



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319479-24

<b>Development</b>	Retain the garage and house foundation as altered (granted under planning permission P19/670) & complete the construction of the garage and house
<b>Location</b>	Lahardaun, Tulla, Co Clare
<b>Planning Authority</b>	Clare County Council
<b>Planning Authority Reg. Ref.</b>	23/377
<b>Applicant(s)</b>	Mark Bennis
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Terry and Maura Melville
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	31 July 2024
<b>Inspector</b>	Natalie de Róiste

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## **1.0 Site Location and Description**

- 1.1. The site is a rural one, measuring 0.60 hectares, accessed from a local road c. 3 km south-east of Tulla in Co. Clare. It forms part of a larger landholding (c. 1.2 hectares) which comprises a single irregularly-shaped field. The field has been partly levelled, to facilitate the construction of the house and garage the subject of this retention application, with approximately 2 metres in level difference between the excavated area and the original ground level to the north-west. The site contains an unfinished two-storey block-built building (the garage), completed to eaves level, and the raft foundation of a house. A large number of deciduous trees have been recently planted to the north end of the field around the boundaries. There are also various small sheds and greenhouses and a shipping container to the side and rear of the garage, on the raised area of the site, and a caravan parked beside the unfinished garage. Gravel roads lead to the house and garage, and to the shipping container.
- 1.2. The landholding is bordered to the south-east by evergreen forestry; to the north by an open field; to the north-west by the appellants' house, gardens, and access drive; and to the south-west by the public road.

## **2.0 Proposed Development**

- 2.1. To (a) RETAIN the garage and dwellinghouse foundation as altered (granted under Planning Permission /670) & (b) complete the construction of the garage and dwellinghouse
- The foundation of the house has been constructed c. 8 metres east/south east of the permitted location, with little or no change in orientation, and a reduction in finished floor level by c. 1.25 metres.
  - The garage is part completed, and has changed both design and location. The footprint is near identical (c. 7 metres x c. 15 metres), with a finished floor level c. 1.2 metres lower than that permitted. It is proposed to complete it as a two-storey flat-roofed building with a height of 5.7 metres, while a single-storey building with a pitched roof was permitted, with a ridge height of 5.7 metres. The first floor is not internally connected to the ground floor, and has independent external access via a staircase to the west gable. The location

has moved c. 10-12 metres to the north-west, and is c. 46 metres from the appellants' house, rather than c. 56 metres.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Split decision, following receipt of Further Information – permission granted to retain the dwellinghouse foundation as altered and complete its construction, permission refused to retain the garage as altered and complete its construction for the following reason:

The garage/workshop proposed for retention is a substantial structure located on a residential site in a rural area. The Planning Authority considers that the structure, by reason of the lack of clarity in relation to the design rationale and proposed future uses, has significant potential to impact negatively on the residential amenities of the area. It is also considered that the structure, by reason of its scale and bulk, would constitute an incongruous form of development which would seriously injure the visual amenities of the area.

The retention and completion of the garage/workshop would therefore be contrary to the proper planning and development of the area and the retention of same would set an undesirable precedent for other such developments in the area.

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

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

Report dated 23 August 2023

- Principle of development of house, garage, and waste water treatment system established under parent permission P19/670
- Concerns re use of garage, extensive first-floor area with concrete floor accessed by external staircase
- Garage was observed on site visit as having been constructed with gable walls, indicating pitched roof

- No negative impacts on visual amenity to wider area
- Increased bulk of shed does not impact on neighbouring residential amenity due to distance and there is no overshadowing, overlooking, or overbearing impacts.
- Further Information required on use of shed, roof design, and any changes to wastewater drainage due to the lowered finished floor level.

Report dated 14 March 2024, following receipt of Further Information.

- No alterations proposed to wastewater treatment, pump can be provided if necessary, response satisfactory
- Lack of clarity on use of substantial double-height garage building, requirement for concrete floor at first floor level, and externally accessible staircase, notwithstanding applicant's assertion that it will be used as a private workshop by the applicant.

### 3.2.2. Other Technical Reports

- Environment Section – email dated 7 March 2024 – proposal deemed compliant with 2021 EPA Code of Practice, subject to condition.

### 3.3. Prescribed Bodies

None

### 3.4. Third Party Observations

One received, from the appellants, residents of the neighbouring property to the north-west. This lengthy and detailed submission noted the following points in objection to the development:

- Size, proximity, change of purpose and redesign of unauthorised garage structure will impact on their residential amenity, as their house is off-road and faces the subject site, not the road
- Potential for use of the garage for a separate dwelling, two apartments, or a business premises, with negative impacts on neighbouring residential amenity

- Garage and wastewater treatment system should be moved to other side of site, away from their house, and no tall trees planted close to the boundary
- Building has three unfinished gables and a lintel in the elevation facing the third parties, indicating a full two-storey building with first floor entrance or window facing the third parties' site
- Unauthorised development, built in bad faith

This submission also detailed extensive construction history and dealings with the applicant.

## 4.0 Planning History

- On site:

P19/670 (Parent permission)

Permission granted 10 October 2019, for construction of dwelling house, garage, and waste water treatment system, including all ancillary site services and works, subject to 13 conditions. Condition 10 mandated the retention of existing hedgerows, and the planting of native broadleaf trees (minimum size: Heavy standard 12-14 cm girth) in informal clusters through the site, to protect the character of the rural area. Condition 11 prohibited any use for the garage other than a use incidental to the enjoyment of the dwelling.

P13/391 Permission granted to extend the appropriate period of permission  
P08/1411

P08/1411 Permission granted for dwelling house, garage, entrance, effluent treatment unit and associated site works.

- Within blue line boundary (on larger landholding)

P13/390 Permission granted to extend the appropriate period of permission  
P08/1372

P08/1372 Permission granted for dwelling house, garage, entrance, effluent treatment unit and associated site works.

## 5.0 Policy Context

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

Development Plan Objective: CDP4.10 Countryside

It is an objective of Clare County Council:

To ensure that the countryside continues to play its role as a place to live, work, recreate and visit, having careful regard to the viability of smaller towns and rural settlements, the carrying capacity of the countryside, siting and design issues and environmental sensitivities.

Development Plan Objective: CDP14.2 Settled Landscapes

It is an objective of Clare County Council:

To permit development in areas designated as 'settled landscapes' to sustain and enhance quality of life and residential amenity and promote economic activity subject to:

- I. Conformity with all other relevant provisions of the Plan and the availability and protection of resources;
- II. II. Selection of appropriate sites in the first instance within this landscape, together with consideration of the details of siting and design which are directed towards minimising visual impacts;
- III. III. Regard being had to the need to avoid intrusion on scenic routes and on ridges or shorelines.

Developments in these areas will be required to demonstrate:-

- a) That the site has been selected to avoid visual prominence
- b) That the site layouts avail of existing topography and vegetation to reduce visibility from scenic routes, walking trails, water bodies, public amenities and roads.
- c) That design of buildings and structures reduces visual impact through careful choice of forms, finishes and colours, and that any site works seek to reduce visual impact.

The site is located within a rural area under Strong Urban Influence as set out in the Urban and Rural Spatial Strategy (Chapter 4), which is considered an Area of Special Control having regard to the development of new single houses in the countryside, as per Objective CDP 4.14 which sets out criteria for applicants for single houses (Economic Need, and/or Social Need).

## **5.2. Natural Heritage Designations**

Slieve Aughty Mountains SPA lies c. 5 km to the north.

Newgrove House SAC lies c. 6 km to the north-west.

Kilkishen House SAC lies c. 5 km to the south-west.

Danes Hole Poulnalecka SAC lies c. 5 to the south-east.

## **5.3. EIA Screening**

The subject development (alterations to existing permitted house and garage in a rural area) does not fall within a class for which EIAR is required.

## **6.0 The Appeal**

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

One third party appeal was received, from Terry and Maura Melville, neighbours to the west. This appeal can be summarised as follows:

- Condition requested to prohibit the planting of beech trees or trees of similar size along the boundary with the appellants' property, to avoid future overshadowing and impact on daylight. Beeches grow up to 40 m high and 30 m wide, and should be no closer than 15 metres (10 metres for smaller trees) from the boundary.
- Change of location of garage significant, was not appropriately addressed by council or by applicant. No structure should be built this close to their home. Applicant appears to intend completing structure.



## 6.2. **Applicant Response**

None received.

## 6.3. **Planning Authority Response**

The Planning Authority responded as follows on 7 May 2024:

- Permission to retain and complete garage has been refused
- Garage has moved c. 12 metres north of original permitted location, and remains approximately 40 metres from appellants' dwelling
- Planting of trees and hedgerows in a domestic garden is not considered to constitute 'works' as defined in planning act.

## 6.4. **Observations**

None received

## 6.5. **Further Responses**

None received

## 7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Retention and completion of the house
- Retention and completion of the garage
- Landscaping

7.2. Retention and completion of the house

7.2.1. The parent permission (P19/670, granted 10 October 2019) has established the principle of development of a house, garage, and wastewater treatment plant on the site, with all associated landscaping and works. A considerable amount of excavation has been undertaken, and the foundation of the house has been constructed with a floor level c. 1.2 metres lower than originally permitted, with no proposed change to the design. Additionally, it is further east (by c. 8 metres). The appellant asserts (diagram, p. 9 of their appeal) that the orientation of the foundation as constructed does not correspond with that shown in the submitted maps and drawings. I find that the difference if any is small, and having visited the site and reviewed all the documentation (including details on wastewater treatment) I am satisfied that the new location and level of the house will not impact negatively on the appellant, on wider amenities, or on the environment.

### 7.3. Retention and completion of the garage

7.3.1. The retention and completion of the garage has been refused by the Local Authority, and no first party appeal or response to the third party appeal has been lodged. I consider that due to the distance of over 40 metres from the appellants' house, and c. 25 metres from the shared boundary, the garage is not overbearing and does not create overshadowing. It has no impact on their visual amenities due to the orientation of the appellants' house and the mature planting on their site between their house and the garage. While the revised location is closer to the appellant's property than originally proposed, it is not so close that a domestic garage would unduly impact on their residential amenity.

7.3.2. Regarding visual amenities over the wider area, the proposal for a two-storey flat-roofed double garage of 189 sqm would be an incongruous building type in this rural area. While the provision of a flat roof instead of a pitched roof would limit the overall height, it does not result in a well-considered design, in my view. However, due to the location to the rear of the proposed house, which would largely shield it from any views from the road, visual impacts would be minimised.

7.3.3. Nonetheless, I would have significant concerns regarding the scale of the building in this rural area under strong urban influence, notwithstanding any scope of the landscape to absorb its visual impacts. The permitted garage was large, at 90 sqm, and the provision of a first floor has created substantial accommodation. Minimal

information on the use of the enlarged structure has been submitted with the planning application, with a single line in the original application and a further paragraph provided at Further Information stage, indicating it will be used as a workshop for the applicant, (an electrical engineer and an electrician), but not for commercial use. No appeal or submission has been made to the Board by the applicant to justify the retention of the building. In the absence of any details, I have concerns regarding the capacity of such a structure to provide for an inappropriate intensity of use on this rural site, and I consider a grant of retention permission for the building as proposed would be a poor precedent.

#### 7.4. Landscaping

- 7.4.1. The appellants consider the planting of trees as undertaken on the site has potential for negative impacts on their residential amenity. The landscaping of the site has been addressed by Condition 10 of the parent permission (reg ref 19/670), which requires the planting of informal clusters of broadleaf trees. I consider this an appropriate condition, given the rural context of the site, creating suitable landscaping for this rural house. No application has been made to amend this element of the permission, and the condition is still in effect. Should the development not be in compliance with this landscaping condition, that is an issue for enforcement by the Local Authority.

### 8.0 **Appropriate Assessment**

- 8.1. Having regard to the nature and scale of the development proposed (alterations to permitted house and garage), the nature of the receiving environment, the separation distance from the nearest designated site and the lack of connectivity to any designated site, no appropriate assessment issues arise, and it is considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on any European sites.

### 9.0 **Recommendation**

I recommend a split decision, that planning permission be REFUSED for the retention and completion of construction of the garage for the reasons and considerations set out in Schedule 1 below, and that planning permission be

GRANTED for the retention and completion of the construction of the house for the reasons and considerations as set out in Schedule 2 below and subject to the attached conditions.

## **10.0 Reasons and Considerations**

### **Schedule 1 Reasons and Considerations**

The garage proposed for retention is a substantial structure of a design, scale and bulk that is out of character with the rural residential setting and would provide capacity for significant intensity of use, and is therefore considered inappropriate for this rural area under strong urban influence. It is considered that the proposal would be contrary to the proper planning and sustainable development of the area, and a retention permission would set an undesirable precedent for similar types of development in rural areas of the county.

### **Schedule 2 Reasons and Considerations**

Having regard to the existing permitted development on the site, and the minor amendments to the location of the house, it is considered that the retention and completion of construction of the house would be in accordance with the proper planning and sustainable development of the area, subject to the below conditions.

## **11.0 Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 20th day of February 2024, 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall comply with the conditions of the parent permission Reg.Ref P19/670 unless the conditions set out hereunder specify otherwise. This permission shall expire on the date of expiry of the parent permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).

3. The installation of any intermediary pumping chamber or similar infrastructure to the wastewater treatment system shall be agreed in writing with the Planning Authority prior to its installation.

Reason: In the interest of public health.

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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Natalie de Róiste  
Planning Inspector

21 August 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	<b>ABP-319479-24</b>		
<b>Proposed Development Summary</b>	Retain the garage and house foundation as altered (granted under planning permission P19/670) & complete the construction of the garage and house		
<b>Development Address</b>	Lahardaun, Tulla, Co Clare.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>		<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

<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>		Preliminary Examination required
<b>Yes</b>		Screening Determination required

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