



Development	House and services on revised site boundaries, garage as constructed in revised location. Existing shed for storage gross floor space of work to be retained: 66.92 sqm (garage) & 25.52 (shed).
Location	Kiltroque, Claregalway, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	212235
Applicant(s)	Gerry Giles.
Type of Application	Planning Permission for Retention.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third party versus grant of permission.
Appellant(s)	Sean Noone.
Observer(s)	None.
Date of Site Inspection	22 June 2023.

Inspector

Stephen Rhys Thomas

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1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.33 hectares, is located in the townland of Kiltrogue approximately 3km to the east of Claregalway. The appeal site is located on the south eastern side of the L71149, which ends in a cul-de-sac to the south west of the site. The appeal site formed part of a larger field area and a new house, shed and renovated shed occupy the site. The public road at this location is approximately 3m wide. Adjoining lands to the south and west of the site are agricultural in nature. The site falls slightly away from the public road. The nearest dwellings include an existing house to the north east whose site boundary is shared with the appeal site. Another dwelling is located immediately opposite the appeal site and there are other dwellings dotted along this cul-de-sac road. The boundary to the agricultural field to the south comprises a low concrete block wall and an amount of topsoil has been deposited at this southern portion of the site.

2.0 Proposed Development

2.1. Permission is sought to retain the following development:

- Retain a dwelling house and services on a revised site boundary.
- Retain a garage at a revised location.
- Retain existing shed for storage purposes.

2.2. Further information was sought to clarify points of ownership and use of shed structures. No changes to the layout or dwelling on site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority issued a notification to grant permission, all six conditions are standardised and relate to the house as constructed, boundaries and use of structures on site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The basis of the planning authority decision includes:

First Report

- Site location and description is outlined, the relevant policies of the County Galway Development Plan 2015-2021 are set out.
- EIA, AA and FRA all considered and not required.
- The principle of a house and garage have already been established by a previous permission. The erection of a garage and shed result in a large floor area, further information on use is required.
- Comments from a third party about land ownership are noted and further information is required.
- All other aspects of the proposal acceptable.

Further information was requested as recommend by the Planner.

Report 2

- Information submitted demonstrates that all development applied for falls within the applicant's ownership. Some boundary walls are outside the red line boundary and these may be of concern, but are outside the remit of this planning application.
- The use of the garage and shed is noted and if permitted will not be used for habitation and will be used for ancillary purposes to the main dwelling.

Permission was granted in accordance with the Planner's recommendation.

3.2.2. Other Technical Reports

None.

3.3. Prescribed Bodies

None.

3.4. **Third Party Observations**

Two third party submissions, layout is incorrect, a portion of the site is outside the applicant's ownership and legal proceedings are in train.

4.0 **Planning History**

Subject site:

PA ref 17/321 – permission to demolish and replace existing dwelling and build new dwelling and garage.

5.0 **Policy Context**

5.1. **Development Plan**

The Galway County Development Plan 2022 -2028 is the operative statutory plan for the area.

Relevant policies and objectives include:

Policy Objective RC 2 Rural Housing in the Countryside

To manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Rural Housing Policy Objectives as outlined in Section 4.6.3 Rural Housing Development Strategy 2022-2028.

RH 6 Replacement Dwelling

It is a policy objective of the Planning Authority that the refurbishment of existing habitable dwelling houses would be encouraged, as a more sustainable option than the demolition and construction of a new dwelling house, unless a conclusive case for demolition based on technical evidence is made for the Planning Authority's consideration on a case by case basis. It will be a requirement that any new dwelling house be designed in accordance with Galway County Council's Design Guidelines for Rural Housing in the countryside. Applicants, who require the demolition of an existing family home shall be accommodated without the requirement to establish a Housing Need and will not be subject to an enurement clause.

WW 6 Private Wastewater Treatment Plants

Ensure that private wastewater treatment plants, where permitted, are operated in compliance with Environmental Protection Agency (EPA) Code of Practice for Domestic Waste Water Treatment System 2021 (Population Equivalent ≤ 10).

Chapter 15: Development Management Standards

DM Standard 6: Domestic Garages (Urban and Rural)

The design, form and materials should be ancillary to, and consistent with the main dwelling on site;

Structures may be detached or connected to the dwelling but should be visually subservient in terms of size, scale and bulk;

Storage facilities should be used solely for purposes incidental to the enjoyment of the dwelling and not for any commercial, manufacturing, industrial use or habitable space in the absence of prior planning consent for such use

DM Standard 7: Rural Housing

DM Standard 8: Site Selection and Design

DM Standard 38: Effluent Treatment Plants

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or directly adjacent to any Natura 2000 sites. There is a designed site located 0.4 km to the south, Lough Corrib SAC (site code 000297).

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the proposed development and its location removed from any sensitive locations or features, there is no real likelihood of significant adverse effects on the environment. The need for environmental impact assessment can therefore be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A Third-Party Appeal was submitted to An Bord Pleanála on the 30th August 2022 opposing the planning authority's decision, the grounds of appeal can be summarised as follows:

- Mapping errors and inaccuracies, the planning boundary of the application do not fall within the registered boundaries, even after further information was submitted. The adjacent dwelling house is not shown on plans.
- The location of the wastewater treatment system and percolation area is incorrectly shown. The layout drawing and the site do not match and the wastewater treatment system cannot be accommodated on the site in accordance with EPA guidelines. Part of the percolation area lies within the appellant's lands.

6.1.2. The appeal is accompanied by, FI submission correspondence, land registry documentation and maps as well as a Circuit Court summons and list of claims.

6.2. Applicant Response

The applicant's submission can be summarised as follows:

- The history of the site is detailed, the site was marked out, and drawn up for land registry purposes, for a site of 0.355 Hectares. However, the Land Registry Map did not reflect the boundary markers as agreed on site, a reduced site area of 0.316 and shortened boundaries resulted. Unaware of the error permission was secured and the house was constructed with all services within the on site boundaries as constructed. However, the register maps lies within the on site boundaries as constructed, hence the percolation area falls outside the registered map boundaries.
- The rest of the farmland was sold (11,14 Hectares) to Sean Noone and here in lies the dispute that is now a civil matter.

- Drawings were prepared to detail the folio boundaries, physical boundaries and the planning boundaries, but this survey was done without a site visit, and is for information purposes only.
- The boundary walls were then rebuilt in accordance with the Folio maps, a new percolation was also constructed. However, the wrong drawings were used in the construction of the wall and percolation area, and this leads to slight discrepancies. The accompanying drawings explain in detail the course of events and though a portion of the old percolation area lies outside the site, it is disconnected and no longer functions.

6.3. Planning Authority Response

None.

7.0 Assessment

7.1. Introduction

7.1.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Development Permitted
- Appropriate Assessment

7.2. Development Permitted

7.2.1. The planning authority granted planning permission for the development as follows: a dwelling house and its services, a revised position for a permitted garage and an existing shed to be used for storage, all on a site with changed boundaries. The initial permission was for the demolition of an existing house and replacement with a new dwelling and a garage, PA ref 17/321 refers. The applicant carried out all of these works but it has transpired that instead of removing an old shed and constructing a garage in its place, the old shed was retained and the garage placed elsewhere. The appeal before the board concerns a new application to retain the existing shed and the repositioned garage. A revised location for the wastewater treatment system percolation area is also sought. All of these elements of the development are to be retained within an amended site boundary.

7.2.2. During the course of the current planning application, the planning authority sought further information with respect to the boundaries of the site, specifically the rear boundary and any legal consents that might be required. The applicant responded with the submission of a Folio File Plan GY121834F, showing the land in their ownership and permission was granted.

7.2.3. The appellant still has concerns about the percolation area and land they believe has been taken from them. The applicant has responded to the grounds of appeal and has set out the chronology of events that have led to the current situation, in brief:

- Site was purchased from Gabriel Giles in 2017.

- Physical markers were placed on the site, to demarcate the plot purchased, 0.355 hectares.
- The site was then mapped for land registry purposes; however, the Land Registration Map did not reflect the markers on site and instead a site of 0.316 hectares was registered. This resulted in a shortened length of site of between 6.5m and 10m.
- Permission was granted and construction began on a site that coincided with the on site markers, not the registry map, thus the percolation area fell into the disputed area of land.
- The balance of the agricultural land was sold to Sean Noone and the discrepancy was highlighted.
- An agreement between owners could not be reached and legal action was initiated.
- New maps were prepared without on-site surveys, then a new boundary was constructed and the percolation area moved inside the site.
- A new planning application was lodged with the new boundaries drawn on plan.
- However, the proposed wall and percolation area were shown as per the incorrect initial layout drawings and are still positioned within the disputed zone, by a margin of between 500mm and 1000mm.

7.2.4. The appellant disputes the material submitted by the applicant in the planning application and states that drawings are incorrectly measured and drawn, and that the applicant has encroached on their land and part of the percolation area still lies beyond a new boundary wall. The appellant is aggrieved by these inaccuracies and has entered into legal proceedings to see that land is returned to them. The applicant has sought to clarify and explain the mistakes made and concludes that the inaccuracies are minor.

7.2.5. I can see that the sequence of events has been frustrating for both parties. From a purely planning perspective, I am satisfied that there is no fundamental problem with what has been permitted and constructed on the site. The planning authority are satisfied that the garage and old shed are acceptable subject to their use being

controlled by a condition. I observed both storage structures on site and subject to their use being ancillary to the main dwelling there are no issues. However, this appeal hinges on site boundaries and development that may have occurred outside the site and on land not in the ownership of the applicant.

7.2.6. Firstly, the issue about boundaries on the site and on maps has taken some time to correct. But according to the drawing submitted by the applicant and dated 08/07/2022, there is a clear record of errors. It is illustrated that the repositioned garage, shed to be retained and percolation area all fall within the planning boundary shown in green. The planning boundary line falls within the registered boundary shown in red. I am satisfied that the majority of the development has been constructed within the lands in the ownership of the applicant and permission to retain same should be granted. However, a blue (cyan) line is labelled 'existing boundary' and in my mind this refers to the concrete boundary wall constructed at the rear boundary of the site. The blue line falls outside both the planning boundary and the registered boundary. This means that the appeal before the Board refers to an application that seeks to retain a boundary, in this case a concrete block wall outside the planning boundary (commonly coloured red but in this case green) and the registered boundary or land not in the ownership of the applicant.

7.2.7. I believe that this is the case and therefore, the boundary wall cannot be retained as constructed but should be repositioned to fall within the planning boundary located between 6.5m and 10m north west of its current position or at least within the control of the applicant 500mm and 1000mm to the north west. I am satisfied that the action to reposition the boundary wall should be required by condition and that an appropriately scaled drawing should exactly locate a boundary treatment (wall, fence or hedge) all within the applicant's ownership and control. To be clear, the existing boundary wall as currently constructed should be demolished and a new boundary treatment positioned entirely with the ownership of the applicant and the details illustrated on a layout.

7.2.8. Percolation Area - The appellant has raised issues about a percolation area that resides within land that they own and they find the matter unsatisfactory. The applicant has stated and shown on layout drawings that the percolation area has been repositioned and is located entirely within both the planning boundary and registry boundary. It is stated that the old percolation area is not connected to the

applicant's wastewater treatment system and has been decommissioned. On the day of my site visit, I observed that the area in question had been recently covered over with topsoil. I am satisfied that the marginally altered position of the percolation area does not change the on site characteristics of the site to appropriately treat wastewater. The documentation prepared by Burke Waste Water Systems submitted by the applicant on the 21st January 2022 and entitled 'Commissioning Certificate' is noted. However, a condition should be attached to ensure that the wastewater treatment system and associated percolation area operates as it should and is regularly maintained.

- 7.2.9. In summary, I am satisfied that the matter of repositioned elements of permitted development, boundaries and ownership can be dealt with in this appeal. The applicant has supplied maps that show ownership and admits to mistakes made and that these have been corrected. Subject to a condition to bring the existing boundary treatment (wall) along the southeastern boundary into land owned by the applicant I am satisfied that permission can be granted.

7.3. Appropriate Assessment

- 7.3.1. Having regard to the nature and scale of the development and its distance to 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.

8.0 Recommendation

- 8.1. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the Galway County Development Plan 2022 -2028, and the scale and nature of the development it is proposed to retain, it is considered that the proposed development would not seriously injure the amenities of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of

traffic safety and visual amenity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 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 11th day of July 2022 and by the further plans and particulars received by An Bord Pleanála on the 28th day of September 2022, 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 proposed development shall be amended as follows:

(a) Within six months of the date of this order, the existing rear boundary wall shall be demolished and a replacement boundary treatment shall be repositioned within the ownership boundary of the site, detailed in red on drawing number 22/546-01 and dated 08/07/2022.

(b) A revised layout map shall show the position of the new boundary treatment within the ownership boundary of the site and this shall be submitted to the planning authority as a record of works completed.

Reason: In the interests of residential amenity.

3. (a) The development shall be served by the existing effluent treatment and disposal system installed on site, and shall be operated and maintained in accordance with the details submitted to the planning authority on the 21st January 2022, and in accordance with the requirements of the document entitled "Code of

Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. 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) A maintenance contract for the treatment systems shall be kept in place at all times. The maintenance contract shall be signed by a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system 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 domestic garage and the domestic store shed shall not be used for habitable or commercial purposes or any other purpose other than those uses incidental to the enjoyment of the dwelling house.

Reasons: In the interests of residential amenity.

5. The site shall be landscaped, using only indigenous deciduous trees and hedging species. This scheme shall include the following:

(a) the establishment of a hedgerow along all side and rear boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the date of this order, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephen Rhys Thomas
Senior Planning Inspector

13 July 2022