



Development	Retention permission for changes to development permitted under planning reference number 09/745 including increased floor area of dwelling and retention of garage structure and planning permission to complete development including installation of wastewater treatment system and permission to remove enurement clause.		
Location	Tonroe, Clarinbridge, County Galway.		
Planning Authority Ref.	22/60637		
Applicant(s)	Ann Marie Kearney.		
Type of Application	Permission.	PA Decision	Grant Permission.
Type of Appeal	First Party v condition	Appellant	Ann Marie Kearney
Observer(s)	None		
Date of Site Inspection	27/10/23	Inspector	Fergal Ó Bric

1.0 Site Location and Description.

1.1 The appeal site is located on the northern side of a cul-de-sac road, the L81065 which is accessed off the N67 approximately two kilometres north-west of the village of Clarinbridge in south-west County Galway. The appeal site is

brownfield in that there is a dormer dwelling and detached domestic garage at an advanced stage of construction on site. The rising walls and roof are in place as are the windows and doors and a concrete front boundary wall and entrance wing walls are also in situ. However, internally the house has not been completed in that there are no floor surfaces in place, no kitchen nor sanitary ware in place and the drains and gullies externally are exposed, the gardens have not been levelled, graded or seeded and the wastewater treatment system has not been installed. The appeal site comprises an area of 0.212 hectares. There is a wall boundary along its southern (roadside) boundary and the remaining eastern, western and northern boundaries comprise natural stone wall, trees and hedgerow. Access to the site is from a 4.5 metre wide cul-de-sac roadway which is located to the south of the site, within an eighty kilometre speed control zone. Site levels within the appeal site rise gradually from the public road (south to north). There are a number of individual dwellings on generous plot sizes further east of the appeal site all with access onto the local road, there is one dwelling further west of the appeal site, again with access onto the local road, to the north-west is a modest sized agricultural building and to the north are agricultural lands.

2.0 Proposed development

Retention planning permission is sought for:

- Additional floor area of fourteen square metres to dwelling house, total floor area 223.7 square metres.
- Domestic garage, total floor area 60.73 square metres.

Planning Permission is sought for:

- Completion of development including installation of proprietary effluent treatment system and associated site services.
- Permission to remove condition number two, regarding inclusion of an enurement clause.

Further information was submitted by the applicant in relation to the following: The submission of a flood risk assessment for the proposals; that minimum separation

distances between the surface water soak pits and the wastewater treatment system and percolation area are achieved and a rationale as to why the enurement clause condition should not have been included within the Planning Authority decision.

3.0 PA's Decision:

The Planning Authority granted planning permission for the development subject to fifteen conditions. Most of the conditions are of a standard nature. However, condition two sets out the following:

- Use of the existing house shall be restricted to use as a house by the applicant, applicant's family, heirs, executors and administrators or persons involved in agricultural or related activities, returning emigrants or those with an essential housing need in this rural area, unless otherwise agreed by the Planning Authority for a period of seven years. The period of restriction shall have effect from the date of first occupation of the house. Within three months of the final grant of this permission, the applicant/developer shall enter into a legal agreement with the Planning Authority (under the provisions of Section 47 of the Planning and Development Act, 2000, as amended) the purpose of which shall be to give effect to the above restriction. The house shall not be occupied until an agreement embodying a provision to give effect to the above restriction (s) has been entered into with the Planning Authority pursuant to Section 47 of the Planning and Development Act, 2000 (as amended).

Reason: To ensure that development in the area in which the site is located is appropriately restricted.

4.0 Planning History.

Planning Authority reference number 07/1664, in 2007, the Planning Authority granted planning permission to the current applicant for the demolition of a cottage on site and for the construction of a replacement dormer dwelling and installation of a proprietary wastewater treatment system and all associated site works.

Planning Authority reference number 09/745, in 2009, the Planning Authority granted planning permission to the current applicant for the demolition of the cottage on site and for the construction of a replacement dormer dwelling and installation of a proprietary wastewater treatment system and all associated site works.

5.0. Local Planning Policy

5.1 Galway County Development Plan 2022 -2028

Chapter 4 of the Plan pertains to Rural living and development.

Section 4.6 of the Plan pertains to the Rural Housing Strategy in the Open Countryside. Clarinbridge and its rural hinterland, including the rural townland of Tonroe is located within an area under strong urban development pressure and located within the Galway County and Transport Planning Strategy (GCTPS).

The growth strategy will focus on the localised sustainable growth that meets the needs of the local population and the wider hinterland.

The following policy objectives are considered to be of relevance:

RH6-Replacement dwellings

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 the 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

requirements to establish a housing need and will not be subject to an enurement clause.

RH9-Design Guidelines

RH11-Wastewater Treatment Provision

5.2 Natural Heritage Designations

- The closest designated European Sites are the Cregganna Marsh Special Protection Area (site code 004142) which is located approximately 1.2 kilometres west of the appeal site. The Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031) are located approximately 1.4 kilometres west of the appeal site.

6.0 The Appeal

6.1 First Party Appeal.

A first party appeal has been received which relates specifically to condition number 2 only of the decision to grant retention planning permission for the modifications to a dwelling and for a domestic garage and planning permission for the installation of an effluent treatment system and site services and the removal of the enurement clause condition. The specific issues raised within the appeal submission relate to the following:

- Condition number two of planning Authority reference number 09/745 required the applicant to enter into an enurement clause.
- The dwelling was constructed as far as shell and core stage since 2010, without the installation of a proprietary wastewater treatment system.
- The enurement clause was never entered into as the dwelling was never fully completed and inhabited.
- The applicant set out under Planning Authority reference 22/60307 that an enurement clause should never have been imposed under the original grant of planning permission on the site, under Planning Authority reference 07/1664, condition number ten.

- The development description under Planning Authority reference 07/1664 was for the demolition of an existing sub-standard dwelling and out house and to construct a new dormer dwelling with associated septic tank services.
- Policy Objective 92 of the then Galway County Development Plan set out that no enurement clause will be included where the development pertains to the replacement of an existing dwelling house.
- Under Planning Authority reference 07/1664, the applicant submitted a report prepared by Westcon Consulting Engineers, who deemed the dwelling to be substandard for modern day living.
- Policy Objective RH 6 of the current Galway County Development Plan 2022 sets out a similar policy stance in relation to replacement dwellings and that applicants who require the demolition of an existing dwelling house shall be accommodated without the requirement to establish a housing need or proof of residence and will not be subject to an enurement clause.
- Therefore, as the new dwelling was granted permission as a replacement dwelling under Planning Authority reference number 07/1664, that permission should not have been subject to an enurement clause.
- The enurement clause is unnecessary and does not serve a purpose in relation to the proper planning and sustainable development of the area.
- Galway County Council have incorrectly imposed an enurement clause on this development from the start and the applicant, Ann Marie Keaney should be allowed to complete the development without a restriction on its use.
- Condition number two should be omitted, and the applicant allowed to complete the development without an enurement clause or restriction on its use upon its completion.

6.2 P.A. Response

- None.

7.0 EIA Screening - Having regard to the nature of the development, which would involve the completion of a single dwelling in the countryside on a brownfield site, which is serviceable by means of an on-site treatment system, 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.

8.0 AA Screening - The subject site is located approximately 1.2 kilometres east of the appeal site Cregganna Marsh Special Protection Area (site code 004142). The Galway Bay Complex SAC (site code 000268) and the Inner Galway Bay SPA (site code 004031) are located approximately 1.4 kilometres west of the appeal site. Having regard to the scale and nature of the development and to the location removed from any European Sites, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually, or in combination with other plans or projects on a European site.

2.0 Assessment

2.1 Introduction

2.1.1 This is a first-party appeal against condition number two only, included within the Planning Authority's decision to grant planning permission under planning reference 22/60637. This condition requires that the use of the house be restricted to use by the applicant, applicant's family, heirs, executors and administrators or persons involved in agricultural or related activities, returning emigrants or those that have an essential housing need in this rural area, unless otherwise agreed by the Planning authority for a period of seven years. The applicant/developer is required enter into a legal agreement with the Planning Authority under the provisions of Section 47 of the Planning and Development Act 2000, as amended. The key issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following heading:

- Planning Policy Provisions
- Other Matters
- Appropriate Assessment

3.0 Planning Policy Provisions

- 3.1.1 The relevant Development Plan in this instance is the Galway County Development Plan 2022-28 which includes the Rural Housing Policy as set out within Section 4.6 of the Plan. Clarinbridge and its rural hinterland is located within an area identified as being under Strong Urban pressure and also located within the Galway County Transport and Planning Strategy (GCTPS). This area is under significant pressure from the development of one off rural dwellings. The appeal site is brownfield, in that a dwelling has been developed to a core and shell stage within its bounds. The Development Plan is supportive of the principle of the development of replacement dwellings, and this is specifically set out within policy objective RH6. I consider that the proposal would assist in the achievement of this objective, given that a dwelling and out shed previously existed on site as set out under Planning Authority reference 07/1664. Therefore, I consider that the proposals would assist in providing for a sustainable solution within this rural context, whereby no additional dwellings have been developed on this brownfield site.
- 3.1.2 Specific policy objective RH6 within the Development Plan sets out that in the case of replacement dwelling where a conclusive case for demolition based on technical evidence is made to the Planning Authority, that the demolition of an existing family home shall be accommodated without the requirements to establish a housing need and will not be subject to an enurement clause. The Planning Authority within their assessment of the current proposals considered the merits of the proposals under Policy objective RH8. This policy objective relates to substantially completed single dwellings and sets out that such proposals shall be accommodated without the requirements to establish a housing need. However, there is no specific mention of the requirement to include an enurement clause.
- 3.1.3 From the planning history pertaining to the appeal site and as included within the Planning Officers report, the existing house on site was permitted as a replacement dwelling under Planning Authority reference 07/1664. Under that particular proposal, the applicant submitted a technical report prepared by their Consultant Engineers. The Engineers recommended that the cottage could not be modified to meet modern day family needs due to the significant extent of rising damp and inability to insulate the floors due to the old masonry construction, that it was not possible to raise floor levels as this would impact upon floor to ceiling heights and door heights. Also, the inability to insulate the roof due to the existence of old rough timber trusses and the

existence of the wattle and sod construction within the cottage structure would all make it impossible to insulate the dwelling in accordance with Building Regulations standards. The engineers set out that it would have been impossible to achieve any acceptable energy efficiency rating and the small size of the windows would have limited the extent of solar gain that could be achieved. The Consultant Engineers concluded that the existing cottage on the site was non-compliant with the Building Regulations and that it could not be modified to comply with these regulations either. I note that planning permission was granted by the Planning Authority for a replacement dormer dwelling.

- 3.1.4 The Planning Authority set out that a commencement notice was submitted by the applicant in May 2008 and that the dwelling house constructed on site materially differed from the plans submitted under planning Authority reference number 07/1664. It is stated that the thatched roof proposals were altered as was the ridge height of the dwelling and rooflights were included within a number of the elevations. Retention planning permission was subsequently granted by the Planning Authority under planning reference number 09/745. Therefore, having granted planning permission, I am satisfied that the Planning Authority considered that the design of the revised proposals for the replacement dwelling was acceptable.
- 3.1.5 The Planning Authority acknowledge within their report that the applicant submitted a Rural Housing Need declaration under the 07/1664 proposals and that she also signed an enurement covenant with Galway County Council on the 31st day of January 2008. The applicant within their appeal submission considers that the development on site would comply with Policy Objective RH6, in that the existing dwelling on site is a replacement dwelling for a cottage that previously existed on site. This cottage was deemed not suitable for refurbishment by their Consultant Engineers, due to issues with regard to compliance with the Building Regulations. Policy Objective RH6 sets out that where proposals relate to the demolition of an existing dwelling, a replacement dwelling shall be accommodated without the requirements to establish a housing need and will not be subject to an enurement clause. Policy Objective RH8 which relates to substantially completed rural dwellings, sets out that it will not be a requirement to establish a rural housing need if it was not a condition of the previously granted planning permission but, is silent in relation to the requirement to enter into an enurement clause.

- 3.1.6 I consider that both rural policies, RH6 and RH8 are potentially applicable in this instance, as the proposals do relate to retaining alterations to the dwelling on site and a domestic garage and permitting the installation of wastewater treatment system, all relating to a dwelling which was originally permitted as a replacement dwelling and that the current dwelling on site would also constitute a substantially completed Rural dwelling as provided for under RH8. I consider that the applicant has made a valid and reasonable planning argument in setting out that the existing dwelling on site was permitted as a replacement dwelling following the submission of the building condition report prepared by Consultant Engineers, submitted under reference number 07/1664. I acknowledge that the applicant submitted local needs documentation under those particular proposal and subsequently entered into an enurement covenant with the Planning Authority in January 2008, although the dwelling was never formally occupied, a matter that is acknowledged by the Planning Authority within their report.
- 3.1.7 On balance, given that Policy objective RH8 does not require an applicant to enter into an enurement covenant and neither did it require the applicant to establish a rural Housing need, even though the Planning Authority accepted she did satisfy this requirement under the original permission under reference number 07/1664, I consider that the current proposals could be considered under Policy objective RH6, for the development of a replacement dwelling on site. This is having regard to the planning history that pertains to the appeal site, and particularly planning reference number 07/1664 and which was accepted by the Planning Authority at that time. I consider that the inclusion of the requirement to enter an enurement covenant, under condition number two of reference number 07/1664 was unreasonable and unjustified having regard to the specific wording as set out within policy objective RH6 clearly sets out that in the case of replacement dwellings, that an enurement clause should not be applied. This is reasonable and as well as being supported by a policy objective within the current Development Plan (RH6), and, therefore, I consider it reasonable to recommend the removal of condition number 2 of the planning decision, reference number 22/60637.

3.2 Other Matters

3.2.1 Flood Risk

3.2.2 The issue of flood risk was raised by the Planning Authority as part of the further information request and the applicant submitted a Flood Risk Assessment (FRA) in response to the request from the Planning Authority. The FRA identified two potential sources of flood risk as being firstly via groundwater associated with the Tonroe Turlough south of the appeal site and secondly via coastal flooding. I note that Clause 5.28 of the Planning Systems and Flood Risk Management Guidelines, published by the OPW sets out the following: Applications for minor development, such as small scale infill, small extensions to houses or the rebuilding of houses... are unlikely to raise significant flooding issues, unless they obstruct important flow paths and/or introduce a significant number of people in flood risk areas. Since such applications concern existing buildings or developed areas, the sequential approach cannot be used to locate them in lower risk areas and the justification test will not apply. However, a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities.

3.2.3 The FRA submitted by the applicant included details of finished floor levels of the dwelling and domestic garage and were detailed as being at 6.47 metres AOD and the freeboard against the groundwater flood level was calculated to be 1.97 metres AOD and approximately 1.1 metres AOD against coastal flood risk. Based on these calculations, I am satisfied that the development is not located within a flood risk area, does not and will not increase the risk of flooding on site nor in the vicinity of the appeal site. I am also satisfied that the development does not impede natural flow paths of the Tonroe Turlough. I note that storm water run-off within the site is to be managed by the inclusion of the appropriate surface water management proposals, as provided for within the planning documentation submitted and conditioned by the Planning Authority (condition number 7).

4.0 Recommendation

4.1 It is recommended that the Planning Authority be directed to remove condition number 2 under planning reference number 22/60637, for the reasons and considerations hereunder.

5.0 Reasons and Considerations

Having regard to the nature and scale of the development which was originally permitted as a replacement dwelling, the brownfield nature of the site, serviced by public watermains, the existing pattern of development in the Tonroe area, the provisions of the RH6 policy objective within the current Galway County Development Plan 2022, it is considered that the inclusion of the requirement to enter into a legal agreement, as required by the planning authority in its imposition of condition number 2 under planning reference number 22/60637, is not warranted nor reasonable, and that the development, with the omission of condition number 2, would, therefore, be in accordance with the proper planning and sustainable development of the area.

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.

Fergal Ó Bric

Planning Inspectorate

31st day of October 2023