the ridge line of the existing house before transitioning up to provide the three storey element.
- 8.3.5. The development is considered a contemporary style extension with relatively minor changes from that permitted under 12/1637. I do not consider the scale and massing spanning over three levels and protruding above the existing established ridgeline to be excessive. I also do not consider the proposed extension out of character with the pattern of development in the vicinity given the presence of an existing contemporary style flat roof house on this laneway and the extant permission. Having regard to the secluded and well screened nature of the site, I do not see how the proposal would seriously injure and detract from the visual and general amenities of the area.
- 8.3.6. The application also proposes a front door canopy feature, a widened front door and an enlarged side window to the west elevation of the existing house at ground floor level. These changes are considered relatively minor and I do not consider they will detract from visual amenity or the residential amenity of neighbouring houses.
- 8.3.7. The application proposes a first floor balcony to the rear elevation of the proposed extension facing west and north and accessed from a bedroom. The balcony will be located c. 28m from the western site boundary and adjoining rear amenity space of the neighbouring house. This distance is considered sufficient to address overlooking concerns to the west.
- 8.3.8. The balcony will be located c.6.9m from the northern boundary. I do not consider this distance to be sufficient to avoid undue overlooking. I accept these lands are not currently developed and I note the Planning Authority have raised no concerns in relation to the balcony. However the lands to the north are zoned Residential (Phase

2). Development of these lands is unlikely in the short or medium term, however it is considered appropriate to protect their development potential. Should the Board decide to grant permission for the development I recommend a condition be attached requiring a two metre obscure screen to be erected along the northern boundary of the balcony.

8.3.9. Having regard to all of the above I consider the proposed extension an acceptable design solution on the subject site, within the defined settlement boundary of Moycullen and on zoned lands.

8.4. Wastewater Treatment

8.4.1. The Planning Authority have raised concerns over the scale of the development relative to the site curtilage, the proximity of the wastewater infrastructure relative to the development footprint and consider the proposal would be prejudicial to public health. They refer to DM Standard 7 of the County Development Plan which deals with 'Site Size for Single Houses Using Individual On-Site Waste Water Treatment Systems' and generally seeks a minimum site size of 2000m² for a single house so as to provide for adequate effluent treatment, parking and open space etc.

8.4.2. The application site is 0.18ha, is located on zoned lands and already has the benefit of an extant permission to upgrade the existing wastewater treatment system to cater for an extension of similar size to the proposed application.

8.4.3. Under planning permission 12/1637 permission was granted for the upgrading of the existing septic tank/percolation area to a mechanical aeration treatment system and a polishing filter. The existing septic tank was to be retained and used for primary settlement. Condition 3 of the permission requires the overall system to be designed, installed and operated in accordance with details submitted to the Planning Authority with the application, and with the EPA's Code of Practice Manual 2009.

8.4.4. Table 6.1 of the EPA's Code of Practice sets out minimum separation distances including a dwelling house must be 7 metres from a septic tank and 10 metres from the percolation area. All of the wastewater treatment system must also be 3 metres from site boundaries.

8.4.5. Following a request for further Information under 12/1637 the applicants submitted a revised site layout plan identifying the location of the existing septic tank which is to

be retained and the location of the proposed tertiary treatment unit, both in the north east corner of the site. Treated wastewater is then pumped and discharged to a c. 56 sq.m polishing filter in the north west corner of the site. The site layout plan drawing submitted with 12/1637 does not appear to identify separation distances and the existing septic tank would appear to be closer to the extension proposed in that application than the required 7 metres. However permission was granted and condition 3 was imposed.

- 8.4.6. In terms of the proposed application, I note the footprint of the proposed extension appears to be generally in keeping with the footprint of the permitted extension under 12/1637 (save for the omission of a car port). The Planning Authority raised concerns at FI stage in relation to separation distances and in particular the location of *'the primary chamber'*. The site layout plan drawing submitted at FI stage again does not identify separation distances but does appear to show the existing septic tank within 3.5m of the proposed house and therefore clearly not in accordance with the Table 6.1 of the EPA Code of Practice 2009 or condition 3 of 12/1637.
- 8.4.7. Having considered the above it would appear to me that the development as proposed would be prejudicial to public health as it does not comply with the EPA Code of Practice. Ordinarily, I would recommend the proposed development should be refused.
- 8.4.8. However the circumstances in this instance are complicated by the nature of the application (change of design) and the fact the applicants have received a grant of permission for a very similar development and to upgrade the existing wastewater treatment system. That permission remains live. The matters are further complicated by the fact the applicants have now commenced the installation of the permitted wastewater treatment system upgrade, which they are entitled to do under 12/1637. In order to comply with condition 3 of 12/1637 they must however, meet the requirements of the 2009 Code of Practice including separation distances.
- 8.4.9. The proposed development is essentially a change of design application of a permitted extension. It does not propose additional floor space or bedrooms and the overall design is considered acceptable. In my opinion non-compliance with the EPA Code of Practice and in particular separation distances is a very serious concern that would be prejudicial to public health. However in this instance I consider a more

pragmatic solution is required given the live and extant permission on the site which permits works to upgrade the existing wastewater treatment system.

- 8.4.10. Therefore, I recommend that permission be granted subject to a condition that the works to the extension permitted by this application shall not commence until such time that the wastewater treatment system permitted under 12/1637 has been installed in accordance with condition 3 of 12/1637, the EPA Code of Practice 2009 and to the written approval of the Planning Authority.

8.5. **Appropriate Assessment**

- 8.5.1. Having regard to the nature and scale of the proposed development and the distance from the nearest European site, 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.

9.0 **Recommendation**

- 9.1. I recommend that permission is granted subject to the following conditions.

10.0 **Reasons and Considerations**

Having regard to the location of the site within the defined Moycullen Settlement Boundary as identified by the Maigh Cuilinn Local Area Plan 2013-2023, the presence of the existing house on lands zoned 'R' residential (Phase 2), the nature, scale, massing and design of the proposed development, the secluded and screened nature of the receiving environment, the pattern of development in the vicinity and the provisions of Section 3.5.3 of the Galway County Development Plan 2015-2021, 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 of property in the vicinity and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 06th day of November 2020 and by the further plans and particulars received by An Bord Pleanála on the 23rd day of December 2020, 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. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on 24th day of June 2013 under pl. reg. ref. no. 12/1637 and as extended by pl. reg. ref. 18/415, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Works to the extension permitted by this permission, shall not commence until such time as condition 3 of pl. reg. ref. no. 12/1637 and as extended by pl. reg. ref. 18/415 has been complied with to the written satisfaction of the Planning Authority.

Reason: In the interest of public health.

4. The proposed development shall be amended as follows:

- a. A 2m high and obscured screening shall be provided to the north boundary of the balcony

Reason: In the interests of residential amenity.

Adrian Ormsby
Planning Inspector

08 April 2021