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Contae Mhaigh Eo, F23 WF90
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Ar dTag./ Our Ref.
Do Thag./ Your Ref.

Plan/H16/mg

30th June, 2023

An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902

LDG-	ABP-	Fee: €	Time:
064741-23		110	
30 JUN 2023			
By: <i>Log Post</i>			

RE: Section 5 Referral by Mayo County Council

A Chairde,

Please see attached Report which the members of Mayo County Council requested to refer to An Bord Pleanála for your determination in this Matter.

Please also find attached Fee of €110 which your Offices have confirmed is the relevant amount payable by a Local Authority in this instance.

If you have any queries in this regard please contact me at the following email addresses : mgordon@mayococo.ie; or planning@mayococo.ie

Mise, le meas,

Mary Gordon
Head of Planning Administration

Encl

Comhairle Chontae Mhaigh Eo
Mayo County Council

REMITTANCE ADVICE / FAISNÉIS IOLAÍOCHTA

AN BORD PLEANALA 64 MARLBOROUGH STREET DUBLIN 1 Ireland	
Cheque No.	633374
Supp ID / Uimh. Aitheantais	133165
Date / Dáta	30/06/2023
Page / Leathanach	1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisce	Our Ref/ Ar dTagairt	AMOUNT/ SUM EUR	Payable Infoctha EUR
SECTION5	28/06/2023	31261461	110.00	110.00
PAGE TOTAL / IOMLÁN AN LEATHANAIGH				
EUR 110.00				
GRAND TOTAL / MÓRIONMLÁN				
EUR 110.00				

WH = Withholding Tax CT = Subcontractors Tax RA = Non Resident Landlord
CMP = Late Payment Compensation

SECTION 5 (4) REFERRAL

Pursuant to Section 5 (4) of the Planning & Development Act 2000 (as amended) Mayo County Council is referring the following question to An Bord Pleanála to be decided by the Board:

Is the clearance of a hedgerow/trees within or bounding the curtilage of a house and the construction of a post and timber fence under 1.2m in height (with some posts exceeding 1.2m by c.0.047m) within or bounding the curtilage of a house and adjacent to a non-public road exempted development?

Background

This question as has arisen on foot of a complaint received by the Planning Enforcement Unit at Mayo County Council. A determination was made by the Planning Authority that the development was development but was exempted development and the Planning Enforcement file was closed. There has been a request to revisit this decision.

Location

The development is located in the townland of Mullauins, Ballina, at Eircode F26 V128, approximately 400m off the R294 Ballina to Boninicon Road. The site is on a crossroads between a local road L-5116 and a private road. The status of the roads has been confirmed by inspecting the PMS Viewer. Location Map is included in Appendix 3.

The development

The development consists of a post and rail fence erected along part of the north western boundary of the site. Setback access to the house is provided along the same boundary further along the boundary. The front of the house is facing the local road L-5116. Measurements were taken, by an authorised person of the Planning Authority, about halfway between north eastern (front) boundary adjacent to the local road L-5116 and the gateway on north western (side) boundaries of the developed site. The measurements were:

Top of post to ground = 1.247m

Top of rail to ground = 1.185m

Width of tarred private road = 2.58m

There does not appear to be any interference with the actual width of the carriageway surface

Imagery

Google Maps/Street View images dated 9/2009 and 9/2019 and a photo taken in 2022 (by an Authorised person of the Planning Authority) of the location of the development are included in Appendix 1.

Planning History

Planning permission was granted for a house and PETU in 2010, planning reference no P09/672 refers. The layout plan and conditions of the planning permission are included in the Appendix 2.

Appendix 1

Photo of the development taken on 22/06/2022



Cont/d

Google Earth photo imagery date 9/2009



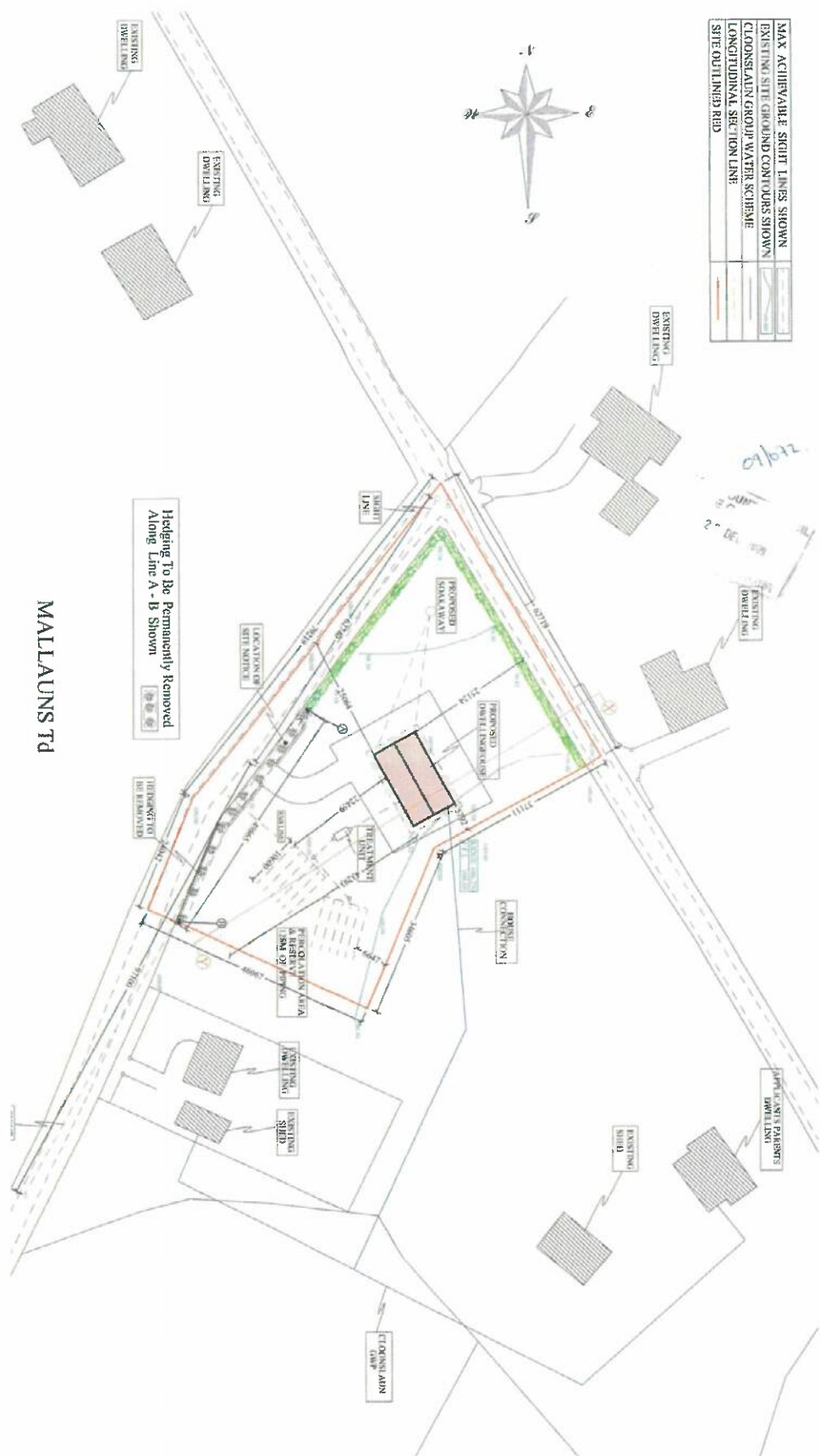
Cont/d

Google Earth photo imagery date 9/2019



Appendix 2 – planning permission layout plan and schedule of conditions P09/672

Cont/d

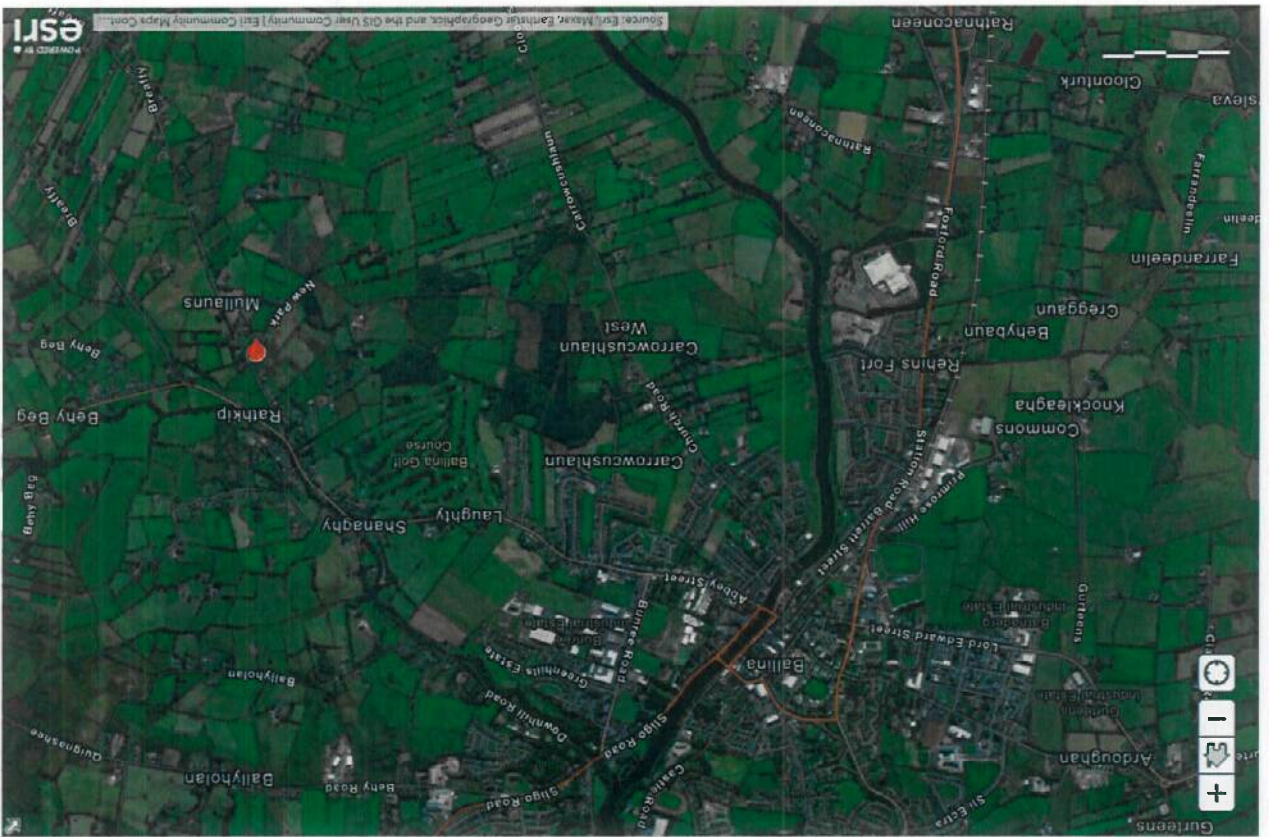


SECOND SCHEDULE - SCHEDULE OF CONDITIONS - P09/672

1. The development shall be carried out in accordance with the plans, elevations and documentation submitted to Mayo County Council on 30/06/09, 01/12/09 and 23/12/09 except as amended by Conditions hereunder.
Reason: In the interests of proper planning and development.
2. The house shall be finished in nap plaster or dash with no colour components. Any stone used shall be a local stone indigenous to the area. No cladding shall be permitted. Roof slates/tiles shall be blue black in colour. No brick shall be permitted as a finish to any part of the dwelling. Windows shall have vertical emphasis, divided simply, centrally divided once horizontally and once vertically. The window frames shall be finished in timber effect. No white PVC shall be permitted. Front door shall be of simple design in hardwood.
Reason: In the interests of visual amenity.
3. a) The proposed dwelling when completed shall be first occupied as the place of residence of the applicant, members of the applicant's immediate family or their heirs and shall remain so occupied for a period of seven years thereafter, unless consent is granted by Mayo County Council for its occupation by other persons who belong to the same category of housing need as the applicant.
b) Before development commences, the applicant shall enter into an agreement with Mayo County Council, pursuant to Section 47 of the Planning and Development Act 2000 providing for the terms of this occupancy requirement.
c) Within two months of the occupation of the proposed dwelling, the applicant shall submit to Mayo County Council, a written statement of the confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.
(d) This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.
Reason: In the interests of proper planning and development.
4. The house shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09 except as amended by Conditions hereunder.
Reason: Building line standards / Proper planning and development.
5. The finished floor level of the house shall be at 100.60 as shown on the site layout plans submitted to Mayo County Council on the 23/12/09.
Reason: In the interests of visual amenity.
6. The existing fence at the front (roadside) of the site shall be removed as per site layout received by Mayo County Council on 23/12/09. The new wall shall be re-constructed of stone from the wall to be removed/local stone and shall be at least 4.5m (14 ft.) from the nearer edge of the adjoining tarred carriageway and the area between the new wall line and the carriageway shall be excavated out, filled up, levelled and made suitable for parking motor vehicles. Surface of lay by shall be of a bound material to prevent carriage of debris onto the public road. Roadside drainage shall be maintained at all times. The new front boundary fence/wall shall not exceed 1.2 m. The hedgerows shall be reinstated with a new front boundary (using the same species of hedgerows which are to be removed) along the new set back as agreed with the Ballina Area Engineer.
Reason: In the interests of traffic safety and to provide parking spaces for vehicles associated with the house.
7. The vehicular entrance gate to the site shall be located as shown on the site layout plans submitted to Mayo County Council on the 23/12/09. Gates shall open inwards only.
Reason: To reduce traffic hazard.
8. No surface water shall be discharged from the site onto the public road. Surface water shall be discharged to soakways on site.

- Reason:** To avoid flooding.
9. The effluent from the house shall be treated in a proprietary effluent treatment unit capable of producing effluent of 20/30 standard which shall be discharged to an elevated percolation area constructed of material having a T-value of 15-30 in accordance with S.R.6 of 1991. There shall be at least 1 metre of material between the percolation pipes and the existing ground level.
- Reason:** For the protection of public health and to avoid water pollution.
10. If the sewage treatment system includes a septic tank, it shall be designed and constructed in accordance with S.R.6 1991 by Eolas – Septic Tank Systems.
- Recommendations for Domestic Effluent Treatment and Disposal for a Single Dwelling/house and shall be located at least 7m (23 ft) from the house served, 20m (66 ft) from any other house, 3m (10 ft) from site boundaries.
- Reason:** For the protection of public health and to avoid water pollution.
11. A percolation area and reserve percolation area shall be designed and constructed in accordance with S.R. 6 of 1991 by Eolas.
- Reason:** For the protection of public health and to avoid water pollution.
12. The percolation area and reserve percolation area shall be at least 20m (66 ft.) from any house, 10m (33 ft.) from roads, streams, drains, 3m (10 ft.) from site boundaries, 100ft. (30.5m) from any well.
- Reason:** For the protection of public health and to avoid water pollution.
13. No water mains, service pipes, access roads, driveways or paved areas shall be located within the percolation area.
- Reason:** For the protection of public health and to avoid water pollution.
14. Adequate access shall be provided for septic tank and percolation area maintenance / treatment system maintenance.
- Reason:** For the protection of public health and to avoid water pollution.
15. A contribution of €357 for amenities shall be paid to Mayo County Council prior to commencement of development on the site. This development contribution shall increase in accordance with the Wholesale Price Index for Building and Construction in January of each year from the date of grant of permission up to the date that payment is made to Mayo County Council.
- Reason:** To comply with Mayo County Council's Development Contribution Scheme.
16. If any ESB lines cross the site, the developer shall inform the E.S.B. of the intention to start work and arrange for diversions of the lines, if necessary.
- Reason:** To avoid electrocution.
17. Compliance with Mayo County Council Fuel Oil Regulations for single family dwellings. (Copy Attached).
- Reason:** To reduce fire risk.
18. All existing trees / hedgerows shall be retained on site. Additional screen planting of native deciduous trees and shrubs shall be planted along all site boundaries save at the entrance where adequate sight visibility shall be retained. Such planting shall be carried out in the first planting season following commencement of development and shall be maintained.
- Reason:** In the interests of residential amenity.
19. Prior to the commencement of development, a cash deposit of €2,000 shall be paid to Mayo County Council to ensure no damage to the public road and services occurs. In advance of works commencing, the applicant/developer should liaise with Mayo County Council's local Area Engineering Office.
- Reason:** To ensure satisfactory completion of the development and protection of public infrastructure.
20. Any existing utility poles along site frontage to be removed/under grounded as required.
- Reason:** In the interests of public safety.

END OF SCHEDULE



APPENDIX 3 – LOCATION