



An
Bord
Pleanála

Inspector's Report

ABP-315032-22

Development	Retention of house as constructed including alterations to fenestration, attic conversion and all associated site works, and construction of extension.
Location	Rineen, Miltown Malbay, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	22764
Applicant(s)	John and Claire McNulty
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Raymond and Marion Conway
Observer(s)	Oisin Conway
Date of Site Inspection	19 th June 2023
Inspector	Eoin Kelliher

1.0 Site Location and Description

- 1.1. The site is situated in the townland of Rinneen, approximately halfway between Lahinch and Miltown Malbay, Co. Clare. The site is accessed from the N67 national road via a right of way over a private access road serving an adjoining farmstead.
- 1.2. The site comprises an existing dormer dwelling house set on its own grounds with a stated area of 0.281ha. The house is set back circa 100m from the public road on elevated ground and enjoys panoramic views of the coastline and the Atlantic Sea. The topography of the area rises to the southwest with the site of the subject dwelling cut into the rising ground and surrounded by an embankment to the rear and sides. An on-site wastewater treatment system has been installed to the southwest of the site. The interior of the house, which is currently unoccupied, is unfinished.
- 1.3. The surrounding area is characterised by agricultural land interspersed with farmsteads and one-off rural houses.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of the dwelling house as constructed and the construction of a conservatory to the side (southwest) of the house. The works to be retained include alterations to the fenestration, an attic conversion, and all associated site works.
- 2.2. The existing dwelling has a stated floor area of 227.86sq.m; this includes the attic conversion to be retained which has a stated area of 92.4sq.m. The proposed conservatory has a stated floor area of 14.03sq.m.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 12th October 2022 Clare County Council decided to grant permission subject to 3 no. conditions. The following conditions are noteworthy:

Condition no. 1(b) Stipulating that all conditions attached to parent permission P09/103 remain applicable unless expressly amended by this planning permission.

Condition no. 3 Stipulating that all surface water generated within the site shall be collected and disposed of within the site and that no surface water shall discharge onto the public road, adjoining properties or into the wastewater treatment system.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Area Planner was satisfied that the proposed development would not have an adverse impact on the visual amenities of the area or the amenities of adjoining properties. The Area Planner noted that whilst the wastewater treatment system permitted under P09-103 had yet to be installed, this can be done in accordance with section 40(2)(a)(iii) of the Planning and Development Act 2000, as amended, which allows for such works outside the appropriate period, and that the proposed development does not increase the effluent loading.

The need for Environmental Impact Assessment and Appropriate Assessment were screened out.

The Area Planner's recommendation is reflected in the decision of the Planning Authority.

3.2.2. Other Technical Reports

Area Engineer (West Clare MD): No observations in relation to the application.

Road Design Officer: Requests that landscaping and planting, including future growth, does not interfere with any sighting distances required at junctions.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

One observation from M.J. Duffy Engineer on behalf of John and Claire McNulty was made on the application. The contents of the observation are echoed in the third-party appeal summarised in Section 6.1 below.

4.0 Planning History

Subject Site:

P.A. reg. ref. 22/346: Application for permission to construct conservatory extension, to retain dwelling house as constructed and attic conversion, and retain alteration to site boundaries and position of sewage treatment system with ancillary works for John and Claire McNulty withdrawn on 25th August 2022 following a request for further information from the Planning Authority. The further information sought can be summarised as follows:

1. The septic tank and percolation area to be retained were not in place at the time of inspection. The applicant was requested to submit proposals to address the fact that the dwelling is not served by an onsite wastewater treatment system. The applicant was advised that, in accordance with section 40(2)(a)(iii) of the Planning and Development Act 2000 (as amended), the septic tank and percolation area as originally granted under reg. ref. P09/103 may be installed at the permitted location outside of the lifetime of the planning permission.
2. Documentary evidence that the applicant has sufficient legal interest in the entirety of the lands outlined in both red and blue on the site layout plan.
3. Revised proposals to address the fact that the access driveway to the site is partially blocked by an existing post and wire fence which has adverse impacts on vehicular movements to and from the site.

P.A. reg. ref. 13/381: Application to extend the appropriate period of planning permission reg. ref. 09/103 for a dwelling house and wastewater treatment system for Claire McNulty refused on 16th September 2013 owing to a change in the County Development Plan policy regarding direct access onto national roads.

.A. reg. ref. 09/103: Permission granted for a single storey four-bedroom dwelling house, septic tank, and foul sewer treatment plant for Claire Conway on 2nd May 2009. The following conditions are noteworthy:

Condition No. 2:

- a) The proposed dwelling when completed shall be first occupied as the place of residence of the applicant, members of the applicant's immediate family or their heirs and shall remain so occupied for a period of seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant.
- b) Before development commences, the applicant shall enter into an Agreement with the planning authority, pursuant to Section 47 of the 2000 Planning and Development Act providing for the terms of this occupancy.
- c) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority, a written statement of the confirmation of the first occupation of the dwellings in accordance with paragraph (a) and the date of such occupation.
- d) This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.

A Section 47 Agreement in compliance with Condition No. 2(b) was signed and sealed by the Council on the 12th December 2013.

Condition No. 6(a):

- a) The proposed wastewater treatment system and percolation area/polishing filter shall be located, installed and maintained in accordance with the details submitted on 05/02/09 and 'Wastewater Treatment Manuals: Treatment Systems for Single Houses', EPA (2000) or any amended version of this document. No system other than the type proposed in submissions and approved by this permission shall be installed unless otherwise agreed in writing with the Planning Authority.
- b) Certification by the system manufacturer that it has been properly installed and tested shall be submitted to the Planning Authority within 4 weeks of the date of installation.

- c) A person on the Clare County Council Register of independent, suitably qualified agents/consultants who shall certify that it has been completed in accordance with the submitted details shall supervise the construction of the percolation area. This certification to include suitable photographs shall be submitted to the Planning Authority within 4 weeks of the completion of these works.
- d) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of 3 years from the first occupancy of the house and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to an agreed with the Planning Authority within 4 weeks of the date of installation.
- e) Surface water soakaways shall be located such that drainage from this area shall be diverted away from the location of the septic tank/percolation area.

Condition No. 9(f):

No changes are permitted to the agreed window sizes or design. No neo-Georgian style plastic glazing bars or other decorations are permitted.

Condition No. 14:

No further development on this site shall hereby be permitted that would otherwise constitute 'exempted development' under the Planning and Development Regulations 2001-2008.

Adjoining Site:

P.A. reg. ref. 08/624: Planning application for a dwelling house, septic tank, and foul sewer treatment plant for Claire Conway on an elevated site to the southeast of the subject site withdrawn on 7th August 2008 subsequent to a request for further information relating to visual amenity and access.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

The site is situated in the open countryside in an area identified as being 'under strong urban influence' in the Clare County Development Plan 2023-2029. The N67 national road from which the site is accessed is designated a 'scenic route'.

Objective CDP14.7 of the Plan relates to the protection of scenic routes and ensuring that the impact of proposed developments is minimised through appropriate standards of location, siting, design, finishing and landscaping.

5.2. Natural Heritage Designations

None of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal made by M.J. Duffy Engineer on behalf of Raymond and Marion Conway against the decision of Clare County Council to grant permission.

The grounds of appeal can be summarised as follows:

- The appellants reside on and farm the adjoining family lands. The applicant is a sibling of one of the appellants and was gifted the subject site at a time when she had a housing need and intended to reside in the dwelling on a permanent basis.
- Concerns raised that the planning application seeks to enable the sale of the dwelling in the middle of the family farm.
- Concerns raised that the development would have significant adverse effects on public and animal health including flooding the adjacent farmland.
- The percolation test relied upon in planning application reg. ref. P09/103 was the same as that undertaken in respect of planning application reg. ref.

P08/624 with the trial hole located some 80m from where the domestic wastewater treatment system is now proposed to be located.

- The location of the proposed DWWTS has a slope of 1:3; the previously proposed location for the DWWTS comprised a level field.
- The proposed additional rooms are readily adaptable to provide for 5 no. bedrooms in total; the wastewater treatment system should be capable of accommodating same.
- The applicant constructed the dwelling in contravention of the granted permission including the installation of a septic tank to the east of the dwelling on land on the appellants' farm; this tank has since been removed and the site boundary properly established.
- The depth of the bedrock in the intended location of the proposed soil polishing filter is likely to be an issue as acknowledged in the site assessment carried out in respect of the initial planning application.
- The EPA code of practice has been revised twice since the initial planning application. The 2021 Code of Practice states a site for discharge to ground is unsuitable if the slope of the percolation area / polishing filter exceeds 1:8.
- The proposed polishing filter measures just 24sq.m when the initial proposal specified a hydraulic loading of 20l/m²/d which required a polishing filter of 54sq.m. No T or P values for the ground have been provided and, as such, the required area of polishing filter cannot be determined. No detail of the proposed sand polishing filter has been provided.
- The house has never been completed and, as such, Section 40(2)(a)(iii) of the Planning and Development Act 2000 cannot be relied upon to complete the development.
- It is a condition of planning permission P09/103 that the wastewater treatment system be installed in accordance with the EPA Code of Practice or any amended version of this document.
- The proposed development materially contravenes Objective CDP8.27 of the County Development Plan which states it is an objective of the Council to

permit the development of single houses only where it is demonstrated to the satisfaction of the Planning Authority that the proposed wastewater treatment system is in accordance with the 'Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses EPA (2009)'.

- There is no evidence that the dispersal of surface / storm water within the boundaries of the site, as conditioned by the Planning Authority, is feasible. The appellant is adamant that his land and road will be flooded.
- The applicants do not have the required housing need which grounded the original application and do not intend to live permanently in the house.
- The permission for the existing dwelling expired on 1st May 2014 and the seven-year enforcement period ceased on 1st May 2021. At that stage only the shell of the house was constructed; the wastewater treatment system was not installed. The current situation makes a mockery of the planning process as the applicants are being allowed to install whatever system they like immune from planning enforcement action. The decision of the Planning Authority is a contradiction in terms and unenforceable.

6.2. Applicant Response

AF Engineering responded to the appeal on behalf of the applicants. The response is summarised as follows:

- One of the applicants was willed the family home to the west of the subject site which she subsequently swapped with her brother for the said site.
- Whilst the applicants' timeframe has been delayed somewhat by the recession, their plan is to complete the house for their own use and occupation.
- The applicants have no intention of selling the subject dwelling; condition no. 2 of planning permission reg. ref. P09/103 precludes the sale of the house for a period of seven years after first occupied.
- The existing dwelling and associated hardstanding areas have been in existence for approximately eight years with no incidents of flooding.

- The appellants were fully aware that a septic tank to serve the dwelling was installed on their land and facilitated same. Planning application reg. ref. P22/346 had to be withdrawn on foot of a mutual agreement regarding the boundary of the site being withdrawn by the appellants.
- Section 40(2)(a)(iii) of the Planning and Development Act 2000 provides for carrying out works which are necessary for or incidental to the use of a permitted building outside the five-year duration of the planning permission.
- The issues raised in the appeal regarding the different standards and codes of practice which apply in respect of assessing the site suitability for wastewater treatment are irrelevant.
- The system approved under P09/103 and installed on site complied with the code of practice at the time of the grant of permission.
- Contrary to the appellants' assertions, the house is plastered, first fix plumbing has been completed and it has an electricity supply; the property had a water and telecom connection up until May 2022 when they were cut off by a third party.
- There has been no evidence of flooding since the house was constructed. All surface water generated within the site will be disposed of within the site in accordance with the relevant planning condition.
- The appeal seeks to prevent a family member from completing a home for which planning permission was granted without objections at the time.

6.3. Planning Authority Response

The Planning Authority's response to the appeal is summarised as follows:

- The onsite dwelling is substantially completed; the application indicated the domestic wastewater treatment system granted under P09/103 is to be installed. Section 40(2)(a)(iii) of the Planning and Development Act 2000 (as amended) provides for such works outside the appropriate period. The DWWTS does not form part of this application and the proposed development does not increase effluent loading.

- The management of surface water is regulated by condition no. 3 of the permission as granted.
- Occupancy of the dwellings is regulated by condition no. 2 of reg. ref. P09/103 and condition 1(b) of the subject permission. The applicant is required to comply with same.
- Contributions are payable at residential rates for the increase in floor area greater than 200sq.m i.e. 42sq.m. A condition in this respect was not attached to the permission in error.

6.4. Observations

An observation on the appeal was received from Oisín Conway. The observation can be summarised as follows:

- The observer's parents own the farm surrounding the dwelling; he has helped them install drains to improve the land, some of which can be very wet in wintertime.
- An unauthorised septic tank was installed on the family land (for which retention permission was sought) because the location of the one proposed in the original planning application had not been subject to tests and wouldn't work in the proposed location.
- The percolation test submitted with the planning application for the subject dwelling was undertaken in an adjoining field in respect of an earlier application; a site suitability assessment was not undertaken in respect of the subject site.
- Since the Council's recent decision to grant the current application, the applicants' have installed a septic tank and a small drain field that differs to the drawings submitted with planning application reg. ref. P09/103. The Council can't do anything about this as the seven-year enforcement period has passed.
- The Planning Officer relied on section 40(2)(a)(iii) to allow the completion of the works permitted under reg. ref. P09/103; this provision of the Act does not apply to substantially completed dwellings as referred to by the Planning

Officer. The Council should not be relying on section 40(2)(a)(iii) of the Act because it overlooked the fact that a test had not been carried out on the site in respect of the original permission.

- The permission regulations clearly look for evidence that the site can treat waste without polluting the adjoining lands; this requirement was ignored because the Council knew the site would fail due to the current EPA requirements in respect of site slope.
- The Planning Authority cannot assess elements of the development without satisfying themselves that the rest of the development will comply with planning conditions and its policy. In its assessment of other retention planning applications, the Planning Authority assessed the suitability of the existing septic tank (several planning applications cited and associated reports attached to observation). The retention of the septic tank should have been included with the application and proper testing of the ground carried out.
- Requests permission be refused on the grounds that the development will pollute and flood the family lands.

7.0 Assessment

7.1. I consider the following to be the main issues to be dealt with in this appeal:

- Wastewater Treatment
- Surface Water Drainage
- Rural Housing Need
- Development Contributions
- Appropriate Assessment

7.2. Wastewater Treatment

7.2.1. This planning application comprises two principal elements, namely the retention of the dwelling house as constructed (including attic conversion and alterations to fenestration) and the construction of a conservatory extension for use as a dining area. Neither of these elements would result in an increase in the wastewater

loading on the permitted onsite wastewater treatment system (reg. ref. P09/103) recently installed in accordance with the provisions of section 40(2)(a)(iii) of the Planning and Development Act 2000, as amended. In this regard I note that section 40(2)(a)(iii) provides that the limit of duration of a planning permission shall not apply in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission. I am satisfied that the permitted DWWTS falls within the scope of this provision.

7.2.2. Regarding the loading on the DWWTS, I note that planning permission was granted for a single storey four-bedroom dwelling, and that the submitted floor plans indicate a three-bedroom dormer dwelling with a games room and associated w.c. and a study. Whilst I acknowledge the appellants' point that the games room and study could be used as additional bedroom accommodation, it has become increasingly common for dwellings to incorporate a study and I accept the bona fides of the applicants in this regard. As the proposed games room and associated w.c. has the spatial characteristics of an en-suite bedroom, I consider the revised layout of the dwelling to be akin to a four-bedroom house with a population equivalent of 6 no. residents, as permitted under reg. ref. P09/103. The Board could, if it sees fit, attach a condition that the study shall not be used for human habitation. I concur with the appellants, however, that such a condition would be difficult to enforce.

7.2.3. Both the appellants and the observer have raised concerns regarding the adequacy of the onsite wastewater treatment system as no percolation tests have been carried in the location of the percolation area, which they state is located on a slope greater than 1:3, contrary to EPA's current (2021) CoP for DWWTSs. Whilst I acknowledge these concerns, as I do not anticipate any additional wastewater loading arising from the proposed development, the design or adequacy of the recently installed and previously permitted on-site domestic wastewater treatment system is not a matter that can be revisited under this appeal. This does not, however, relieve the applicant from the requirements of conditions no. 6(a) and (c) of the original permission for the dwelling, which required that the wastewater treatment system and percolation area/polishing filter shall be installed and maintained in accordance with the EPA CoP (2000) or any amended version of the document, and that the construction and

completion of the percolation area shall be certified by an independent, suitably qualified agent / consultant. Furthermore, as per section 2(1)(a) of the Water Services Acts 2007 and 2012 (Domestic Waste Water Treatment Systems) Regulations 2012, the applicants are required to ensure wastewater or sewage effluent shall not emit, discharge, seep, leak or otherwise escape from the system, or part thereof, other than from a place or part of the system where the system is designed or intended to discharge domestic wastewater or sewage effluent. In this case, the permitted DWWTS should discharge to groundwater. If it does not, the appellants may complain to the District Court, as provided for by section 70(6) of the Water Services Act 2007.

- 7.2.4. The appellants' state that the proposed development would materially contravene the County Development Plan objective to permit the development of single dwelling houses where the proposed wastewater treatment system is in accordance with the EPA CoP. It should be noted, however, that permission is being sought to retain design changes and an extension to the previously permitted dwelling only. As previously stated, these changes would not result in additional wastewater loading on the permitted DWWTS. As such, this objective is not relevant to the current application and a material contravention of the County Development Plan does not arise.
- 7.2.5. The appellants and the observer argue that the subject house is not now and never was completed and, as such, the provisions of section 40(2)(a)(iii) of the Planning and Development Act 2000 do not apply. Having regard to the extent of works carried out, which includes the external envelope of the house, I am satisfied that the outstanding works required to complete the permitted development, which are both necessary and ancillary for the completion of the house, fall within the scope of section 40(2)(a)(iii) of the Act.

7.3. Surface Water Drainage

- 7.3.1. The overall footprint of the proposed conservatory extension measures circa 17.4sq.m. The foundation and floor slab of the extension have already been installed. The applicants have indicated in their response to the appeal that the development has not heretofore resulted in flooding of the appellants' lands. Given the relatively small footprint of the proposed extension and the overall size of the

ite, I am satisfied that the additional surface water run-off generated by the proposed extension can be dealt with within the site boundary by way of a soak pit, as proposed. Given the modest scale of the proposed development, it would be both unreasonable and unusual to require the applicant to submit supporting evidence in this regard.

7.4. Rural Housing Need

7.4.1. The appellants state that the purpose of the current application is to facilitate the sale of the subject property and that the applicants no longer have a rural housing need. The applicants have rebuked this assertion and indicate that they intend to reside in the dwelling when completed. This matter has no bearing on the planning application before the Board, which relates to modifications to the design of the permitted dwelling and an extension only. I do note, however, the occupancy requirements of condition no. 2 attached to planning permission reg. ref. P09/103, which the applicants are bound by.

7.5. Development Contributions

7.5.1. The Planning Authority, in its response to the appeal, states that development contributions are applicable to the proposed floor area over 200sq.m which it calculates to be 42sq.m. The additional floor area to be retained and proposed includes that of the attic conversion (92.4sq.m) and the sunroom extension (14.03sq.m). Excluding the attic floor area to be retained, the existing dwelling has a floor area of 135.46sq.m.

The most recent Development Contribution Scheme (2017-2023) for the county provides that a development contribution of €20 per sq.m in excess of 200sq.m (including both existing development and the extension or €20 per sqm of extension where the existing unit is greater than 200sq.m) be levied on extensions to an existing residential unit. The development contribution rate for residential development is also €20 per sq.m for residential floor space greater than 200sq.m. As the application modifies the floor area of the original dwelling by including additional accommodation at attic level, and now seeks to extend the existing dwelling, and the total floor area of the dwelling would amount to 241.89sq.m, a development contribution condition should have been attached to the decision to grant permission. This matter can be addressed here.

7.6. **Appropriate Assessment**

Having regard to the nature and small scale of the development, which comprises the retention of design changes to an existing dwelling and a domestic extension, and the distance to the nearest European sites and the absence of known pathways to European sites, it is considered that 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. Appropriate Assessment is not, therefore, required.

8.0 **Recommendation**

8.1. I recommend that permission be **GRANTED** for the reasons and considerations set out below subject to conditions.

9.0 **Reasons and Considerations**

9.1. Having regard to the nature, design and location of the proposed development and the pattern of development in the area, it is considered that the proposed development would not detract from the scenic amenity of the landscape or the seriously injure the amenities of adjoining properties. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	<p>The development shall be retained, carried out and completed 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, and the development shall be retained and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
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2.	<p>All relevant conditions attached to the previous grant of permission for development at the site (planning register reference number P09-103) shall be strictly adhered to.</p> <p>Reason: In the interest of clarity and the proper planning and sustainable development of the area.</p>
3.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p>Reason: To ensure adequate servicing of the development, and to prevent pollution.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting the 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.</p>

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.

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.



Eoin Kelliher
Planning Inspector

22nd August 2023