



An
Bord
Pleanála

Inspector's Report PL16.248634

Development	Construction of dwellinghouse, associated garage, wastewater treatment system and ancillary works
Location	Gortbrack North, Pullathomas, Ballina, County Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	P16/964
Applicant(s)	Anthony Lavelle
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Anthony Lavelle
Observer(s)	None
Date of Site Inspection	22 nd August 2017
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The subject site is located in northwest County Mayo, approximately 2.7km to the northeast of Inver Village and approximately 4km north of the R314 regional road at Barnatra, which links the towns of Belmullet and Ballycastle. The subject site is located on elevated ground on the southwest side of Lengad or Dooncarton hill, 80m above sea level availing of significant views overlooking Broadhaven Bay, 1.5km to the west and the Owenduff river valley to the south. The surrounding area is dominated by sparsely populated blanket peatlands with housing concentrated along intermediary elevated ridges and valleys.
- 1.2. The appeal site measures 0.4ha and is located on a cul de sac accessed off a network of local roads and terminating at a dwelling 125m to the northwest of the site. An open drain closely follows the northwestern boundary of the site and the eastern boundary is marked by a post and wire fence. A post and wire fence and a drainage channel also extend across the 41m frontage to the site. Vegetation, rocky outcrops and soil on site are indicative of the upland blanket bog context. Land levels in the area drop significantly downward from northeast to southwest with approximately a 7m difference across the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
- Construction of a three-bedroom detached dwellinghouse (157sq.m);
 - Construction of associated domestic garage (47sq.m);
 - Installation of wastewater treatment system;
 - Vehicular access off local road;
 - All associated groundworks and landscaping.
- 2.2. The planning application was accompanied by a Site Suitability Assessment Report and the consent of the landowner to submit the application.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to refuse permission generally for the following reasons:

- R.1** visual impact of the proposals from a scenic route;
- R.2** concerns regarding the capacity to safely attenuate and dispose of wastewater arising.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer reflects the decision of the Planning Authority. The Planning Officer noted the following:

- Parts of the site were waterlogged during their site visit (January 2017);
- Permission for development of a dwellinghouse 120m southeast of the site was refused under Ref. 05/3058 (April, 2006) due to the lack of capacity for the site to safely dispose of wastewater;
- Site is northeast of L-1202-45 local road, a designated scenic route in the County Development Plan.

3.2.2. Other Technical Reports

- None.

3.3. Prescribed Bodies

- None

3.4. Third-Party Submissions

3.4.1. One submission was received during consideration of the application. This submission was in support of the application and noted that the proposals would provide a family home for the applicant.

4.0 Planning History

4.1. Subject Site

4.1.1. None.

4.2. Surrounding Sites

4.2.1. There have been no planning applications on the immediately adjoining sites, but there have been applications in the surrounding area for dwellinghouses, many of which were withdrawn, while a decision was reached by the Planning Authority on the following:

- Gortbrack North (250m southeast of appeal site) – Ref. 05/5038 – Permission **refused** (April 2006) for dwellinghouse, garage and wastewater treatment system. Reason for refusal based on the inability of the site to adequately dispose of wastewater.

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for Planning Authorities

5.1.1. The Guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. The appeal site is located within an area recognised within the Guidelines as having a ‘Clustered Settlement Pattern’, where the key objective is to support a vibrant rural population. The following sections of the Guidelines are of relevance to this appeal:

- Section 3.2.3 ‘Rural-Generated Housing’;
- Section 3.3.1 ‘Landscape, Natural and Cultural Features’;
- Section 3.3.3 ‘Siting and Design’;
- Section 4.5 ‘Protecting Water Quality’.

5.1.2. Circular Letter PL 2/2017 issued in May 2017 by the Department of Housing, Planning & Local Government provides additional guidance regarding local needs

criteria in Development Plans in light of a recent European Courts judgement. The Circular advises that the existing 2005 Guidelines remain in place.

5.2. Mayo County Development Plan

Rural Housing Policy

- 5.2.1. The subject site is not located on lands zoned for a specific use within Mayo County Development Plan 2014-2020. Map 3 of the Development Plan addressing 'rural-area types', identifies the appeal site as being within a 'Structurally-Weak Area'.
- 5.2.2. Section 2.3.2 of the Plan states that in areas classified as Structurally-Weak Areas, permanent residential development (urban and rural-generated) will be accommodated, in particular, special consideration will be given to the provision of housing in rural areas that have sustained population loss since 1951, subject to good planning practice.

Landscape

- 5.2.3. The appeal site is within 'Landscape Protection Policy Area 1 - Montaine Coastal Zone' according to Map 3a of the Development Plan. The landscape assessment for this Policy Area in the Landscape Appraisal of County Mayo outlines that it is a visually distinct area, as it incorporates, in a relatively small area, two dramatic landscape attributes; a steep and rugged shoreline and mountains rising immediately above.
- 5.2.4. Map 4 of the Development Plan illustrates that the local road (L-1202-45) generally running parallel with the coastline and approximately 1km west of the appeal site is a scenic route with scenic views to the east and west. The following landscape protection objectives are relevant:
 - **LP-01** - It is an objective of the Council, through the Landscape Appraisal of County Mayo, to recognise and facilitate appropriate development in a manner that has regard to the character and sensitivity of the landscape and to ensure that development will not have a disproportionate effect on the existing or future character of a landscape in terms of location, design and visual prominence;

- **LP-02** - It is an objective of the Council that all proposed development shall be considered in the context of the Landscape Appraisal of County Mayo with reference to the four Principal Policy Areas shown on Map 3A Landscape Protection Policy Areas and the Landscape Sensitivity Matrix (Figure 3), provided such policies do not conflict with any specific objectives of this Plan.
- **LP-03** - It is an objective of the Council to protect the unique landscape of the County which is a cultural, environmental and economic asset of inestimable value;

The following views and prospects objective is relevant:

- **VP-01** - It is an objective of the Council to ensure that development does not adversely interfere with views and prospects worthy of preservation and protection as outlined on Map 4, or on the views to and from places and features of natural beauty or interest (e.g. coastline, lakeshores, protected structures, important historic sites) when viewed from the public realm.

Wastewater

- 5.2.5. Section 20.2.2 of the Plan states that in unserviced rural areas, where a proposed dwelling cannot connect to the public sewer, a site suitability assessment will be required. The assessment must be carried out in accordance with the EPA (Environmental Protection Agency) Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses (population equivalent ≤ 10) taking into account the cumulative effects of existing and proposed developments in the area.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The principal grounds of appeal of the applicant can be summarised as follows:

Landscape & Visual Impact (Reason 1)

- The site is not elevated, does not break the skyline and proposals have been designed to incorporate measures and features address the visual impact of the proposals;
- The surrounding area is quiet and located on a cul de sac;

- The site location is not within a designated area or in a particularly scenic area, with the scenic views looking toward the sea rather than inland to the appeal site;
- Existing dwellings in the area break the skyline and the greatest visual impact arises from agricultural buildings;

Wastewater Treatment (Reason 2)

- The Site Suitability Assessment directed the design of the wastewater treatment system proposed;
- The period during which the Planning Authority undertook their site visit (17th January 2017) was not an extended dry period as claimed within the Planning Officer's report;
- Continued monitoring of the trial holes confirms that the designs proposed for wastewater treatment meet relevant standards;

Housing Need

- The surrounding area continues to suffer from a declining population;
- Applicant and partner work locally and wish to establish a permanent home prior to enrolling their child in the local school;
- Applicant does not have access to other lands for developing a home;

Other Matters

- The Notification of a Decision to Refuse permission refers to another planning reference number and the Council may have confused the site;

A set of photographs, the Site Suitability Assessment and meteorological records have been submitted in support of the grounds of appeal.

6.2. Planning Authority Response

6.2.1. The Planning Authority did not respond to the grounds of appeal.

6.3. Observations

- None

7.0 Assessment

7.1. Introduction

7.1.1. The site is located within a 'Structurally-Weak Area' and within the Mayo County Development Plan or the Sustainable Rural Housing Guidelines there is no restriction on the development of houses in this rural area type. It is noted that the grounds of appeal refer to the applicant's connections with the area. I consider that there is no requirement to demonstrate a local need to justify permission for a house in this area and this issue was not raised in the Planning Authority's reasons for refusal. Should the Board be minded to grant planning permission, an occupancy condition would not be necessary. Consequently, the main planning issues in the assessment of the proposed development are as follows:

- Visual Impact;
- Site Suitability for On-site Wastewater Treatment;
- Other Matters.

7.2. Visual Impact

7.2.1. Refusal reason No. 1 of the Planning Authority's notification to refuse the proposed development relates to the visual impact of the proposed development, when viewed from a designated scenic route and prospect.

7.2.2. The subject site is elevated above the surrounding road network, approximately 50-55 metres higher than the L-1202-45, which is a designated scenic route and forms part of the Wild Atlantic Way, a popular tourist route. The surrounding area is of high scenic amenity and the site has extensive views of Broadhaven Bay, Owenduff river valley and Belmullet peninsula. The proposed development would be visible from the designated scenic route, particularly from the southwest and from within the valley. The grounds of appeal note that there are some residences and farmsteads located on slightly more elevated ground in the immediate area, but I note that these are not recent developments and the vast majority of residences in the area are located on lower lands. The immediate upland blanket bog landscape and wider coastal mountain landscape is dramatic, expansive, natural and undeveloped. I consider that the proposed development, on elevated ground would represent a prominent and discordant entry into a rural landscape of high scenic amenity.

- 7.2.3. The Landscape Appraisal of County Mayo identifies this part of the County, comprising low vegetation and smooth terrain, as being a difficult landscape to physically or visually absorb development. The grounds of appeal assert that the positioning and design of the dwelling (20m wide and almost 7m high) on site and the inclusion of other design features and measures, including landscaping and grading works, would serve to reduce the visual impact of the proposed development on the landscape. While I recognise the efforts made to reduce the visual impact of the proposals, I consider that the topography, exposure and elevation of the appeal site and the uncomplicated surrounding landscape with minimal man-made features and low vegetation would not be capable of absorbing the proposed development without a significant negative impact arising.
- 7.2.4. The grounds of appeal outline that the more important views and scenery from the scenic route are seaward, however, the Landscape Appraisal of County Mayo refers to the immediacy of the coastline to upland areas as being key to the distinctiveness and drama of this landscape. This is reflected in the Development Plan designation (Map 4) to protect views and prospects both looking inland and seaward from the scenic route (L-1202-45). While I recognise that the proposed development would only be visible intermittently from the scenic route and primarily approximately 1 to 1.5km to the west and southwest of the site, I note that the Development Plan includes objective VP-01, which seeks to preserve and protect views and prospects of the landscape from this scenic route. Furthermore, I note that the Development Plan includes landscape protection objectives LP-01, LP-02 and LP-03, all of which seek to preserve and protect the scenic amenity of the county and the character of scenic areas.
- 7.2.5. In conclusion, as the proposed development on an elevated and exposed site, would be visible from a designated scenic route and would represent a discordant entry into the landscape, views of which are designated for protection and preservation, and the visual impact of the proposed development could not be addressed via mitigation. I consider that the proposed development would contravene landscape and view protection objectives of the Mayo County Development Plan 2014-2020.

7.3. Site Suitability for Wastewater Treatment

- 7.3.1. Reason No. 2 of the Planning Authority's notification to refuse the proposed development, refers to the lack of capacity to safely attenuate and dispose of wastewater. The wastewater treatment element of the proposals involves the installation of a packaged effluent treatment system (Klargester by Kingspan) from which the treated effluent would be pumped to a stilling chamber on a slightly higher level and this would then percolate through the soils and subsoils. At the time of the Planning Authority's inspection (January 2017) it is stated that the trial hole showed water less than 1m below ground level (photograph attached to Planning Officer's report). Section 20.2.2 of the Development Plan, requires an assessment to be carried out in accordance with the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses. The grounds of appeal assert that the Site Suitability Assessment included with the planning application and resubmitted with the appeal reveals that the proposed development meets the requisite standards and that the Planning Authority erred in their assessment given that weather conditions prior to their site inspection was not defined by an extended dry period, as stated by the Planning Authority.
- 7.3.2. The Site Suitability Assessment report submitted notes the potential targets near the site as groundwater and wells, there are three houses within 250m of the site and there are no watercourses within 250m of the site. The report states that a trial hole was examined in November 2016 and bedrock was not encountered within 2.45m depth. Percolation tests undertaken revealed an average T-value of 46.33 and a P-value of 38.64. The EPA Code of Practice states that where the T-value is between 3 and 50, as per the subject assessment, the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. Where the P-value is between 3 and 75, the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.3.3. The site is underlain by a 'Poor' aquifer (PI) with 'Extreme' vulnerability. The Site Suitability Assessment refers to the vegetation on site comprising grasses, rushes, mosses and heathers and the wider soil type as being formed of blanket peats. Such soils generally result in boggy conditions. The soil classification description in the trial hole log, which is stated as clay over sandy silt and sandy gravel, does not tie in with the evidence on the ground, which shows shallow peats overlying

weathered rock. I also note the existence of a rocky outcrop to the southeast of the site, which was referenced in the Site Suitability Assessment. The Site Suitability Assessment report submitted noted that there was no sign of ponding on site at the time of testing (November 2016). Although not extensive and preceded by heavy rainfall the previous day, some surface water ponding was noted on site at the time of my site visit, indicating poor water percolation on the site. The question that arises is whether the soils/subsoils have the capacity to adequately treat the final effluent prior to discharge to groundwater.

- 7.3.4. Whilst the proposed treatment system is technically capable of providing a good quality effluent, I have concerns regarding the proposal. Firstly, as noted above, the soil classification description in the trial hole log does not tie in with the evidence on the ground. Secondly, it has not been established that the polishing filter bed with invert level a minimum of 0.55m to 0.9m below existing ground level, would provide sufficient percolation medium above groundwater level to attenuate the effluent prior to discharge to ground. Table 6.2 of the EPA Code of Practice requires a minimum depth of 0.9m unsaturated subsoil below the percolation pipes to bedrock and the water table. The Planning Authority inspection (January 2017) noted the water table less than 1m below ground level and during my site visit (August 2017) the water table was approximately 1.2m below ground level. Consequently, there is insufficient depth of unsaturated permeable subsoil below the base of the polishing filter for the proposed secondary treatment system. It is proposed to install the percolation pipework running generally against the gradient on sloping ground. While I note the proposals to level off the percolation area, Section 11.3.2 of the EPA Code of Practice outlines that on sloping sites the pipework should be installed parallel to the contour to aid distribution of the treated effluent.
- 7.3.5. In conclusion, having regard to the soil and subsoil conditions that occur on this sloping site including the shallow peat cover over weather rock and given the high water table, I have concerns that the site can be satisfactorily drained by means of a secondary treatment system, notwithstanding the proposed use of a packaged treatment system and soil-polishing filter. I consider that the proposed development would pose an unacceptable risk to ground water and would be prejudicial to public health and that permission should be refused on these grounds.

7.4. Other Matters

- 7.4.1. I note that the grounds of appeal refer to an incorrect planning reference number (16/694) used in the Second Schedule of the Planning Authority's Notification of a Decision to Refuse Permission with copy submitted as evidence, and this raises concerns that the subject application may have been confused with another application. I note that the copy of the Notification received by the Board, includes the correct Planning Reference (16/964) in the Second Schedule.

8.0 Appropriate Assessment

- 8.1.1. Neither an Appropriate Assessment (AA) Screening Report nor a Natura Impact Statement (NIS) were submitted with the application or appeal. There is an open drain running along the northwestern boundary of the site, which is proposed to be realigned as part of the subject proposals. This drain feeds southwards into a tributary of the Owenduff river, which is noted as having a good ecological status in the River Basin Management Plans and feeds directly into Broadhaven Bay. There are 11 no. European sites within 15km of the subject site. With the exception of two sites, I am satisfied that the remainder can be 'screened out' on the basis that significant impacts on the European sites could be ruled out arising from distance and lack of hydrological connectivity.
- 8.1.2. Blacksod Bay / Broadhaven Special Protection Area (SPA) (Site Code No. 004037) (c. 1.5km to the west) and Broadhaven Bay Special Area of Conservation (SAC) (Site Code No. 000472) (1.5km to the west). The open drain at the site is a potential direct pathway for effects to these European sites. These European sites share the same aquifer as the proposed development, which has an 'Extreme' vulnerability rating.
- 8.1.3. Broadhaven Bay SAC is selected for a range of coastal habitats including; tidal mudflats and sandflats, large shallow inlets and bays, reefs, Atlantic salt meadows and sea caves. This site is of high conservation importance owing to the presence of several habitats listed in Annex 1 of the EU Habitats Directive. No part of the development would be located within the SAC and there would be no loss or fragmentation of habitat.

- 8.1.4. Blacksod Bay / Broadhaven SPA is of high ornithological importance for its excellent diversity of wintering birds and it is also of special conservation interest for Great Northern Diver, Brent Goose, Common Scoter, Red-breasted Merganser, Ringed Plover, Sanderling, Dunlin, Bar-tailed Godwit, Curlew, Sandwich Tern and Dunlin and for wetlands habitat. The development of the site would not result in any loss or fragmentation of habitat within the SPA.
- 8.1.5. The project has potential for indirect impacts to occur to the above European sites from emissions to groundwater during construction and there is also potential for direct impacts to arise from foul effluent discharge during the ongoing use of the house. I note the concerns raised in my assessment above regarding the suitability of the development to be operated using the proposed effluent treatment system. While I recognise that the qualifying features of the European sites are predominantly aquatic, consisting of intertidal habitats, having regard to the hydraulic connectivity between the site, including the Owenduff river, there is some degree of interdependence and interconnectivity between these habitats and surface water running along the appeal site. Therefore, I cannot reasonably rule out that there would not be significant effects, either individually or in combination with other plans or projects, on the European sites on the basis of the scientific information available.
- 8.1.6. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Blacksod Bay / Broadhaven SPA (Site Code No. 004037) and Broadhaven Bay SAC (Site Code No. 000472), or any other European site, in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

9.0 Recommendation

- 9.1. I recommend permission be **refused** for the following reasons and considerations.

10.0 Reasons and Considerations

1. Objectives RH-02, LP-02, LP-03 and VP-01 of the Mayo County

Development Plan 2014-2020 all seek to preserve sensitive landscapes, and these objectives are considered reasonable. Having regard to the elevation and exposed location of the site in an area of high scenic amenity and visible from a scenic route with views and prospects designated for protection in Mayo County Development Plan 2014-2020, it is considered that the proposed development would form a discordant and obtrusive feature on the landscape, would fail to be adequately absorbed and integrated into the landscape and would detract from the rural character and scenic amenities of the area. The proposed development would thereby be contrary to the objectives of the Planning Authority, as set out in the Mayo County Development Plan 2014 – 2020, would seriously injure the visual amenities of the area and, therefore, would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the ground, soil and subsoil conditions observed on the site and given the insufficient depth of unsaturated subsoil between the proposed percolation pipes and the water table, the Board is not satisfied that the site is suitable for the treatment and disposal of domestic foul effluent in accordance with the “Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)”, 2009 and subsequent clarifications issued by the Environmental Protection Agency. The proposed development would, therefore, be prejudicial to public health.
3. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Blacksod Bay / Broadhaven SPA (Site Code No. 004037) and Broadhaven Bay SAC (Site Code No. 000472), or any other European site, in view of the site’s Conservation Objectives. In such circumstances, the Board is precluded from granting approval/permission.

Colm McLoughlin
Planning Inspector

11th September 2017