



An
Bord
Pleanála

Inspector's Report PL07.247474

Development	Construction of house, garage, effluent treatment unit and polishing filter and detached garage.
Location	Ballybaun, Gort, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	16/858
Applicant(s)	Keith Rock
Type of Application	Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Keith Rock
Observers	none
Date of Site Inspection	3 rd January 2017
Inspector	Stephen Kay

1.0 Site Location and Description

- 1.1. The appeal site is located on a backland site accessed off a local road (L-4514-18) which runs south from the centre of Gort in the direction of Crusheen and Ennis. The M18 motorway is located c. 230 metres to the west of the appeal site and the Limerick – Galway railway line is located to the east. Further to the east is the old N18 Limerick to Galway road which is now the R458.
- 1.2. The appeal site is adjoined to the north by the site of a recently completed two storey dwelling. To the east, south and west the site is adjoined by lands that are in agricultural use. The general area of the site is level and open. The rear boundary of the site comprises a mature tree and hedgerow boundary. The boundary with the existing dwelling comprises a wire fence.
- 1.3. The appeal site is accessed via a laneway of c. 375 metres in length that is unsurfaced and of restricted width. The access lane currently accesses the agricultural lands located to the north and west of the site and there is an existing shed located close to the local road. The section of lane in the vicinity of the existing dwelling is not enclosed however that part to the north east between the L-4514-83 and the north east corner of the adjoining dwelling site is enclosed by stone walls and is of a restricted width such that it is suitable for a single vehicle to pass.
- 1.4. The stated area of the appeal site is 0.2942 ha. The access laneway is outside of the boundary of the site however it is indicated that a wayleave to the site is available. The proposed connection to existing well water supply is also indicated as being within this right of way.

2.0 Proposed Development

- 2.1. The development the subject of this application comprises the construction of a two storey dwelling house, detached garage and on site effluent treatment system on the site. The house is proposed to have a T shaped plan with the front part of the house two storey and a single storey element to the rear. The front building line is proposed to match that of the adjoining dwelling to the north with the house facing north west away from the local road. The detached garage is proposed to be located

to the rear of the site and the on site effluent treatment system is proposed to be located close to the eastern site boundary.

- 2.2. The stated floor area of the proposed dwelling is 230.9 sq. metres and the overall height is 7.9 metres. External finishes are indicated as comprising painted render. The stated floor area of the garage is 33.8 sq. metres.
- 2.3. The proposed on site treatment system is a Tricel P6 wastewater treatment system discharging to a percolation area. Water supply is proposed to be from a bored well that is located to the north of the site on the access laneway.
- 2.4. Site access is proposed to be via the existing access laneway and access onto the local road.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission for a single reason that can be summarised as follows:

1. That the proposed development is located within the area covered by the Galway Transportation Planning Study and an area under strong urban influence on the urban fringe of Gort. Based on the information provided, it is considered that the proposal constitutes urban generated housing as the applicant is from Gort town and that the applicant has not demonstrated substantial rural housing need or rural links to the area. The proposed development would therefore be contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, would contravene materially Objective RHO1 of the *Galway County Development Plan, 2015-2021* and would be contrary to the proper planning and sustainable development of the area.

It is noted that the reason for refusal issued by the Planning Authority makes reference to material contravention of Objective RHO1 of the development plan and that the provisions of s.37(2)(b) of the Planning and Development Act relating to the circumstances where An Bord Pleanala can overturn a decision to refuse permission are therefore applicable in this case.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the planning officer notes the submission on file from third parties, the information regarding the location where the applicant resided and his connections with the area is noted. Concluded that the proposed development is not likely to have any significant effect on any Natura 2000 sites. It is considered that the applicant does not comply with Policy RHO1 of the development plan. It is noted that the applicants brother was granted permission on the adjoining site on the basis that he was going to be farming (letter from Teagasc) and also that this permission was granted under the previous development plan. Addendum subsequent to the submission of further information following a time extension comes to the same conclusion regarding compliance with development plan policy. A refusal of permission consistent with the Notification of Decision which issued is recommended.

3.2.2. Other Technical Reports

None on file.

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4.0 Planning History

The following planning history relating to the adjoining site to the north is of relevance to the assessment of this appeal:

Galway County Council Ref. 10/835 – Permission granted by the Planning Authority for the construction of a new access road and associated services to serve existing lands and partially completed dwelling house granted under An Bord Pleanala Ref. PL07.230482.

Galway County Council Ref. 08/1735; An Bord Pleanala Ref. PL 07.230482 – _Permission granted by the planning authority and granted on appeal by An Bord Pleanala to the construction of a dwelling house, garage, septic tank and percolation area.

Galway County Council Ref. 07/1270; An Bord Pleanala Ref. PL 07.223805 – Permission granted by the planning authority but refused on appeal by An Bord Pleanala to the construction of a dwelling house, garage, septic tank and percolation area. Permission was refused for a reason relating to the location of the site in a regionally important karst aquifer and an area classed as extremely vulnerable, and that the Board was not satisfied that the proposed development would not give rise to an unacceptable risk of groundwater pollution, which would be prejudicial to public health, and would, therefore, be contrary to the proper planning and sustainable development of the area.

In the Board's Direction it was noted that the Board also shared the Inspector's concerns regarding the design and scale of this house in the landscape, but decided not to raise this as a new issue in the context of this appeal.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the *Galway County Development Plan, 2015-2021*.

The site is located within an area identified as being a Rural Area under Strong Urban Pressure. The site is also located within the area covered by the Galway Transportation and Planning Study (GTPS) within which additional specific requirements relating to rural housing apply.

The relevant policy for developments located in areas under strong urban pressure and within the GTPS is **Objective RHO1** which sets out a number of criteria against which proposals for rural housing will be assessed. Applicants need to demonstrate that they comply with one of the following:

- long standing family ties to the area and seeking to develop their first home.
- Long standing links to the area for a substantial part of their lives.
- Functional dependence on the rural area in which they propose to locate.
- The lands on which the site is located have been in their continuous ownership for 20 years or more.
- Applicants who resided in a rural area, then moved away and now are seeking to return.
- Exceptional health circumstances of the applicant such as to require that they reside in the rural area
- Requirement that an endowment condition would be attached to any grant of permission.

The appeal site is located within an area included within landscape Class 2 – moderate sensitivity (where 5 is the most sensitive) and a landscape value rating of moderate (range low – outstanding).

5.2. **Guidelines for Planning Authorities on Sustainable Rural Housing**

The appeal site is located in an area that is on the boundary of an Area Under Strong Urban Influence and a Structurally Weak Area. The guidelines state that persons who are part of the rural community should be facilitated by the planning system in all areas. A clear distinction between rural and urban generated housing is made in the guidelines and demand for urban generated housing is to be accommodated within existing settlements.

6.0 The Appeal

6.1. Grounds of Appeal

The following is a summary of the main issues raised in the first party appeal submitted:

- That the previous planning history cases on the adjoining site to the north (Martin Rock) largely focussed on the issues of effluent treatment and disposal and also on other issues raised by third parties relating to rights of way and access. It is clear from the history cases that both the Planning Authority and the Board accepted that the applicant (Martin Rock, brother of the first party appellant Keith Rock) satisfied the requirements of the rural housing policy set out in the development plan.
- That the housing policy set out in Objective RHO1 is difficult to interpret and would appear be open to interpretation. It would appear that this objectives states that those with a substantiated housing need would be accommodated but not within the urban fringe which contradicts the first part of the policy.
- That the policy would appear to indicate that the within the urban fringe area that an applicant would be facilitated on the basis of having a substantiated rural housing need.
- That the appeal site is located on the family farm. The applicant has never owned a house previously and has never been the recipient of planning permission.
- That the applicant clearly has strong links with the area. The application is being made on the family farm. The site is beside his brother's house and a few metres from the house where his father was raised and which was inherited by his aunt.
- The report of the planning officer states that the applicant was not raised on the family farm but was raised in Gort town. The development plan policy does not however require the applicant to have lived in the area, they require the person to have '*strong links to the rural area*'.

- That the circumstances of the applicant's father are somewhat unusual and it has an impact on compliance with the rural housing policy. Following the death of their mother, the applicants father and his aunt were raised by their uncle on a farm that includes the current appeal site. They subsequently inherited the farm from their uncle with the applicant's aunt inheriting the part with the farmhouse and his father inheriting other lands. The applicants father therefore moved into Gort town and raised his family (including the current applicant / first party) in Gort. It would appear to be unfair and not what was intended by the housing policy that the children of the aunt would be entitled to a rural house while the applicant is not.
- That the site is owned by the applicant and the balance of the father's lands are now farmed by the applicant's brother who lives in the adjoining house.
- That the applicant has now returned to Ireland from Canada. He intends to work helping his brother on the farm and assist his brother in alleviating flooding issues on the lands.
- The appeal is accompanied by a letter from the first party that sets out his connections with the local area, how part of the farm lands are liable to flooding and how his presence would help on the operation of the farm particularly during periods when part of it is flooded.

6.2 Planning Authority Response to Grounds of Appeal

There is no response on file to the issues raised in the first party appeal.

7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of this appeal:

- Principle of Development and Compliance with Rural Housing Policy
- Design and Visual Impact
- Drainage and Site Access

- Appropriate Assessment and Other Issues

7.2. Principle of Development and Compliance with Rural Housing Policy

- 7.2.1. The basis for the refusal of permission issued by the Planning Authority is that the applicant does not comply with the provisions of Objective RHO1 of the development plan. The refusal reason states that the application site is located within the Galway Transportation Planning Study Area (GTPS), the urban fringe of Gort town and within an area of strong urban influence. It is stated that the applicant has not satisfactorily demonstrated his '*substantial rural housing need*' or his '*rural links*' and that the proposed development would therefore '*contravene materially*' Objective RHO1 of the *Galway County Development Plan, 2015-2021*. It is noted that the wording of the reason for refusal makes reference to material contravention of the development plan and that the provisions of s.37(2)(a) of the Planning and Development Act and the prescribed circumstances where the Board may overturn the refusal of permission are therefore applicable in this case.
- 7.2.2. The first party appeal sets out the circumstances of the applicant and it is noted that the applicants father was from the local area and was born in a house located close to the current appeal site. This dwelling would appear to have been inherited by the aunt of the current applicant and the applicant's father inherited other lands in the area. At this time, the applicants father moved into Gort town and the applicant was born and grew up in the town, albeit still having connections with this rural area by virtue of his father owning land there and his family (aunt) living there.
- 7.2.3. The first party appeal contends that the housing policy set out in Objective RHO1 is difficult to interpret and would appear be open to interpretation. It would appear that this objective states that those with a substantiated housing need would be accommodated but not within the urban fringe which contradicts the first part of the policy. It is submitted that the appeal site is located within the urban fringe of Gort town and that the development plan does not contain a ban on housing in such areas. Rather, it is submitted that the plan allows for housing to be permitted when the applicant has '*strong links to the rural area*' and that the applicant meets the definition of a person who has '*strong links to the rural area*' as defined in the plan.

7.2.4. The relevant sections of Objective RHO1 for consideration in this case are 1(a) and 1(b). Criteria 1(a) states that rural housing will be facilitated for those applicants with 'rural links' to the area through long standing existing and immediate family ties. The definition of 'rural links' is given on page 64 of the plan and is defined as '*...a person who has strong links to the rural area and wishes to build a dwelling generally within an 8km radius of where the applicant has lived for a substantial continuous part of their lives*'. In the case of the first party, he does have strong links to the rural area in that his father was from the area and owned land in the vicinity of the site. It is also apparent that the brother and aunt of the applicant live in close proximity to the site. The second requirement, however that the person would be looking to build a dwelling within 8km of where they have resided for a significant period. In the case of the first party their family home was in Gort town which is within 8km of the appeal site. It is not however in my opinion the meaning of the definition that persons brought up in a town would be facilitated in getting permission for a dwelling in a rural area. Such a situation is clearly urban generated housing rather than rural and does not come within the definition of rural links. In this case the interpretation of the definition as facilitating persons living in the town to obtain permission for housing in a rural area within 8km would also mean that permission would be granted within the identified high development pressure urban fringe of Gort.

7.2.5. The first party appeal makes the case that the circumstances of the applicant in this case are somewhat unusual in that his father and aunt went to live with an uncle on the death of his parents and that he subsequently moved into Gort town when the lands he inherited at Ballybaun did not contain a dwelling. It is noted in the appeal that the aunt of the applicant did inherit lands with a house and that as a result her children would comply with the rural housing policy and it is contended that such a situation is unfair. While I recognise that the family circumstances of the first party are not typical of urban generated housing demand, the fact remains that he has not lived in a rural area. Notwithstanding the family connection to the vicinity of the appeal site I do not therefore see how he meets the criteria asset out at 1(a) of Objective RHO1.

7.2.6. Similarly, criteria 1(b) requires an applicant to have long standing rural links with an area. As set out above, I do not consider that the first party meets this requirement. Criteria 1(b) also makes provision for applicants who wish to apply on lands owned

by a person who has no immediate family and who wishes to accommodate a niece or nephew on family lands. This is not the circumstances of the first party as he is stated to be the owner of the appeal site. In any event such applicant need to establish a '*substantiated rural housing need*' which is defined as '*supportive evidence for a person to live in this particular area...*'. I do not consider that the applicant in this case has submitted a convincing case as to why he as a returning emigrant has a requirement to live in this particular rural area.

7.2.7. I note that the appeal also states that the applicant of the first party was granted planning permission by both the planning authority and by the Board on appeal for the development of a dwelling in this location (adjoining site to the north) and that this indicates that the first party should also be considered to be in accordance with the rural housing policy. I note that the brother of the first party (Martin Rock) was granted permission on the adjoining site under Ref. PL 07.230482. This permission was however granted under the provisions of a previous Galway County Development Plan. It is also noted that the applicant in this case (Martin Rock) indicated that he was to be engaged in farming of the landholding in this location and that this statement was supported by supporting written documentation from Teagasc. The first party in the current case has stated that he would assist his brother in maintaining the farm lands and specifically in dealing with periodic flooding of the lands. No documentary evidence of substantial involvement in agriculture has been submitted with the application and given that the family lands in this area are being farmed by Mr Martin Rock, I do not consider that there are grounds whereby the applicant could be considered to have a need to live in this rural area such as would generate a '*substantiated rural housing need*' or be '*functionally dependant on the immediate rural area*' such that he would comply with section 1(b) or 1(c) of Objective RHO1 of the development plan.

7.2.8. As noted above, the Notification of Decision to Refuse Permission issued by the Planning Authority makes reference to material contravention of the development plan and the provisions of s.37(b)(2) are therefore applicable in this case. The first party appeal submission does not directly address the issue of material contravention of the plan and the s.37 criteria other than contending that the wording of Objective RHO1 is open to interpretation. As set out above, I do not consider that this is the case and I do not consider that there are conflicting objectives in the

development plan or that the objectives are not clearly stated. Similarly, I do not consider that the circumstances of the applicant are consistent with the Sustainable Rural Housing Guidelines as the housing demand in this case is in my opinion urban generated and the area within which the site is located is one under strong urban influence. Similarly, I do not consider that there is a case that the proposed development would be of strategic or national importance and I do not consider that there is any clear evidence that the proposed development should be permitted having regard to the prevailing pattern of development in the area since the making of the current development plan. For these reasons I do not consider that the criteria set out in s.37(2)(b) have been met and that it is not therefore open to the Board to overturn the refusal of permission issued by the Planning Authority in this case.

- 7.2.9. For the reasons set out above I do not consider that the circumstances of the applicant are such that he complies with the requirements of Objective RHO1 of the Galway County Development Plan, 2015-2021 as it relates to the granting of permission for housing in Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure – GTPS) and that permission should be refused on this basis. I also do not consider that the criteria set out in s.37(2)(b) have been met such that it is open to the Board to overturn the decision of the Planning authority to refuse permission on the basis of material contravention of Objective RHO1 of the development plan.

7.3. Design and Visual Impact

- 7.3.1. The dwelling is of similar scale to that which exists on the adjoining site to the north. The site is located at a sufficient remove from the local road and the topography is such that there would be no clear view of the proposed dwelling from the local road. Similarly, the separation to the M18 is such that views from this road would be limited and mitigated by the landscaping of the site.
- 7.3.2. I note that the decision of the Board under Ref. PL 07.223805 identified concerns with regard to the visual impact of the proposed dwelling on the site to the north and specifically its design and scale. As set out above, I consider that the visual impact of the proposed development is acceptable given its separation from surrounding roads and other development and the landscape class 2 designation of the area.

7.4. Drainage and Site Access

- 7.4.1. The access to the appeal site is proposed to be via an existing access laneway that connects the appeal site and that of the existing dwelling immediately to the north to the local road, c. 250 metres to the east of the site. As set out in the site description, the access route is c. 375 metres in length and is of restricted width. I also note the fact that the existing junction between the laneway and the local road is characterised by poor sightlines and visibility to the south when existing the site. Under Ref. 10/835, permission granted by the Planning Authority for the construction of a new access road and associated services to serve existing lands and partially completed dwelling house granted under An Bord Pleanala Ref. PL07.230482.
- 7.4.2. Sight lines to the right hand side existing the site are indicated on Drawing No. 01 as being 70 metres however in reality the existing sight line is approximately 35 metres to the nearside road edge with visibility restricted by the existing stone roadside boundary wall. I note that the Inspectors report in respect of Ref. PL07.230482 makes reference to the submission of measures to ensure adequate sightlines at this location. I also note the fact that the permission granted by the Planning Authority for the construction of a new access road and associated services under Ref. 10/835 includes Condition 2 requiring sight distance triangles to be adequately maintained and the report of the Planning Officer indicates that letters of consent for the maintenance of vision lines have been submitted. It is not clear whether specific proposals for the improvement of sight line to the south of the entrance was submitted with these applications however I am of the opinion that the current layout is not satisfactory without works to set back the adjoining boundary to the south of the entrance. These lands are outside of the appeal site and there is no information presented that the consent of the landowner to improvement works is available. The sightlines at the entrance to the site and issues of traffic safety are a new issue I the content of the current appeal and the Board may wish to pursue this issue further in the event that the substantive reason for refusal relating to housing need is not accepted.
- 7.4.3. The development proposes that effluent generated on site would be treated by use of a Tricel P6 effluent treatment system. I note that the results of the on site assessment undertaken indicate that the site is suitable for the installation of such a system and that the 2.7 metre deep trial hole showed no water and that the T value

recorded was c. 12. These results are consistent with the site assessment results recorded in the inspectors report for Ref. PL07.230482 to the north and my inspection of the site which indicated relatively dry ground conditions and no water evident in the trial or percolation holes which remained open at the time of inspection. From the site assessment form the appeal site is however located in a karst area and one which is regionally important and of moderate vulnerability. I note that the assessment undertaken under Ref. PL07.230482 identified the area of the appeal site as having an extreme vulnerability rating however the GSI groundwater Data Viewer identifies the immediate area as being of moderate vulnerability. Moderate vulnerability and a regionally important aquifer equates to a groundwater response of R1 and treatment systems such as that proposed should be acceptable subject to normal good practice in such areas. In the previous case, ref. PL07.230482, secondary treatment was proposed in view of the karst ground conditions and the Board may wish to pursue this issue further in the event that the substantive reason for refusal relating to housing need is not accepted.

7.5. Appropriate Assessment and Other Issues

7.5.1. The application was the subject of a screening for appropriate assessment by the planning authority however the assessment contained in the report of the planning officer only lists the sites within 15km of the application site. No appropriate assessment screening was submitted as part of the application documentation.

7.5.2. The appeal site is located within c. 3km of three Natura 2000 sites as follows:

- East Burren Complex SAC (001926)
- Coole Garryland Complex SAC (000252) and
- Lough Cultra SAC (000299)

The first two sites are located on the opposite side of the M18 motorway from the appeal site.

7.5.3. In the case of the Lough Cultra SAC, the feature of conservation interest for the site is the lesser horseshoe bat. It is not considered that having regard to the nature of the proposed development and the separation to the SAC site of c.3km at the closest point that the proposed development would be likely to have a significant effect on the Natura site in light of its conservation objectives.

7.5.4. In the case of the Coole Garryland Complex, the features of conservation interest include

- Natural eutrophic lakes
- Turloughs
- Rivers with muddy banks
- *Juniperus communis* formations on heaths or calcareous grasslands
- Semi-natural dry grasslands and scrubland facies on calcareous substrates
- Limestone pavements and
- *Taxus baccata* woods of the British Isles

Having regard to the nature and scale of the proposed development, to the separation distance between the appeal site and the Coole Garryland site, the severance by the M18 and the potential karst groundwater connection I do not consider that the proposed development is of a scale such that it would be likely to have significant effects on the SAC site in light of the conservation objectives of the site.

7.5.5. In the case of the East Burren Complex SAC, the features of conservation interest include

- Hard oligo-mesotrophic waters,
- Turloughs
- Water courses of plain to montane levels with the *Ranunculus fluitans* and *Callitriche-Batrachium* vegetation
- Alpine and Boreal heaths
- *Juniperus communis* formations on heaths or calcareous grasslands

- Calaminarian grasslands of the *Violetalia calaminariae*
- Semi-natural dry grasslands and scrubland facies on calcareous substrates
- Lowland hay meadows
- Calcareous fens with *Cladium mariscus* and species of the Caricion *davallianae*
- Petrifying springs with tufa formation
- Alkaline fens
- Limestone pavements
- Caves not open to the public
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*
- *Euphydryas aurinia*
- *Rhinolophus hipposideros*
- *Lutra lutra*

Having regard to the nature and scale of the proposed development, to the separation distance between the appeal site and the East Burren Complex site, the severance by the M18 and the potential karst groundwater connection I do not consider that the proposed development is of a scale such that it would be likely to have significant effects on the SAC site in light of the conservation objectives of the site.

8.0 Recommendation

8.1. Having regard to the above it is recommended that permission be refused based on the following reasons and considerations:

1. The site is located within an area of strong urban influence as identified in the Galway County Development Plan, 2015-2021 and within the urban fringe of Gort town and within the Galway Transportation Planning Study Area and within an area where the provisions of Objective RHO1 (rural housing development Zone 1) apply. On the basis of the information submitted it is considered that the proposed development constitutes urban generated housing demand as the applicant previously lived in Gort town and has never resided in the rural area and has not demonstrated employment or other reasons that justify residing in this location and has not therefore demonstrated 'substantiated rural housing need' or 'rural links' with the area as defined in the Galway County Development Plan. The proposed development would therefore be contrary to Objective RHO1 of the Galway County Development Plan, 2015-2021, would be contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities to restrict urban generated housing demand in areas under strong urban influence and would be contrary to the proper planning and sustainable development of the area.

Stephen Kay
Planning Inspector

7th February, 2017