



An
Bord
Pleanála

Inspector's Report

ABP-315543-23

Development	Retention of extension to dwelling, garage and relocation of sewerage treatment unit, and construction of percolation area, north and part east site boundaries and all associated site works
Location	Ballinagun East, Cree, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	22265
Applicant(s)	Joe Garry
Type of Application	Permission
Planning Authority Decision	Grant Permission with Conditions
Type of Appeal	Third Party
Appellant(s)	Michael Crowe
Observer(s)	None
Date of Site Inspection	19 th June 2023
Inspector	Eoin Kelliher

1.0 Site Location and Description

- 1.1. The subject site is situated in the townland of Ballinagun East, circa 1.25km south of the village of Cree, Co. Clare. The site is accessed from the R483 regional road and has a stated area of 0.187ha.
- 1.2. The site comprises a traditional cottage dwelling with rendered walls and a pitched slate roof externally. There's a detached garage to the rear (north) of the dwelling and an existing wastewater treatment unit to the side (east) of the dwelling. The dwelling is accessed from the south via a driveway which terminates to the front of the garage. The boundaries of the site are predominantly defined by drystone walls, hedging and trees. The rear (northern) and part of the side (eastern) boundary of the site surrounding the proposed percolation area is undefined save for an electric fence. The topography of the site rises gently to the front of the dwelling. The site of the dwelling is cut into the slope of the site with the most northern part of the site at a higher level. From here the topography falls away towards the neighbouring dwelling to the north and the public road to the west.
- 1.3. The surrounding area is characterised by agricultural fields. There is a cluster of farm buildings and a bungalow dwelling to the west of the site, on the opposite side of the public road. There is a holy well (St. Margaret's), which is a recorded monument, in the adjoining field to the south of the site. An agricultural field separates the site from the neighbouring dwelling to the north. There is a ringfort located circa. 135m northeast of the site.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of side and rear extensions (31.26sq.m) to the existing dwelling and the adjoining detached garage (24.76sq.m), relocation of the on-site sewerage treatment unit and revisions to the site boundaries.
- 2.2. Permission is also sought to install the percolation area permitted under planning application reg. ref. 00/1309 to the north of the dwelling and construct sod and stone boundary walls on the northern and part of the eastern boundaries of the site.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 12th December 2022 Clare County Council decided to grant permission subject to 5 no. conditions. The following conditions are noteworthy:

Condition No. 2 that the northern and eastern boundaries of the site shall be in accordance with the drawings and particulars submitted to the Planning Authority and amended by the additional information.

Condition No. 3(a) that the proposed percolation area shall be located, installed and maintained in accordance with the details received by the Planning Authority and the EPA Code of Practice for Domestic Wastewater Treatment Systems.

Condition No. 4(a) regarding the monitoring of ground works by a suitably qualified archaeologist.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Report

The Planning Officer's initial report recommended seeking further information as follows:

- An archaeological impact assessment report regarding the impact of the development on undiscovered archaeological remains.
- Details of the design, condition and capacity of the existing septic tank.
- Details of the proposed percolation area demonstrating compliance with the EPA Code of Practice for DWWTS and details of the onsite percolation tests which informed the design of the percolation area.
- Details of the height and design of the proposed sod and stone ditches, which should be stock proof. It was advised that where the said boundaries encroach onto adjacent lands the written consent of the adjacent landowner is required.

Further Information

The applicant submitted the following further information on the 21st July 2022:

- An Archaeological Report prepared by Eddie Danaher archaeologist dated 13th October 2002 in respect of Condition No. 6 of planning application reg. ref. 00/1309.
- Site Characterisation Report prepared by Thomas Burke dated 8th June 2022.
- Revised Site Layout Plan drawing no. P/21/233/SL_FI-01 dated 21st July 2022 including a section drawing of a proposed 0.5m wide by 0.5m high sod and stone ditch.
- Site Section drawing dated June 2022 showing proposed wastewater treatment unit and percolation area.

The Planning Authority considered the further information significant. The applicant informed the public of this fact by way of new public notices.

The applicant submitted Unsolicited Further Information on the 18th August 2022 comprising revised Site Layout Plan drawing no. P/21/233/SL_FI-02 dated 21st July 2022 showing a proposed 1.5m wide by 1.5m high sod and stone ditch.

Further Information Report

States that the matter of archaeological impact has not been resolved as the submitted Archaeological Report related to ground disturbance associated with the site access road only. Clarification of further information was sought.

Clarification of Further Information

The applicant submitted a Desk-Based Archaeological Assessment Report prepared by Margaret McNamara of TVAS Ireland Ltd. on 19th October 2022.

The Planning Authority considered the clarification of further information significant. The applicant informed the public of this fact by way of new public notices.

Clarification of Further Information Report

The Planning Officer notes that any potential disturbance of archaeological remains is said to have been unlikely and concurs with the recommendation of the submitted

Archaeological Assessment that monitoring of the proposed groundworks be carried out. A decision to grant permission subject to 5 no. conditions was recommended.

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

3.2.2. Other Technical Reports

Environmental Technician: Satisfied that the matters raised in Items 2(a) & (b) of the request for further information request have been addressed and sets out recommended conditions regarding the design and installation of the proposed percolation area, the maintenance of the wastewater treatment unit and the management of surface water.

Area Engineer: No observation to make.

Road Design Planning Report: Sets out its requirements for surface water drainage, construction waste and sight distances at junctions.

3.3. Prescribed Bodies

Department of Housing, Local Government and Heritage (Development Applications Unit): By letter dated 29th April 2022 and again on 2nd August 2022 the DAU advised that the proposed development site is in the Creegh Freshwater Pearl Mussel catchment and that Clare County Council must ensure the proposal will not impact on water quality within the catchment.

3.4. Third Party Observations

Third-party submissions were made by Michael Crowe, the appellant, at all stages of the application. The issues raised in the submissions are echoed in the grounds of appeal summarised in Section 6.1 below.

4.0 Planning History

P.A. reg. ref. 00/1309: Permission granted 19th September 2000 for the provision of a wastewater sewage treatment system and relocation of existing site entrance for Joseph Garry.

P.A. reg. ref. 21/1128: Planning application for the retention of an extension to the existing dwelling, relocation of sewerage treatment unit and percolation area, revision of site boundaries and construction of a garage along with all associated works for Joe Garry withdrawn 10th December 2021.

P.A. reg. ref. 21/1128: Planning application for the retention of an extension to the existing dwelling, relocation of sewerage treatment unit and percolation area, revision of site boundaries and construction of a garage along with all associated works for Joe Garry withdrawn 24th March 2022.

5.0 Policy Context

5.1. Clare County Development Plan 2023-2029

The site is situated in a settled landscape and an area under strong urban influence as identified on Map C (Landscape Designations) and Map D (Areas of Special Control) of the County Development Plan.

The site is partly located within the Zone of Notification for a recorded monument (St. Margaret's Well – RMP No. CL047-034).

Objective CDP11.32(g) states it is an objective of the Council to permit the development of single dwelling houses in unserved areas 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 for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), EPA (2021).

Objective CDP.10 states it is an objective of the Council to protect the Zones of Archaeological Potential located within both urban and rural areas as identified in the Record of Monuments and Places.

5.2. Natural Heritage Designations

None of relevance.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third-party appeal against Clare County Council's decision to grant permission. The grounds of appeal are summarised as follows:

- The Planner's CFI report incorrectly states that no submissions had been received; the appellant made a valid submission on the CFI, which contained vital information, that was not taken into consideration in the Planner's assessment.
- No ground levels were provided with the application. The ground slopes up from the road more than the maximum allowable slope (1:8) as set out in the EPA Code of Practice.
- There is a risk of leachate entering the appellant's lands to the north of the site, which are downgradient of the proposed percolation area, as the distance from the percolation area to the site boundary is below the EPA Code of Practice requirements.
- The proposed development cannot comply with the EPA Code of Practice.
- The proposed 1.5m wide by 1.5m high stone and sod ditch does not constitute a stock proof fence and was not agreed with the appellant. It has been set back into the site a marginal distance from the common boundary. This reduces the separation distance that can be achieved from the percolation area.
- The location of proposed ditch would result in part of the applicant's folio title being located outside the physical boundary of the site and within the physical boundary of the appellant's lands. This has the potential to breach Section 43 and 44 of the Land and Conveyance Reform Act 2009, which states the carrying out of works to a party structure must not cause substantial damage or inconvenience to the adjoining owner.
- The appellant has tried to resolve the boundary issue with the applicant in recent years to no avail. His livestock, which are his livelihood, must not be put at risk because of the proposed works.

- The use of the further information and clarification of further information provisions by the Planning Authority exceeds the intended interpretation of the Planning Regulations, giving numerous opportunities to the applicant to correct serious and wilful omissions.

6.2. Applicant Response

None.

6.3. Planning Authority Response

The Planning Authority's response is summarised as follows:

- The Planning Authority considered that there was sufficient information available within the application, and the further information and clarification of further information responses, to make an appropriately informed determination.
- Wastewater issues were resolved through the further information process and are managed by condition no. 3 of the permission.
- The Planning Authority refers to the assessment in the Planner's Report in respect of the further information item no. 3 and condition no. 2 of the permission regarding boundary treatments.

6.4. Observations

None.

7.0 Assessment

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

- Design of Percolation Area
- Boundary Issues
- Appropriate Assessment

7.2. Design of Percolation Area

7.2.1. I note the following from the submitted Site Characterisation Form:

- The existing dwelling on the site, as extended, has a population equivalent of 4 persons.
- The site is in an area comprising locally important aquifer bedrock with moderate groundwater vulnerability.
- The groundwater protection response is, therefore, R1. As such, the proposal is acceptable subject to normal good practice (i.e. system selection, construction, operation and maintenance in accordance with the EPA Code of Practice).
- There are no rushes or drainage ditches on the site which suggests free draining soil with good percolation.
- A trial hole was dug to a depth of 2.5m; bedrock and the water table were not encountered.
- The subsurface percolation test revealed an average value of 32.56min/25mm.
- It is proposed to utilise the existing secondary treatment system from which effluent would be pumped to a calming chamber before discharging by gravity into 500mm wide trenches (Option 3 as per Table 10.1 of the EPA Code of Practice).

7.2.2. As per the Site Layout Plan drawing submitted with the Site Characterisation Form, 6 no. 8 metre trenches are to be provided. This proposal accords with the required minimum of 12 metres per person where percolation values are between 21 and 40 and gravity discharge is proposed.

7.2.3. The appellant's main issue with the proposed percolation area is that it would be located on ground having a slope of 1:7, which is greater than the EPA Code of Practice's minimum requirement of 1:8. The appellant has undertaken a survey of ground levels along the northern boundary of the site and in the public road in this regard. The appellant states site improvement works to a depth of 1.29m would be required to correct this matter and points out that Section 6.7 of the CoP does not allow site improvement works where the slope exceeds 1:8.

- 7.2.4. Notwithstanding the foregoing, the current application relates to a long-established dwelling. Accordingly, I do not consider the strict application of the Code of Practice requirements appropriate in this instance. I note the presence of a downgradient holy well in the adjoining field to the south of the site and I consider the proposed location of the percolation area to the rear (north) of the dwelling, as previously permitted, reasonable. Whilst the slope of the site at this location may exceed 1:8, relatively minor cut and fill ground works would correct this matter without the need to import soil. Furthermore, I consider the risk of leachate entering the appellant's lands low given that the ground does not fall significantly for some distance north of the site and the invert level of the proposed percolation trenches would be 0.9 metres below ground level.
- 7.2.5. As the proposed percolation area would provide for an improved standard of effluent treatment overall, I am satisfied that it would not be prejudicial to public health.

7.3. **Boundary Issues**

- 7.3.1. The appellant states that the proposed 1.5 metre wide by 1.5 metre high stone and sod ditch would not be stock proof and would result in a situation where land belonging to the applicant would be located on the appellant's side of the boundary. I am satisfied that the height and construction of the proposed boundary wall would prevent livestock from entering the grounds of the proposed percolation area given that such walls are typical of field enclosures. Whilst the design of the boundary would result in a reduced separation distance from the proposed percolation area to the physical boundary of the site, the required 3m separation distance to the common boundary line and the required 1 metre buffer surrounding the percolation area would be maintained. The extent of the applicant's land that would be located outside the proposed boundary wall would be negligible. Furthermore, I am satisfied that the proposed boundary wall can be constructed without giving rise to substantial damage or inconvenience to the appellant's property. The Board should note that boundary disputes are ultimately a civil matter which do not generally fall within the scope of a planning assessment.

7.4. **Appropriate Assessment**

Having regard to the nature and small scale of the proposed development, and the distance to the nearest European Sites, and in the absence of any hydrological or other connections to European Sites, it is concluded that no Appropriate Assessment issues arise as 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 retention permission and permission be granted.

9.0 **Reasons and Considerations**

Having regard to the rural location of the site in a 'Settled Landscape' as identified in the Clare County Development Plan, and the nature and scale of the proposed development, it is considered that the proposed development would not, subject to conditions, detract from the amenities or the archaeological heritage of the area, and would not be prejudicial to public health. 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 retained, carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further particulars submitted on 21 st of July 2022, 18 th August 2022 and 8 th November 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, and the development shall be retained and completed in accordance with the agreed particulars.
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	<p>Reason: In the interest of clarity.</p>
2.	<p>a) The proposed percolation area shall be in accordance with the standards set out in the document entitled “Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)” – Environmental Protection Agency, 2021.</p> <p>b) Within three months of the installation of the percolation area, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the percolation area is constructed in accordance with the standards set out in the EPA Code of Practice.</p> <p>Reason: In the interest of public health.</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>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –</p> <p>a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development,</p> <p>b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers is appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p>

	Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.
5.	The garage to be retained shall be used solely for purposes incidental to the enjoyment of the dwelling house and shall not be used for any commercial purpose or for human habitation. Reason: In the interest of residential amenity and clarity.

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

4th July 2023