



An  
Bord  
Pleanála

## Inspector's Report ABP-321880-25

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<b>Development</b>	Retention of granny flat and all associated site works
<b>Location</b>	Tawnynameeltoge/Midgefield, Westport, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	24483
<b>Applicant(s)</b>	Phil Lynch
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Grant permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Kearns
<b>Date of Site Inspection</b>	16 <sup>th</sup> May 2025
<b>Inspector</b>	Sarah O'Mahony

## **1.0 Site Location and Description**

- 1.1. The 0.35ha site comprises a detached dwelling and detached independent unit situated in a rural area in southwest Mayo. Westport is situated 6km northeast of the site while the N59 is situated 550m to the east. The Owenwee River is situated 40m south of the site. The summit of Croagh Patrick is situated 6km northwest of the site.
- 1.2. Access is provided via a laneway from the L-5876 which is a cul-de-sac servicing additional properties up to 7km west of the site. The general landform slopes steeply from north down to south with the resulting dwelling and granny flat situated high above the road level. The steep area around the laneway comprises dense and mature mixed species trees and scrub resulting in no visibility of the dwelling or flat from the public road.
- 1.3. Adjoining land use is a mix of low density detached dwellings, woodland and agricultural land.
- 1.4. The granny flat subject of this application is situated to the rear and east of the dwelling and comprises a 23m<sup>2</sup> flat roof detached structure finished externally with timber cladding.

## **2.0 Proposed Development**

- 2.1. Permission is sought to retain a 23m<sup>2</sup>, single storey, detached residential unit situated to the rear of the main dwelling on the site and all ancillary development including connection to the existing on-site wastewater treatment system.
- 2.2. A cover letter received with the application states that the flat is occasionally required as overflow accommodation for the Applicant's family.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.2. A notification to grant retention permission was issued by Mayo County Council on 20<sup>th</sup> January 2025 subject to 4no. conditions including no. 2 as follows:

*“2. The main house and independent living unit shall be retained in single ownership and shall not be sold or let separately. The independent living unit shall only be occupied by members of the immediate family of the occupier of the main house.*

*Reason: In the interest of the proper planning and development of the area.”*

### **3.3. Planning Authority Reports**

#### **3.3.1. Planning Reports**

- The Planners report recommendation to refuse permission is consistent with the notification of decision which issued.
- Appropriate Assessment (AA) and Environmental Impact Assessment (EIA) issues are both screened out.
- The assessment section of the Planner’s report reads as follows: *“The structure is 23m<sup>2</sup> in size, therefore falls well below the permissible 60m<sup>2</sup> for a granny flat. The structure is not visible from the public road. Given that the site is heavily planted the timber clad is considered acceptable.”* It also notes an existing access, wastewater treatment system and connection to the public water supply but does not comment on these matters.

#### **3.3.2. Other Technical Reports**

- Flood Risk Management: Report received stating no further flood risk assessment required.

### **3.4. Prescribed Bodies**

The application was referred to the following prescribed bodies but no responses were received:

- Uisce Éireann
- An Taisce
- Development Applications Unit

### 3.5. Third Party Observations

One third party submission is received from John Kearns which raises the following matters:

- Overlooking and associated impact to privacy and residential amenity.
- Commercial short-term letting use is ongoing in the structure. References made to advertisements for the structure on AirBnB and a recent refused permission for short-term letting.
- Concern that main dwelling is also being let out and requires retention permission.
- Concerns regarding adequacy of wastewater treatment and lack of assessment regarding additional population equivalent.
- Structure does not comply with planning regulations for minimum floor areas or multiple sections of the building regulations.
- Lack of surface water management details.
- Queries regarding details on the site layout plan and boundaries. Some boundaries are allegedly inaccurate.
- Inadequate sightlines at the existing entrance causing a traffic hazard.
- Lack of prior notice/opportunity to comment prior to construction due to the retention nature of the application.
- Concern that granting permission would set an undesirable precedent leading to a proliferation of similar developments.

### 4.0 Planning History

- 24/371: Permission refused to retain Franny flat as constructed for short-term letting with connection to existing proprietary effluent treatment system together with associated site works. Permission was refused for one reason as follows:

1. The proposed residential development is contrary to section 2.9 'Other Ancillary Buildings' to the existing residential unit (Rural) of the Mayo county development plan 2022-2028, Volume 2, Development

Management Standards whereby *“all ancillary buildings in this section are ancillary to the main use of the dwelling and are not intended as options for sale, rent/lease (long or short term) or for tourist use separate to the main house and are intended for use by members of the existing residence on site or in relation to granny flats/independent living units for immediate family members who require to be located beside the members of the existing house hold on site”*. It is therefore considered that the proposed development would seriously injure the amenities and depreciate the value of property in the vicinity and would be contrary to the proper planning and development of the area.

- 00/3312: Planning permission granted to construct a dwellinghouse and proprietary effluent treatment unit.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Mayo County Development Plan 2022-2028 (referred to hereafter as the CDP). Section 2.9.2 of the Development Management Guidelines, which are set out in Volume 2 of the CDP, refers to ‘Granny flats/independent living units’ as follows:

*“Granny Flats/ Independent Living Units maybe considered separate to the existing house on site, subject to not exceeding a floor area of 60m<sup>2</sup>. Such units shall be single storey only. Any larger units shall be attached as an extension to the existing house on site. The design of such structures shall be in accordance with the provisions of Section 2.9.4 below.”*

- 5.2. Section 2.9.4 states that such ancillary buildings shall:

- *“In general, be subordinate to the existing dwelling in its size.*
- *Reflect the window proportions, detailing and finishes, texture, materials and colour of the existing house unless a high quality contemporary and innovatively designed is proposed.*

- *Not have an adverse impact on the amenities of adjoining properties through undue overlooking, undue overshadowing and/or an over dominant visual impact.*
- *Carefully consider site coverage to avoid unacceptable loss of private open space. Such proposals together with all other buildings on site shall not exceed an overall site coverage of 60%.*

*Where the proposal increases the potential occupancy of the of the overall site, the adequacy of the on-site sewage treatment (in unsewered areas) should be demonstrated by the applicant.”*

### **5.3. Natural Heritage Designations**

- 5.3.1. Brackloon Woods Special Area of Conservation (SAC) and proposed Natural Heritage Area (pNHA) is situated 400m northeast of the site while Lough Greney Bog NHA is situated 500m to the northwest.

### **5.4. EIA Screening**

- 5.5. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

## **6.0 The Appeal**

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

One third party appeal is received from John Kearns which raises the following grounds of appeal:

- A grant of retention permission would set a precedent for future planning violations on the site and elsewhere, precluding opportunities for comments from third parties. Granting permission would set a poor planning precedent for other such developments leading to a proliferation of ‘shanty development’.

- Overlooking – the family flat is on an elevated position and overlooks the appellants property and laneway impacting privacy and amenity of the appellants property.
- The unit was previously, and possibly still, used for commercial purposes as allegedly evidenced by AirBnB advertisements and the applicant's previous application to utilise it for short-term letting.
- No technical information was submitted to demonstrate that the existing wastewater treatment system can accommodate the additional load generated by the development or how wastewater from the new unit is conveyed to the existing system. The lack of the Planning Authority's request for this information represents a breach of their own standards and regulations. Permission should be invalidated or refused in the absence of this information. Queries regarding liability for negative impacts to watercourses and adjoining property in the event of wastewater issues.
- The 23m<sup>2</sup> structure does not comply with planning or building regulations for minimum floor spaces or matters regarding accessibility etc as per Parts M, B and L of the building regulations.
- No information presented in the application documents regarding surface water management. Surface water currently enters the appellants property. Imposing condition no. 3 is inappropriate due to the previous breaches of planning codes and responsibilities.
- Site boundaries are inaccurate and therefore represent an invalid planning application.
- Sightlines are unachievable due to the steep terrain and therefore granting permission represents a traffic hazard.
- The 'garden shed' finish of the unit is an insult on the landscape and sets an undesirable precedent.

## 6.2. Applicant Response

- A response from the applicant was received however it was outside of the appropriate 4-week period and was therefore returned to the applicant.

### **6.3. Planning Authority Response**

- No response received.

## **7.0 Assessment**

### **7.1. Principle of Development**

7.1.1. Section 2.9.2 of the Development Management Standards set out in Volume 2 of the CDP provides for granny flats and states they may be considered subject to the having a floorspace below 60m<sup>2</sup> and being single storey only. Both criteria are met in this proposal and therefore I consider the principle of development is met.

7.2. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the report(s) 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:

- Overlooking
- Wastewater treatment
- Surface water management
- Traffic hazard
- External finishes
- Other matters

### **7.3. Overlooking**

7.3.1. The appellant contends that the unit overlooks their property and therefore impinges on their privacy.

7.3.2. The single storey structure has windows on all four sides with separation distances of 10m to the site boundaries to the north and east and separation distances of 50m to the nearest dwelling to the east, 100m to the nearest dwelling to the north and 75m to the nearest dwelling to the west. The site boundaries comprise post and rail



timber fencing however the intervening area is planted with trees in a woodland/copse type of setting. In this regard there is no visibility from the flat to any residential property outside of the site and the main dwelling situated therein.

- 7.3.3. The unit is situated at a higher ground level than the adjacent laneway to the east which is shared by the appellant to access agricultural land to the north of the site and another party to access a dwelling. A letter of support was submitted as part of the original planning application from the third party who is not the appellant. The finished floor level in the flat is approximately 6m higher than the ground level of the laneway. While the trees provide a degree of visual screening, there is still a visual connection between the flat and the adjacent laneway however the laneway does not in my view constitute a primary amenity space related to any dwelling and is simply a thoroughfare.
- 7.3.4. Windows at the north of the unit look out onto a series of ornamental ponds and to a cliff face within the site. The cliff appears to roughly represent the property boundary with the appellants property situated at the higher ground which comprises woodland and agricultural land which is not a residential amenity area. The resulting scenario means there is little visibility afforded to the adjacent property due to its location on top of a cliff face situated close to the northern elevation windows as well as the intervening trees and scrub. In my view, the only overlooking afforded in this location is from the appellants property down towards the flat.
- 7.3.5. I do not consider there is any significant impact to residential amenity in terms of overlooking. There is no visibility from the granny flat to any other residential unit or primary open space.

#### **7.4. Wastewater Treatment**

- 7.4.1. The appeal raises a number of concerns regarding the adequacy of the existing wastewater treatment system on the site to cater to the additional biological load generated by the increased occupancy of the site. Section 2.9.4 of the of the Development Management Standards in Volume 2 of the CDP requires that where the proposal for granny flats increases the potential occupancy of the overall site, the adequacy of the on-site sewage treatment (in unsewered areas) should be demonstrated by the applicant.

- 7.4.2. The application documents state that the unit is connected to the existing wastewater treatment system for the main dwelling. No supporting information was provided to demonstrate that the existing wastewater treatment system can accommodate any additional biological loading generated by the unit.
- 7.4.3. The granny flat currently has two bedrooms to accommodate 4no. people and is stated to be used occasionally by members of the applicant's family. I note however that the application documents provide an alternative layout proposing to convert the existing second bedroom to a bathroom and to subsequently convert the existing bathroom to a store.
- 7.4.4. No issues are raised in the local authority reports with the operation of the existing wastewater treatment system. No information is provided in the application documents to clarify when the unit was installed or if any additional loading can be catered for, however, I inspected the site and did not note any odour or discolouration issues within the site which could be attributed to a malfunctioning treatment system.
- 7.4.5. Having regard to the proposed one-bedroom scale of the unit and the associated part time occupation/tenancy, I consider it unlikely that the existing wastewater treatment unit could not cater to an occasional increased hydraulic loading from one additional bedroom. I do recommend however that a condition is attached requiring the works to revise the layout into a one bed unit to be completed within 12 months of the grant of permission, and photographic evidence of same to be submitted to the Planning Authority.

## **7.5. Surface Water Management**

- 7.5.1. Condition no. 3 of the notification to grant permission requires no surface water to discharge from the site to adjoining public road or private property. The appellant contends that surface water from the unit enters their adjacent property and that the onus of responsibility should not lie with the appellant to ensure the applicant adheres to condition no. 3.
- 7.5.2. I did not note any surface water entering adjacent property during the site inspection however this was carried out during a period of prolonged dry weather. I did note that

surface water from the flat discharges to a series of small ornamental fish ponds situated adjacent to the flat and no leaks were evident.

- 7.5.3. I consider condition no. 3 is an appropriate response given the scale of the works. Any surface water which is generated within the site should be managed within the site and should not enter private property or discharge onto the public road. The applicant is responsible for this matter and the onus is on the Local Authority to investigate any matters of alleged non-compliance with a grant of permission.
- 7.5.4. Given the scale of the works and the associated scale of any surface water which may be generated from the site, I consider a condition such as no. 3 should be attached.

## **7.6. Traffic Hazard**

- 7.6.1. Access to the unit is via an existing laneway to the main dwelling. The recessed area off the public road is shared with the previously mentioned laneway which runs alongside the eastern boundary of the site. Both lanes slope steeply up and away from the roadside to the north. The boundary on the applicants side (west) of the recessed area has been set back in the form of a low wall to improve sightlines while there is native hedge at the eastern side.
- 7.6.2. The design speed of the tertiary road is not clear but likely to be no more than 60km given its very narrow single lane character. A drawing illustrating sightlines was not submitted with the application however having inspected the site and had regard to the site layout drawing, I consider sightlines of 20-25m are achievable to the east and 60m to the west.
- 7.6.3. Section 7.6 of the Development Management Standards set out in Volume 2 of the CDP advises minimum sightlines of 70m and therefore the existing entrance does not meet these requirements. This entrance was however permitted under ref. 00/3312 and therefore the only matter to be assessed under this appeal relates to its intensification and whether that would constitute a traffic hazard.
- 7.6.4. Having regard once again to the 1-bedroom scale of the unit which is stated to be utilised for private purposes for visiting family on a part time basis, I consider any intensification of the vehicular entrance to be minor and not likely to create a traffic hazard.

## **7.7. External Finishes**

- 7.7.1. The unit is finished with a flat roof and timber cladding externally in a log cabin type of aesthetic which reflects the rural and woodland character of the area. It is not visible from any public property and has limited visibility from adjacent private property. In my view the timber finish is an acceptable finish for this area and does not detract from the landscape or the character of the area.
- 7.7.2. I note Section 2.9.4 of the Development Management Standards in Volume 2 of the CDP requires ancillary buildings such as the granny flat to 'reflect the window proportions, detailing and finishes, texture, materials and colour of the existing house unless a high quality contemporary and innovatively designed is proposed.' The existing materials and finishes do not reflect those on the main dwelling but I consider they are appropriate and innovatively designed for the woodland setting.

## **7.8. Other Matters**

- Commercial Use

- 7.8.1. The applicant has not sought permission to utilise the structure for commercial purposes. I note the planning history on the site where the applicant was refused such permission for short-term letting under ref. 24/371. This is a different application for a different use and, in the event of a grant of permission, an appropriate condition should be applied to regulate such use to non-commercial purposes only.

- Planning and Building Regulations

- 7.8.2. The appeal suggests permission should be refused as the layout of the unit does not comply with building or planning regulations. Building Regulations are a separate legislative code to planning legislation and compliance with same lies outside of the scope of an appeal.
- 7.8.3. There are recommended standards for minimum floor areas set out in the national planning policy document 'Quality Housing for Sustainable Communities', DoEHLG 2007. Such standards however relate to independent standalone dwellings with their own services, access and open space etc. The subject unit is intrinsically linked with the main dwelling by means of sharing an access, wastewater treatment, water, electricity supply and open space. In this regard, it is not an independent unit and I

consider it constitutes an extension of the main dwelling. In my view it therefore does not need to meet the minimum floor areas for kitchens, dining rooms and bedrooms etc.

- Site Boundaries

7.8.4. The appeal references a court order regarding boundaries between the two properties and alleges that the boundaries on the application documents do not reflect the applicant's property. No map was submitted with the appeal to illustrate this matter and it is not clear if any of the alleged boundary matters relate to the development itself. The appeal does not specify if the development itself encroaches on third party property but simply contends that the application is invalid.

7.8.5. In the absence of any demonstratable data from the appellant illustrating landownership, and having regard to the location of the granny flat which is over 10m from boundaries illustrated on the drawings received with the application, I consider there are insufficient grounds to invalidate the application.

- Precedent

7.8.6. Every planning application is assessed on its own merits and every decision likewise is based on site specific context and related policy. I do not agree that granting permission would set an undesirable precedent leading to a proliferation of sub-standard 'shanty' type development.

## 8.0 AA Screening

8.1. I have considered the [title of project] in light of the requirements S177U of the Planning and Development Act 2000 as amended.

8.2. The subject site is located 400m southwest of Brackloon Woods Special Area of Conservation (SAC).

8.3. The proposed development comprises retention of a 23m<sup>2</sup> family flat connected to the existing wastewater treatment system on the site.

8.4. No nature conservation concerns were raised in the planning appeal.

- 8.5. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 8.6. The reason for this conclusion is as follows:
- The small scale and nature of the development,
  - Location-distance from nearest European site and lack of connections, and
  - Taking into account screening report/determination by Mayo County Council.
- 8.7. I conclude, 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.
- 8.8. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## **9.0 Recommendation**

I recommend that retention permission be granted in accordance with the conditions set out below.

## **10.0 Reasons and Considerations**

Having regard to the location and character of the site and surrounding area in a rural area together with the provisions of the Mayo County Development Plan 2022-2028 including sections 2.9.2 and 2.9.4 of the Development Management Standards, it is considered that, subject to compliance with the conditions set out below, the scale and nature of the development is acceptable. The development would comply with local design guidance and would not seriously injure the visual or residential amenity of the area. The development is, therefore, in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

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 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within 12 months of the grant of permission, the applicant shall submit photographic evidence to the Local Authority demonstrating that the internal arrangement of the family flat reflects the one-bedroom layout illustrated in the drawings received with the application.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to non-commercial, ancillary domestic use only (as specified in the lodged documentation), unless otherwise authorised by a prior grant of planning permission.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>The independent family unit for a family member(s) shall not be sold, let or otherwise conveyed as an independent living unit. The existing garden and curtilage of the overall residential property on this site shall not be subdivided.</p> <p>Reason: In the interest of residential amenity and to control the density of residential units</p>

5.	<p>No surface water shall be discharged from the site onto the adjoining public road or any third party property.</p> <p>Reason: In the interest of amenity and public safety.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</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.

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Sarah O'Mahony  
Planning Inspector

21<sup>st</sup> May 2025



### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	
<b>Proposed Development Summary</b>	321880
<b>Development Address</b>	Tawnynameeltoge/Midgefield, Westport , Co. Mayo
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	State the Class here
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	<p><b>State the Class and state the relevant threshold</b></p>
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p><b>State the Class and state the relevant threshold</b></p>

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p>Yes <input type="checkbox"/></p>	
<p>No <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

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