

Inspector's Report ABP320758-24

Development Construction of side extension and

fenestration changes to cottage; construction of detached domestic garage, together with all associated site development works and services.

Location Mooghaun North, Newmarket-on-

Fergus, Co. Clare.

Planning Authority Clare County Council.

Planning Authority Reg. Ref. 2460062

Applicant Jonathan Ahearne & Rebecca Earles.

Type of Application Permission.

Planning Authority Decision Permission with conditions.

Type of Appeal Third Party

Appellant James Lynch

Observer None

Date of Site Inspection18th February 2025.InspectorDerek Daly

1.0 Site Location and Description

1.1. The site is located in a rural area in the townland of Mooghaun North approximately 3 kilometres to the north of Newmarket on Fergus and six kilometres southeast of Clarecastle in County Clare. The site fronts onto a local road which defines the site's southeastern boundary. There is a single storey cottage on this site and this cottage is in a poor state of repair. There is a two storey dwelling to the south and no development to the north and west of the site. There is another dwelling on the opposite (eastern) side of the local road. site falls sharply in level in the northern area of the site which has a stated area of 0.402 hectares. On the road fronting the site there is a general fall in level in a southerly direction.

2.0 **Proposed Development**

- 2.1. The proposed development as initially received by the planning authority on the 21st February 2024 was for the construction of side extension and fenestration changes to cottage; construction of detached domestic garage, together with all associated site development works and services.
- 2.2. The proposed extension is located to the north of the existing dwelling is single storied with a pitch roof the ridge height of which is lower than the ridge of the existing cottage and the front building line is set back from the existing front building line of the cottage. The floor area of the existing cottage is stated as 65.6m²; demolition works account for 10.6m² of the existing building; the proposed extension is stated as 92.9m² with the overall new floor area stated as 147.9m². The proposed garage was proposed to the north of the northeast of the proposed/existing dwelling with a floor area of approximately 27m2 with a ridge roof to a maximum height of 4852mm.
- 2.3. In relation to services, it is proposed to connect to a public mains water supply, to treat foul effluent to a septic tank and to discharge surface water to soakaways.
 - The documentation submitted included an *Inspection & Report on Existing Domestic Wastewater Treatment System* by a Chartered Engineer which refers to a site inspection, refers to the septic tank and its capacity based on information received

concluding the existing septic tank will have adequate capacity to cater for wastewater generated at this property. The report indicates that there is little to clarify the issue of the size of the soakpit / percolation area which was not readily apparent but the engineer was of the opinion and stated this in writing that the existing percolation area / soakpit will be adequate for the proposed development.

2.4. Further information was submitted on the 23rd July 2024 which included a cover letter, flood maps documentation and a site layout plan.

The documentation notes that flooding occurs on adjoining lands to the North-east of this site and on rare occasions over spills onto the application site and on very rare occasions onto the public road; that there have been past flood events in the area however there is an existing house on this site and the applicants are not proposing anything that would intensify flooding in the area. Whether planning is granted or not the current flooding issues in the area will remain. A Detailed Flood Risk Assessment is not required owing to the "minor development" however a number of proposals are submitted to demonstrate that the proposed development will not have adverse impacts on the existing floodplain which include;

- Locations of soakpits which will be adequately sized to cater for all roof and surface water generated within this proposed development and these are outlined on the site layout plan.
- The installation of a permeable driveway proposed rather than a hardstanding impermeable area.
- The replacement of the existing front timber post and rail fence with a 1.0m high Blockwork capped wall.
- The installation of an aco channel drain across the site entrance which would discharge into an adequately sized soakpit in the lawn.
- The location of the house extension is away from the area that previously flooded.
- The omission of the garage as this was proposed close to the area that previously flooded.

- It is noted that based on the GSI Groundwater Flooding maps, this property is contained in Flood Map C, and properties in flood zone C have the least likelihood of flooding.
- Comments are made in relation to submissions received.
- All surface water generated within this site will be disposed of within the application site via soak pits and permeable surfaces.

3.0 Planning Authority Decision

3.1. **Decision**

- 3.1.1. The decision of the Planning Authority was to grant planning permission subject to four conditions.
- 3.1.2. Condition 1(b) referred to this planning permission permits a side extension and fenestration changes to existing cottage only. The proposed garage shall be omitted.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report dated the 15th April 2024 refers to the provisions of the current County Development Plan (CDP); an assessment of the proposal which is in a rural area in the context of the provisions of the CDP, issues relating to treatment of wastewater and flooding. The report recommended further information in relation to a concern that to permit the proposal would exacerbate flooding at this location. To address this concern, an assessment of the potential for flooding at this site is required and to submit a detailed Flood Risk Assessment of the proposed development, to be carried out in accordance with the provisions of the document "The Planning System and Flood Risk management – Guidelines for Planning Authorities" (OPW 2009).

The report also noted that the Environment Section of Clare County Council have commented on this application. Having regard to the details as submitted with this application as regards the means of waste water treatment, it is not necessary to seek FI in relation to this.

The planning report dated the 9th August 2024 assessed the further information submitted indicating;

Having regard to the flood maps which have been received, I note that the subject site is just outside of Flood Zone A and B and considering the nature and scale of the proposed development it is considered that no further flood risk assessment is required. Section 5.28 of the Flood Assessment Guidelines is noted in relation to minor development. The report noted also the applicant's decision to omit the proposed garage. Permission was recommended.

3.2.2. The environment report dated the 21st March 2024 recommended that further information noting the existing septic tank did not display any signs of malfunction. However, this dwelling appears to have been vacant for some time and therefore the WWTP has not been in use. The applicant must demonstrate that the WWTP can cope with the loading from the proposed dwelling. Further information on a range of issues was therefore recommended be submitted by a suitably qualified assessor.

4.0 Planning History

4.1. No relevant history relating to the site,

5.0 Policy and Context

5.1. **Development Plan**

- 5.1.1. The statutory development plan is the Clare County Development Plan 2023-2029.
- 5.1.2. Relevant provisions include
 - CDP 4.18 Development Plan Objective: Refurbishment of a Derelict House/Structure in the Countryside It is an objective of Clare County Council: To permit applications for the refurbishment of a derelict house/structure in the countryside provided that
 - a) The external walls are substantially intact and are capable of being refurbished;
 - b) The design of the proposal does not erode the siting and design qualities of the dwelling/ structure.

- c) The size of any extension takes account of the siting and size of the existing dwelling/structure.
- d) The design, scale and materials used in the refurbishment and/or extension are in keeping and sympathetic with the existing structure. Contemporary designs and finishes which constitute a modern interpretation of the traditional architectural vernacular of the area will also be considered on a case by case basis.
- e) Mature landscape features are retained and enhanced, as appropriate.
- f) Normal planning considerations including but not limited to road safety, amenities, public health, design, protected species (especially Lesser Horseshoe Bats and other bat species) shall take precedence over the 'principle' of encouraging such development, and in particular that for such developments alongside or directly accessed from National Roads, that the provisions of Objective CDP 11.13 shall apply. (Refer to Chapter 11).
- 5.1.3. Development Plan Objective: Appropriate Assessment, Strategic Environmental Assessment and Strategic Flood Risk Assessment CDP3.3
 - It is an objective of the Clare County Council:
 - e) To require the preparation and assessment of all Plans and Projects to have regard to the information, data and requirements of the Appropriate Assessment Natura Impact Report, SEA Environmental Report and Strategic Flood Risk Assessment Report contained in Volume 10 of this Development Plan;
 - 5.2. National Guidance
- 5.2.1. The Planning System and Flood Risk management Guidelines for Planning Authorities" (OPW 2009) outlines guidance in relation to assessment of development in relation to flood risk, with the objectives to avoid inappropriate development in areas at risk of flooding; avoid new developments increasing flood risk elsewhere and ensure effective management of residual risks for development permitted in floodplains.
- 5.2.2. A staged approach should be adopted to flood risk with the application of stages of appraisal and assessment to appraise the adequacy of existing information and to scope the extent of the risk of flooding and a detailed flood risk assessment to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of

- potential flood risk to a proposed or existing development or land to be zoned, of its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.
- 5.2.3. Section 2.23 refers to flood zones and there are three types or levels of flood zones defined for the purposes of the Guidelines: Flood Zone A where the probability of flooding from rivers and the sea is highest (greater than 1% or 1 in 100 for river flooding or 0.5% or 1 in 200 for coastal flooding); Flood Zone B where the probability of flooding from rivers and the sea is moderate (between 0.1% or 1 in 1000 and 1% or 1 in 100 for river flooding and between 0.1% or 1 in 1000 year and 0.5% or 1 in 200 for coastal flooding); and Flood Zone C where the probability of flooding from rivers and the sea is low (less than 0.1% or 1 in 1000 for both river and coastal flooding). Flood Zone C covers all areas of the plan which are not in zones A or B. A sequential approach is outlined in relation to assessment of proposed development within each flood zone.
- 5.2.4. Chapter 5 outlines Flooding and Development Management, stages of development management and identification of flood risk and where necessary the application of the justification test. Permission should be refused where flood issues have not been, or cannot be, addressed successfully and where the presence of unacceptable residual flood risks remain for the development, its occupants and adjoining property.
- indicates that applications for minor proposals in areas of flood risk section 5.28 indicates that applications for minor development, such as small extensions to houses, and most changes of use of existing buildings and or extensions and additions to existing commercial and industrial enterprises, are unlikely to raise significant flooding issues, unless they obstruct important flow paths, introduce a significant additional number of people into flood risk areas or entail the storage of hazardous substances. Since such applications concern existing buildings, the sequential approach cannot be used to locate them in lower-risk areas and the Justification Test will not apply. However, a commensurate assessment of the risks of flooding should accompany such applications to demonstrate that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities. These proposals should follow best practice in the management of health and safety for users and residents of the proposal.

- 5.2.6. The guidance also include technical appendices in relation to the identification and assessment of flood risk and addressing flood risk management in design of development.
- 5.2.7. The EPA Code of Practice Domestic Waste Water Treatment Systems (DWWTSs) (Population Equivalent ≤ 10 updated in 2021 outlines requirements in relation to assessment of suitability for domestic wastewater treatment systems.

5.3. Natural Heritage Designations

5.4. The subject site is located within relatively close proximity to a designated European site the Lower River Shannon SAC site code 002165 and also the Ballycar Lough pNHA site code 000015.

5.5. **EIA Screening**

5.6. 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The third party appeal in summary refers to;
 - There is reference to the planning authority's assessment of the application and the appellant's submission on the application.
 - The flood maps submitted are not accurate in relation to the history of flooding on the site and area.
 - Reference is made to the incidence of flooding in the area in recent years.
 - The proposal of a sinkhole on a site that has no place to retain additional water requires to be reviewed based on the evidence of flooding.

 Submission includes original submission made to the planning authority which includes photographs of recent flooding.

6.2. Planning Authority Response

The planning authority outline the matters considered in assessing the proposal in relation to flood risk and the presence of a dwelling on the site and the response requests the Board to confirm its decision.

6.3. First Party Response

The applicant in a response indicates;

- The GSI Groundwater Flooding maps referred to by the appellant are publicly available documents and the applicants have no control over the content of the documentation.
- The applicant acknowledge flooding occurs in the area in particularly to the northeast of the site and also on occasion on the site and whether planning permission is granted or not flooding issues will remain in the area.
- The garage is now omitted to mitigate any perceived intensification of flooding.
- If permission is not granted the applicant intends to extend the cottage within the provisions of exempted development.
- It is proposed to provide a soakpit and not a sinkhole to adequately cater for surface and roof water generated.

7.0 Assessment

7.1. The main issues in this appeal are principle of the development and the grounds of appeal. The issues of the treatment of foul effluent and Appropriate Assessment also needs to be considered. I am satisfied that no other substantive issues arise.

The issues are addressed under the following headings:

- The principle of the development
- Grounds of appeal.

Wastewater treatment

7.2. The principle of the development.

- 7.2.1. The proposal as initially submitted is for the construction of side extension and fenestration changes to cottage; construction of detached domestic garage, together with all associated site development works and services. In the further information response submitted on the 23rd July 2024 the construction of detached domestic garage was omitted and for the purpose of this assessment the revised proposal omitting the garage is considered.
- 7.2.2. The proposal is for an extension to an existing cottage established on the site and in principle the principle of an extension is acceptable. Objective CDP 4.18 of the CDP provides for the refurbishment of a derelict house/structure in the countryside and it is an objective of Clare County Council to permit applications for the refurbishment of a derelict house/structure in the countryside provided the criteria as outlined are complied with the current proposal meets these criteria. The principle of the proposed development is acceptable.

7.3. Grounds of appeal

- 7.3.1. The primary issue raised in the appeal relates to the issue of flood risk. In the grounds of appeal, the appellant contends that there is an incidence of flooding in the area in recent years and the submission includes original submission made to the planning authority which includes photographs of recent flooding in the area. The flood maps submitted are not accurate in relation to the history of flooding on the site and area and that the proposal of a sinkhole on a site that has no place to retain additional water requires to be reviewed based on the evidence of flooding.
- 7.3.2. The first party response contends that the GSI Groundwater Flooding maps referred to by the appellant are publicly available documents and the applicants have no control over the content of the documentation. The first party applicants acknowledge flooding occurs in the area in particularly to the northeast of the site and also on occasion on the site and whether planning permission is granted or not flooding issues will remain in the area. In a response to mitigate potential the garage is now omitted to mitigate any perceived intensification of flooding and it is proposed to provide a soakpit and not a sinkhole to adequately cater for surface and roof water generated.

- 7.3.3. The planning authority in response to the grounds of appeal outline the matters considered in assessing the proposal in relation to flood risk and the presence of a dwelling on the site.
- 7.3.4. It is noted that in assessing the planning application the planning authority requested further information referring to concerns arise as regards the potential for flooding at this site and on adjacent lands and as regards the potential for flood water from this site to flow onto the public road and that there is a history of flooding on this site and on adjacent lands.
- 7.3.5. There is no dispute by the parties that incidence of flooding does occur in the area and the primary issue to therefore consider is whether permitting the proposed development would exacerbate flooding at this location and whether an assessment of the potential for increased flooding at this site arises.

An examination of the flood risk mapping data on OPW and GSI mapping data layers would indicate that the site is not within GSI groundwater flooding high or medium probability though lands on the opposite side of the public road are identified as low probability are identified and to the north east of the site on both sides of the road. lands further to the south are identified as flooding high or medium probability and this would reflect the general contours with a fall in levels to the south along the public road and lands to the east of the road.

The proposal as submitted is relatively modest in the increase in floor area and footprint with a consequent low potential increase of runoff from roof water. The site is large in area and there is a significant fall in level to the northwest which would afford the opportunity to divert water arising from the development into the lower area of the site and away from the public road.

There area also measures proposed to ameliorate potential flooding including the provision of soakpits adequately sized to cater for all roof and surface water generated within this proposed development, the installation of a permeable driveway proposed rather than a hard-standing impermeable area, the installation of a channel drain across the site entrance which would discharge into an adequately sized soakpit in the lawn in effect diverting surface water generated into soakaways on the site and not discharging to the public road, the omission of the garage as this was proposed close to the area that previously flooded and which reduces roof /

surface water runoff. The contours of the site with a fall in level to the northwest will facilitate the implementation of these measures.

The overall effect of these measures therefore will provide for that surface and roof water generated within this site will be disposed of within the application site via soak pits and permeable surfaces rather discharging onto the public road. It will not address issues of flooding which occurs in the area but will prevent a further contribution to flooding and the issue of flooding in the area is largely a wider problem outside of the site which likely requires to be addressed within the context of a wider relief scheme.

The therefore consider the proposal as submitted to be acceptable.

- 7.4. On site treatment of wastewater.
- 7.4.1. Given issues of potential flooding in the area and potentially within the site the issue of the treatment of effluent requires to be considered.
- 7.4.2. As noted, there is an existing septic tank of the site. The applicant submitted documentation which included an Inspection & Report on Existing Domestic Wastewater Treatment System by a Chartered Engineer which refers to a site inspection, refers to the septic tank and its capacity based on information received concluding the existing septic tank will have adequate capacity to cater for wastewater generated at this property.
- 7.4.3. The report indicates that there is little to clarify the issue of the size of the soakpit / percolation area which was not readily apparent but the engineer was of the opinion and stated this in writing that the existing percolation area / soakpit will be adequate for the proposed development. This opinion was based on a visual inspection with no clarity in relation to the actual capacity of the septic tank and an absence of detail on the percolation area which the report indicated the size of the soakpit / percolation area was not readily apparent however on the day of inspection.
- 7.4.4. The environment report of the planning authority dated the 21st March 2024 recommended that further information while noting the existing septic tank did not display any signs of malfunction. However, this dwelling appears to have been vacant for some time and therefore the WWTP has not been in use and therefore the applicant must demonstrate that the WWTP can cope with the loading from the proposed dwelling. Further information on a range of issues was therefore

- recommended be submitted by a suitably qualified assessor including information on the current system on the site in relation to the tank and percolation system in place, the capacity of the system versus occupancy rating and separation of surface/roof water.
- 7.4.5. I would note that the septic tank and percolation are located to the rear (west) of the existing dwelling and that the overall area of the site does provide sufficient area for the satisfactory treatment and percolation of effluent in areas least likely to be impacted by flooding and also there is ample area on the site for diverting ant surface and roof water away from percolation areas. Given however that the existing treatment plant has not been in use for some time and there is an absence of evidence presented in relation to the actual percolation area on the site in relation to capacity and efficiency I consider that a detailed assessment as outlined in the environment report as desirable in order to ensure that a satisfactory disposal to current standards can be achieved in the interests of protection of groundwater and public health.
- 7.4.6. Based on visual evidence and the visual evidence of the consulting engineer and environment department and the area of land available I am satisfied that adequate and safe disposal of wastewater can take place on the site and that in a grant of permission it would be appropriate to attach a condition requiring the applicant to undertake a more detailed site assessment of the existing system demonstrating that it can satisfactorily treat and dispose of anticipated loadings generated and that any revisions deemed necessary arising from the site assessment to be submitted to and agreed with the planning authority and also compliance with all requirements determined by the planning authority following their assessment.

8.0 Appropriate Assessment Screening

I have considered the proposal for the construction of side extension and fenestration changes to cottage; together with all associated site development works and services with the construction of detached domestic garage excluded in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is an established residential site.

- 8.1. The subject site is located within approximately 2 kilometres of a designated European site the Lower River Shannon SAC site code 002165 which consists of the freshwater stretches of the River Shannon catchment and the estuary of the river with a large number of qualifying interests in relation to species and habitats. The main threats to the site and current damaging activities as identified by the NPWS data include discharges into the river system from agricultural run-off and several sewage plants and activities which endanger species which area qualifying interests.
- 8.2. The Ballycar Lough pNHA site code 000015. NPWS data identifies that this site forms part of a series of small lakes in east Clare and comprises a calcareous lake with associated fringe habitats including reed-beds, fens and marshland habitats.
- 8.3. The proposed development comprises in effect a relatively minor increase in floor area to an existing as outlined in section 2 in the Inspectors report. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows; the nature of the development, the distance to designated sites and the absence of pathway to these sites.
- 8.4. I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects and likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

9.1. I recommend that permission be granted.

10.0 Reasons and Considerations

Having regard to the nature of the proposed development, the scale of the development, the pattern of development in the area and the existing residential use on site and the provisions of the Clare County Development Plan 2023-2029 it is considered that the proposed development would not seriously injure the amenities

of the area of property in the vicinity and would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

- 1. (a) The development shall be carried out and completed in accordance with the drawings and particulars as received by the Planning Authority on the 21st day of February 2024 and in accordance with the drawings and particulars received by the Planning Authority on the 23rd day of July 2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.
 - (b) This planning permission permits a side extension and fenestration changes to existing cottage only. The proposed garage shall be omitted.

Reason: In the interest of clarity.

2. The existing dwelling and proposed extension shall be jointly occupied as a single residential unit and the extension shall not be sold, let or otherwise used as a separate dwelling unit.

Reason: In the interest of clarity and orderly development.

- 3. (a) The disposal of surface water shall comply with the requirements of the planning authority for such works and services.
 - (b) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge into the wastewater treatment system or onto the public road or adjoining properties.
 - (c) The surface water management proposals as set out in the further information response received by the Planning Authority on the 23rd July 2024 shall be implemented in full and shall be in place and operational prior to the occupation of the proposed development.

Reason: In the interest of the proper planning and development in the area and to prevent flooding arising from the development.

- 4. Prior to the commencement of any development works on the site;
 - (a) the applicant shall submit to the planning authority for their agreement an assessment of the existing septic tank and the means of percolation on the site indicating the capacity and adequacy of the current system to satisfactorily treat anticipated effluent loading. The assessment shall also include details necessary to show compliance with the requirements of the document entitled "Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" Environmental Protection Agency including any recommendations for amending and upgrading the current system on the site to comply with the Code of Practice.
 - (b) the applicant shall comply with all requirements and recommendations determined by the planning authority following the receipt of the assessment and where necessary submit any documentation required to indicate compliance with such requirements and recommendations
 - **Reason**: In the interest of safeguarding groundwaters and the protection 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.

6th March 2025

[.] Derek Daly Planning Inspector

Appendix 1 - Form 1

EIA Pre-Screening [EIAR not submitted]

An Bord Pleanála		la	320758-24				
Case	Reference)					
Propo	osed Devel	opment	Construction of side extension and fenestration changes to				
_		Оринсии	cottage; construction of detached domestic garage, together				
Sumn	nary		with all associated site development works and services.				
Devel	Development Address Mooghaun North, Newmarket on Fergus County Clare.						
	the propo oject' for tl	Yes	Tick if				
(that is involving construction works, demolition, or interventions in					relevant		
the natural surroundings)					and		
the natural surroundings)					proceed to		
					Q2.		
				No	Tick if		
		X	relevant.				
					No further		
					action		
					required		
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?							
	Tick/or	State the	Class here.	Proc	eed to Q3.		
Yes	leave						
	blank						
No	Tick or			Tick if relevant. No			

X	leave blank		further action required				
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?							
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development.	EIA Mandatory EIAR required				
No X	Tick/or leave blank		Proceed to Q4				
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?							
Yes	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)				

5. Has Schedule 7A information been submitted?							
No	X	Screening determination remains as above (Q1 to Q4)					
Yes	Tick/or leave blank	Screening Determination required					

Inspector: Derek Daly Date: 6th March 2025