



An
Bord
Pleanála

Inspector's Report

ABP-312119-21

Development	Demolition of sunroom, construction of sunroom to front and kitchen extension to rear of existing dwelling.
Location	Clooneen, Kilglass, Strokestown, Co. Roscommon.
Planning Authority	Roscommon County Council
Planning Authority Reg. Ref.	21196
Applicant(s)	Reg Beattie.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Type of Appeal	Third Party
Appellant(s)	Aibhen Shelley.
Observer(s)	None.
Date of Site Inspection	19 th October 2022.
Inspector	Bríd Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to an established rural dwelling site overlooking Kilglass Lough located approximately 7km to the northeast of Strokestown and 7km west of Roosky in County Roscommon. The appeal site has a stated area of .2446 hectares and is occupied by an existing single storey south facing dwelling with a sunroom extension to the front opening onto a decking area. There are two dwellings on the adjoining sites to the east. To the rear and side of the dwelling there is a shed type structure (located outside the redline site boundary). Vehicular access to the site is from an entrance off the local road from the western side of the site. Site boundaries are defined by a mix of hedgerows and trees.

2.0 Proposed Development

- 2.1. The application as set out involves permission for demolition of existing sunroom to front elevation, construct new sunroom to front (11.6mx 3.8m) and a kitchen dining extension to rear 4.05m x 5.1m) , new windows, new roof lights and solar panels together with all associated site works.
- 2.2. In response to the Council's request for additional information modifications were made to the proposed front sunroom extension to provide rectangular rather than curved form as initially proposed with more extensive glazing and increased vertical emphasis.

3.0 Planning Authority Decision

3.1. Decision

By order dated 9th November 2021 Roscommon County Council issued notification of the decision to grant permission subject to 5 conditions which included the following of particular note:

Condition 1. Development to be carried out in accordance with plans and particulars submitted with the application as amended by further information submitted on 27th July 2021. *“For the avoidance of doubt this permission pertains only to the*

development as detailed in the formal development description and does not infer any entitlements in respect of site boundary definition and land ownership matters.”

Condition 2 The existing dwelling and extension to be used as an overall single dwelling unit.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner’s report sought additional information inviting also modifications to the proposed design of the front extension to better integrate with the existing dwelling. Applicant was also requested to clarify water supply details and to demonstrate legal interest with respect to the application site and to address third party submission with regard to ownership.

Following submission of additional information the planner’s report notes that the triangular portion of land providing access to the site is not within the ownership of the applicant however it is apparent that this access has been enjoyed for a considerable period. As the proposed development does not involve works outside the land ownership boundary permission was recommended subject to conditions.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

No submissions

3.4. Third Party Observations

Submission from Devitt Doorley Solicitors on behalf of Aibhen Shelley, Fairbanks Strokestown which alleges that the proposed development involves encroachment onto Mr Shelly’s property Folio 14817F.

4.0 Planning History

PD21 132 Incomplete application for permission to construct sunroom and kitchen extensions to front and rear elevations windows to front and side elevations, roof windows and solar panels together with all associated site works.

7252B Permission granted for the erection of a porch / conservatory to front of existing bungalow.

7252A Approval granted on OP for erection of bungalow garage and septic tank. July 1974.

7252 (March 1972) Outline Permission for erection of bungalow garage and septic tank system.

5.0 Policy Context

5.1. Development Plan

The Roscommon County Development Plan 2022-2028 refers. This plan was adopted in the intervening period since the decision of the planning authority. Date of adoption was 8th March 2022 and the plan took effect on 19th April 2022.

Development Management Standards are set out in Chapter 12. In relation to House Extensions at 12.8 I note the following standards

“Extending existing dwellinghouses to meet changing family needs is an acceptable form of development which is viewed positively by the Council.

In general terms the extension shall be

Subordinate to the existing dwelling in its size, unless in exceptional cases, a larger extension compliments the existing dwelling in its design and massing.

Reflect the proportions detailing and finishes, texture, materials and colour of the existing dwelling, unless a distinctive high quality contemporary and innovatively designed extension is proposed.

Avoid unacceptable loss of private open space.

Where an extension increases the potential occupancy of the dwelling, the adequacy of the on site sewage treatment (in unserviced areas) should be demonstrated in a planning application.”

5.2. Natural Heritage Designations

The site is not within a designated area. Kilglass and Grange is a proposed NHA. The nearest SAC is the Annaghmore Lough (Roscommon) SAC Site Code 001-626 which is located approximately 7km to the southwest of the site.

5.3. EIA Screening

On the issue of Environmental Impact Assessment screening having regard to the limited nature and scale of the development, nature of the receiving environment no likelihood of significant effects on the environment arises from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal is submitted by Aibhen Shelley Fairbanks Strokestown, Co Roscommon and is accompanied by a number of enclosures to elucidate the case made. Grounds of appeal are summarised as follows:

- Decision is unlawful as it was reached ultra vires the powers of Roscommon County Council, is void by reason of procedural deficiencies and breaches of planning law for public consultation and is irrational and perverse and flawed by insufficiency of reasoning.
- Appellant owns the triangular portion of land providing access to the site which is included within Folio RN14817F, and does not consent to making the application.

- Application does not comply with Regulation 22(2)(g) of the 2001 Regulations and is invalid.
- Article 22(2)(g) of the 2001 Regulations require that the consent of the owner is provided. Where an issue in relation to the validity of the application for permission arises this must be considered by the Board. In this regard reference is made to *McCallig v An Bord Pleanála* [2013] IEHC 60 and *Frascati Estates Limited v Walker* [1975] IR 177)
- The application as submitted identifies the redline (site boundary) and blue line (ownership boundary) which purport to indicate legal ownership of the entire lands, including the disputed triangle which is not within the lands for which the applicant is the registered owner. No consent has been provided with respect to these lands therefore the application fails to comply with Regulation 22(2) of the Planning and Development Regulations and represents an unlawful interference with the appellant's property rights.
- It is incorrect for planner to state that the development will occur on lands owned by the applicant as the application depends use of land as permanently site entrance for access.
- It is not open to the planner to amend the site plan or application.
- No easement exists over the property and the planning authority has no power to infer such an easement.
- Access to the property was altered in 2014 when entrance was widened and hedgerow removed.
- As per *Condon v Galway Holding Company Ltd and Others* [2021] IECA 216 makes it clear that where a local authority has purported to exercise control over land does not in and of itself mean it has such control.
- Plans were only made available for public consultation on the public portal on 14th May with closing date for submissions as being 23 May and were not available to review at the public desk.
- Circular PL 09/2020 Operating of Planning System during Covid 19 Level 5 restrictions and clarification of the operation of the Planning System during the

Covid 19 Pandemic stated that planning applications were available for public consultation by appointment and that the local authority planning offices should not have been completely closed to the public. This was not practice in Roscommon County Council.

- Further information was not published or made available within the statutory timeframe and was incorrectly deemed confidential and the appellant and any other third parties were unable to make a submission on the further information.
- Decision is irrational and contradictory with specific reference to condition 2 stating “For the avoidance of doubt this permission pertains only to the development as detailed in the formal development description and does not infer any entitlements in respect of site boundary definition or land ownership matters.”
- Decision is flawed by insufficiency of reasoning. There is no explanation as to the weight attached to further information response.
- No assessment of planning history or reference to the enlarged entrance arising from the removal of hedgerow. Removal of hedgerow results in financial penalty in relation to basic farm payment.

6.2. Applicant Response

The response by Arch Eng Tech Consulting on behalf of the applicant is summarised as follows:

- The disputed land relating to the gateway access is in no way affected by the proposed development. This portion of land is in ownership of Roscommon County Council
- The existing entrance to the property has been subject to uninterrupted use for access and egress for some 47 years
- The appellant refers to historical works to the access / gated entrance which are not affected by the proposed development.

- Letter from Roscommon County Council dated 9th October 2020 refers to alleged unauthorised development consisting of the erection of piers, gates and fencing at Kilglass Lough, Clooneen (Blakeney) Strokestown Co Roscommon and states that the matter has been investigated by the Planning Authority and is deemed to be exempted development.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

7.0 Assessment

- 7.1. I note that the grounds of appeal are focussed in the main on legal and procedural matters and are notably silent in respect of the merits of the development as set out. The proposal involves a relatively minor extension and modification to the existing dwelling to improve the standard of residential and environmental amenity. In term of the development management standards of the Roscommon County Development Plan 2022-2028, I am satisfied that the proposed extensions are subordinate to and reflect the proportions detailing and finishes of the existing dwelling. I consider that the revisions to the proposed front sunroom extension as outlined in the response to the request for additional information provides a more appropriate design solution. On the matter of wastewater treatment the proposal is not likely to increase the potential occupancy of the dwelling therefore in line with the development management standards it is not a requirement to demonstrate the adequacy of existing on site sewage treatment as part of the planning application. Having considered the detailed design I consider that the proposal is acceptable and is in accordance with the proper planning and sustainable development of the area.
- 7.2. The main issue focus of the appeal relates to the question of validity of the application and question of compliance with Article 22 (2) (g) of the Planning and Development Regulations 2001 as amended the requirement that *“where the applicant is not the legal owner of the land or structure concerned – (i) the written*

consent of the owner to make the application” should be provided as part of the planning application documentation.

- 7.3. The question of ownership arises in relation to the portion of land at the western extremity of the site which provides the vehicular entrance to the dwelling site. The third party appellant contends that he is the owner of this land and he does not consent to the making of the application. The first party asserts that this disputed portion of land is owned by Roscommon County Council and outlines that the property has enjoyed uninterrupted access over this section of land since the property was built in 1974. A copy of a letter from Gore and Grimes solicitors dated 10th April 2012 provided within the first party response to the appeal indicates that the access way into the property is in charge of Roscommon County Council. Correspondence from Roscommon County Council to Gore and Grimes solicitors dated 5th April 2012 indicates that the road L6040 is in charge of Roscommon County Council and makes reference to an agreement dated 11 March 1969 between Roscommon County Council and the relevant landowner with regard to the Council's acquisition of the plot.
- 7.4. I note that none of the works specified within the application are proposed within the area of disputed land. I note that the third party appellant alleges that unauthorised works were carried out to the entrance and in response the first party has submitted a copy of correspondence from Roscommon County Council dated 9th October 2020 advising that the matter had been investigated and the erection of piers at the existing entrance is deemed to be exempted development. The current application does not involve any works to the entrance.
- 7.5. I acknowledge that the site layout drawings submitted with the application and in response to the request for additional information repeatedly inaccurately include the disputed portion of lands within the redline and blue line boundaries and there is no yellow shading to demonstrate a wayleave. The Board may choose to write to the applicant (pursuant to Section 131 of the Planning and Development Act 2000, as amended, to request revised site layout map to correct this issue.

- 7.6. I note that the Board has no statutory power in relation to matters of title and ownership raised in the appeal - these being civil matters that can only be resolved by agreement between the parties or in the civil courts. I note that the Development Management Guidelines state clearly at 5.13 that “the Planning system is not designed for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts.” I have noted the provisions of Article 22(1)(g) and case law with regard to the obligation to demonstrate sufficient legal estate or estate to enable the applicant to carry out the proposed development. I consider that the application has demonstrated sufficient legal interest to make the application and in this regard the parties are referred to Section 34(13) of the Planning Act which states that a person shall not be entitled solely by reason of a permission to carry out any development.”
- 7.7 I note that the third party appellant has raised matters raised within the appeal in respect of the procedures adopted by the Planning Authority, office opening hours during Covid 19 Level 5 restrictions and the availability of the planning documents for review. It is suggested that third party rights were infringed as further information documentation was deemed confidential and not available for review and that third parties were consequently precluded from making observations in relation to same. I cannot retrospectively confirm the facts in relation to these matters but in any event I note that such matters are beyond the remit of the Board in terms of assessment of the appeal and any review of such administrative decisions and provisions are the preserve of the Courts.
- 7.8 As regards Appropriate Assessment having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. The physical distance from the appeal site to the nearest European sites is such that any impact from the hazard source will be well diminished along the pathways in question by the time it reaches the receptor. Having regard to the nature of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the 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. I have read the submissions on the file, visited the site and had due regard to the development plan and all other matters arising. I recommend that the Board uphold the decision of the planning authority and grant permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the location of the site and pattern of development in the area, it is considered that the proposal would be compatible with the visual, residential and rural amenities of the area and would not impact unduly on the residential amenities of adjacent properties. No appropriate assessment issues would arise. The proposal would thus accord with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and lodged with the application as amended by full plans and particulars received on 28th day of July 2021 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. The external finishes of the proposed extension shall be the same as those of the existing dwelling in respect of colour and texture.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the detailed requirements of the planning authority for such works and services.

Reason: In the interest of public health.

Bríd Maxwell

Planning Inspector

21 October 2022