



An
Bord
Pleanála

Inspector's Report PL07.247774

Development	House
Location	Caherlissakill, Monivea, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	16/944
Applicant(s)	David Harkins and Jeanne Lonergan
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First
Appellant(s)	David Harkins and Jeanne Lonergan
Observer(s)	None
Date of Site Inspection	3 rd March 2017
Inspector	Rónán O'Connor

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1.0 Site Location and Description

- 1.1. The site is located off a local road, approximately four kilometres north of Monivea, Co. Galway. The site slopes from east to west. There is a recently constructed two-storey dwelling house immediately to the north of the site. There are a number of other dwelling houses in the immediate vicinity.
- 1.2. The site is a greenfield site bounded by wooden fencing to the north, west and south and a stone boundary wall to the east.

2.0 Proposed Development

- 2.1. It is proposed to construct a two-storey dwelling house.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Refuse permission for two reasons relating to housing need for the development of a new dwelling house within the Galway Transportation Planning Study Area and the creation of a road traffic hazard due to the additional turning movements generated.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- As well as the originally submitted Planning Application documents, the planning officer had regard to material submitted during an Extension of Time which included additional housing need material, revised access arrangements, relocation of the dwelling house and additional wastewater infrastructure information.
- Planning Officer considered housing need had not been demonstrated and states that no ownership evidence is presented.
- Access was considered hazardous to road users. The plans showing revised access arrangements and a revised house location, submitted on 15 Nov

2016, were not considered as these were considered a material change and could not be considered under an Extension of Time.

- Recommended the application be refused for three reasons, the third reason for refusal relating to design which was not reflected in the final decision of the planning authority.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

Western Regional Fisheries Board - no response

3.4. Third Party Observations

None

4.0 Planning History

15/1439 - Granted - Change of house plans to previously permitted planning application (Reg. Refs. 11/229 & 06/805)

11/922 – House – Granted (Extension of duration)

11/229 – House – Granted (Extension of duration)

06/2269 – House – Granted

06/805 – House – Granted permission consequent to outline permission 02/4946

02/4946 – Outline Permission for House – Granted

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Galway County Development Plan 2015 – 2021 (CDP) shows the site as lying within a rural area under strong urban influence (GTPS). Rural Housing Objective (RHO 1) is therefore of relevance, as are RHO 9 and 12, which relate to design

guidelines and waste water treatment associated with development in un-serviced areas.

- 5.1.2. Objective RHO 1 sets out the policy for rural housing development in areas that are under strong urban pressure. This states that it will be an objective to facilitate rural housing for applicants who *inter alia* have rural links to the area and who are seeking to develop their first home on a family farm, those with no family links but who have significant other connections to the area, those who are functionally dependant on the immediate rural area in which they are seeking to build. Provision is also made for exceptional health circumstances (2b).
- 5.1.3. Relevant DM Standards are as follows: 5 (Rural Housing), 6 (Assimilation of Development into Landscape), 7 (Site Size for Single Houses Using Individual On-Site Waste Water Treatment Systems), 18 (Access to National and Other Restricted Roads for Residential Developments), 20 (Sight Distances Required for Access onto National, Regional and Local Roads), 21 (Building Lines), 27 (Surface Water Drainage and Flooding), 28 (Water Supply), 29 (Effluent Treatment Plants).
- 5.1.4. The site lies within the East Central Galway Landscape Character area where the Landscape Sensitivity is deemed to be Class 1 and the Landscape Value Rating is Low.
- 5.1.5. The closest area that is identified in the OPW Flood mapping for groundwater flood extents is located 4.2km to the east of the site.

5.2. **National Planning Guidelines**

- Sustainable Rural Housing (2005)

5.3. **Natural Heritage Designations**

None

6.0 **The Appeal**

6.1. **Grounds of Appeal**

- 6.1.1. The grounds of appeal, as submitted by Stephen Dowds Associates, on behalf of the appellants, are as follows:

- When appellants bought the site it had the benefit of full planning permission for a house, which then expired.
- Paid full development prices for the site.
- Subsequently obtained planning permission themselves but condition No. 3 made it impossible to carry out the development.
- Query if site lies within the GTPS area.
- Should the Board determine if the site is outside the GTPS area then then first reason for refusal must fall.
- Appellants do own the site. – Copy of Land Registry title deeds (Appendix C)
- Appellant's have invested significant sums of money in site.
- Will lose their status as first time buyers.
- Application documents include a significant amount of information concerning appellant's connections with the area.
- Previous permission attached a condition that was impossible to comply with – tantamount to refusing permission
- Precedent for granting a dwelling within GTPS for a French applicant which the Board approved following a refusal (appeal reference PL07.209324). This followed a grant of outline permission and subsequent approval for a house which had expired.
- Board considered material circumstances had not changed significantly so as to warrant a refusal.
- Suggested that the same applies in this case- there has been no appreciable change in circumstances since the expiry of the last permission.
- Allowing a house on a site which had the benefit of planning permission when the appellant's bought it and subsequently had themselves gained planning permission would not violate this rural housing policy.
- There is no precedent set in this instance. There was no enurement clause on the original grant of permission on this site.

- Pressure for rural housing in Galway declines gradually outwards – this is an area where flexibility should be shown.
- Planners report does not refer to a submitted letter in relation to rural housing policy – this is attached in an Appendix to the appeal submission.
- In relation to sight lines and traffic safety, planning permission has been granted on this site three times and traffic hazard was not considered to be a problem.
- The location of the entrance was improved by its relocation in the further information submission – this shows sight lines of 120m – the original plans indicated sight lines of 70m.
- Site is located on a quiet road.
- Planning officer considered relocation of access was a material change. If Board considers the change material, it is suggested that the Board might use its powers under Section 142(4) of the PDA Act 2000 to seek a new public notice.
- Planner's report expresses concern in relation to the vertical alignment of the road – the issue is the horizontal alignment of the road.
- House design is identical to that approved under the previous application.
- Slight shortfall in site size standard is considered trivial but if necessary, appellants would accept a condition requiring a reduction in floor area of the dwelling.
- Section drawing A-A is incorrect as it shows two floors.

6.2. Planning Authority Response

6.2.1. None

6.3. Observations

6.3.1. None

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions, and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Principle of Development/Rural Housing Policy
- Access
- Design and Visual Amenity
- Residential Amenity
- Water Supply/Waste Water/Drainage
- Appropriate Assessment.

7.2. Principle of Development/Rural Housing Policy

7.2.1. The appeal site is located in an area that is within the area covered by the Galway Transportation and Planning Study area and is therefore identified in the County Development Plan (section 3.7) as being an area that is a Rural Area Under Strong Urban Pressure. The council policy for rural housing in this high pressure area is set out in Objective RHO 1 of the plan and it is this objective which has been focussed on in the assessment undertaken by the Planning Authority. In this assessment it is concluded by the Planning Authority that the applicants do not meet the requirements of Objective RHO 1 as they have not demonstrated sufficient housing need.

7.2.2. There is only one Rural Housing Need form on file relating to Jeanne Lonergan. This applicant is employed in Cork and works from home 3 days and works in Cork 2 days a week. It is intended to work from home 5 days a week.

7.2.3. Within the Extension of Time period, the applicants have expanded on their connections to the local community and this is summarised as follows:

- Letter from Fr. Enda Howley, Monivea, stating that the applicants are known to him and are valuable members of the community in Monivea. It also states that the applicants will lose out financially if permission is refused.

- Letter from Abbeyknockmoy Hurling Club stating that one of the applicants (David Harkins) is an active member of the club and supporting his application for a house.
- Letter from Monivea/Abbey Gaelic Football Club stating one of the applicant (David Harkins) was and is an active member of the club and supporting his application for a house.

7.2.4. The most recent planning permission on site was allowed to lapse and as such there is no permission on the site. The Board is therefore required to determine the application in accordance with the statutory planning guidelines contained within the current Development Plan, the sustainable rural housing guidelines and other relevant guidelines together with the proper planning and sustainable development of the area.

7.2.5. However, the Board should have regard to the fact that permission has been granted for a dwelling on this site and therefore the proposal was deemed to be acceptable in principle. The Board should therefore consider whether or not there has been a material change in circumstances that would warrant a reversal of the planning authority's original decision.

7.2.6. The original decision to allow a dwelling on this site did not include an occupancy clause. Subsequent extensions of time and a change of house plan application meant this permission was kept live until the expiry date of the most recent change of house plan application, which was 16th April 2016.

7.2.7. Any new application on this site is now subject to the provisions of the current Development Plan, including an assessment of housing need. As such this is a material change that requires a new assessment of the principle of the development.

7.2.8. I do not consider that housing need in this instance has been established and the information put forward is not sufficiently robust in my view. Family connections are referred to in passing but not set out in any great detail, save for the fact that the one of the applicants (Jeanne Lonergan) is residing in her brother's house in Waterdale, Claregalway, which is 14.5 km from the site.

7.2.9. One of the applicants (Jeanne Lonergan) is employed in Cork and therefore is not functionally dependant on the land. This applicant's employment as a Senior Information Development does not appear to directly support the rural economy and

the applicants not appear to be involved in rural economic activities. There is no information on file in relation to the other applicant's employment.

7.2.10. There is some evidence of links with the area with one of the applicants (David Lonergan) being a member of two local GAA Clubs. There is also a letter from a local priest stating the applicants are known to him and are valuable members of the local community. However, it is my view that this evidence is insufficient to demonstrate housing need, having regard to the requirements of RHO 1.

7.2.11. The applicants have submitted evidence of ownership of the site, which is accepted. However, ownership of the site does not in itself demonstrate housing need, having regard to the objectives of the Development Plan.

7.2.12. I note the appellant has referred to a previous decision (PL07.209324) where a dwelling house was permitted where a permission had expired on the site. This relates to a dwelling house in Mountscribe, Kinvarra, Co. Galway which is located approximately 31km south-west of the appeal site. A key consideration in this appeal was that the site was located in a 'Structurally Weak Area' as defined by the Sustainable Rural Housing Guidelines, where appropriate residential development can be permitted. Galway County Development Plan defines Structurally Weak Areas as those to the west and east of the GTPS. The appeal site does not lie within a Structurally Weak Area and therefore the same considerations do not apply in this instance.

7.3. **Access**

7.3.1. The access was originally proposed closer to the northern boundary of the appeal site. During the period of the Extension of Time, a revised site layout plan was submitted on 15th Nov 2016 with the access moved closer to the southern boundary of the site. The Local Authority did not accept this information as it was considered to be a material change and was not appropriate to deal with under the Extension of Time. I do not concur with this conclusion and the different access location does not fundamentally alter the nature of the application and is not so material as to warrant new public notices. The Board, however, may consider the plans to be material and advertise accordingly, if appropriate.

7.3.2. The revised access location gives sightlines of 120m in both directions, complying with the requirements of DM20 of the Galway County Development Plan. As such the access arrangements are appropriate in this instance.

Design and Visual Amenity Impact

7.3.3. I have had regard to the revised site layout plan submitted to the planning authority on 15th Nov 2016. I do not consider the revised location to be so material as to warrant additional public notices. The Board, may consider the revised location to be material and advertise according, if appropriate.

7.3.4. In terms of appearance, the proposed dwelling is a 2 storey building of contemporary design. This is an appropriate design response to the site, given the similar approach taken on the adjacent site. In terms of scale and massing, this is similar to the adjacent site and is appropriate in this instance.

7.3.5. In relation to the garage structure, I note the appellants have accepted there is an error in the drawings as Section A-A shows a structure of 7.7m in height whereas other drawings of the garage show a maximum height of 4.6m. If the application was to be approved, a condition should be imposed to ensure the maximum height of the garage is as per the correct elevations and sections.

7.3.6. Overall the dwelling is in keeping with the modern appearance and scale of neighbouring developments and as such is appropriate.

7.4. Residential Amenity

7.4.1. There is only one window on the elevation facing the neighbouring property and this serves the landing area. As such no overlooking will result from this window. There is sufficient distance from the proposed dwelling to the neighbouring property to ensure that no overshadowing or loss of outlook will result.

7.5. Water Supply/Waste Water/Drainage

7.5.1. In relation to water supply the applicants are proposing to utilise a mains water supply.

- 7.5.2. In relation to waste water, a Proprietary Waste Water Treatment Plant and Percolation Area (Polishing Filter) is proposed, to be constructed in accordance with EPA Guidelines.
- 7.5.3. The GSI Groundwater maps show that the site is located within an area with an Aquifer Category of 'Regionally Important' (RI) with a vulnerability classification of 'Extreme' (E), representing a GWPR response of R2¹ under the EPA Code of Practice. According to the response matrix, on-site treatment systems are acceptable in such areas subject to normal good practice and the following condition:
1. There is a minimum thickness of 2m unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system
- Or
- A secondary treatment system as described in Sections 8 and 9 is installed, with a minimum thickness of 0.3m unsaturated soil/subsoil with P/T values from 3 to 75 (in addition to the polishing filter which should be a minimum depth of 0.9m), beneath the invert of the polishing filter (i.e. 1.2m in total for a soil polishing filter).
- 7.5.4. The trial hole assessment submitted by the applicant encountered bedrock at a depth of 1.3m BGL which demonstrates a shallow soil depth on site, requiring the use of raised percolation areas.
- 7.5.5. The site characterisation records a T-test value of 8.67. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for use of a septic tank system or secondary treatment system discharging to groundwater.
- 7.5.6. According to the Site Characterisation Report the recommendation is for a packaged waste water treatment system and polish filter. The report notes that the site is not suitable for a septic tank system and percolation area. The revised site layout plan details a Proprietary Waste Water Treatment Plant (Septic Tank) and Percolation Area (Polishing Filter). The information is therefore conflicting and there is doubt in relation to the suitability of the site for the system proposed.
- 7.5.7. While there are no wells within 200m of the secondary treatment system, I am therefore unable to conclude that the development will not impact on the quality of groundwater. The concentration of other private systems in the area also needs to

be considered. Therefore, the proposal would have potential to result in a public health hazard.

7.5.8. In relation to drainage soakaway areas are proposed which are appropriate in this instance.

7.6. **Appropriate Assessment**

7.6.1. The closest designated European Site is Monivea Bog SAC which is located 4.3km south-east of the site. The Conservation Objective of this site is 'To restore the favourable conservation condition of Active raised bogs in Monivea Bog SAC'. This adjoins the Lough Corrib SAC which is 4.8km to the south-east of the site.

7.6.2. Having regard to the scale and nature of the proposed development, a dwelling, and having regard to the distance to the nearest European Sites, and the absence of an evident pathway to the nearest European Sites, I am of the view that no appropriate assessment issues arise and the proposal would not be detrimental to the Conservation Objectives identified above and would not be likely to have a significant effect, individually or in combination with other plans or projects, on any designated European site.

8.0 **Recommendation**

8.1. In view of the above, it is recommended that permission be refused based on the reasons and considerations set out below.

9.0 **Reasons and Considerations**

1. The site is located in a rural area outside of any identified settlement and within an area of strong urban influence as identified in the Galway County Development Plan, 2011-2017 and within an area where the provisions of Objective RHO 1 of the plan regarding rural housing in areas under strong urban pressure – Galway Transportation Planning Study Area (GTPS) is applicable. Having regard to the information submitted with the application and specifically the lack of sufficient documentary information demonstrating the applicant's rural links to the area as specified in Objective RHO 1, it is considered that the proposed development would not be consistent with the

policy set out in the plan for housing in rural areas. The proposed development if permitted would therefore be contrary to Objective RHO 1 of the development plan, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

Rónán O'Connor
Planning Inspector

29th March 2017