



An
Bord
Pleanála

Inspector's Report ABP 315212-22

Development	Refurbish existing house and construct a ground floor and dormer roof extension and a granny flat extension to the existing dwelling house and all associated works.
Location	Clonfadda Tld. Killaloe. Co Clare.
Planning Authority	Clare Co. Council.
Planning Authority Reg. Ref.	22/445.
Applicant(s)	Martin & Mary O' Sullivan.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party
Appellant	Paul Mc Grath.
Observer(s)	None.
Date of Site Inspection	May 18 th , 2023.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in Clonfadda Townland, c 1.6km southwest of Killaloe. Co. Clare. It is located on the east side of the R463 and accommodates a one and a half storey dwelling, which is screened from view by existing vegetation. The dwelling is accessed by a long avenue that meanders through a mature garden. The site slopes down gradient in a generally west to east direction and the area where the house is located is generally flat. The eastern boundary is formed by a drain which flows northwards and discharges into a stream adjacent to the northern site boundary. The stream discharges to the River Shannon to the east.
- 1.2. The site is adjoined to the north by an existing dwelling and agricultural land and to the south by a haulage company with associated yard and buildings. There is an internal access providing connectivity between the two sites. There is a boathouse/shed located adjacent to the south-eastern boundary which is accessed along the southern boundary. To the east beyond the site boundary, there is agricultural land adjoining the River Shannon.
- 1.3. The area is rural in character with residential development in ribbon form along the adjoining road network.

2.0 Proposed Development

- 2.1. The proposal is to refurbish the existing house and to construct a ground floor and dormer roof extension and provide a granny flat. It is proposed to demolish a small section (43.7m²) of the house and to construct the extension to the rear in the area occupied by a patio area. The extension will provide additional floor space on the ground floor and within the attic area and part of the house will be used as a granny flat.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 6. no conditions, which included the following:

Condition No. 2: Occupancy of the proposed granny flat to be occupied by a member of the family of the occupier of the principal dwelling and shall not be let, sold, leased or otherwise used as a separate dwelling unit.

Condition No. 6: Financial contribution

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The principle of the development is acceptable.
- The existing house is well screened from the public road. The design is acceptable and will not have a negative impact on the visual amenities of the area.
- The development will not impact on the residential amenities of the area. There is no overlooking of neighbouring property.
- The existing septic tank is of sufficient size and capacity to accommodate the refurbished dwelling and the recommended distances set out in the EPA Code of Practice are achieved.
- The proposed development will not result in significant adverse on a European site.

3.2.2. Other Technical Reports

Environmental Assessment Officer –there is no potential for significant effects on a European site as a result of the proposed refurbishment and extension works at this location.

Road Design Office – Standard requirements in relation to road drainage, maintenance of sightlines and waste management.

Acting S.E.E Killaloe – Further information required on achievable sightlines and for prevention of surface water run-off onto the public road.

Environment – Confirmation required that the existing wastewater treatment system is fit for purpose and to treat and discharge effluent based on the proposed P.E for the refurbished property.

4.0 Further Information

4.1. Further information was requested seeking the following:

- Screening for Appropriate Assessment Report.
- Report on existing septic tank system by a suitably qualified assessor and its capacity to accommodate additional loading.

4.2. A response to further information was received by the planning authority on October 6th, 2022 and included the following:

- Natura Impact Assessment Screening/Environmental Report (Burke Environmental Services, July 2022).
- Report on Septic Tank: (Environmental Planning Consultants, September 2022).

5.0 Submission

5.1. A submission was received from Paul Mc Grath which raised the following issues:

- Risk of water logging and flooding.
- Footprint of the proposed development is greater than the existing house.
- Ground is unsuitable for a septic tank.
- Proximity to SAC.
- Distances to boundaries of adjoining landowners should be respected.
- Trees and ditches on the site should be retained.
- Existing stream on the site is in its natural form and is free running for fish to access.
- Flood lighting should not be permitted close to SAC.

6.0 Planning History

94/563 – Permission granted for a dwellinghouse and associated site works on November 22nd, 1994.

7.0 Policy and Context

7.1. Development Plan

The operative development plan is the Clare County Development Plan 2023-2029 came into effect on April 20th, 2023. The site is located in a Heritage Landscape (Objective CDP14.5) and adjoins a Scenic Route (CDP 14.7).

7.2. Natural Heritage Designations

The site adjoins the Lower River Shannon SAC (Site code 002165).

7.3. EIA Screening

The proposed development is not one to which Schedule 5 of the Planning and Development Regulations, 2001, as amended, applies and therefore, the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

8.0 The Appeal

8.1. Grounds of Appeal

- Michael Mc Grath is the current owner of the existing house and has given written consent to the applicants to apply for planning permission.
- The adjoining lands are the subject of civil law action. Depending on the outcome of court proceedings the lands to the front and rear of the site could become landlocked.
- There are concerns that the entrance to the proposed development is on land in separate ownership.
- Currently the only right of way to the lands to the front and rear of the proposed development is through a surface yard and workshop which is part of the civil law action.

8.2. Applicant's Response

- The objection is vexatious in nature and is rooted in a land dispute between the landowner and his brother (the appellant).
- The proposed development has no impact or bearing on the adjoining land.
- The attached planning pack indicates clearly that the proposed development does not encroach onto adjoining land.
- The land registry folio map of the adjoining disputed land along with the aerial map image show the site relative to the adjacent disputed and clearly illustrates that the lands are not land locked.
- The lands above the development (as referred to by the appellant) have approximately 100m of public road frontage along with a further 100m of farmyard entrance lane frontage. In addition, there is an entrance gate from the farmland into this land.
- The land below the dwelling is contiguous with the farmyard and is clearly not landlocked.
- The entrance and driveway along the southern boundary do not follow the exact line of the Land Registry map boundary. The deviations are minor in nature and have not been called into question over the past 25 years since the entrance and driveway were erected. The reason for the diversion was to keep away from the stream that runs through the property.

8.3. Planning Authority Response

- Under the provisions of Development Management Guidelines for Planning Authorities, it is stated that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, which are matters for resolution in the Courts.
- The third-party observation received by the planning authority did not raise any doubts regarding sufficiency of legal interest.
- The grounds of appeal do not raise any doubt in relation to the ownership of the subject dwelling or the legality of the current owner providing consent for the proposal.

- The civil dispute appears to affect the existing access arrangements to the dwelling only.
- The planning authority requests the Board to uphold its decision.

9.0 **Assessment**

9.1. **Introduction**

The only matters raised in the grounds of appeal relate to issues of title to land. A number of planning issues were raised in the submission to the planning authority, which are also considered.

The main issues, therefore, are as follows:

- Title to land
- Site drainage
- Appropriate Assessment
- Other matters

9.2. **Title to Land**

- 9.2.1. The applicants in this case are prospective purchasers of the house and have made the application with the written consent of the landowner (Michael Mc Grath). The appellant (Paul Mc Grath) is the owner's brother and a dispute has arisen regarding lands held in family ownership.
- 9.2.2. I draw the attention of the Board to the Development Management Guidelines for Planning Authorities (DoEHLG, 2007), which are also referenced on the Planning Authority's response to the grounds of appeal. The Guidelines (Section 5.13) clarify that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land, which are ultimately matters for resolution in the Courts.
- 9.2.3. As noted in the planning authority's response, no doubts were raised in relation to sufficiency of legal interest during the processing of the application. The planning authority was satisfied that the applicants demonstrated sufficient legal interest to make the application.

- 9.2.4. It would appear that the main issue arising relates to the position of the southern site boundary and the entrance which are not entirely consistent with the land registry maps (Folio CE24427F). The proposed extension would be confined within the existing site and I noted on my site inspection that there are no circumstances on site which would prevent the carrying out of the proposed development within the red boundary line indicated on the submitted drawings.
- 9.2.5. The issue is clearly a legal matter and as such is beyond the scope of the appeal. Should the Board be minded to grant permission for the development, I recommend that the applicants attention be drawn to the provisions of section 34(13) of the Planning and Development Act 2000, as amended.

9.3. **Site drainage**

- 9.3.1. During the processing of the application, the planning authority raised issues regarding the adequacy of the existing septic tank system and its capacity to serve the refurbished dwelling. The house was originally granted permission with a septic tank to be provided in accordance with SR6:1991
- 9.3.2. In response to further information, it has been clarified that there will be no increase in bedrooms and the existing septic tank has the capacity to adequately treat the hydraulic loading associated with the refurbished house. It has been confirmed that a new percolation area has recently been constructed which would improve the overall treatment of wastewater effluent discharging from the septic tank. It is further noted that the separation distances to the house and drain on the site are in accordance with the requirements of the EPA's Code of Practice: Domestic Waste Water Treatment Systems (Population Equivalent <10), 2021
- 9.3.3. The new percolation area is stated to consist of 4 .no 18m percolation pipes and in accordance with the minimum percolation trench length (Table 7.2 of EPA Guidance) for a four-person house. I note that the report submitted in response to further information recommended that that this be increased to 7 no. 18m trenches which is the appropriate minimum length for a 7-person house. This was not included as a specific condition by the planning authority.
- 9.3.4. I would point out to the Board that I was unable to verify the location of the percolation area in the location indicated on the site layout plan. It would appear from

the photographs submitted in response to further information that the percolation area is located closer to the tree line and the northern boundary of the site.

- 9.3.5. I note that a site suitability assessment was not submitted to determine the suitability of the site for the effective treatment and disposal of foul effluent arising. There is no evidence that a trial hole was excavated to determine the location of the water table/ existing ground conditions or that percolation tests have been carried to assess the assimilative capacity of the subsoil. There is no site-specific information submitted to indicate that the design of the installed system is suitable for the subject site.
- 9.3.6. In the absence of a properly constituted site suitability assessment by a qualified assessor in accordance with the EPA 's Code of Practice, it is my opinion that the Board cannot be satisfied that the installed system is capable of the adequate treatment and disposal of the foul effluent. This is particularly important in light of the drain located along the eastern boundary of the site which discharges to a stream along the northern boundary of the site, both of which act as hydrological pathways to the adjacent SAC.

9.4. Impact on SAC and Appropriate Assessment

- 9.4.1. Details of the application were referred by the Board to various prescribed bodies including the DAU but no responses were received. The Screening for Appropriate Assessment carried out by the planning authority noted that the site was located adjacent/partially overlaps the Lower River Shannon SAC (Site code 002165). It concluded that further assessment was required as details of the construction methodology and the capacity and condition of the existing septic tank were unknown.
- 9.4.2. The response to further information includes a report called a Natura Impact Assessment Screening report. It identifies the streams to the east and along the northern boundary of the site as hydrological pathways between the proposed development site and the adjoining SAC. It provides a summary of potential pollution sources associated with construction including demolition, excavation and construction with the potential to impact on the SAC. It notes that the proposed works will be located generally within the footprint of the proposed patio area at the rear of the house and that the distance to the stream to the north will be maintained. I note that the Environmental Assessment Officer of Clare Co. Council was satisfied

that the planning authority had sufficient information to conclude that no significant adverse effects on the SAC were likely to arise.

- 9.4.3. The applicant's screening report notes that there are 2 no. qualifying habitats within the zone of influence of the proposed development, including Floating River Vegetation (3260) and Alluvial forests (91E0). It is further noted that these are not recorded in the vicinity of the proposed development and no downstream impacts are likely.
- 9.4.4. Having regard to the source-pathway-receptor model and the proximity of the SAC, I consider that there is potential for indirect effects (particularly on Floating river vegetation) associated with the migration of pollutants during construction via the streams on the site, which have not been comprehensively considered by the applicant in the screening report. On the basis that uncertainty remains and the potential for significant effects cannot be ruled, I consider that the Board cannot conclude in the absence of Appropriate Assessment and the submission of a Natura Impact Statement that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the Lower Shannon River SAC (Site code: 002165) or any other European site, in view of the site's Conservation Objectives.
- 9.4.5. I would also note that in the absence of a full and comprehensive site assessment, the Board is not in a position to conclude that the site is suitable for the safe treatment and disposal of effluent arising, which could also result in potential indirect effects on the qualifying interests of the SAC.

9.5. **Other matters**

9.6. **Design** – The existing house is well screened and will not impact on the adjoining scenic route. Whilst not raised as an issue in the submissions or in the appeal, I consider that the proposed extension due to its overall design, scale, mass and bulk and lack of effective integration with the roof of the house, is out of proportion with the existing house and significantly detracts from its overall composition and character.

9.7. **Flooding** – I note from the Planning Officer's report that the site is located outside Flood Zone A and B and the applicants have stated that they have no knowledge of

flooding on the site. There will be no interference with the existing stream located adjacent to the northern site boundary.

- 9.8. **Trees/hedgerows** – There is mature planting along the site boundaries and within the site, which will not be impacted by the proposed development. The extension will take place almost entirely within the footprint of the patio to the rear of the house.

10.0 Conclusion

- The proposed extension is acceptable in principle in this location.
- The issues raised in the appeal regarding ownership/title to land are beyond the scope of this appeal.
- In the absence of a site suitability assessment, it has not been demonstrated that the site is suitable for the adequate disposal and treatment of effluent, which is particularly relevant in the context of the surface water systems on the site and their connectivity to the European site.
- In the absence of Appropriate Assessment, it is not possible to conclude that significant effects on the integrity of the SAC and its qualifying interests will not arise.

The Board may consider that some of the issues raised are new issues and avail of its powers under section 137 of the Act.

11.0 Recommendation

- 11.1. On the basis of the above assessment, I recommend that permission for the development be refused for the reasons and considerations set out below.

12.0 Reasons and Considerations

Having regard to the proximity of the proposed development to the River Shannon SAC (Site code 002165) and the existing streams on the site which function as hydrological pathways between the site and the SAC, and the absence of a site suitability assessment to establish the suitability of the site for the disposal and treatment of foul effluent, it is considered that the potential exists for indirect effects

on qualifying habitats for which the site is selected associated with the migration of sediments and other pollutants to surface water. On the basis of the information provided with the application and the appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects would not result in adverse effects on the integrity of the Lower Shannon River SAC (Site code: 002165), in view of the site's Conservation Objectives.

In such circumstances, the Board is precluded from granting permission for the development.

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.

Breda Gannon
Planning Inspector

15th, June 2023

