



An
Bord
Pleanála

Inspector's Report

ABP-321076-24

Development	Retention of change of floor levels to Units 45 & 46 approved under under planning references: 06/5813 & 21/2071.
Location	Bun na Coille Estate, Kylebroughland, Moycullen, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	24235
Applicant(s)	Solemia Limited
Type of Application	Retention.
Planning Authority Decision	Grant Retention
Type of Appeal	Third Party
Appellant(s)	Una and Noel Gillespie
Observer(s)	None
Date of Site Inspection	31 st January 2025
Inspector	Darragh Ryan

1.0 Site Location and Description

- 1.1. The two dwelling houses for retention are located within the Bun na Coille estate in the townland of Kylebroughlan in the outskirts of Moycullen. The estate is largely finished with the site immediately adjacent to the proposed retention development unfinished. There is a fenced area surrounding this unfinished aspect of the development where there is a proposal for four houses. The roadway outside the site has been completed to wearing course tarmac level. The estate when complete will consist of 60 houses and is connected by road and footpath with Coill Ard to the North of the site.
- 1.2. To the south of the site are greenfield agricultural lands with low density residential rural dwellings. To the north and east is existing residential development. The Bun na Coille Estate is accessed off local road L1320 to the north of the site. The estate is nearing completion with large element of the existing estate fully landscaped, with public lighting, tarred finish and public footpaths. Site area is indicated as 0.0458ha.

2.0 Proposed Development

- 2.1. The applicant is seeking retention for change of floor levels to units 45 & 46 approved under planning references: 06/5813 & 21/2071. Gross floor space of works to be retained 228sqm.

3.0 Planning Authority Decision

- 3.1. **The planning authority issued a Decision to grant retention permission subject to conditions.**

C3 – This permission is for retention of changes to finished floor levels (FFL) for units 45 & 46 as indicated under the public notices only and in all other respects the development shall be executed in accordance with Planning Reference numbers PI. Ref 21/2071 and PI. Ref 06/5813. The proposed development shall comply with the terms and conditions of PI. Ref 21/2071 and PI Ref 06/5813 which govern the overall development of the site, save where amended by the plans and particulars submitted with this application on 7th of August 2024 and the conditions hereunder.

C5 – Boundary treatment and landscaping shall be as per the plans and particulars received by the planning authority on the 7th of August 2024.

(b) Planting shall comprise of native tree/plant species only.

(c) All boundary treatments facing public areas shall be constructed using natural, limestone only.

3.2. Planning Authority Reports

3.2.1. There is a single Planning Report on file. In summary the planning report noted the following:

The planning authority noted the change in level difference between the granted levels under 06/5813 as 49.0m and constructed levels as 49.60m. The level difference is .60m. Concerns from third parties in relation to overlooking and privacy are noted. The distance from opposing dwellings to the rear is approximately 18m. This aligns with SPPR 1 of the Compact settlement guidelines. A decision to grant was recommended based on the above assessment.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

- None

3.4. Third Party Observations

There is a single third-party observation on file. The observer resides to the rear of the development for retention. The observer raises a number of issues regarding breaches of previous planning conditions on site. Issues in relation to wider unfinished aspects of the estate are outlined. The construction of rear boundary wall is also stated to be constructed in the wrong place. The development results in a loss of privacy, health and well-being.

4.0 Planning History

- PA reg ref 23/466 – ABP reference 319813-24 – (immediately adjacent) construction of 4 houses and associated ancillary site works
- PA reg ref 21/1851 - extension of duration for full permission granted to Solemia Unlimited Company for a residential development consisting of 113 residential units comprising of 24 5-bed detached dwellings, 4 4-bed detached dwellings, 24 4-bed semi detached dwellings, 48 3-bed semi-detached dwellings, 13 3-bed terrace dwellings. Permission is also sought for the provision of an access onto the Spidal Road, an internal temporary access road, connection to the existing public sewer along with all other ancillary site services, previous planning reference no. 06/5813 & 12/1112 (Gross floor area 15,507 sqm).
- PA reg ref 21/2071 – permission granted to Solemia Unlimited Company for the development which will consist of change of house type on previously approved residential scheme (planning ref: 06/5813) on 67 sites (numbers 34 to 67 inclusive and 81 to 113 inclusive). They will change from 18 number 3 storey 4-bed semidetached, 34 number 2 storey 3-bed semi-detached, 13 number 2 storey 3-bed terraced and 2 number 2 storey 4-bed detached to 20 number 2 storey 4-bed semi-detached, 30 number 2 storey 3-bed semidetached, 7 number 2 storey 3-bed terraced, 8 number 2 storey 2-bed terraced and 2 number 2 storey 4-bed detached. Works will further involve minor localized modifications to the site layout along with all associated site works & services. Gross floor space of proposed works: 7637.1 sqm. (19 Conditions).
- PA reg ref 17/1510 - extension of duration for full permission granted to Solemia Unlimited Company for a residential development consisting of 113 residential units comprising of 24 5-bed detached dwellings, 4 4-bed detached dwellings, 24 4-bed semi detached dwellings, 48 3-bed semi-detached dwellings, 13 3-bed terrace dwellings. Permission is also sought for the provision of an access onto the Spiddal Road, an internal temporary access road, connection to the existing public sewer along with all other ancillary site

services, previous planning reference no. 06/5813 & 12/1112 (Gross floor area 15,507 sqm).

- PA reg ref 12/1112 - extension of duration granted to McNerney Homes Ltd (in receivership) for full permission for a residential development consisting of 113 residential units comprising of 24 5-bed detached dwellings, 4 4- bed detached dwellings, 24 4-bed semi detached dwellings, 48 3-bed semi-detached dwellings, 13 3-bed terrace dwellings. Permission is also sought for the provision of an access onto the Spiddal Road, an internal temporary access road, connection to the existing public sewer along with all other ancillary site services, previous planning reference no. 06/5813 (Gross floor area 15,507 sqm) (expired 24/10/2017).
- PA reg ref 06/5813 - outline planning permission granted to McNerney Homes Ltd to construct a creche measuring 450 sqm and for full permission for a residential development consisting of 113 residential units comprising of 24 5-bed detached dwellings, 4 4-bed detached dwellings, 24 4-bed semi detached dwellings, 48 3-bed semidetached dwellings, 13 3-bed terrace dwellings. Permission is also sought for the provision of an access onto the Spiddal Road, an internal temporary access road, connection to the existing public sewer along with all other ancillary site services (Gross floor area 15,507 sqm).

Adjacent Site

- PA reg ref 2460729 – Construction of 60 residential dwelling houses and a creche. Permission refused by Galway County Council – appealed to An Bord Pleanála 320712-24, decision pending.

5.0 Policy Context

5.1. Galway County Development Plan 2022 to 2028

Chapter 3 - Placemaking, Regeneration and Urban Living

- Policy Objectives Placemaking - PM 1- PM 13.
- Policy Objectives Compact Growth and Regeneration CGR 1-13.

- Policy Objectives Urban Living UL1-6.

5.2. Natural Heritage Designations

- SAC:Lough Corrib SAC (approximately 1.17 km from the subject site)
- SAC:Ross Lake and Woods SAC (approximately 3.54 km from the subject site)
- SAC:Connemara Bog Complex SAC (approximately 3.84 km from the subject site)
- SPA:Lough Corrib SPA (approximately 2.91 km from the subject site)

6.0 EIA Screening

The current application before the Board does not constitute a class of development for which EIAR is required.

7.0 The Appeal

7.1. This is a third party appeal against the decision of Galway County Council to grant retention permission for change of floor levels at units 45 and 46, at Bun na Coille Estate, Kylebroughland, Moycullen, Co. Galway. The Grounds of Appeal can be summarised as follows:

- The retaining wall as constructed has not been constructed in accordance with relevant planning permissions.
- No reason or explanation has been given for the change of site levels.
- The change in levels results in significant overlooking of appellants property.
- The raised finished floor level will result in a depreciation in value of property in the area
- Due to ongoing rock breaking on site there has been structural damage caused to adjoining properties and this has not been repaired or fixed by the appellant. No details of vibration impact or noise readings have been supplied by the applicant. This continued unauthorised activity has resulted in legal proceedings against the applicant.

- The houses are in a different location from the original grant of permission 06/5813
- The applicant has provided a site history and details of enforcement proceedings between the applicant and Galway county Council. Concerns are raised in relation to the structural integrity of the constructed dwellings as a result of on site practices.
- The houses for retention were constructed on a raft foundation which is not permitted in the building or planning regulations.
- Other issues of non – compliance around the wider Bun na Coille estate are also referenced

7.2. Applicant Response

- None

7.3. Planning Authority Response

- None

7.4. Observations

- None

7.5. Further Responses

- None

8.0 Assessment

8.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site and having regard to the relevant local policy guidance, I consider the main issues in relation to this appeal are as follows:

- Development for retention

- Other Matters
- Appropriate Assessment

8.2. Development for retention

- 8.2.1. Planning permission was originally granted for 116 houses under parent permission reference 06/5813. A subsequent application for amendments to house designs and the completion of the estate was approved under planning reference 21/2071. It is noted that the unit numbers in the parent permission and the 21/2071 application differ from those under the current application.
- 8.2.2. The current appeal pertains exclusively to the retention of changes in finished floor levels (FFL) for units 45 and 46. The appeal raises concerns regarding enforcement proceedings and alleged unauthorised development within the wider estate. While these matters are outside the remit of this appeal, they will be addressed separately under the heading "Other Matters" for clarity. It is further noted that the applicant has not responded to the third-party issues raised in the appeal.
- 8.2.3. The applicant seeks retention of the finished floor levels for two dwellings, constructed at an FFL of 49.60m. Under the permissions granted in 06/5813 and 21/2071, the permitted FFL was 49.00mOD. The appellant contends that the 60cm increase in FFL results in significant issues, including overlooking, loss of residential amenity for existing dwellings, and depreciation of property values in the area. Furthermore, it is alleged that a rear boundary wall has been constructed in an incorrect location.
- 8.2.4. A review of the site layout under permissions 06/5813 and 21/2071 confirms that units 45 and 46 have been constructed in the same location as previously permitted under 21/2071. The appellant's property, No. 68, is positioned to the rear of these units and is situated at a higher elevation due to the natural topography of the site. The agent for the applicant has not provided finished floor levels for the appellant's property; however, the roof level has been indicated as 64.42mOD, compared to the roof level of units 45 and 46 at 58mOD. While the increase in finished floor level by 60cm is acknowledged, it is not considered to create a significant additional opportunity for overlooking. The dwellings have been constructed in accordance with the approved site layout, where a degree of impact was anticipated.

- 8.2.5. Concerns have been raised regarding the absence of privacy barriers between habitable rooms. Given the clear level differences between sites, a degree of overlooking is inherently expected due to the area's natural topography. The appellant's property, being on a higher plateau, has a greater potential for overlooking future occupants of units 45 and 46 rather than vice versa. Therefore, the increase in FFL is not considered to contribute significantly to overlooking or a loss of amenity to the extent that would warrant a refusal of permission.
- 8.2.6. The appellant also raises concerns regarding the separation distance between dwellings and the adequacy of private open space. An examination of permissions 06/5813 and 21/2071 confirms that the dwellings proposed for retention have been constructed in the same location as permitted under 06/5813. The separation distance between the rear elevations of the units and the appellant's property is indicated as 18.5m. It is noted that the appellant's dwelling (No. 68) appears to be positioned further west than indicated in the site layout presented under 21/2071. However, this matter is not within the scope of the current application.
- 8.2.7. While the increase in FFL by 60cm is regrettable, it is not considered a material factor contributing to the concerns raised regarding loss of amenity, rear garden space, or overlooking. The development remains consistent with the previously granted permissions 06/5813 and 21/2071 in all other respects. As such, the increase in finished floor level does not warrant refusal of permission in this instance.

8.3. Other Matters

Unauthorised Works

- 8.3.1. The appellant has raised concerns regarding the construction of a 6m high retaining wall, alleging that it was built in breach of planning and building regulations. It is contended that this wall, located to the rear of Unit 45, reduces the rear garden space and results in a revised site layout. Upon review of the relevant documentation and my site inspection, I am satisfied that the retaining wall has been constructed in accordance with the parent permission (Ref: 06/5813). Furthermore, I do not consider this matter to be a material consideration in the determination of the current application before the Board. Issues relating to planning enforcement fall within the

jurisdiction of the local authority and are therefore beyond the remit of An Bord Pleanála.

- 8.3.2. The appellant has also alleged a history of non-compliance by the developer, citing ongoing unauthorised works that deviate from the approved planning permission (Ref: 06/5813). Following my examination of the submitted documentation and site inspection, I am satisfied that the works completed on-site align with the terms of the original planning permissions. Allegations of non-compliance and any associated legal proceedings are not material to the determination of this appeal.
- 8.3.3. Based on the evidence presented and my observations on-site, I consider the appellant's concerns to be either beyond the scope of this appeal or satisfactorily addressed by the applicant. The development is substantially complete and executed to a high standard. No substantive issues arise that would warrant refusal of the application.

9.0 AA Screening

I have considered the proposal to construct a dwelling in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located 1.7km from the nearest European Site Lough Corrib SAC and 2.9km from Lough Corrib SPA. The development proposal consists of construction of 4 dwellings.

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:

- scale and nature of the development]
- Location-distance from nearest European site and lack of connections

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. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

I recommend that retention development for units 45 & 46 be granted

11.0 Reasons and Considerations

It is considered that, subject to compliance with the conditions set out below, the retention for change of floor levels of the two dwelling units will not have significant negative impact on amenity of neighbouring properties. Having regard to the foregoing it is considered that, subject to compliance with the conditions set out below, the development for retention would not be seriously injurious to the amenities of the area or the residential amenities of properties in the vicinity of the site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be retained in accordance with the plans, elevations and documentation submitted to Galway County Council on 7th of August 2024 except as amended by conditions hereunder.

Reason: In the interest of clarity.

2. The development hereby permitted relates solely to that as advertised under the public notices of the planning application.

Reason: In the interest of clarity

3. This permission is for retention of changes to finished floor levels (FFL) for units 45 & 46 as indicated under the public notices only and in all other respects the development shall be executed in accordance with Planning reference numbers PI. Ref 21/2071 and PI. Ref 06/5813. The proposed development shall comply with the terms and conditions of PI Ref 21/2071 and PI. Ref 06/5813 which govern the overall development of the site,

save where amended by the plans and particulars submitted with the application on the 7th of August 2024 and the conditions hereunder.

Reason: In the interest of clarity.

4. (a) All surface water generated by the development shall be disposed of within the site and shall not be discharged onto the road or adjoining property.
- (b) Only clean uncontaminated storm water shall be discharged to the soakaway system or surface water.

Reason: In the interests of road safety and proper planning and development.

5. (a) Boundary treatment and landscaping shall be as per the plans and particulars received by the Planning Authority on the 7th of August 2024.
- (b) Planting shall comprise of native tree/plant species only.
- (c) All boundary treatments facing public areas shall be constructed using natural, limestone only.

Reason: In the interests of visual and residential amenity.

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.

Darragh Ryan
Planning Inspector

24th February 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	321076-24		
Proposed Development Summary	Retention for change of floor levels		
Development Address	Bun na Coille Estate, Kylebroughland, Moycullen, Co. Galway		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	
		No	X
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			
No	X		
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No			

4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			

5. Has Schedule 7A information been submitted?		
No		
Yes		

Inspector: _____ Date: _____