



An
Bord
Pleanála

Inspector's Report

An Bord Pleanála Ref. 07.246529

Proposed Development	Construction of extension and garage to house and upgrading of existing waste water treatment system.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	15/1543
Applicant(s)	Sean Grealish.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission.
Appellant(s)	Sean Grealish.
Observer(s)	None.
Date of Site Inspection	7th August, 2016.
Inspector	Stephen Kay

1.0 Site Location and Description

The appeal site is located in the village of Rindifin to the south of Gort. The area is included within the Gort LAP and the site and surrounding lands are zoned for development. The site is accessed via a laneway which is a right of way to the site off the N18 national road. This access route is covered with stone and the southern side of the drive is characterised by paving sets stored in piles.

There is an existing house on the site which is a two storey vernacular dwelling that is in very poor condition albeit that the walls and roof of the structure are substantially intact. The application documents indicate that there is an existing on site septic tank and percolation area and also that there is an existing on site well. The location of this well is not indicated on the submitted Site Plan. The site is relatively level with the road and the stated area is 0.2023 ha.

To the west the site is bounded by undeveloped land located between the existing dwelling and the road (N18). To the east, the boundary is defined by a ditch and mature trees and beyond that lands that are in agricultural use. To the south west, the site is adjacent to dwellings that front onto the N18 and which have vehicular access to the N18 to the south of the site. There is existing residential estate development located c. 150 metres to the north of the site on the same side of the N18 and also on the western side of the N18.

2.0 Description of Proposed Development

The proposed development comprises the construction of an extension to the rear of the existing building on the site. The extension proposed takes the form of a two storey extension with an A profile roof that is to be hipped into the roofline of the existing dwelling. Smaller single storey elements are proposed to the north and south of the two storey extension.

The extension is indicated as having a living room area at ground floor level and an en suite bedroom and new bathroom at first floor level. The proposed development would result in a total of three bedrooms in the dwelling and the overall area of the proposed extension is 85.75 square metres.

A single storey garage structure is proposed to be located very close to the north east of the extended dwelling and is indicated as having a floor area of c.48.6 sq. metres.

As part of the development it is also proposed that the drainage of the site would be upgraded with the installation of a new effluent treatment system incorporating primary, secondary and tertiary treatment. The treatment system is proposed to be located to the north of the extended dwelling with the percolation area sited towards the north west corner of the site. It is proposed that the existing septic tank which is indicated as located close to the northern boundary of the site would be removed as part of the development.

3.0 Planning History

The site formed part of developments on larger sites as follows:

Galway County Council Ref. 06/3876 – Permission refused by the Planning Authority for the construction of 71 no. dwelling units and all ancillary site services.

Galway County Council Ref. 98/1543 – Permission refused by the Planning Authority for the construction of 25 no. houses.

4.0 Planning Authority Assessment and Decision

4.1 Internal Reports

Planning Officer Report – The initial report of the Planning Officer notes the form of development proposed and a number of concerns regarding the water supply and waste water treatment are identified as well as issues relating to the design, building structural condition and potential impact on bats and the proximity of the site to the Lough Cutra SAC where one of the qualifying interests is the Lesser Horseshoe Bat. FI on these issues is recommended however the FI request which issued only related to the water supply and foul drainage. A second report subsequent to the request for further information recommends refusal of permission for four reasons, three of which were included in the Notification of Decision which issued. The reason omitted related to the potential for bats to be present on the site and the potential impact on the qualifying interests of the Lough Cutra SAC.

There are no other internal reports on file.

4.2 Request for Further Information

Prior to issuing a Notification of Decision the Planning Authority requested further information on the following issues:

1. Details of the bored well on site as the location of this is not indicated on the submitted plans. Noted that public mains water supply runs along the N18 and proposals for connection to this main are requested.
2. Regarding wastewater treatment it is noted that the site is located within the inner source protection zone of a water supply and that therefore the groundwater protection response for the site is R(3)2 rather than the R(2)2 as indicated on the Site Characterisation form submitted. Revised proposals are therefore required that meet the requirements of this groundwater protection response.

In response to the request for further information the applicant submitted the following details:

- Results of pump yield tests for the well showing that adequate supply available and chemical quality of water is acceptable. The exact location of the well site is not shown.
- A revised site characterisation form is submitted. Noted that the treatment system will replace an existing septic tank and that the percolation area not within 60 metres of any public or industrial water supply source.

It is noted that the initial recommendation of the Planning Officer was that the further information request would include other issues including the submission of a bat survey.

4.3 Notification of Decision

A Notification of Decision to Refuse permission, was issued by the Planning Authority. The following is a summary of the reasons for refusal:

1. That the site is located within the Kinvarra Coastal catchment and drains to the Inner Galway Bay SPA and the Galway bay Complex Sac and has hydrological connection to a number of European sites as well as being within a source protection zone for groundwater source. In the absence of satisfactory information the proposal would be contrary to the EPA Code of Practice for single dwellings, would be prejudicial to public health and would adversely affect the integrity and conservation objectives of protected European sites.
2. That the proposed design and materials do not respect the existing vernacular structure on the site and would be visually obtrusive and would materially contravene Objective AH6 of the County Development Plan.
3. That in the absence of a structural report showing that the existing structure on the site has capacity to accommodate the proposed development the proposed development would materially contravene Objective RH07 of the development plan.

It is noted that all three reasons for refusal make reference to material contravention of the development plan and that the provisions of s.37(2) of the Planning and development Act (as amended) are therefore applicable in this case.

It is also noted that the report of the Planning Officer recommended that permission would also be refused on the basis of the potential impact on Lough Cultra SAC and the absence of a survey of bats which would enable a comprehensive screening assessment to be undertaken. This reason for refusal was not included in the Notification of Decision which issued.

5.0 Appeal Submission

The following is a summary of the main issues raised in the appeal

- That the site is zoned residential existing and surrounded by lands that are zoned Residential (Phase 2). This would indicate that the Planning Authority are aware that there is an existing dwelling on the site which can be made habitable.
- That under ref. 13/1374 Galway County council granted permission for an extension of a dwelling in a rural area which is significantly larger than the original structure.
- That the proposal involves the installation of a new on site treatment system and is a significant improvement over the existing septic tank.
- That the designation of the site as being within an inner source protection and a groundwater response of R3(2) however this is contradicted by the Environment Section who have informed the appellant that the site is located

900 metres from a water source and is therefore in an outer source protection area and should have a response matrix of R3(1). This source is not a groundwater source but rather is taken from a river and was not therefore considered as a risk in the initial site assessment.

- That the site and proposed treatment system meets all of the requirements for a site classified as R3(1) response.
- That the proposed design does complement the existing vernacular structure and the existing structure is essentially retained in full. The main extension proposed forms a classic T shape and the extensions will not be visible from the public road.
- Noted that the Objective referred to by the Planning Authority (Objective AH6) references the importance of such structures and to resist demolition. The council's decision would allow the building to deteriorate further and not to allow an extension that would protect vernacular architecture.
- That it is unfair that the Planning Authority did not raise the concerns that it had regarding the design with the applicant by way of further information.
- That the requirement for a structural report is under Objective RH07 which relates to rural areas and not a location that is zoned residential such as the proposed development. If required, such a structural report should have been requested by way of further information.

6.0 Response Submissions

There is no response from the Planning Authority to the grounds of appeal.

7.0 Planning Policy

7.1 Gort LAP

The appeal site is located within the development boundary of the Gort LAP. The site is located within an area that is zoned Objective R-Residential Existing under the provisions of the Gort LAP, 2013. This zoning has the objective *'to promote the development of appropriate and serviced lands to provide for high quality well laid out and well landscaped sustainable residential communities with an appropriate mix of housing types and densities together with complementary land uses such as community facilities, local services, and public transport facilities to serve the residential population of the area, protect existing residential amenities and facilitate compatible and appropriately designed new infill development in accordance with the proper planning and sustainable development of the area.'*

7.2 Galway County Development Plan, 2015-2021

There are a number of policies and objectives contained in the County Plan which are of relevance to the proposed development and which are referred to in the assessment and Notification of decision of the Planning Authority.

Objective RHO 7 - relates to the renovation of existing dwellings and states that it is an objective of the council that proposals for such renovations would be dealt with on their merits. Also stated that a structural report will be required to illustrate that the structure can be brought back into use.

Objectives WS 7 and WS 11 relate to the protection of water sources and aquifers.

Objective WW 5 relates to ensuring that proposals for new dwellings are consistent with the Code of Practice (EPA).

7.0 Assessment

In my opinion the following are the main issues relevant to the consideration of this appeal:

- Principle of Development
- Design and Impact on Character
- Other issues (Residential Amenity, Traffic)
- Drainage and Water Supply
- Appropriate Assessment

8.1 Principle of Development

8.1.1 The appeal site is located within lands that are within the development boundary as identified in the Gort LAP, 2013. The site is zoned for residential development and is identified as residential existing in the land use zoning map. The principle of the redevelopment of an existing house on the site is, in my opinion, therefore acceptable in principle.

8.1.2 The Planning Authority have made reference in their assessment and Reason No. 3 of the Notification of Decision to Refuse Permission to the need to demonstrate that the structure is capable of being brought back into habitable use without

compromising the original character of the dwelling and that a structural report is required to this effect. The appellants note that this Objective is contained in the Plan under the heading of rural housing and that as the appeal site is located in an urban area that this objective does not therefore apply to the appeal site. I note that this is the case, and also consider that the Objective would appear likely to relate primarily to proposals for the redevelopment of existing rural houses and is intended as a mechanism for demonstrating that such existing dwellings are capable of being redeveloped and that the structure is not derelict and residential use of the site effectively extinguished. It could be argued that such an approach should apply in the case of the appeal site, however given the location of the site on lands that are zoned residential existing I do not consider that this would be appropriate. In addition, it is my opinion that the condition of the existing dwelling while poor is not such that it is derelict. The walls and roof are intact and it would, in my opinion likely be capable of being restored to residential use while retaining the original design features.

8.1.3 I note that reason for refusal No.3 included in the Notification of decision to refuse Permission makes reference to material contravention of Objective RH07 and that the provisions of s.37(2)(b) of the Planning and Development Act are therefore applicable. In this case I do not consider that the reference to material contravention of this objective is a reasonable interpretation of Objective RH07 by the Planning Authority for the reasons set out in 8.1.2 above and primarily for the reason that the site is located in an area zoned for residential development. It is my opinion that the fact that the site is located within the boundary of a LAP and is zoned is such that it conflicts with the objective requiring the justification of redevelopment of a dwelling and the submission of a structural report and that under s.37(2)(b)(ii) it is therefore open to the Board to Grant permission in this instance.

8.1.4 With regard to the impact of the proposed development on the future development of the surrounding lands, I note the fact that the undeveloped residential lands surrounding the site are identified as Phase 2 in an order of priority and that the development of these lands is therefore unlikely to occur in the near future or at least over the lifetime of the current Galway County development Plan, 2015-2021. In any event, the siting of the dwelling within the site and the relatively restricted site size is such that I do not consider that the granting of permission would act to significantly compromise the future development of the surrounding residentially zoned Phase 2 lands.

8.2 Design and Impact on Character

8.2.1 Reason for Refusal No.2 cited by the Planning Authority relates to the design of the proposed development and the opinion of the council that the design does not complement or contribute positively to the existing vernacular structure. Particular concern is expressed in the report of the Planning Officer regarding the side elevations and the bulk of the proposed extensions. It is considered that the proposed development would be contrary to Objective AH 6 of the County Plan relating to vernacular architecture.

8.2.2 The design of the proposed development is such that the extension is entirely to the rear of the existing structure. The existing side gables would be retained and the height of the proposed extension would not exceed that of the existing structure. In my opinion the basic design approach proposed would not result in the loss of the existing basic form or features of the structure. The front elevation would remain unchanged and when viewed from the public road (N18) which is almost 100 metres away the proposed extension would not be visually prominent. Some form of extension of the original structure is required in order to make the proposed development suitable for modern habitation.

- 8.2.3 In stating the above, I do consider that the scale of the extension at ground floor level is excessively wide and that the proposed single storey elements would act to make the structure visually bulky. The omission of these single storey elements would not fundamentally alter the layout of the proposed accommodation and would make the form of the building more in keeping with the T shaped plan for which the first party states to be a traditional design. In the event of a grant of permission it is therefore recommended that these single storey elements would be omitted by way of condition.
- 8.2.4 Objective AH 6 states that it is an objective of the Council to ‘...ensure the protection, retention, and appropriate revitalisation and use of the vernacular built heritage, including structures that contribute to landscape and streetscape character and resist the demolition of these structures’. In the case of the proposed development the existing vernacular structure is unoccupied and in poor condition. Whatever the rights and wrongs of its current condition, it is apparent that unless it is renovated in the relatively near future then the viability and potential for the reuse of the existing structure will be threatened. As set out above, subject to some modification that would reduce the bulk of the proposed rear extension I do not consider that the proposed development would be visually incongruous or significantly out of keeping with the existing structure on site. It is also my opinion that the retention of the structure and its reuse would be consistent with the aims of Objective RH 6. Given this I do not see how the proposal can clearly be seen to constitute a material contravention of Objective RH 6 as stated by the Planning Authority in Reason for Refusal No.2.
- 8.2.5 In terms of the provisions of s.37 (2) of the Act, there do not appear to be changes to the pattern of development since the making of the LAP in 2013 that would justify permission being granted. The appellants cite Ref. 13/1374 which they state to be precedent for a large scale extension to a vernacular building however this site is

significantly (c.10km) to the north of the current appeal site. While I do not see any policies or objectives in the plan which directly conflict with the decision of the planning authority to refuse permission on the basis of the adverse impact on vernacular architecture, I do not consider that the decision of the of the Planning Authority to determine that the proposed development materially contravenes Objective AH 6 is a reasonable contention given the nature and scale of the proposed development and also given the wording of the objective which places considerable emphasis on the protection and retention of vernacular built heritage. To refuse permission in this instance would, in my opinion be a greater threat to vernacular heritage than would be the case if the development were to be permitted. On the basis of the scale and nature of the proposal I do not therefore consider that it can reasonably be stated that the proposal would materially contravene the objective and therefore do not consider that it is appropriate that the Board is constrained by s.37(2) of the Act in overturning the decision of the Planning Authority in this case.

8.3 Other Issues

8.3.1 The design and layout of the proposed development is such that I do not consider that there would be a significant adverse impact on residential amenity that would arise on foot of the proposed development. Recognition has to be had to the fact that there is an established residential use of this site. There are a number of dwellings which front the N18 to the south of the appeal site, the rear of which are visible from the appeal site. The proposed extension would not however have a significant impact in terms of overlooking of these adjoining properties.

8.3.2 Access to the site is via an existing access onto the N18. Sight lines in both directions at the existing entrance are acceptable and meet the minimum standards.

8.4 Drainage and Water Supply

- 8.4.1 The development is proposed to be served by a proprietary effluent treatment system and raised percolation area which would be located to the north of the existing dwelling and close to the north west corner of the site. There is an existing septic tank on site which is proposed to be decommissioned as part of the proposed development. Water supply is indicated as being via a bored well on site and further information regarding the capacity and water quality in this well was submitted by the applicants as part of the further information response. It is indicated in the report of the planning officer and the further information request that there is a public water supply available on the N18 however the applicant responded to confirm that it was not proposed to use this public supply. It is noted that if there is no connection to the site that a pipe would have to be laid along the right of way and over lands which the applicant does not own.
- 8.4.2 The first party has taken particular issue with the classification of the site as being located within an inner protection zone around a public water source and states that clarification from the Environment Section of the council indicates that the site is actually located within an outer zone and such that the correct ground water protection response and resulting requirement for an on site treatment system, are R3(1) and not R3(2) as stated by the Planning Authority. There is no information on file to support the contention of the first party regarding the site being in an outer protection zone however I note that the Environmental report prepared for the Gort LAP by RPS Consulting Engineers indicates the location of the LAP lands relative to Groundwater source Protection Zones, (Figure 3.11). Figure 3.11 indicates that the appeal site lies outside both the inner or outer zones although it appears to be very close to the boundary of the inner zone. The site is located within an area that is a regionally important aquifer and the vulnerability rating is High to Low.

8.4.3 On the basis of a regionally important aquifer and a high vulnerability rating the response would be R2(2). With such a design response an on site treatment system would be acceptable subject to normal practice and a minimum thickness of 0.6 metres unsaturated soil with a P/T value of 1 to 50 (in addition to the polishing filter which should be a minimum of 0.6 metres) so a minimum of 1.2 metres. In the case of the appeal site, the Site Characterisation form indicates that there was no water table observed in a 2.5 metre deep trial hole. At the time of inspection of the site the trial hole was still open and no water was observed. A T value of 17.2 and P value of 18.5 was recorded in the site assessment and there is nothing from an observation of the site or the trial holes that would indicate that these results are incorrect. The revised site characterisation and proposal for the design of a system as submitted in response to the further information request indicates that there would be a minimum of 1.2 metres provided below the invert level of the soil polishing filter and a 45 sq. metre polishing filter area is proposed. This system would be consistent with a R2(2) design response and would also appear to me to be consistent with the requirements of a R3(2) design response in the event that it was considered that the site was located within an outer source protection zone.

8.4.4 For the reasons set out above, I do not consider that the decision of the Planning authority that the proposal would constitute a material contravention of Objectives WW 5 and WS 11 is a reasonable assessment and I do not therefore consider that it is appropriate that the Board is constrained by s.37(2) of the Act in overturning the decision of the Planning Authority in this case.

8.5 Appropriate Assessment

8.5.1 The appeal site is located in relatively close proximity to a number of Natura 2000 sites. To the south east, the site is within c. 2.1 km of the Lough Cultra SAC and SPA sites, to the north west it is within c. 2.5km of the Coole Garryland SAC / SPA

sites at the closest point and west, the site is c. 3.1km from the East Burren Complex SAC at the closest point.

8.5.2 The habitats and species of interest for the Lough Cultra SAC is the lesser Horseshoe bat and this colony is stated to be of international importance. The location of the site relative to Lough Cultra is such that there are no significant barriers or severance between the Natura 2000 site and the appeal site. The data sheet for the site indicates that the site supports an internationally important winter roost for *Rhinolophus hipposideros* with the maximum number recorded has been 93 individuals. Good quality foraging habitat is stated to surround the roost sites however the bats' summer roosting sites have not been established. No survey of the structure to assess for the presence of bats or the use of the disused structure as a summer roost has been submitted with the application and the lack of a survey has been noted in the report of the Planning Officer. While it is considered unlikely that the site is significantly connected with the population in the Lough Cultra site this cannot be verified on the basis of the information available. I am also conscious of the fact that Reason for Refusal No. 1 makes reference to material contravention of a number of Objectives including Objective NHB1 which states that it is an objective of the council to support the protection of habits and species as set out in the Annexes of the habitats Directive. It is noted that the wording of Reason for Refusal No.1 relates primarily to the potential adverse impact on Natura 2000 sites hydrologically connected to the appeal site, principally the Inner Galway Bay SPA and Galway Bay Complex SAC rather than a connection to the Lough Cultra SAC. Notwithstanding this, given the degree of uncertainty regarding the potential for the use of the existing structure on site as a summer roost and the reference to material contravention of Objective NHB 1 in Reason for Refusal No.1 and the fact that none of the other criteria listed in s.37(2)(b) of the Planning and Development Act as amended would appear to me to be applicable, I consider that the scope for the Board to overturn the reason

for refusal issued is limited in this instance. It is therefore recommended that permission would be refused on the basis of contravention of Objective NHB 1 of the Plan relating to protected habitats and species.

8.5.3 The Lough Cultra SPA is located c. 2.1km to the south east of the appeal site at the closest point. The species of interest for this site is the Cormorant and the conservation objective for the site is to maintain or restore this species to favourable conservation status. Given the nature of the proposed development, the potential pathway which is hydrological connection and the very low likelihood of a significant adverse impact on water quality and hence on the conservation objective of maintaining or restoring the population I do not consider that the proposed development would be likely to have a significant effect on the Lough Cultra SPA in light of the conservation objectives of the site.

8.5.4 The Coole Garryland SAC is located c. 2.5km to the north west of the site at the closest point. The habitats / species of interest listed for the site include Natural Eutrophic Lakes, Turloughs, Calcareous grasslands and Yew woodlands. The conservation objective is the maintenance or restoration at favourable conservation status of these habitats. Given the nature and scale of the proposed development, the potential pathway which is hydrological connection and the very low likelihood of a significant adverse impact on water quality and hence on the conservation objective of maintaining or restoring the population I do not consider that the proposed development would be likely to have a significant effect on the Coole Garryland SAC in light of the conservation objectives of the site.

8.5.5 The Coole Garryland SPA site is also located c. 2.5km from the appeal site at the closest point. The species of interest listed for this site is the Whooper Swan and the conservation objective is the maintenance or restoration at favourable conservation status of this species. Given the nature and scale of the proposed

development, the potential pathway which is hydrological connection and the very low likelihood of a significant adverse impact on water quality and hence on the conservation objective of maintaining or restoring the population I do not consider that the proposed development would be likely to have a significant effect on the Coole Garryland SPA in light of the conservation objectives of the site.

8.5.6 The Termon Lough SAC is located c.4km to the south west of the appeal site at the closest point. The habitat of interest for this site is Turloughs and the conservation objective is to maintain or restore to favourable conservation status this habitat. Given the nature and scale of the proposed development, the potential pathway which is hydrological connection and the very low likelihood of a significant adverse impact on water quality I do not consider that the proposed development would be likely to have a significant effect on the Termon Lough SAC in light of the conservation objectives of the site.

8.5.7 The east Burren complex SAC is located c. 3.1km from the appeal site at the closest point. The site is identified on the basis of a number of species and habitats including the following, Hard water lakes, Turloughs, Cladium Fens, Alkaline Fens, Lesser Horseshow Bat and Otter. As is the case with the Lough Cultra SPA, on the basis of the information presented and in the absence of a survey of the existing structure it is not possible to state that there would not be any potential adverse impact on the maintenance at favourable conservation status of the Lesser Horseshoe Bat which is a conservation objective of the site. For similar reasons as set out in 8.5.2 above, the reference to material contravention of Objective NHB 1 regarding Protected habitats and Species is noted as is the wording of reason for refusal No.1 which states that the proposed development would materially contravene this objective.

9.0 Recommendation

- 9.1 In view of the above it is recommended that permission would be refused based on the following reasons and considerations:

Reasons and Considerations

1. Having regard to the location of the site relative to the Termon Lough SAC (site code 001321) and Lough Cultra SAC (site code 000299), to the species of interest for these sites, specifically the lesser horseshoe bat and to the potential for the structure on the site to be used as a summer roost for this species and absence of any information on file regarding the use of the site by bats, the Board is not satisfied that the proposed development would not materially contravene Objective NHB 1 of the Galway County Development Plan, 2015-2021 as it relates to protected habitats and species and that the development would not be likely to have significant effects on these European sites in light of their conservation objectives. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

13 September, 2016