



An
Bord
Pleanála

Inspector's Report ABP-310889-21

Development

Retention of lean-to sunroom extensions terraced area and glass balustrade over rainwater storage tank, retention of new road entrance onto R352 road and associated wing walls, upgraded farm roadway from new road entrance to dwelling house and polytunnel, upgraded waste water treatment system, storage areas, 38m² sunroom extension to the rear of the existing dwelling house constructed under exempted development including all ancillary site works and services.

Location

Morgan's Lane, Cappaduff,
Mountshannon, Co Clare.

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

21402

Applicant(s)

Declan White & Ann Gitte Oerback

Type of Application

Permission

Planning Authority Decision

Grant

Type of Appeal

Third Party

Appellant(s)

Jim Grady

Date of Site Inspection

11th November

Inspector

Colin McBride

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area 7.02 hectares, is located a short distance to the north west of Mountshannon, Co. Clare and north of Lough Derg. The appeal site is accessed from the R352, within the speed limit zone of Mountshannon and accessed over a long laneway running north from the public road. The appeal site is occupied by a single-storey dwelling with partial split level basement area and associated outbuildings. The existing dwelling has an existing access from the west off Morgan's Lanes. The nearest dwelling is located adjoining the western boundary of the site. The appeal site includes agricultural lands between the R352 and the dwelling located and is located to the west of the access laneway.

2.0 Proposed Development

- 2.1. Permission is sought for retention of
- (a) lean to sunroom extension to east elevation of the existing studio building to the north/front of the site,
 - (b) kitchen extension to the east elevation of the existing dwelling house,
 - (c) converted lean to structure from storage to bathroom and dressing room with extension to existing sunroom on the west elevation of the existing dwelling house,
 - (d) rainwater storage tank and associated structures located to the south/rear of the existing dwelling house,
 - (e) retention of terraced area and glass balustrade over rainwater storage tank,
 - (f) new road entrance onto R352 road and associated wing walls,
 - (g) upgraded farm roadway from new road entrance to dwelling house and polytunnel,
 - (h) upgraded wastewater treatment system,
 - (i) storage areas located to the south and east of the existing dwelling,
 - (j) 38sqm sunroom extension to the rear of the existing dwelling house constructed under exempted development.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to four conditions. The conditions are standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (17/06/21): The proposal was considered acceptable in terms of overall design and scale, visual amenities, adjoining amenities, public health and traffic safety. A grant of permission was recommended based on the conditions outlined above.

3.2.2. Other Technical Reports

Environment Section (04/06/21): No objection subject to conditions.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

3.4.1 Submission by Jim Grady, Cappaduff, Mountshannon, Co. Clare.

- The observer wished to be informed of any decision made.

4.0 Planning History

No planning history.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Clare County Council 2017-2023.

The site is located in a Settled Landscape and within the Slieve Aughty Mountains SPA

CDP 13.2

It is an objective of the Development Plan:

To permit development in areas designated as 'settled landscapes' that sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
- Regard being given to avoiding intrusions on scenic routes and on ridges or shorelines. Developments in these areas will be required to demonstrate:
- That the site has been selected to avoid visually prominent locations;
- That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads;
- That design for buildings and structures reduce visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

5.2. Natural Heritage Designations

Slieve Aughty Mountains SPA (004168) site is partially located within the SPA.

Lough Derg (Shannon) SPA (004058) c.0.68km to the south.

5.3. EIA Screening

5.3.1 The proposed development is not of a class (Schedule 5, Part 2(10) of the Planning and Development Regulations, 2001 (as amended)). No EIAR is required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A third party appeal has been lodged by Jim Grady, Cappaduff, Mountshannon, Co. Clare, V94 Y2A8. The grounds of appeal are as follows...

- The appellant resides on the adjoining dwelling to the west of the appeal site.
- The issues raised concern the planting of a leylandii and laurel hedge to the south of the appellant's dwelling that blocks light. The fact that this issue was not addressed by the Planning Authority is raised.
- The construction of a roundabout in front the appellant's dwelling is also raised as an issue and both elements are considered to impact adversely on existing residential amenity.

6.2. Applicant Response

6.2.1 Response by the applicants, Declan White & Anne Gitte Oerback, Morgan's Lane, Cappaduff, Mountshannon, Co Clare.

- The applicants state that the appellant's assertion that trees were transplanted to the boundary is false and note that such is established planting in place over 20 years.

6.3. Planning Authority Response

6.3.1 Response by Clare County Council.

- The grounds of appeal do not relate or refer to any of the developments for which retention was sought under ref no. P21/402. The Planning Authority request that the decision to grant of upheld.
- The appellant's statement regarding provision of a roundabout is false with the feature in question a raised planter.
- The applicants outline historical issues regarding their relationship with their neighbour and that the appeal should be dismissed.

7.0 **Assessment**

- 7.1. Having inspected the site and the associated documents the main issues can be assessed under the following headings.

Design, scale, nature of development subject to retention

Public health

Traffic

- 7.2. Design, scale, nature of development subject to retention:

- 7.2.1 The proposal is for retention of various elements including extensions to an existing dwelling, an outbuilding, an upgraded wastewater treatment system and a new vehicular entrance and access track. The nature and scale of the elements for retention are satisfactory in the context of the existing dwelling, which is a split level dwelling, predominantly single-storey with a large terraced area with storage shed underneath the terrace. I would be of the view that the various alterations and extensions are satisfactory in design and scale, integrate well with the existing dwelling and are satisfactory in the context of the visual amenities of the area. I am satisfied that the design and scale of the extensions would be acceptable in the context of adjoining amenity with an existing dwelling located to the west (appellant's dwelling).

- 7.2.2 The appellant's grounds of appeal does not relate to any of elements that are subject to retention as outlined in the public notices. The two elements are boundary

treatment along the southern boundary of his property, which consists of existing trees and a raised planted feature within the curtilage of the site. I would be of the view that as these elements are not part of the development description, then they are not subject to assessment under this appeal. The question of whether such elements is development or not is not a matter for consideration under this appeal with a separate process for such questions (Section 5 referrals). I would consider that the assessment should only relate to the elements referred to in the public notices and in regards to design and scale, and physical impact, I am of the view that the elements for which retention is sought would be acceptable in the context of the proper planning and sustainable development of the area.

7.3 Public health:

7.3.1 The proposal entails retention of a wastewater treatment system on site. This would appear to be an upgraded system over what was previously in place with the existing dwelling long established on site. The documents submitted includes a site suitability test carried out in accordance with the EPA Code of Practice and whose result indicate that the site is suitable for the operation of wastewater treatment system. Having regard to the fact the proposal is likely to represent an improvement in standards over what it replaces and provides for more advanced and up to date treatment system to serve an existing dwelling as well on the basis of site suitability result, I am satisfied the proposal would be acceptable in the context of public health.

7.4 Traffic Impact:

7.4.1 The proposed development includes retention of a new vehicular access and access track from R352 to the south of the site. The dwelling appears to have an existing access from a public road to the west. The proposed entrance is located within the urban speed limit zone of Mountshannon and is at a location where sightlines are of a good standard in both directions. The access track is discreet in terms of its visual impact and is aided by being a natural surface with a high degree of planting. The layout of the entrance would be acceptable in the context of traffic safety and convenience.

8.0 Appropriate Assessment screening

8.1 The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U and section 177V of the Planning and Development Act 2000 (as amended) are considered fully in this section. The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive.
- Screening the need for appropriate assessment.
- The Natura Impact Statement and associated documents.
- Appropriate Assessment of implications of the proposed development on the integrity each European site.

Compliance with Article 6(3) of the Habitats Directive

8.2 The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given. The proposed development is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

8.3 The applicant did not submitted a screening assessment or Natura Impact Statement. The Local Authority carried out an Appropriate Assessment Screening and concluded that the proposed development would be unlikely to have any significant effects on the integrity of any Natura 2000 site.

- 8.4 The fact the proposal is for retention and concerns elements that have already been implemented is significant. The appeal site is partially located within a designated Natura 2000 site, the Slieve Aughty Mountain SPA (004168). The question arises is whether the regularisation of the development would circumvent the purpose of the Habitats Directive. The question arises whether substitute consent is required. I would refer to Section 177B(1), subsection 1 of Part XA of the Planning and Development Act, 2000 (as amended). Under this section...

177B.— (1) Where a planning authority becomes aware in relation to a development in its administrative area for which permission was granted by the planning authority or the Board, and for which—

- (a) an environmental impact assessment,
- (b) a determination in relation to whether an environmental impact assessment is required, or
- (c) an appropriate assessment,

was or is required, that a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union has been made that the permission was in breach of law, invalid or otherwise defective in a material respect because of—

- (i) any matter contained in or omitted from the application for permission including omission of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or inadequacy of an environmental impact statement or a Natura impact statement or both of those statements, as the case may be, or

- (ii) any error of fact or law or procedural error,

it shall give a notice in writing to the person who carried out the development or the owner or occupier of the land as appropriate.

- (2) The notice referred to in subsection (1) shall—

(a) inform the person to whom it is given of the proceedings and findings referred to in subsection (1),

(b) direct the person concerned to apply to the Board for substitute consent no later than 12 weeks from the date of the notice,

(c) direct the person concerned to furnish with his or her application a remedial environmental impact statement or remedial Natura impact statement or both of those statements, as the case may be,

(d) advise the person concerned that he or she may make submissions or observations in writing to the planning authority no later than 4 weeks from the date of the notice.

(3) Not later than 8 weeks after the giving of the notice under subsection (1) the planning authority shall—

(a) where no submissions or observations are made to the authority under subsection (2)(d), confirm the notice, or

(b) where submissions or observations are made to it under subsection (2)(d), subject to subsection (4), decide to confirm or withdraw the notice.

(4) A planning authority may withdraw a notice under subsection (3)(b) only where the authority has been shown that a final judgment of a court of competent jurisdiction in the State or the Court of Justice of the European Union has not been made that the permission granted for the development was in breach of law, invalid or otherwise defective in a material respect because of the matters set out in subsection (1).

(5) The planning authority shall notify in writing the person to whom the notice under subsection (1) was given of the withdrawal or confirmation of the notice and the reasons therefor.

(6) (a) Where the decision of the planning authority is to confirm the notice under subsection (3)(a), the notification referred to in subsection (5) shall also contain a direction to apply for substitute consent not later than 12 weeks after the giving of the notification under subsection (2).

(b) Where the decision of the planning authority is to confirm the notice under subsection (3)(b), the notification referred to in subsection (5) shall also contain a direction to apply for substitute consent not later than 12 weeks after the giving of the notification under subsection (5).

(7) The planning authority shall send a copy of a notice given under subsection (2) or (5) to the Board.

(8) Details of the confirmation or withdrawal of the notice by the planning authority shall be entered by the authority in the register.

(9) For the purposes of this section and section 177C, a judgment shall be deemed to be a final judgment where—

(a) the time within which an appeal against the judgment may be brought has expired and no such appeal has been brought,

(b) there is no provision for appeal against such judgment, or

(c) an appeal against the judgment has been withdrawn.

- 8.5 On this basis if an Appropriate Assessment was required then substitute consent would be required and permission cannot be granted. I would consider that if an Appropriate Assessment screening determines the proposal would not have required an Appropriate Assessment permission can be considered.

Screening for Appropriate Assessment - Test of likely significant effects

- 8.6 The project is directly connected to a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s). The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site in view of the conservation objectives of those sites.

Brief Description of the Development

- 8.7 Permission is sought for...

- (a) lean to sunroom extension to east elevation of the existing studio building to the north/front of the site,
- (b) kitchen extension to the east elevation of the existing dwelling house,
- (c) converted lean to structure from storage to bathroom and dressing room with extension to existing sunroom on the west elevation of the existing dwelling house,
- (d) rainwater storage tank and associated structures located to the south/rear of the existing dwelling house,
- (e) retention of terraced area and glass balustrade over rainwater storage tank,
- (f) new road entrance onto R352 road and associated wing walls,
- (g) upgraded farm roadway from new road entrance to dwelling house and polytunnel,
- (h) upgraded wastewater treatment system,
- (i) storage areas located to the south and east of the existing dwelling,
- (j) 38sqm sunroom extension to the rear of the existing dwelling house constructed under exempted development.

European Sites

- 8.8 The development site is partially in a European site, the Slieve Aughty Mountains SPA (004168) and is 0.68km from the Lough Derg (Shannon) SPA. A summary of European Sites that occur within a possible zone of influence of the proposed development is presented in the table below.

Site Name & Code	Approx. distance from site
Slieve Aughty Mountains SPA (004168)	The site is within the designated site.
Lough Derg (Shannon) SPA	c.0.68km to the north

Slieve Aughty Mountain SPA (004168)

The site synopsis for this site states is a very large site that extends southwards from just south of Loughrea, County Galway to Scarriff in County Clare. The peaks are not notably high or indeed pronounced; this site rises to a maximum of 400 m at Maghera west of Lough Graney. The site includes many small- and medium-sized lakes, notable Lough Graney and Lough Atorick; several important rivers rise in the site, including the Owendalulleagh and Graney. Lough Derg occurs immediately to the south-east. The Slieve Aughty mountains are predominantly comprised of Old Red Sandstone, but outliers of Lower Palaeozoic rocks provide occasional outcrops capping the hills. The site consists of a variety of upland habitats, though approximately half is afforested. The coniferous forests include first and second rotation plantations, with both pre-thicket and post-thicket stands present. Substantial areas of clear-fell are also present at any one time. Almost one-third of the site is unplanted blanket bog and heath, with both wet and dry heath present. Well-developed blanket bog occurs at several locations, notable Sonnagh, Loughatorick South and Glendree. The remainder of the site is mostly rough grassland that is used for hill farming.

The site is a Special Area of Conservation (SAC) and is listed for the following qualifying interests:

Hen Harrier (*Circus cyaneus*) [A082]

Merlin (*Falco columbarius*) [A098]

The generic conservation objectives for this site seek to maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPAs.

Lough Derg (Shannon) SPA (004168)

The site synopsis for this site states that Lough Derg is the largest of the Shannon Lakes, being some 40 km long. Its maximum breadth across the Scarriff Bay-Youghal Bay transect is 13 km but for most of its length it is less than 5 km wide. The lake is relatively shallow at the northern end being mostly 6 m in depth but in the

middle region it has an axial trench and descends to over 25 m in places. The narrow southern end of the lake has the greatest average depth, with a maximum of 34 m. The greater part of the lake lies on Carboniferous limestone but the narrow southern section is underlain by Silurian strata. Most of the lower part of the lake is enclosed by hills on both sides, the Slieve Aughty Mountains to the west and the Arra Mountains to the east. The northern end is bordered by relatively flat, agricultural country. The lake shows the high hardness levels and alkaline pH to be expected from its mainly limestone catchment basin and it has most recently been classified as a mesotrophic system. The lake has many small islands, especially on its western and northern sides. The shoreline is often fringed with swamp vegetation. Aquatic vegetation includes a range of charophyte species.

The site is a Special Area of Conservation (SAC) and is listed for the following qualifying interests:

Cormorant (*Phalacrocorax carbo*) [A017]

Tufted Duck (*Aythya fuligula*) [A061]

Goldeneye (*Bucephala clangula*) [A067]

Common Tern (*Sterna hirundo*) [A193]

Wetland and Waterbirds [A999]

The generic conservation objectives for this site seek to maintain or restore the favourable conservation condition of the wetland habitat at Lough Derg (Shannon) SAC as a resource for the regularly-occurring migratory waterbirds that utilise it.

- 8.8 The proposal is for retention of alterations to an existing and long established dwelling consisting of extensions, polytunnel, an upgraded wastewater treatment system and a new vehicular access and access laneway. The long established use of the site for a dwelling means the site has been in active use for a significant period of time and the elements subject to retention are ancillary elements, with no significant intensity of use proposed. Having regard to remote location of the

development in relation to the Lough Derg SPA there are no source pathway links between the appeal site and such can be screened out for further assessment.

- 8.9 The appeal site is partially within the Slieve Aughty Mountain SAC. Although partially within the SPA, the appeal site is occupied by an existing dwelling, which is a long standing use on this site. The proposal is for ancillary alterations to the existing dwelling and does not change the use or nature of activity on site or increase its intensity. The proposal does entail an upgraded wastewater treatment system and in likelihood replaces a less sophisticated wastewater treatment system on site and is likely to be an improved level of treatment of discharged wastewater over the previous arrangement. The qualifying interests of the designated site relate to bird species and not to any aquatic, hydrological or hydrogeological characteristics. Having regard to the existing long established use of the site, the proposal does not reduce habitat available for such species or alter the nature and intensity of use at this location. Having regard to established nature and use of the site I would be satisfied that the proposed development would be unlikely to have a significant effect on the conservation status of such. In this regard I would consider that this site can also be screened out for further assessment.

Screening Determination

- 8.10 The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on the Slieve Aughty Mountain SPA (004168) and Lough Derg (Shannon) SPA (004058), or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

9.0 Recommendation

I recommend a grant of permission subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the provisions of the Clare County Development Plan 2017-2023 and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in the context of the visual amenity of the area, the amenities of adjoining properties, traffic safety and convenience, and satisfactory in regards to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be 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. 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. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and no surface water from the proposed development/site shall be allowed to discharge onto adjoining properties or the public road.

Reason: In the interest of public health.

3.

(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 27th day of April 2021, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). Arrangements in

relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the grant of permission, the developer shall submit 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 and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Colin McBride
Planning Inspector

03rd December 2021

