



An
Bord
Pleanála

Inspector's Report PL16. 247600

Development	House and wastewater treatment system
Location	Ballyneggin, Castlebar, Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	16/543
Applicant	John Foley
Type of Application	Permission
Planning Authority Decision	Grant permission subject to conditions
Type of Appeal	Third Party vs. Grant
Appellants	Gerry and Kathleen Tolan
Observer	None
Date of Site Inspection	27 th February 2017
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in a rural area c4.2km north-east of the centre of Castlebar, Co. Mayo. Substantial residential development has occurred in this vicinity. The site has a stated area of 0.37ha and consists of a rectangular plot of unused land between the curtilages of two detached houses. It is served by a county road c4.8m wide which joins the N5 national primary road c400m to the south. A line of four houses runs north from the site towards a junction with another county road where more ribbon development has occurred. Then northern boundary of the site is marked by a dense fir hedge. Its front boundary is marked by a hedgerow that has been cut to a uniform height. It is on the inside of a curve in the road. The southern boundary of the site is marked by a post and rail fence. The land slopes down from north to south.

2.0 Proposed Development

2.1. It is proposed to build a two storey house on the site with a stated floor area of 220m² and a ridge height of 8.18m. A detached garage of 45m² would be built. The house would be served by a wastewater treatment system with a percolation area and a water supply from the public mains.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 14 conditions, the first of which restricted occupation of the authorised house for 5 years.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report on the initial application recommended that further information be sought to demonstrate rural housing need in accordance with development plan policy, and a contextual elevation showing the proposed house and those on the neighbouring sites. A second report on the submitted further information sought details of land

ownership in the family and proof of same. A third report on the clarification of further information stated that the family home was within 5km of the site. The proposed development would not be out of keeping with its context. A grant of permission was recommended.

3.2.2. Other Technical Reports

The Road Design Section had no objection subject to conditions

3.3. **Third Party Observations**

Submissions were received from the appellants that objected to the proposed development on grounds similar to those raised in the subsequent appeal. The impact on water pressure was also raised as a concern.

4.0 **Planning History**

Reg. Ref. 06/3038 – The planner's report refers to an application for permission for a house on the site that was deemed to be withdrawn. No other planning applications were cited by the parties.

5.0 **Policy Context**

5.1. **Guidelines for Planning Authorities on Sustainable Rural Housing, 2005**

The site is in a rural area designated as being under strong urban influence. The guidelines advise the housing needs of the local rural community should be facilitated in such areas, but that urban generated housing demand should be directed to zoned and serviced land within settlements. Appendix 4 recommends against ribbon development which would form a high density of almost continuous road frontage, for example 5 or more houses within 250m on one side of a road. The degree to which a house might constitute infill development is relevant in this regard.

5.2. Mayo County Development Plan 2014-2020

The policy of the planning authority is that that applications for houses in rural areas under strong urban influence must meet a rural housing need under the categories set out in section 2.3.1 of volume 2 of the plan, which are –

2.3.1.1 Persons who are an intrinsic part of the local rural community due to their having spent substantial periods of their lives, living in the rural area in which they propose to build a home. This category refers to: a.

Farmers, their sons and daughters, a favourite niece/nephew² and/or any persons taking over ownership and running of a farm, who wish to build on the family farm holding (a farm holding shall consist of at least 4ha).

b. Sons and daughters of non-farming persons who have spent a substantial period of their lives (i.e. at least 5 years) living in the rural area on which they propose to build and wish to build a home near their family place of residence (i.e. within 5km in any direction of family residence).

c. Returning emigrants who spent a substantial period of their lives living in the rural area in which they propose to build, who now wish to return to reside near (i.e. within 5km) other immediate family members (i.e. mother, father, brother, sister, son, daughter or guardian) to care for elderly immediate family members, to work locally, or to retire.

2.3.1.2 Persons working full-time or part-time in the rural area in which they propose to build their first house. This category of housing need refers to:

a Persons involved in full-time farming, forestry, inland waterway or marine related occupations.

b Part time occupations where the predominant occupation is farming/natural resource related.

c Persons whose work is intrinsically linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place within the rural area in which it is proposed to build.

For the purpose of clarity, proposed sites shall generally be required to be located within 10 km (6.2 miles), in any direction, of an applicant's place of work.

Section 4 states that ribbon development will not be permitted outside the 60kph speed limit. It is defined as more than 5 houses in a rural over 250m of road frontage. Section 5.3 states that single vacant sites between houses will be considered to avoid dereliction and decay.

5.3. Natural Heritage Designations

None

6.0 The Appeal

6.1. Grounds of Appeal

The appellants live in the house on the adjacent site downhill from the appeal site.

- The proposed house and garage would be on higher land beside the appellants' property. The house would be at an angle and would not follow the established building line. It would therefore overlook and overpower the appellants' house and seriously injure their privacy. The proposed building and landscaping would also restrict sunlight at their property.
- The bedrock in the area is not suitable for the safe disposal of effluent with a large density of septic tanks already up the hill from the appellants' house. The appeal site is saturated for most of the year. A large pond forms in the vicinity of the proposed soakaway/percolation area. Rushes, ponding and waterlogging are apparent on the site. Photographs of ponding are submitted. It may originate from the effluent from other houses further up the hill. After the proposed development all such effluent would run onto the appellants' property.
- The proposed alder and birch trees grow fast and to enormous heights and widths. They would block daylight and sunlight from the appellants' property and will impact on piping, foundations etc. They would block the view towards the countryside. They would result in the appellants' house being hemmed in.

They would give rise to concerns from falling branches and debris blocking gutters.

- The setting back of the boundary fence would be an incentive for traffic to speed more on a busy link road.

6.2. Applicant Response

- The proposed house would be similar to those on either side on a substantial site of 0.39ha. The applicant has lived in his parents' house at 10 Rosslee, Castlebar since 2003. That house is 2.83km from the site. The applicant met with the council's Senior Planner prior to making the application and took advice to ensure that the house met the council's rural housing design guidelines.
- The proposed house is oriented on site to encompass passive solar design and the privacy of adjoining properties. It would be 28m from the appellants' house, well above the 22m minimum specified in the council's guidelines. An overlooking study is submitted showing that there would be very little overlooking of the appellants' house and garden from the proposed house. The proposed house would be north-west of the appellants house and would not significantly overshadow it. A study is submitted to demonstrate this. The scale and design of the house is appropriate to this rural area and the council's design guidance. It would not overbear the appellants' property. There is a minimal difference of 416mm in the floor levels of the two houses and a slight larger difference in their ridge levels of 1.023m, as is shown on the contextual elevations submitted by the applicant. The drawing submitted to the planning authority is a true reflection of the comparable sizes and scales of the properties.
- The proposed boundary setback is similar to that on the appellants' property and provides the sightlines required under the county development plan. It would represent a routine road safety improvement.
- There is no evidence of bedrock in the 2m trial hole dug on the site and no evidence to support the assertion in the appeal that the bedrock in the area is not suitable for the safe disposal of effluent. The site suitability assessment

disproves the claim in the appeal that the soil on the site has poor percolation. The site suitability assessment was carried out by competent personnel who accurately described the test results including those of a visual inspection. There are no rushes on site. The growth of vegetation on the site reflects the fact that it has not been farmed in many years. The statement in the appeal regarding ongoing ponding and waterlogging are not substantiated. A single photographic record taken during one of the wettest winters in many years does not establish a benchmark for the rest of the year or other years. Rainfall records from Met Éireann are submitted for the winter and previous winters. The photos were taken after exceptionally heavy rainfall, and show the lowest part of the site where the soakaway would be located but not the percolation area. Effluent has not been recorded on the site. The bed of the Castlebar River would be 15m below the floor level of the house. The proposed development would not, therefore, adversely affect the local environment.

- The proposed planting along the boundary with the appellants' property would be a deciduous hedge c1.8m height of indigenous species in accordance with the rural housing design guidelines issued by the planning authority. It would not unduly overshadow that property. It would not contain fast growing species. It would not physically impinge on the appellants' house.

6.3. Planning Authority Response

The planning authority did not respond to the appeal.

7.0 Assessment

- 7.1. The applicant's employment on a road scheme that passes through rural areas would not provide him with a rural housing need under section 2.3.1.2 of the development plan because the particular location at which such work would occur is, by its nature, transient and the scheme as a whole runs through and close to several urban settlements. The applicant has submitted that he has resided at his parents' home at Roslee Castlebar since 2003. The house at Roslee is on the periphery of Castlebar. It is a suburban type of house, on a cul-de-sac with other such houses. It

lies within the area to which the Castlebar and Environs Development Plan 2008-2014 applies. However it is in an area that is zoned under that plan to protect its rural character where policy is to restrict residential development to single houses which meet cases of rural housing need. The family home is within 5km of the current appeal site, with a straight line separation of c2.8km. It is therefore considered that the applicant's long time residence in that house would qualify him as a member of the rural community whose housing needs might justify a relaxation in the general policy to restrict residential development in rural areas that are subject to strong urban influence under section 2.3.1.1.b of the county development plan. This conclusion is based on a literal interpretation of the relevant policies in the national guidelines and the county development plan. A different and more purposive interpretation of the relevant policies, based on the fact that the applicant's family home is closer to the centre of Castlebar and the larger part of the built-up area than it is to the appeal site, might support a conclusion that the proposed house would be a response to an urban generated demand. However none of the parties to the appeal argued for such an approach.

- 7.2. There is extensive ribbon development around the appeal site. However the current site would be between two houses and the proposed development would not extend a line of housing either directly or by establishing a context for further development. The proposed house on this particular site would not contravene the local or national policies against ribbon development, therefore, even though it is likely that development on any other site in the vicinity would.
- 7.3. The site has an area 3,700m². The trial hole test there indicated a depth of unsaturated soil of more than 2m. The percolation tests showed a t-value of 31. These results are consistent with the ground conditions and vegetation on the site observed at the time of inspection. They indicate that the site is suitable for the treatment of effluent generated by a house and its drainage to ground water. There is a depression in the south-west corner of the site where ponding was observed at the time of inspection. However the proposed percolation area would not be installed in this area. The depression is at a slightly lower level than the ground on the appellants' site. The surface water there did not appear to have been contaminated with effluent. It is not considered likely, therefore, that the proposed development would result in environmental pollution on the site or on the appellants'

land, or that it would result in a deterioration in the quality of surface or groundwater or be prejudicial to public health.

- 7.4. The position of the proposed house on the site would be appropriate, considering the positions of the houses on the adjoining sites relative to the public road. It would respect whatever building line might be perceived along this side of the road. The design of the proposed house is relatively restrained and has due regard for its rural location.
- 7.5. The proposed house and garage would be set back more than 20m from the appellants' house and more than 11m from their shared boundary. It would be north of the appellants' property. It would not, therefore, unduly overbear, overlook or overshadow the neighbouring property. The proposed alder and birch planting along the shared boundary would not grow unusually fast or to enormous heights, nor would it be likely to unduly impinge on the structures on the adjoining property. The proposed development would not injure the residential amenities of property in the vicinity of the site.
- 7.6. The site sits on the inside of a curve in the public road where an 80kph speed limit applies. Traffic volumes on this road at the time of inspection were notably high for a county road, reflecting its proximity to a national primary road and the extensive residential development in the vicinity. The submitted site layout plan shows the removal of all the hedgerow on the front of the site. This would allow an adequate level of forward visibility along the road to and from the north of the proposed access to the site. However the visibility that would be achieved to the south would still be restricted. The site layout plan shows forward visibility of 57m. However this is measured to the far, right-hand side of the road. The actual forward visibility that would be achieved between the proposed access and vehicles coming from the south would be only c50m. The Road Design Section of the council advised that it had no objection to the development, provided the sightlines required by the county development plans were achieved. Table 3 of volume 2 specifies sightlines of 90m along local roads with design speeds of 60kph, or 120m if the design speed is 70kph. Such a sightline cannot be achieved to the south of the site regardless of what works were carried out on the site, and could not be required by a condition attached to a permission. The proposed development would therefore fail to meet the road safety standards set by the development plan. Nevertheless the curve in

the road at this location occurs in the middle of a ribbon of residential development. The roadside ditch at the front of the appeal site currently restricts the forward visibility available to the accesses to the houses on either side in a manner that reduces traffic safety. Its setback would mitigate an existing hazard. The proposed development would also make the start and end of the ribbon of residential development more apparent to drivers, who might be expected to moderate their speeds accordingly when travelling past the appeal site, thus further reducing the hazards at the existing accesses on either side. Therefore, despite the additional turning movements that it would generate at a location with restricted visibility, the overall impact of the proposed development on road safety would be marginally positive.

8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions set out below.

9.0 Reasons and Considerations

Having regard to the applicant's residence in an area zoned to protect its rural character within 5km of the site, it is considered that the proposed development would meet the housing needs of the rural community in accordance with section 2.3.1 of volume 2 of the Mayo County Development Plan 2014-2020. The proposed house would not extend the ribbon development in this area. It would improve the forward visibility available at the accesses to the existing houses on adjoining plots and would therefore be acceptable in terms of traffic safety and convenience, notwithstanding the limited visibility available to the south of the proposed access. The site is considered suitable for the treatment and disposal of domestic foul effluent and the proposed development would not be prejudicial to public health. Having regard to the established pattern of development, the proposed house would not seriously injure the amenities of property in the vicinity or the character of the area. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity

2. a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

4. The external walls shall be finished in neutral colours such as grey or off-white.

Reason: In the interest of visual amenity

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution

6. (a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

7. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority with the application and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four

weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall provide for the establishment of a hedgerow along all side and rear boundaries of the site, and along the new front boundary set back in the accordance with the site plan submitted with the application.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the

surrounding rural landscape, in the interest of visual amenity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Stephen J. O'Sullivan
Planning Inspector

3rd March 2017