



Development	Retain and complete existing dwelling, domestic garage, effluent treatment system, site boundaries, connection to services and associated site works previously permitted under PA. Ref. P06/2149.		
Location	Shandrum, Newport, Co. Mayo		
Planning Authority Ref.	P23/6		
Applicant(s)	Cathal & Maryrose Brady		
Type of Application	Retention & Permission	PA Decision	Grant Retention & Permission
Type of Appeal	Third Party	Appellant	Michael McLoughlin
Observer(s)	None		
Date of Site Inspection	22 nd August 2023	Inspector	Ian Campbell

1.0 Site Location/ and Description.

The appeal site is located in the townland of Shandrum, east of the N59 and c. 2 km south of Newport, Co. Mayo. The appeal site is situated on the northern side of a local access road (L-54268), has a stated area of 0.249 ha. and accommodates a recently constructed detached 1.5 storey dwelling and a detached garage.

The adjoining area is rural in character. The site to the immediate west accommodates a partially constructed detached house. The site to the north-east, which is elevated relative to the appeal site, accommodates a detached dwelling. Lands to the south on the opposite side of the L-54268 are in agricultural use.

1.2 Proposed development.

The proposed development, as described in the public notices, entails '*planning permission to retain and complete an existing dwelling house and domestic garage which were previously granted permission under planning reference P06/2149, including effluent treatment system and site boundaries as constructed on site, together with all associated site works and connection to existing services*'.

The applicants state that they purchased the house in 2021 and that at this time the house was constructed up to wall plate level. Based on my site inspection and the information submitted with the planning application and the appeal I consider that the proposed development comprises retention permission for the development which was undertaken after the expiration of the permission granted under PA. Ref. 06/2149, as extended (i.e. after January 2017).

The applicant refers to the house as being 95% completed and that drainage works have yet to be fully completed. On this basis the proposed development therefore also comprises permission to complete the development.

1.3 PA's Decision.

The Planning Authority issued a Notification of Decision to GRANT permission on the 1st March 2023 subject to 10 no. conditions.

The report of the Planning Officer notes that there is no requirement for the applicant to demonstrate housing need.

1.4 Planning History.

The following pertains to the appeal site:

PA. Ref. 06/2149 – Permission GRANTED for a house, garage and waste water treatment system.

The following conditions are pertinent;

Condition No. 5 – front boundary to be set-back 4.5. metres from road edge.

Condition No. 6 – vehicular entrance to be relocated to eastern boundary so as to provide a shared entrance.

Condition No. 7 - surface water run-off from the site shall not discharge onto the public road or adjoining lands.

This permission was subsequently extended under PA. Ref. 06/21490 up to the 14th January 2017.

The following permission relates to the adjoining site to the west;

PA. Ref. 06/2146 - Permission GRANTED for a house, garage and waste water treatment system.

1.5 Planning Policy

The relevant Development Plan is the Mayo County Development Plan 2022-2028. The appeal site is not subject to any land-use zoning.

The provisions of the Mayo County Development Plan 2022 – 2028 relevant to this assessment are as follows:

- Section 2.12, Volume 2 (Development Management Standards) – Surface Water

1.6 Natural Heritage Designations

Clew Bay Complex SAC (Site Code – 001482) – c. 0.5 km west of the appeal site.

1.7 The Appeal

1.7.1 Third Party (Michael McLoughlin)

- A roadside drain has been diverted, affecting the appellant's field.
- The road has been damaged by site traffic.
- The Planning Authority considered that an occupancy clause did not apply despite the house having not being completed.
- Concerns raised by the appellant in his submission to the Planning Authority regarding the impact of the proposal on his septic tank, the installation of solar

panels, the size of the site and the creation of ribbon development were not addressed by the Planning Authority.

- Part of roadside boundary has been removed.
- A fence has been erected dangerously close to the road.
- Percolation tests should have been required as site levels on the site have changed since 2006.
- No soakaways have been constructed.

1.7.2 P.A. Response

None received.

1.8 EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

1.9 AA Screening

The appeal site is located c. 0.5 km east of Clew Bay Complex SAC. Having regard to the nature and limited scale of the proposed development and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

2.0 Assessment

2.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Scope of Appeal

- Drainage
- Issues Arising

2.2. Scope of Appeal

- 2.2.1. In response to the issue of the solar panels having being installed on the roof of the dwelling the applicants contend that the intention of the proposal is to seek retention permission for the house as constructed. In addition to the installation of solar panels, from inspecting the floor plans and elevations submitted under PA. Ref. 06/2149 and the drawings furnished with the current application/appeal I note a number of divergences, specifically in relation to fenestration/opes, roof lights, the omission of a chimney and the construction of rear annex. Whilst these elements, including the solar panels, have not been referred to in the development description contained in the public notices having regard to the nature of these changes I consider that they can be determined under this application/appeal in the context of retention permission for the dwelling.
- 2.2.2. The site layout plan submitted under PA. 06/2149 indicated a boundary wall to the front of the site which was recessed from the public road. Condition no. 5 of PA. Ref. 06/2149 required that the wall to the front of the site be set back 4.5 metres from the road edge so as to accommodate parking. The roadside boundary of the appeal site comprises a timber fence set back c. 1 metre from the road edge. The development description contained in the public notices refers to 'site boundaries as constructed on site' and as such I consider that the application includes reference to the repositioned site boundary and the provision of a timber fence in lieu of a stone wall.
- 2.2.3. Condition no. 6 of PA Ref. 06/2149 required the relocation of the vehicular entrance to the eastern¹ boundary so as to provide a shared entrance with the adjoining development. At the time of the Planning Authorities assessment of PA. Ref 06/2149 the site to the west was the subject of a concurrent planning application for a house

¹ My emphasis.

under PA. Ref. 06/2146² and as such it is reasonable to conclude that reference to 'east' is a typographical error and that the intention was that the subject property and the property to the west were to be served by a shared vehicular entrance. In my opinion the extent of the red line boundary of the appeal site means that there is no opportunity for a shared entrance serving the appeal property with the property to the west. I therefore intend to assess the proposal on the basis of the vehicular entrance as constructed.

2.3. Drainage

- 2.3.1. The main issue raised in this appeal concerns flooding of adjacent lands. The appellant contends that a roadside drain has been diverted, affecting the appellant's field, and that soakaways intended to serve the development have not been constructed.
- 2.3.2. The applicant states that contrary to the assertion of the appellant they have not removed or diverted any drain on the site. The applicants note that the existing drain along the eastern boundary of the appeal site predates the permission granted in 2006 (i.e. PA. Ref. 06/2149) and was straightened by the previously owner of the site. This drain conveys run-off from the public road across the applicants' site. The applicants state that water on the public road emanates from the appellants' lands located on the southern side of the public road and that this run-off then enters their site. The applicants note that there may be ways to address the drainage issues raised by the appellant however these solutions relate to lands outside their site.
- 2.3.3. The dwelling on the appeal site is situated at a lower level relative to the public road, the property to the north-east and the agricultural lands to the south. My site inspection coincided with a prolonged period of rain and I observed run-off from the L-54268 running down the gravel to the front of the appeal site. I did not observe any obvious flooding of neighbouring lands however.

² The same discrepancy is also noted in Condition no. 6 of PA. Ref 06/2146 with the Planning Authority stipulating that the vehicular entrance was to be relocated to the west, whereas reference presumably should have been to the east.

- 2.3.4. The site layout plan submitted under PA. Ref. 06/2149 indicated a drain to the front of the appeal site running parallel with the public road. *Drawing No. L-02 'Site Layout Plan'* submitted with the current planning application/appeal indicates 'a new drainage channel along entrance to connect to existing surface water drain along site boundary'. Based on my site inspection this does not appear to have been constructed. Run-off within the appeal site appears to discharge to the drain along the eastern boundary of the site. Due to the topography of the appeal site and the public road the drain to the east of the site conveys run-off from the road flowing down along the side/east of the appeal site. The installation of the drain along the front of the appeal site, as indicated on the site layout plan, may address any issues of flooding where surface water collects on the L-54268. However it is also possible that flooding in the vicinity of the appeal site is as a result of other factors unconnected with the applicants' lands and the drainage regime of same. In any event I am satisfied that the proposed development, which includes the provision of a drain along the front of the site will not result in any significant issues of flooding on the appeal site or to any property in the vicinity. On this basis I do not consider that the proposed development would warrant a refusal of permission on this basis.
- 2.3.5. The appellant notes that soakaways have not been constructed on the appeal site. An annotation of the site layout plan under PA. Ref. 06/2149 appears to indicate a soakaway to the rear/north of the garage. The site layout drawing submitted under the current planning application/appeal however does not indicate any soakaways and it would appear based on the site layout drawing submitted under the current planning application/appeal that run-off within the appeal site is directed towards the drain running along the eastern boundary of the appeal site (i.e. the site layout refers to 'all surface water to existing drain'). The applicants state that if considered necessary they are amenable to providing a soakaway to the rear of the appeal site. In my opinion the provision of a soakaway would help attenuate run-off from the site in accordance with the principles of Sustainable Urban Drainage Systems (SuDS) and should the Board be minded to permit the proposal I recommend that details of a soakaway(s) to serve the structures on the site be agreed with the Planning Authority.

2.4. Issues Arising

2.4.1. Site Suitability

The appellant contends that percolation tests should have been required as site levels on the site have changed since 2006. The applicants state that levels on the appeal site have not been altered since the percolation tests were undertaken in 2006. The suitability of the site for a waste water treatment system was previously assessed under PA. Ref. 06/2140 and was found to be acceptable by the Planning Authority. I therefore do not consider that revised percolation testing would be warranted in this instance.

2.4.2. Ribbon Development

The appellant notes that the Planning Authority have not considered his initial submission in relation to the proposal resulting in the creation of ribbon development. I note that the Sustainable Rural Housing, Guidelines for Planning Authorities defines ribbon development as 5 or more houses on any one side of a given 250 metres of road frontage. There are 5 no. houses on the northern side of the L-54268, however having regard to the fact that the dwelling on the appeal site has been permitted under PA. Ref. 06/2149, and the current proposal seeks to regularise the situation which has arisen as a result of the expiration of the permission, with the house being substantially complete, I do not consider that the proposed development would warrant a refusal on the basis of the creation of ribbon development.

2.4.3. Solar Panels

The appellant notes that his submission to the Planning Authority in respect of solar panels was not considered. The appellant's submission recommended that the solar panels be relocated to the rear roof slope to minimise their visual impact and also to address the impact of glare to the appellant who uses machinery on the lands opposite. I am satisfied that the solar panels do not result in any significant adverse impacts on the visual amenity of the area. Furthermore, I note that the solar panels are by their nature designed to absorb light and as such I am satisfied that they will

not result in any significant issues in terms of glint/glare, or cause a hazard to road users, or to the appellant when operating machinery in the area.

2.4.4. Occupancy Clause

The appellant's appeal submission notes that the Planning Authority considered that an occupancy clause did not apply despite the house not being completed. Condition no. 1 of PA. Ref. 06/2149 required that the dwelling when completed shall be first occupied by the applicant or members of his immediate family, and shall remain so for five years. As noted by the applicant, the house was sold to the applicant in 2021 without having been previously occupied. Map 3.1 of the Mayo County Development Plan 2022-2028 identifies the appeal site within an area under strong urban influence and Objective RHO1 requires that an occupancy condition is to be applied to developments for single houses within such areas. Objective RHO1 however also provides that the residency condition shall not affect the sale of the house or site by a mortgagee in possession or by any person deriving title from such a sale where force majeure applies, for example, death, illness, relationship break up, emigration, unemployment, relocation due to work issues which would necessitate a new primary place of residence. Whilst I note that no information has been submitted with either the planning application or the appeal in respect of the background to the sale of the property, noting the period which has elapsed since permission for the house was granted, and notwithstanding that the dwelling has not been completed, and consequently resided in, I consider it reasonable that an occupancy condition would not apply should the Board be minded to permit the proposed development.

2.4.5. Set back from roadside/entrance

As addressed above at paragraph 2.2.2 Condition no. 5 of PA. Ref. 06/2149 required a setback of 4.5 metres between the proposed front boundary and the road edge. The Planning Authorities rationale for this set-back would appear to relate to the facilitation of car parking in this area, with Condition no. 5 referring to this area being surfaced in a manner to facilitate the parking of cars. In my opinion facilitating the parking of cars to the front of the appeal site would not be desirable, however having regard to the narrow nature of the L-54268 a setback between the front roadside boundary and the road edge is warranted so as to facilitate the passing of vehicles. The applicants state

that they are amenable to setting the front boundary of the site back. Should the Board be minded to grant the proposed development I recommend that a setback of 3 metres be provided between the roadside edge of the L-54268, as defined by the extent of the road surface and the front boundary fence. This will entail an additional set-back of c. 2 metres given that the existing fence which is in-situ is currently set back c. 1 metre from the road edge.

2.4.6. Development Contributions

Section 10.6 of the adopted Mayo County Council Development Contribution Scheme 2023 provides that '*no exemptions or waivers are applicable for retention permission and that retention of minor changes to previous permitted developments shall be assessed on a case by case basis*'. Based on the information submitted with the planning application and the appeal it would appear that the majority of the development permitted under PA. Ref. 06/2149 was complete on the expiration of the permission and that I note that the changes between the development permitted under PA. Ref. 06/2149 and the development as constructed are relatively minor. On this basis I consider that development contributions should not apply to the proposed development.

3.0 **Recommendation**

- 3.1. Having regard to the above it is recommended that retention and permission is granted based on the following reasons and considerations and subject to the attached conditions.

4.0 **Reasons & Considerations**

Having regard to the provisions of the Mayo County Development Plan 2022-2028 and to the nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would not result in flooding, would not be prejudicial to public health, would not seriously injure the amenities of the area or of property in the vicinity, would not have a significant impact on European sites in the vicinity, and, would be in accordance with the proper planning and sustainable development of the area.

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 with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The garage shall be used solely for use incidental to the enjoyment of the main dwelling and shall not be sold, rented or leased independently of the main dwelling and shall not be used for the carrying on of any trade, business or commercial/industrial activity. The structure shall not be used for the purposes of independent habitation.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>Prior to occupation of the house, the developer shall enter into a water connection agreement with Uisce Éireann.</p> <p>Reason: In the interest of public health.</p>
4.	<p>Within 2 months of this grant of permission/retention permission, the applicant shall submit to the Planning Authority for its written agreement, details including calculations, sizing and location(s) of a soakaway(s) to cater for surface water run-off from the structures on the site and hardstanding areas. Surface water from the site shall not discharge to the public road or adjacent property.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Prior to occupation of the house the front boundary of the site shall be set back 3 metres from the edge of the L-54268, as demarcated by the surfaced area of the road. The area between the front boundary of the site and the edge of the L-54268 shall be levelled and surfaced in tarmacadam.</p> <p>Reason: In the interest of traffic safety.</p>

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.

Ian Campbell
Planning Inspector

5th September 2023