



An  
Bord  
Pleanála

## Inspector's Report ABP-317331-23

<b>Development</b>	Alter Condition No. 3 of P04/2598. This will involve changing house No. 10 from its use as a holiday home to its use as permanent residence.
<b>Location</b>	10 Cluain Uilinn, Spanish Point Road, Miltown Malbay, Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	23193
<b>Applicant(s)</b>	Michael Brennan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Michael Brennan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	19 <sup>th</sup> December 2023
<b>Inspector</b>	Ciara McGuinness

## 1.0 Site Location and Description

- 1.1. The site is within the settlement boundary of Miltown Malbay, to the southwest of the town centre. The site is located within an existing development of holiday homes comprising 30 no. houses called Cluain Uilinn. The form of development within this estate is semi-detached, storey-and-a-half dwellings, with private rear amenity space, a small garden and parking to the front. The estate is accessed from the N67.
- 1.2. The site is bound to the northeast by the local GAA pitch, and to the southwest by undeveloped lands and residential development. The rear (north) of the site backs onto the L6224 local road. A service station is located directly across from the site access on the N67.
- 1.3. The stated floor area of the dwelling is 106.50sqm and the overall site area is stated as 0.0280ha.

## 2.0 Proposed Development

- 2.1. The development the subject of this appeal comprises the alteration of Condition No. 3 of PA Reg Ref P04/2598, which will involve the change of use of No. 10 Cluain Uilinn from holiday accommodation to permanent residential accommodation. No physical works to the existing properties or layout are proposed as part of the proposed development.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse planning permission for the development for the following stated reason;

*“The subject site is located within an established holiday home/tourist development, on land zoned for ‘Tourism-TOU1’ in the Clare County Development Plan 2023-2029, whereby the existing permitted dwellings are restricted to holiday home use as set out under condition no.3 of PI Ref 04/2598. It is considered that the proposed development would be contrary to the zoning provision for the area where residences for permanent occupation are normally not permitted on land zoned as*

*Tourism. In addition, the proposed development, by reason of the proposed change of use of the house from a holiday home to a permanent dwelling, would undermine the coherence of use already established at this location, would dilute the provision of tourism accommodation and would set an undesirable precedent for further such developments at this location. The proposed development would if granted materially contravene condition no.3 of Pl. Ref 04/2598 and materially contravene a development objective indicated in the plan for the zoning of lands. The proposal would therefore be contrary to proper planning and sustainable development of the area.”*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planners Report (18/05/2023) considered the proposed development in the context of the details submitted with the application, the planning history, the relevant Development Plan and Settlement Plan policies, objectives and zonings. The report also includes a paragraph on Environmental Impact Assessment, Appropriate Assessment and Flood Risk. The report notes that the dwelling is considered suitable for permanent occupancy in terms of internal layout and private amenity space. However, the ‘Tourism’ Zoning does not allow for dwellings for permanent occupancy. The proposed development would therefore contravene the zoning objective for ‘Tourism’. Refusal is recommended.

#### **3.2.2. Other Technical Reports**

West Clare Municipal District – No observation.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

None.

## 4.0 Planning History

PA Reg Ref 98/1137 – Permissions granted in June 1999 for the construction of 10 no. holiday homes along with all ancillary services.

PA Reg Ref 04/713 – Permission refused in June 2004 for the construction of 20 no. holiday homes along with foul sewer, storm water and water main services and extension of service road/footpaths.

PA Reg Ref 04/2598 – Permission granted in September 2005 to construct 20 no. holiday homes and one office suite, along with foul sewer storm water and water main services and extension of service road/footpaths.

Condition 3 states;

*“The proposed units shall be used for short term tourist accommodation only and shall not be used as a place of normal residence without a further grant of planning permission. The units shall not be sold, leased or otherwise disposed of as independent living units. The management company shall be responsible for the management and maintenance of the development including all internal roads, open space, refuse, and lighting services. Details of the company shall be submitted to the Planning Authority for agreement and approval prior to commencement of development.”*

## 5.0 Policy Context

### 5.1. Clare County Development Plan 2023-2029

- 5.1.1. Miltown Malbay is identified as a small town in the County’s Settlement Strategy. The CDP states that these towns are of fundamental importance as employment and tourist centres and as centres for the provision of services and facilities for their resident populations and their rural hinterlands.

#### **Land Use Zoning**

- 5.1.2. The strategy for the individual small towns is outlined in more detail in their respective Settlement Statements and Land Use Plans, set out in Volume 3 of the

Development Plan. A Settlement Plan for Miltown Malbay is set out in Volume 3(d) (West Clare Municipal District Plans).

- 5.1.3. The appeal site is zoned for 'Tourism'. The Development Plan (Section 19.4) states that *'land zoned for Tourism use shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists / holiday makers and visiting members of the public'*.
- 5.1.4. The Indicative Land Use Zoning Matrix (Appendix 2) notes that on lands zoned for Tourism the land use *'Residential – single dwelling (permanent occupation)'* is identified as a use that is not normally permitted. *'Residential – single dwelling (short-term tourist accommodation)'* is identified as being Open for consideration.

#### **Other Relevant Sections/Policies**

- 5.1.5. The following policies/sections are also considered relevant to the consideration of the subject proposal:

#### **Development Plan Objective: Holiday Homes CDP5.14**

It is an objective of the Development Plan:

- a) To permit holiday homes in settlements where the developments are of a scale and at a location which contribute to sustainable communities, while ensuring an appropriate balance between the number of permanent homes and holiday homes;
- b) In settlements where an overconcentration of holiday homes has been identified, namely Ballyvaughan, Bellharbour, Bunratty, Carrigaholt, Doolin, Doonbeg, Fanore, Kilkee, Lahinch, Liscannor, Mountshannon, Querrin and Spanish Point to permit new residential development for permanent occupancy only;
- c) In the settlements of Ballyvaughan, Bellharbour, Bunratty, Carrigaholt, Doolin, Doonbeg, Fanore, Kilkee, Lahinch, Liscannor, Mountshannon, Querrin and Spanish Point to support and facilitate the conversion of some holiday home units to permanent homes or appropriate uses where:

- i) It can be demonstrated that both the dwellings and the associated infrastructure (open space provision, car parking, wastewater capacity etc.) are of a sufficient standard to support the proposed new use; and
- ii) The Planning Authority is satisfied that the conversion will not have a negative impact on the tourism product in the area.

## **5.2. Natural Heritage Designations**

Carrowmore Point to Spanish Point and Islands SAC (Site Code 001021) – 1.8km to the southwest of the site.

Mid-Clare Coast SPA (Site Code 004182) – c.1.8km to the southwest of the site.

## **5.3. EIA Screening**

See Form 1. The proposal is for a change of use and so it is not a “project” for the purpose of EIA.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The following is a summary of the main issues raised in the first party appeal;

- The houses are not part of a tourist village with each of the houses being owned/occupied by individuals.
- The layout and private amenity areas are suitable for permanent use.
- There is a shortage of permanent housing in the area.
- Miltown Malbay Wastewater Treatment Plant needs to be upgraded to create more availability for future developments. This is hindering development.
- The County Development notes the complementary role of Spanish point and Miltown Malbay, with Spanish Point focusing on tourism and Miltown Malbay to further develop its service function.
- A mixture of holiday and permanent occupancy can co-exist at this location.

- There is already a significant provision of tourist accommodation in Miltown Malbay.

## 6.2. Planning Authority Response

The following is a summary of the main points raised in the Planning Authority's response to the first party appeal;

- Comments regarding wastewater treatment and shortage of permanent houses are noted. The argument that most houses are owner occupied does not form a justification for the occupation of this dwelling as a private residence nor does it imply that the change of use from holiday use to private residences which have taken place to date constitute an authorised use.
- Tourism zoning does not make any provision for the application of Part V. If the appellants argument is accepted by the Board, then it would be possible for developers to construct private residences on land zoned for tourism and avoid legal obligations under Part V.
- The appellant has not addressed the reason for refusal. The observations, however compelling from a social and economic perspective, do not form a planning rationale for overturning the decision.

## 6.3. Observations

None

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development
- Appropriate Assessment

## 7.2. Principle of Development

7.2.1. The Cluain Uilinn development is located on lands zoned for 'Tourism'. The Tourism Zoning Objective provided in the Development Plan states that *'land zoned for*

*Tourism use shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourist's / holiday makers and visiting members of the public'. I do not consider that the proposed change of use of existing holiday accommodation to permanent residential use would be consistent with this description. I further note that the Indicative Land Use Zoning Matrix notes that on lands zoned for Tourism, 'Residential – single dwelling (permanent occupation)' is identified as a use that is not normally permitted. In this regard, I do not consider that the proposed development would be consistent with the Tourism Zoning Objective for the site.*

- 7.2.2. The first party argues that there is already a significant provision of holiday accommodation in Miltown Malbay. I note that Section 5.2.14 of the Development Plan relates to Holiday Homes, with Objective CPD 5.14 identifying settlements where there is an oversupply of holiday homes and where only permanent occupancy residential developments will be permitted. These identified settlements (Ballyvaughan, Bellharbour, Bunratty, Carrigaholt, Doolin, Doonbeg, Fanore, Kilkee, Lahinch, Liscannor, Mountshannon, Querrin and Spanish Point) do not include Miltown Malbay. These same settlements were also identified as settlements where the conversion of some holiday home units to permanent homes or appropriate uses is supported and facilitated subject to meeting certain conditions. Again, I note that Miltown Malbay is not one of these identified settlements. In this regard, I do not consider that there is an overprovisions of holiday homes in Miltown Malbay.
- 7.2.3. The first party also contends that there is a shortage of permanent housing in the area. I note the fact that the Core Strategy for the County as set out in Table 3.4 of the Development Plan identifies Miltown Milbay as having a target increase in population between 2023 and 2029 of 43 no. households requiring 2.17 ha. of zoned lands. It is evident from Table 3.4 that land is available over the plan period to meet the target population.
- 7.2.4. As set out above, I do not consider that the first party has clearly demonstrated that the proposed development would be consistent with the Tourism Zoning Objective for the site. I consider that the proposed change of use from holiday home to permanent dwelling would undermine the permitted tourist use of this site and would materially contravene a condition attached to an existing permission. I consider that



the proposed change of use would have a negative impact on tourism facilities in the area. I therefore recommend a refusal of permission.

### **7.3. Appropriate Assessment**

- 7.3.1. Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I recommend that permission be refused based on the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the subject site within an established holiday home/tourist development, on land zoned for 'Tourism' in the Clare County Development Plan 2023-2029, where residences for permanent occupation are normally not permitted, and whereby the description of this zoning objective provides for '*structures and activities which are primarily designed to facilitate tourism development*', it is considered that the proposed change of use to permanent residential occupancy would be contrary to the land use zoning objective, would undermine the coherence of holiday home use in the existing Cluain Uilinn development, and would materially contravene Condition 3 attached to P04/2598. The proposed development would therefore set an undesirable precedent for further such changes of use and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ciara McGuinness  
Planning Inspector

13<sup>th</sup> March 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>			
<b>Proposed Development Summary</b>	Alter Condition No. 3 of P04/2598. This will involve changing house No. 10 from its use as a holiday home to its use as permanent residence.		
<b>Development Address</b>	10 Cluain Uilinn, Spanish Point Road, Miltown Malbay, Co Clare		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b> ✓	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>			Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	No EIAR or Preliminary Examination required
<b>Yes</b>		Class/Threshold.....	Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_