

An Bord Pleanála



Inspector's Report

Appeal Reference No: PL07.246495

Development: Permission sought to retain and complete as approved under planning ref.no.07/3443, 1) excavated rock face, 2) change in location of domestic garage, 3) reorientation of effluent treatment systems and percolation area, 4) access to northwest boundary and close access from northeast boundary, 5) previously approved dwellinghouse and solid fuel, including all associated site works (house of 232.5-sq.m GFA and garage of 57.54-sq.m GFA).

Address: Gortatlewa, Bushypark, Galway

Planning Application

Planning Authority: Galway County Council
Planning Authority Reg. Ref.: 16/124
Applicant: Pat and Michael Heffernan
Planning Authority Decision: **REFUSE** permission for 5no. reasons

Planning Appeal

Appellant(s): Pat and Michael Heffernan
Type of Appeal: First party against decision
Observers: James Heffernan
Date of Site Inspection: 01/07/16

Inspector: John Desmond

1.0 SITE LOCATION AND DESCRIPTION

The application site is located c.1km outside and northwest of the Galway City boundary, off the N59 (Clifden Road), and c.5km from the city centre. The area is rural but is very heavily developed for one-off rural housing at densities approaching suburban development in parts. The land is rugged, elevated and sloping, with mature tree and shrub vegetation along field boundaries, within mature residential properties and in stands.

The subject site is located to the rear (south) of two existing dwellings fronting onto the N59, but which access the N59 via a single shared access lane which accommodate three existing dwellings (the two frontage dwellings and another dwelling to the rear) and the application site. The other dwelling is located to the west of the subject site. The two roadside residential dwellings contain mature trees and vegetation.

The land generally slopes down from southwest to northeast towards Lough Corrib and this is also the case for the site and associated and contextual land which slope down to the N59. There is a ground level difference of c.18.5m between the N59 and the rear boundary of the site (c.155m).

The application site has a stated area of 0.2ha and principle dimensions indicated as 29.6m X 71.1m. The site has been excavated at its southern end (by up to c.8m). There is an exposed rock-face at the southern end of the site, inside the site boundary. It would also appear to have been infilled at its northern end, possibly to a depth of c.3m, although this is not clear from the submitted drawings. There is a retaining wall of c.3m (estimate) in height erected along the northern and northwest side of the of the site, which mostly follows the line of the site boundary. The site is generally level, with the southern section cleared of materials and vegetation and the northern section used for storage of mixed building-related material and overburden. The only vegetation of note within or bounding the site is at the elevated southern boundary.

Apart from the northern, northwest and southern boundaries, the site is currently open to the adjoining lands. To the west and north, the site abuts 'family private access way' roads. The west road is the principle shared access route to the N59, whereas the north route provides access to a c.0.1ha area to the east of the application site where there are currently shipping containers and stored mixed materials.

The access to the N59 has good visibility and, as far as I am aware, is within the 50kph speed limit. The N59 is of good alignment and with hard shoulder.

The nearest Natura 2000 sites include Lough Corrib SAC (site no.000297) located c.600m and Lough Corrib SPA (site no.004042) c.660m to the northeast, the Connemara Bog Complex SAC (site no.002034) c.8.75km to the west and the Inner Galway Bay SPA (site no.004031) and the Galway Bay Complex SAC (site no.268) a little over 5km to the south.

2.0 PROPOSED DEVELOPMENT

The development subject of this appeal can be summarised as followed:

- 1) The retention of existing excavated rock face and access from northwest boundary.
- 2) The carrying out and completion of the approved development under reg.ref.07/3443 comprising a dwellinghouse and solid fuel store, including all associated site works (house of 232.5-sq.m GFA and garage of 57.54-sq.m GFA) with the following amendments:
 - change in location of domestic garage
 - reorientation of effluent treatment systems and percolation area
 - close access from northeast boundary.

3.0 RELEVANT PLANNING HISTORY.

On site –

Reg.ref.15/1349: Permission **REFUSED** by Galway County Council (06/01/16) to Michael and Pat Heffernan to (1) retain and complete excavated rock face to rear of property, (2) construct enlarged fuel store/storage shed from that approved under Ref.07/3443, (3) retain access to North West Boundary and close access from the North East boundary on site of works previously approved under reg.ref.07/3443.

Reg.ref.13/0205: Permission **GRANTED** by Galway County Council (22/04/13) to Pat and Michael Heffernan for extension of duration of permission ref.07/3443 for the erection of one dwelling (198.7-sq.m), garage, septic tank, puraflo effluent treatment system and percolation area.

07/3443: Permission **GRANTED** by Galway County Council (19/03/08) to erect one dwellinghouse, garage, septic tank, 'puraflo' effluent treatment system and percolation area. (Gross floor area 198.7sqm).

In the vicinity –

On site to southwest, with access route abutting southern boundary and returning northeast to run parallel to and within c.25m of the site's eastern boundary.

Reg.ref.13/1277: Permission **GRANTED** by Galway County Council (21/01/14) to James Heffernan for extension of duration of permission reg.ref.08/2641 to construct a slatted shed (gross floor space 272.38sq m).

Reg.ref.08/2641: Permission **GRANTED** by Galway County Council (22/20/08) to James Heffernan to construct a slatted shed (gross floor space 272.38sq m).

4.0 PLANNING AUTHORITY DECISION

Decision to **REFUSE** permission for five reasons. The reasons for refusal may be summarised as follows:

- 1) Contrary to rural housing policy under Galway County Development Plan and Section 28 Ministerial Guidelines.
- 2) The proposed works for retention and completed (works to excavated rock-face specifically) would interfere with character of Class 3 rural landscape.
- 3) Would endanger public safety by reason of traffic hazard or obstruction of road users due to failure to demonstrate adequate sightlines at entrance.
- 4) Contrary to EPA Code of Practice Manual (2009), would seriously endanger health and safety of occupants and pose an unacceptable risk to surface waters contrary to EU Groundwater Directive (80/86/EEC).
- 5) Prejudicial to public health due to surface water runoff.

4.1 Planning and technical reports

Planning Officer – The report of 30/03/16 is generally consistent with the decision of the Planning Authority to **REFUSE** permission and the content and detail of the refusal reasons attaching to the said decision. Additional relevant points of the report include:

- Appropriate Assessment not required having regard the nature and scale of the development, the proposal to install a wastewater treatment and disposal system to EPA standards, in conjunction with lack of any

apparent ecological or hydrological connectivity to the Lough Corrib, with no significant effect, individually or in combination, on Lough Corrib SPA and SAC considered likely.

- Concerns regarding sight distance relate to the entrance onto the private access road.
- The submitted drawings do not provide clear visual representation of how the proposed stone retaining / terrace wall will appear on completion and address the negative visual impact of the exposed granite wall.
- The 7m separation distance between the septic tank and polishing filter from the French drain is unacceptable.
- Proposed house plans do not accord with those permitted under reg.ref.07/3443 in terms of height, floor area and design.
- Joint-applicant Pat Heffernan, who was not an applicant under reg.ref.07/3443 (only Michael Heffernan), has been granted a number of permissions in the area (63264, 72397, 95/1279 and 12/75) and does not qualify to build a house under the Council's rural housing provisions.
- No solid fuel store is indicated.
- Notes TII submission regarding access to national road network which would be contrary to national policy (SP&NR Guidelines, 2012).

Transport Infrastructure Ireland – The report of 07/03/16 indicates that the proposed access is contrary to national policy (SP&NR, 2012) and would create an adverse impact on the national road where the maximum speed limit applies and be at variance with foregoing policy in relation to control of frontage development on national roads.

4.2 Observations

One observation was received, from James Heffernan of Gortacleva (10/03/16). The main points raised were as follows.

Possible instability of rock-face.

- Only a fraction of the excavated embankment is rockface.
- The rock is overlain by a mixture of clay and rock, with topsoil above, which becomes unstable when wet.
- The angle of the cliff-face significantly exceeds a reasonable angle of repose for this mix of rock and soil and may give way over time.

Visual impact of rock face

- Agrees with previous Planner's report that the excavated face is very unsightly and would detract from visual and residential amenities of the area.
- The visual impact is injurious on the observer who uses the right of way to access his land.

Restoration

- It would be wholly possible to restore the ground to its original contour as depicted on section YY drawings attached to reg.ref.07/3443.
- This would address stability and visual concerns.

Relocation of garage

- Would prevent reinstatement of ground contours.

Drainage – effluent treatment and soakpits: No water should discharge from the site onto the private access road, which may end up on the N59.

Site access – sightlines at the entrance should comply with safety sightlines, particularly regarding interference of line of sight by boundary walls. Sightlines to the N59 may be safety concern also.

5.0 GROUNDS OF APPEAL

Pat and Michael Heffernan c/o Padraic Hession & Associates (27/04/16) - The grounds of appeal may be summarised as follows:

Number of reasons of refusal

- Previous similar development proposal refused for three reasons (reg.ref.15/1349), including a reasons related to the proposed enlarged storage shed.
- The amended proposals omitted the storage shed and this should have, at minimum, reduced the number of refusal reasons to two, but they increased to five.
- The proposed landscaping works are sufficient to address refusal reason no.1 of reg.ref.15/1349.
- They are confused as to why there is an issue with sightlines which was included under reason no.3 of reg.ref.16/124.

Reason no.1 – non-compliance with rural housing provisions

- Pat Heffernan was included as applicant as Galway County Council has included him in the enforcement correspondence (Warning Letters and Enforcement Notices) concerning site excavation and it was therefore not possible to include only one of their names in the application.

- Michael Heffernan is of limited intellect and is helped by his brother, Pat.
- Compliance with rural housing need has been dealt with in the application of 2007, which is a live permission extended in duration to April 2018.
- The applicant is only to resolve particular issue, including ground levels, enforcement, effluent treatment, shed and access.

Reason no.2 - landscaping

- It is easy to decipher what is proposed by the landscape designers.
- Anything further required can be addressed by condition.
- David Heffernan, the closest resident, has indicated he has no difficulty with the view and that it is only visible up close.
- A sketch of the use of boulders against the excavated area, as a retaining wall, has been attached, but the applicants are of the view that this is not needed.

Reason no.3 - sightlines

- This has been fully dealt with under the 2007 application, the said permission being extend to April 2018, and the sightlines are unchanged.

Reason no.4 – Soakways

- These have now been detailed.

Permission can now be granted for the works and the Board should overturn the decision of the County Council.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

None.

6.2 Observations on grounds of appeal

The main points of the observations submitted by James Heffernan (24/05/16) may be summarised as follows:

- Housing need criteria - neither applicant can fully comply with the criteria:
 - Pat Heffernan has a number of planning permissions in the vicinity;
 - Michael Heffernan currently and has always lived in the family home, also being the observer's home and has a right of residency in same under the terms of their father's will.
 - Michael, due to mental disability, is incapable of managing his own affairs and will never have a housing need.
 - Michael will never occupy the proposed house.

- Reiterates concerns raised regarding:
 - Instability of excavated face;
 - Visual impact;
 - Sightlines at entrance
- Stormwater:
 - The proposed soakways may not be of sufficient capacity.
 - Location of soakways upstream and uphill of proposed house suggests that the natural slope of land will encourage stormwater to pass beside / under house and through the percolation area, overloading same.
- Change in levels
 - Reinstatement of ground levels may present difficulties for run-off from ground and surface water behind the new dwelling.

7.0 POLICY CONTEXT

7.1 PLANS

Galway County Development Plan 2011-2017

Section 3.7 Single Housing in the Countryside

Section 13.4 Rural Housing Considerations

7.2 OTHER REFERENCE DOCUMENTS

'Spatial Planning and National Roads, Guidelines for Planning Authorities' (DoEHLG, 2012)

'Code of Practice, Wastewater Treatment and Disposal Systems Servicing Single Houses' (EPA, 2009)

'Development Management Guidelines for Planning Authorities' (DoEHLG, 2007).

'Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005)

8.0 ASSESSMENT

I consider the main issues arising can be considered under the following headings:

1. Policy
2. Cliff-face
3. Sightlines
4. Water effluent
5. Surface water drainage
6. Appropriate Assessment

8.1.0 Policy

- 8.1.1 The site is located within that area defined as '*Rural Areas under Strong Urban Pressure (GTPS)*' under the County Development Plan 2015-2021. There is an extant permission for Michael Heffernan for a dwelling on this site under reg.ref.07/3443, extended under reg.ref.13/0205 to April 2018.
- 8.1.2 The current application is made in the name of Michael Heffernan and Pat Heffernan. The Planning Authority refused permission on the grounds of non-compliance of one of the applicants, Mr Pat Heffernan, with the Council's rural housing policy by reason of his having already been granted permission in the vicinity on a number of occasions. On the previous application for a similar development, which was also made by Pat and Michael Heffernan, the Planning Authority did not include a similar reason for refusal.
- 8.1.3 The appellants submit that Pat Heffernan was included as applicant as Galway County Council has included him in the enforcement correspondence (Warning Letters and Enforcement Notices) concerning site excavation and it was therefore not possible to include only one of their names in the application. The scope of the enforcement action and the issues it concerned are not provided on file, but I would note that the excavations would appear to extend onto the adjacent lands to the east of the site where there are extensive storage of building materials and excavated granite rock, and a number of shipping containers and sheds, whereas the subject application concerns the site works only within the site of permission reg.ref.07/3443, which would appear to be under the control/ownership of Michael Heffernan alone. There would seem to be no reason to include Pat Heffernan as an applicant. I do not accept that Pat Heffernan needed to be included as a co-applicant due to the purported limited intellectual ability of Michael Heffernan.

8.1.4 In the absence of the applicant demonstrating compliance with the Council's rural housing policies, in accordance with relevant Ministerial guidance (*'Sustainable Rural Housing Guidelines'*, 2005), the Planning Authority's decision to refuse permission on rural housing need grounds is legitimate and reasonable.

8.1.5 Should the Board decide to grant permission, given the site's planning history and the location of the site within the area under strong urban pressure, the Board may consider it appropriate to limit the occupancy and ownership of the proposed dwelling to Michael Heffernan, alone. However, I would have reservations about the legitimacy of excluding one of the applicants by condition, and such a condition may be unreasonable and contrary to the basic criteria for conditions under the *'Development Management Guidelines'* (2007). In view of the existing permission to extend duration of the parent permission, I would advise that the Board attach a condition limiting the duration of the permission to carry out and complete the development concerned to 21 April 2018 to match of the permission for extension of duration under reg.ref.13/0205 having regard to the altered development plan and planning-related context since the parent permission was granted.

8.2.0 **Cliff-face**

8.2.1 Visual impact - Having inspected the site, I do not regard the visual impact of the excavated cliff-face to present a permanent negative visual impact. The cliff face is not visible except from the subject site and from immediately neighbouring lands to the west and east and there would be little or no visual impact in the medium or long distance range, including on the N59. I would expect that some of the cliff-face would be colonised by plants over time and would be obscured by even modest planting within the site. The applicant's landscaping and planting proposals set out in drawing no.16/1061/01 (received 10/05/16) are reasonable and easy to follow and implementation of same could be specifically required by condition, if necessary. I therefore do not consider refusal reason no.2 to be valid. The visual impact will be difference if extensive structural works are required to address the stability of the cliff-face (see below).

8.2.2 Stability – Third party observer, James Heffernan, has raised concern about the possible structural instability of the cliff-face. He points out that contrary to the assertion of the applicants' engineer, only a fraction of the excavated embankment comprises granite rock-face, with the majority comprising an overlay of a mixture of clay and rock, with topsoil above. It is submitted that such material will be unstable when wet and, given the angle of the cliff-face

which significantly exceeds a reasonable angle of repose for such material, may give way over time. I consider these to be valid and reasonable concerns.

- 8.2.3 The stability of the rock-face has implications for the adjoining property (agricultural lands) to the south, not least as the access route to a slatted shed permitted under reg.ref.08/2641 (duration of permission subsequently granted under reg.ref.13/1277, but not constructed) runs immediately along the southern boundary of the current appeal site. A right of way adjacent the southern boundary is indicated on plans attached to reg.ref.07/3443.
- 8.2.4 In their appeal, the appellants submitted a rough sketch section-drawing for retaining structure along the cliff-face. The details are vague, insufficient and appear unrealistic given the nature of the materials (boulders) to be use. The appellant also submits that no deterioration has taken place to the embankment over 12 months, including a very wet winter. Whilst this may be so, there is no information regarding the potential risk of collapse over time. In the absence of accurate and supported information regarding same and detailed proposals to retain the cliff-face, as appropriate, the retention of the cliff-face would seriously injure the amenity of the neighbouring lands to the south and would be contrary to the proper planning and development of the area.

8.3.0 **Sightlines and traffic issues**

- 8.3.1 Refusal reason no.3 concerned the endangering of public safety by reason of a traffic hazard or obstruction of road users due to the failure of the applicant to demonstrated that minimum sightline distance can be achieved in both directions at the entrance to the site. The applicant site entrance is to a private, loose-surfaced roadway shared by three dwellings, the application site, the adjacent storage site and agricultural lands to the south. The sightline distance standards under TII TD41/42 concern access to public roads and do not apply as standard to access onto this private road. The TII concerns relate only to the proposed access to the N59.
- 8.3.2 The report from TII advises that the proposed development would, if permitted, create an adverse impact on the national road where the maximum speed limit applies and would be at variance with national policy concerning development involving access to national roads as set out in '*Spatial Planning and National Roads Guidelines for Planning Authorities*' (DoEHLG, 2012). However, the proposed development does not access directly onto a national road and, as far as I am aware, the junction of the private access road to the N59 is within the 50kph speed limit commencing to the west of the site

entrance on the approach to Galway City. The said policy applies only outside the 50/60kmh speed limit zones for cities, towns and villages, although the Board may consider it reasonable to have regard to same having regard to the particular site context.

8.4.0 **Wastewater**

- 8.4.1 Foul water - The dwelling is proposed to be served by a septic tank, effluent treatment system ('puraflo' system stated on parent application) and percolation area. Permission was granted for a dwelling with septic tank, effluent treatment system ('puraflo' system) and percolation area in 2008, prior to the adoption of the EPA Code of Practice in 2009. A cursory review of the proposed layout shows that the proposed system does not comply with the separation distances from roads, boundaries, drains and slope breaks/cuts required by the COP (table 6.1).
- 8.4.2 Whilst the proposed location is altered marginally compared to that previously proposed, with a reorientation of the percolation area and therefore the previous site characterisation assessment may be applicable, the proposed location is currently being used for storage of building materials and overburden and it would appear to have subject to infilling to achieve the levelled area. The drainage characteristics of the site are therefore likely to be significantly different at this point in time, due to infilling and compression of earth material and a new site characterisation assessment would therefore be required. In the absence of same, and notwithstanding that there is a public mains supply in the area to which the applicant proposes to connect, the disposal of wastewater on site would pose a threat to groundwater in the vicinity and be prejudicial to public health.
- 8.4.3 Surface water - The applicant initially proposed to discharge surface water from the site via French drain (i.e. to ground). In the absence of comprehensive design details and calculations for collection and disposal of surface water runoff, the Council determined that permission should be refused on ground of prejudice to public health and injury to amenities. A French drain was proposed under the parent application and standard conditions were attached concerning surface water drainage.
- 8.4.4 On appeal, the applicant has submitted revised proposals (drawing no.11-60-01-SL-01) omitting the French drain and showing surface water runoff discharging to two soakpits to the southern side of the proposed house. The principle of discharging to ground is acceptable in principle. No surface water should be permitted to flow off the site onto the private access road as the

said road would appear to ultimately drain to the N59. This issue can be addressed by condition should permission be granted.

8.5.0 Other issues.

8.5.1 The applicant has indicated site levels for retention to a different datum to that used in the parent application and it is no possible to clearly relate the spot levels between applications. The applicant submits that the finishes floor level of the proposed dwelling is c.2m below that of the permitted under the parent application. Whilst I have no objection to the finished levels, in principle, the details are uncertain and not directly comparable to the parent permission.

8.6.0 Appropriate Assessment

8.6.1 Lough Corrib SAC (site no.000297) is within c.600m and Lough Corrib SPA (site no.004042) within c.660m, however, having regard to the Conservation Objectives pertaining to the qualifying interests for those sites only Lough Corrib SAC is of concern. Dispersed habitation outside of the Natura 2000 site is identified as a high ranking threat to the SAC. However, having regard to the relatively small scale and nature of the proposed development, being amendments to a permitted residential dwelling, and the location of the site at a distance from any Natura 2000 site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 CONCLUSIONS AND RECOMMENDATION

It is considered that the proposed development should be **REFUSED** for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

1. The proposed development, by reason of failure of the applicant to carry out and submit a site characterisation assessment for the revised location of the proposed onsite wastewater treatment system and percolations area, having regard to the alteration of site levels through excavation and infilling, and by reason of the proposed layout of the wastewater treatment system which does not achieve the minimum separation distance required for such developments, the proposed development would be contrary to the requirements of the EPA's *'Code of Practice for, Wastewater Treatment and Disposal Systems*

Serving Single Houses' (2009) and would therefore pose a threat to groundwater quality and be prejudicial to public health.

2. The Board is not satisfied that, based on the details and drawings of proposals submitted on file by the applicant, that the excavated cliff-face will be structurally stable, having regard to the composition of the material comprising the cliff-face. The development proposed for retention would, by reason of risk of collapse of the excavated cliff face, seriously injure the amenities of the adjacent property to the south, which includes a right of way directly abutting the application site's southern boundary for which permission has been granted under reg.ref.08/2641 (and duration of permission extended under reg.ref.13/1277) for access to a slatted shed on lands to the southwest.

John Desmond
Senior Planning Inspector
17/08/16