



An  
Bord  
Pleanála

## Inspector's Report PL16.249128

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<b>Development</b>	New house on ruin of existing house, septic tank, and percolation area
<b>Location</b>	Gortaskibbole, Knockmore, Ballina, Co. Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	17/494
<b>Applicant(s)</b>	Padraic Crean and Marita Brogan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	John Ferguson
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	2 <sup>nd</sup> November 2017
<b>Inspector</b>	Una O'Neill

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## 1.0 Site Location and Description

- 1.1. The subject site is located between Ballina and Knockmore, in the townland of Gortaskibble, east of Lough Conn, in north Mayo, west of the R310. There are a number of dispersed rural houses in this area, primarily directly onto the R310.
- 1.2. The site is accessed via a track off an existing laneway, which has an access from the R310. There are 2 other dwellings with accesses directly onto the laneway, northeast of the site, in proximity to the egress onto the R310. The site, which has a stated area of 0.4034 ha, is currently under grass and comprises the ruins of an old stone cottage and a stone shed. The site, which is roughly rectangular in shape, slopes down from west to east with the existing cottage and shed at the eastern end of the site. The land continues to slope down to the east and then rise up again to the R310. The site is visible from the R310. The site outlined in red is part of a larger landholding, outlined in blue in the submitted documentation.

## 2.0 Proposed Development

- 2.1. The proposed development comprises a new dwelling, 7.8m wide x 14.81m deep, with an overall height of 7.5m. The dwelling is of a single storey pitched roof form with attic level accommodation, windows at first floor level in the gable ends, and rooflights. The proposed floor area is stated to be 179.47sqm.
- 2.2. A conventional septic tank and percolation area is proposed for wastewater treatment, with an effluent pump to form part of the system. Surface water disposal is by means of a soakaway. Water supply is from a new connection to the mains system

## 3.0 Planning Authority Decision

### 3.1. Decision

GRANTED, subject to 13 conditions, including the following:

- C2: Occupancy
- C4: Finished floor level

- C5: Works to entrance from R310

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

The Planning Officer's report generally reflects the decision of the Planning Authority.

#### **3.2.2. Other Technical Reports**

Mayo National Roads Design Officer: No objection.

Engineer Report: No objection subject to conditions in relation to the access onto the R310 which shall be spayed and recessed, and surface water discharge.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

One objection was received from John Ferguson. The issues raised are covered in the grounds of appeal.

## **4.0 Planning History**

P16/755 – Permission GRANTED for new dwelling houses. Application withdrawn on appeal.

P08/1508 – Permission REFUSED to construct new dwelling, for reasons related to access onto strategic regional road, backland development and insufficient information in relation to traffic hazard.

## **5.0 Policy Context**

### **5.1. Sustainable Rural Housing, Guidelines for Planning Authorities (2005)**

- The subject site is located within an area designated as being 'Rural Areas under Strong Urban Influence' within these Guidelines.

- Section 3.3.3 deals with 'Siting and Design'

## 5.2. Mayo County Development Plan 2014-2020

5.2.1. The following rural settlement policies are of relevance:

**RH-01:** It is an objective of the Council to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG), Map 1 Core Strategy Conceptual Map and the Development Guidance document of this Plan.

**RH-02:** It is an objective of the Council to require rural housing to be designed in accordance with the Design Guidelines for Rural Housing (Mayo County Council). Consideration will be given to minor deviations from the guidelines where it can be demonstrated that the deviation will not have an adverse visual impact on the landscape or on local residential amenity in the Area.

5.2.2. **Volume 1:** Rural Area under Strong Urban Influence.

In an area located within an area defined as a 'Rural Area Under Strong Urban Influence', the applicant shall satisfy the planning authority that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- 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/nephew (within the meaning of the Capital Acquisitions Tax Consolidation Act 2003) 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)...

5.2.3. **Volume 2:** Planning Guidance and Standards for Development in County Mayo

**Access:** It is stated under section 16.1.4 that in order to protect existing and future capital investment in and the safety and carrying capacity of Strategically Important Regional Roads, development along such roads will be restricted outside the 60km/hr speed limits except: where such proposals, subject to a Road Safety Audit (see traffic assessments in Section 16.2 below), can demonstrate that they do not interfere with the traffic safety of the Strategically Important Regional Road and comply with the categories listed hereunder:

a) The provision of a new dwelling house for farmers, their sons or daughters, a favourite niece/nephew 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) where a suitable vehicular access cannot be created from another roadway or utilising an existing access

b) The provision of a new dwelling house where an existing inhabited dwelling house is in need of replacement and provided the existing house will not be used for further habitation...

5.2.4. **Section 3:** Occupancy Condition

In an effort to minimise market opportunism in areas classified as Rural Areas under Strong Urban Influence, an occupancy condition, as set out below, will normally be attached to any grant of planning permission, requiring occupancy for a maximum of five years by the applicant, his or her family or by any person meeting housing need criteria.

5.3. **Mayo Rural Housing Design Guidelines 2008**

The rural house design guide aims to encourage the use of traditional forms, scale and materials that have a proven history of blending into the landscape.

5.4. **Natural Heritage Designations**

The River Moy SAC (Ref. 002298) is located approx. 2km to the east of the subject site. Lough Conn and Lough Cullin SPA is located approx. 3km to the west of the subject site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellant, John Ferguson, lives to the east of the appeal site, directly adjoining the R310 and with an access from it. The following is a summary of the grounds of appeal:

- It is unclear who owns the laneway, which is required to access the site, as no right of way has been registered with the Property Registration Authority.
- Works are proposed to this access road, which have not been included within the red line for the application and therefore procedurally cannot be undertaken.
- This proposal is a case of backland development with no existing road servicing the site, which was a key reason for refusal under the 2008 application.
- The delivery of a new development at this site has the potential to act as a catalyst for development of further houses along this historical access road, which historically continued south and exited onto a local road south of the site.
- The proposal contravenes development plan policy, represents a significant case for traffic hazard and will set an undesirable precedent for development at this location.
- The proposal is contrary to development plan provisions in that it proposes the loss of an existing wall/hedgerow/ditch over a significant length of the existing access road and agricultural passage, which is contrary to the rural housing guidelines.
- The proposal does not form part of a cluster of dwellings but is set back 150m from existing dwellings fronting the R310.
- The development plan promotes the use of vacant residential properties as an alternative to new build. There is an existing vacant property on the laneway.

## 6.2. Applicant Response

- The access road dates back to the 1800s and the site comprises the ruins of the former Ferguson family homestead.
- The applicant's housing need is a rural generated need.
- Alternative sites were considered within the family holding and this was considered the most appropriate location, given section 6.2 of the development plan whereby it is preferable to locate a dwelling on the footprint of any existing ruin or cluster of ruined buildings. This location will also enable retention of existing hedgerows and walls.
- The house in ruins and access can be seen on the historical 25 inch maps (dating from 1888-1913) and a clachan is visible at this location on a historic 6 inch map dating from 1837-1842. The proposed site gives effect to a traditional pattern of development lost and replaced by ribbon development along the R310. The proposal is not considered a backland development and is in compliance with development plan policy to avoid ribbon development and encourage a proposed dwelling to be located on the footprint of any existing ruin or cluster of ruined buildings.
- Rights of way exist in law in both registered and unregistered form and therefore appellant's claim that this right of way is unregistered is vexatious. There is no dispute to the applicant's right to use this road. A declaration/deed of grant of way is hereby submitted and signed by all relevant third parties.
- The appeal site has the benefit of an established residential use up to the 1970s. The cottage then fell into a state of disrepair and ultimately ruin.
- The site edged red does not include the right of way as the applicant does not own this, but it is included in yellow with letters of consent submitted by the landowners over which the right of way traverses, seeking to carry out improvements and modest widening.
- The widening of the laneway will not result in the destruction of a long established hedgerow, it will merely result in its relocation with the stone wall. Three existing mature trees will be maintained. The widening of this laneway and the relocation of the eastern boundary would represent works which are



considered to be exempted development within the meaning of the Planning and Development Act/Regulations. It is argued that this aspect of the development should not be considered material in the determination of this appeal.

- Access of R310 is considered safe and adequate. The speed limit has been reduced from 100kph to 80 kph. The intensification of use of the laneway will not result in traffic hazard.
- The laneway is surfaced for approx. half of its length and is clearly defined and passable for the remainder. The existing laneway serves just one additional house and three separate agricultural landholdings including the family home of the applicants. The use of the laneway is solely restricted to these persons.
- This application differs from other ABP decisions for rural houses in that the proposed development seeks to utilise the ruin of a former dwelling house. Appeal ref PL21.245168 is considered relevant in the context of this appeal, as are the following: 202881, 126765, 237147 and 118101.

### **6.3. Planning Authority Response**

None.

### **6.4. Observations**

None.

### **6.5. Further Responses**

None.

## **7.0 Assessment**

7.1. The primary issues for assessment include;

- Rural Housing Policy
- Access Track/Laneway and Traffic

- Red Line Boundary
- Amenity of the Area
- Wastewater Treatment

### **Rural housing policy**

- 7.2. The applicant is proposing a house on the ruins of an existing house. From site inspection, 2 stone walls were observed which appear to have related to the stated house. A small stone shed with galvanised lean-to roof is also present on the site. The proposed house is to be located in the approximate location of the previous dwelling and extends further east of it.
- 7.3. The subject site is located within an area defined as a 'Rural Area Under Strong Urban Influence'. In such areas, the applicant shall satisfy the planning authority that their proposal constitutes a genuine rural generated housing need based on their own roots in or links to a particular rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:
- 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/nephew (within the meaning of the Capital Acquisitions Tax Consolidation Act 2003) 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)...
- 7.4. The applicants are Marieta Brogan and her partner Padriac Crean. The owner of the land is Thomas Ferguson who is stated to be Marieta Brogan's uncle. The cover letter accompanying the application states Marieta Brogan grew up in the area and lived with her parents until she was 24. Her parent's and uncle's house is identified on a map, as well as that of the uncles. Padraic Crean grew up in Cloghans, which is

a few kilometres away. Marieta Brogan wishes to move back to Gortaskibbole and start her own family there, who will attend the school at Currabaggan. Their roots are established in the area where Marieta's son and daughter play for Knockmore GAA club and attend the local foroige club. The applicant wishes to live in the local area where she grew up and on land which has been in their family ownership for generations. It is stated that the applicant will take over her uncle's farm and assist in looking after her elderly parents and uncle who are approx. 150m from this site. A letter from the applicant's uncle and godfather Thomas Ferguson accompanies the application and states that he supports the application and that Marieta will be taking ownership of the farm and the running of it, which is stated to be greater than 4ha in area.

- 7.5. The appellant contends that the letter on file from Thomas Ferguson failed to establish a bona fides that there is a legitimate intent for the transfer of ownership of the farm to Marieta Brogan and a letter only stating this intent is not sufficient. A concern is raised that this decision will result in precedent for further development on this laneway. It is stated that the applicant's family has not farmed these lands in 20 years as the farm is leased.
- 7.6. The Planning Authority accepted that the applicant complied with the rural housing policy. I note however, that no documentation was submitted to verify any of the information which was submitted by way of the cover letter and associated letter from Thomas Ferguson. There is insufficient information before me to determine whether both applicants have a genuine housing need and if this need is rural generated as opposed to being urban generated. It is not stated where Marieta Brogan or Padraic Crean currently reside or where their places of employment are. It is not stated if either of the applicants currently own a house. In addition while it is stated that the farm is to be transferred to Marieta Brogan, no timescale is provided in terms of her taking over the running of the farm. Given the location of the dwelling within a Rural Area Under Strong Urban Influence, I am overall not satisfied that the applicants' comply with national policy to facilitate rural generated housing need only in this area.

### **Access Track/Laneway and Traffic**

- 7.7. Section 16.1.4 of the development plan states that in order to protect existing and future capital investment in and the safety and carrying capacity of Strategically Important Regional Roads, development along such roads will be restricted outside the 60km/hr speed limits except: where such proposals, subject to a Road Safety Audit (see traffic assessments in Section 16.2 below), can demonstrate that they do not interfere with the traffic safety of the Strategically Important Regional Road and comply with the categories listed hereunder: a) The provision of a new dwelling house for farmers, their sons or daughters, a favourite niece/nephew 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) where a suitable vehicular access cannot be created from another roadway or utilising an existing access.
- 7.8. The subject site is accessed off a track from a laneway, which in turn is accessed off the R310, which is defined as a strategically important regional road. The access laneway which appears to be private and has a farm gate across the entrance is utilised by two dwellings (one of which is unfinished) and one farmer. The laneway, which is approx. 4.9m wide, is well used for a distance of approx. 185m. The laneway then becomes a grassed-over unsurfaced track, approx. 2.5m wide, and continues a distance of approx. 86m to the entrance to the site. The applicant indicates this section of track and the overall laneway, which leads to a shed and the ruins of a house, dates from the 1800s. It is proposed to widen and upgrade the track element for a length of 86m to approx. 7m wide, removing an existing hedgerow with trees and rubble wall. It is stated in the appeal that the hedgerow/wall will be relocated to the new widened edge. It is also proposed to carry out works to the entrance from the R310 to improve sightlines.
- 7.9. I do not consider the works involving the widening of the existing track to be modest in their nature as proposed by the applicant and given the works will increase the width of the track from 2.5m to 7m, it appears that it will require land take from an adjoining field, the ownership of which has not been stated. I consider the widening of this track to be excessive and question the sustainability of developing infrastructure for this unserved site which is 86m from the surfaced laneway, and a further 185m, to the exit onto the R310.
- 7.10. The existing sightlines onto the R310, from the existing agricultural type entrance, are considered insufficient and the applicant has proposed improvement works at

this entrance from the R310. The measures proposed by the applicant to improve sightlines include the removal of trees, increase splay and recess gate, and the creation of a layby on the laneway. These works are considered satisfactory by the area engineer and I note a road safety audit was not required by the area engineer.

- 7.11. I note the works are not within the red line boundary of the site and cannot therefore be undertaken as part of this application. The applicant cannot therefore sufficiently demonstrate that they do not interfere with the traffic safety of this Strategically Important Regional Road. In addition, the additional traffic movements generated by the proposed development in my view would represent would further limit the carrying capacity of this road, which would be contrary to the proper planning and sustainable development of the area.

### **Amenity of the Area**

- 7.12. There are a number of one-off rural properties in this immediate area, which are primarily located in a ribbon pattern along the R310. The applicant's dwelling is proposed to be located in the middle of agricultural land, approx. 200m from the road. I note the Mayo County Development Plan 2014-2020 states that to avoid ribbon development a sequential approach to choosing a rural housing site should be included, one of the preferred options being to locate on the footprint of any existing ruin or cluster of ruined buildings, subject to normal planning considerations. However, what remains of the ruined buildings/cluster has been largely subsumed within the surrounding agricultural nature of the land and these buildings are not in any way linked to the operation of the farm or to an established farm yard. To establish a rural dwelling at this location would be visually obtrusive and discordant on the existing landscape.
- 7.13. The finished floor level of the dwelling is stated to be 100.65 as stated on the plan site section A-A1. I note the land slopes down to the east of the site and rises up toward the road/R310. The site is visible from the R310 given the level differences. The proposed dwelling will be visible at this location and will impact on the amenity of the area.
- 7.14. It is stated within the Mayo Rural Housing Design Guidance 2008 that in siting a house it is important to avoid loss of existing mature trees, hedgerows and stone walls on site. Where they have to be removed hedgerows should be replanted and

relocated behind new road boundary lines. The applicant proposes to remove hedgerow/trees/stone wall of approx. 86m in length along the eastern side of the track to the site to facilitate access to the proposed dwelling. It is stated by the applicant in the response to the appeal that they intend to relocate the hedgerow/walls further east and they propose to retain three existing trees which may be left isolated owing to this site. The removal of such a vast stretch of hedgerow/wall and potential impact on trees in terms of both habitat loss and impact on the visual amenity of the area is considered contrary to the Mayo Rural Housing Design Guidelines 2008, as incorporated into the Mayo County Development Plan 2014-2020.

### **Red Line Boundary**

- 7.15. The appellant highlights that works are proposed to the access from the R310 and to the access track which have not been included within the red line for the application and therefore procedurally cannot be undertaken.
- 7.16. The applicant states the site edged red does not include the right of way as the applicant does not own this, but it is included in yellow with letters of consent submitted by the landowners over which the right of way traverses, seeking to carry out improvements and modest widening. The widening of this laneway and the relocation of the eastern boundary would represent works which are considered to be exempted development within the meaning of the Planning and Development Act/Regulations. It is argued that this aspect of the development should not be considered material in the determination of this appeal.
- 7.17. The works to the track/laneway are not identified within the red site boundary of the development and are not within the blue line ownership boundary. The application is accompanied by two letters of consent from the owners of the 2 existing dwellings on the laneway, which adjoin the access to the R310. The letters consent to the applicant upgrading the access from the R310 and removing/relocating trees. A third letter of consent from James Herbert has been submitted stating that he gives consent to Marieta Brogan to use the right of way to access the site. It is stated in a separate letter that James Herbert uses the road to access farmland. There is no map accompanying the letters of consent and it is not clear that James Herbert is giving consent to the applicant to widen the track from the laneway to the site as

opposed to permission to use the access as set out in the letter, or if he indeed owns this piece of land adjoining the track. While the applicant states in the response to the appeal that those affected by the access/right of way have freely given their consent to the use, improvement and widening of same, the letters of consent are not clear in this regard.

- 7.18. The applicant is proposing works outside the red site boundary line to both the laneway/track and the entrance from the R310 and has not demonstrated sufficient legal interest to carry out works on land required to access the site outside of their ownership. I am not satisfied that the proposed dwelling can be accessed in a safe manner.

### **Wastewater Treatment**

- 7.19. The applicant proposes a septic tank and percolation area. The accompanying site suitability assessment indicates the site is over a Regionally Important Karstified Aquifer (Rk), with vulnerability classified as High. The EPA Code of Practice (CoP) indicates that the site falls within the R2(1) response category where an on-site system is acceptable subject to minimum thickness of 2m unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system.
- 7.20. The trial hole results report a depth of 2.8m unsaturated soil. The T-test was undertaken, in accordance with the CoP Annex C. A trial hole depth of 2.8m is indicated on the form, however it is also indicated that a depth of 3m is required for regionally important aquifers. The T value is stated to be 7.5. T values between 3 and 50 indicate soil is suitable for the development of a septic tank system or secondary treatment system discharging to the groundwater. The proposal complies with separation distances to key features and scale of percolation area required.
- 7.21. Based on the information before me, I am satisfied that the proposal if permitted would not be prejudicial to public health with regard to the septic tank and pumping system.

### **Appropriate Assessment**

- 7.22. Lough Moy SAC is located approx. 2km east of the site. Lough Conn and Lough Cullin SPA is located approx. 3km west of the site.

7.23. Having regard to the nature of the development for one dwelling and the separation distance to any European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. It is recommended that permission for the proposed development be refused for the reasons and considerations set out hereunder.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within "Area Under Strong Urban Influence" as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Mayo County Development Plan 2014-2020, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, 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.
2. The applicant is proposing works outside the red site boundary line indicated on the proposed site layout plan and has not demonstrated sufficient legal interest to carry out said works, which are required to improve sightlines and provide a vehicular access to the site. The Board is not satisfied therefore that the proposed development would not endanger road safety by reason of traffic hazard because of the identified traffic turning movements the development would generate onto a strategically important regional road.



3. Having regard to the proposed removal of a significant part of a hedgerow and boundary wall to gain access to the site, as well as the topography of the site, it is considered that the proposed development would result in the loss of existing hedgerow and trees to the detriment of the rural character of the area, contrary to the guidance in the Rural Housing Design Guidelines and the Mayo County Development Plan 2014-2020 and the proposed development would form a discordant and obtrusive feature on the landscape at this location. The proposed development would therefore seriously injure the rural character and visual amenities of the area, would fail to be adequately absorbed and integrated into the landscape, would militate against the preservation of the rural environment and would set a precedent for other such prominently located development in the vicinity. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Una O'Neill  
Senior Planning Inspector

29<sup>th</sup> November 2017