



An  
Bord  
Pleanála

## Inspector's Report PL 61 249409

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<b>Development</b>	Construction of a house, garage, sewage treatment system and percolation area.
<b>Location</b>	Quarry Road, Menlo, Galway City.
<b>Planning Authority</b>	Galway City Council.
<b>P.A. Reg. Ref.</b>	17/217
<b>Applicant(s)</b>	Martina Bermingham.
<b>Type of Application</b>	Permission
<b>Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party X Refusal of Permission
<b>Appellant</b>	Martina Bermingham,
<b>Date of Site Inspection</b>	5th December, 2017
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The application site has a stated area of 6,650 square metres and is formed from lands on the east side of Quarry Road and which are accessed via a farm gate and an agricultural track. The ground is primarily under fissured limestone, is uneven and rises in a south easterly direction. Quarry Road, the level of which is below that of the site overlooks Lough Corrib which is downslope, circa 250 metres to the west. The area is characterised by residential development on single plots which is continuous a short distance to the north and to the south but not close to the site. Adjacent to the site to the south there is a cottage and to the north a large two storey dwelling and a short distance further to the north of which is a limestone quarry. The road is uneven in horizontal and vertical alignment and there are no footpaths or public lighting along it.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a house and a garage, the total stated floor area of which is 351 square metres in conjunction with a septic tank, proprietary treatment system and percolation area. The footprint of the dwelling is shown circa 100 metre back from the road frontage, 8.2 metres from the northern site boundary and eleven metres from the southern site boundary. A ridge height of 5.9 metres with a finished floor level of 105 metres is indicated along with a lean to garage which has maximum height of four metres.
- 2.2. It is stated in the application submission that the applicant has resided at Lisheenoran, Annaghdown, Corrandulla since the 1980s and that the site of the proposed development is eight kilometres from Lisheenoran; that the surrounding landholding (not the landholding in which the site is located) was in the ownership of her mother and her late father but that it was transferred that the land was passed to her ownership in 1998 and that she farms the land. In a separate written statement, the applicant's mother Kitty states that the surrounding landholding was passed to her son by herself and her late husband in 1998, that her son continues to farm the land and, that she resides in a house built on this land. Folio documents for the landholding at Lisheenoran, Annaghdown, is provided. There is an accompanying

statement from the Principal of the national school at Annaghdown, indicating that the applicant attended the school between March, 1979 and June 1983.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. By order dated, 19<sup>th</sup> September, 2017, the planning authority decided to refuse permission on the basis of three reasons as outlined below:

1. Failure to demonstrate that the applicant satisfies the criteria for establishment of housing need at the location, having regard to the “A” zoning objective which provides for encouragement of sustainable agricultural activities and protection of the rural character of the lands.
2. Failure to provide for a sewage treatment and disposal arrangements to a standard that ensures protection of waterways, the site location being in a fissured limestone area and, close to Lough Corrib.
3. Diminution of the natural beauty in the rural area of outstanding beauty in which the site is located due to the proposed elevated position on the back land site.

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

##### Planning Reports

3.2.1. The planning officer noted the planning history and remarked that there have been a number of prior applications for residential development on the sites in which claims were made as to local housing need, and that current applicant has failed to demonstrate local housing need as provided for in the development plan for lands subject to the “A” zoning objective. (See section 5.1.1 below) In addition, the planning officer indicates concerns about the adequacy of the proposed waste water treatment system given the proximity to Lough Corrib which is the source of public water supply for the city and county and, concerns as to adverse visual impact, as reflected in the reasons for the decision to refuse permission as outlined above

## Other Technical Reports

- 3.2.2. The report of the Environmental Health Officer indicates no objection to the proposed development. However, the planning officer notes in her report that she consulted the Environmental Health Officer to advise that the proposed treatment system did not have IAB registration and that she was then advised that a proprietary system which does not have IAB certification is unacceptable.
- 3.2.3. A report from the Technician in the Environment and Climate Change section notes that the site location which is over fractured limestone with no topsoil and limited subsoil and is in close proximity to Lough Corrib which is a source of public water supply. He considers that a grant of permission would be detrimental to the environment and that the proposed treatment system is not acceptable under the EPA guidelines for safe disposal of effluent.

The planning officer note that no other internal technical reports were available to her when she assessed the application.

## 4.0 Planning History

- 4.1. According to the planning officer report the site location has no record of recent planning history but there is record of prior unsuccessful applications dating back to 1991.

P. A. Reg. Ref. 782/91/ PL 61/5/87901: Permission was refused for two houses with septic tanks. The applicant was James Hallinan.

P. A. Reg. Ref. 684/99: Permission was refused for one house and a septic tank. The applicant was Conor Molloy.

P. A. Reg. Ref. 445/01: Permission was refused for one house and a septic tank. The applicant was Conor Molloy.

P. A. Reg. Ref 06/37 Permission was refused for one house and a septic tank. The applicant was Peggy Lyons.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative development plan is the Galway City Development Plan 2017-2023 according to which the site is within an area zoned, “A” *providing for consideration of a limited type of residential development based on a convincing case of established housing need restricted to families who are resident in the area and families engaged in farming.*” Occupancy conditions will be attached of permission is granted in these areas. Criteria for eligibility for consideration for development of a dwelling in these areas are set out in Section 4.6.2
- 5.1.2. The site location comes within an area designated as an area of natural beauty. There is a specific objective for protection of the views and prospects from Quarry Road.
- 5.1.3. Quarry Road is also subject to an objective for road improvement works.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received from the applicant’s agent, Aidan Doyle on 17<sup>th</sup> October, 2017 which includes a copy of the entire application submission. According to the appeal:

- The decision of the planning authority was not issued on a correct date so the decision should be overturned.
- The applicant works in Galway city and her current place of residence at the family home which is less than eight kilometres from the site location where her brother farms the family landholding.
- The previous unsuccessful applications for permission for a dwelling on the site by other parties are not comparable or relevant to the current application as Ms Bermingham’s circumstances are dissimilar to those of prior applicants.
- It is inappropriate to claim that the site is being protected for agricultural activities as it has not been farmed between 1991 and 2017.

- The limestone on the site was placed over topsoil so it was incorrect of the planning officer to state that it, "*is located in a fissured limestone area in close to Lough Corrib*". The limestone present on the site was placed over the topsoil to a depth of 175 mm with a sandy loam clay to a depth of 800 mm. Gleyson to bedrock is located 1.2 metres below as indicated in the site characterisation form. It is not possible to have a double bedrock layer and the stone on the site has fallen from surrounding walls and spread across the site.
- While the ground is suitable for discharge of effluent, a tertiary treatment system was included in the proposed waste water treatment system. An Ecoflow Coco filter system will provide final treatment to improve effluent quality before discharge by pump to a raised bed soil filter.
- The dwelling will not be viewed from the north, south or east due to heavily sheltered boundaries, a dense hedge line and tree heights around the perimeter, the setback and finished floor level of 103.00 mm the height of 5.94 metres. It is lower than the dwelling to the south west of the site.
- The adjacent bungalow permitted under P. A. Reg. Reg. 16/309 which directly overlooks Lough Corrib has a finished floor level of 14.90 compared to that of the proposed dwelling of 14.716 which is a total of 184 mm below the permitted dwelling. The planning authority concern about the elevated site location is questionable because it granted permission for the dwelling under P.A. Reg. Ref. 16/309 where there is a higher elevation and no camouflage from the surrounding foliage. Dwellings proposed in the previous unsuccessful applications had higher floor levels.
- The road frontage is limited in depth, fifty metres being available and a depth of nineteen metres. Other developments are back-land development because they are behind existing development at a distance from the road frontage have been permitted on the road. (P. A. Reg. Refs 07/896, (11/180), 95/75, 98/421, 91/51, 12/93 and 03/369 refer.)
- Views are protected and intrusion on the landscape is minimised in the proposal.

## 6.2. Planning Authority Response

- 6.2.1. A submission was received from the planning authority on 17<sup>th</sup> November, 2017 in which the planning authority confirms that it considers that a comprehensive assessment was carried out as indicated in the planning officer's report and in which the points made in the assessment and reasons attached to the decision to refuse permission are reiterated. It is recommended that the decision to refuse permission based on the reasons attached be upheld.

## 7.0 Assessment

- 7.1. The issues central to the determination of a decision and considered below are:

Local Housing Need.

Arrangements for effluent treatment and disposal.

Impact on rural character and amenities of the area.

Appropriate Assessment.

### 7.2. Local Housing Need.

- 7.2.1. The applicant must demonstrate eligibility for development of a dwelling based on local housing need owing to the site location within an area subject to the zoning objective "A" *providing for consideration of a limited type of residential development based on a convincing case of established housing need restricted to families who are resident in the area and families engaged in farming.*"
- 7.2.2. While it is accepted that the applicant is a native of the Annaghdown area which is circa eight kilometres from the site location where the family landholding is located, neither she or members of her immediate family are resident on the landholding from which the site is formed. The applicant's place of residence is at Annaghdown, in the townland of Lisheenoran. She is not engaged in any agriculture and her place of employment is in Galway City to which she commutes from Annaghdown.
- 7.2.3. Notwithstanding the relative proximity of the site location to Annaghdown, a housing need at the site location is not demonstrated in the application. The applicant therefore does not appear to have a genuine rural housing need and therefore the application does not satisfy the eligibility criteria set out in Section 4.6.2 of the



Galway City Development Plan, 2017-2023. The contention in the appeal that the applicant's circumstances are not comparable to those of the prior applicants is acknowledged and the statement in the planning officer's report that three previous applicant's claimed ownership of the site lands has been noted.

7.2.4. As discussed above an established housing need to justify development at the site location which is designated for the encouragement of sustainable agricultural activities and not for residential development that would support her application has not been demonstrated. It is recommended that the planning authority decision to refuse permission based on lack of genuine rural housing need be upheld.

### 7.3. Arrangements for effluent treatment and disposal.

7.3.1. The concern, as indicated in the reason for refusal of permission by the planning authority is based on the proximity to Lough Corrib which is the source of water supply for Galway and surrounding areas and is also a designated Special Area of Conservation. Furthermore, the site is over a regionally important aquifer. During the visual inspection of the site it was observed that the ground cover is in limestone and loamy soil derived from till which is underlain by fissured limestone. The statement made on behalf of the applicant that the stone cover within the site is imported material and that the testing carried out was on the soil below the level of this stone cover is noted.

7.3.2. It is noted that no "T" test appears to have been carried out whereas the "P" test indicated a result of 18.53 min/25 mm. The location is therefore suitable for effluent disposal through secondary treatment incorporating a polishing filter at the ground surface or, over ground having regard to Table 6.3 of the interpretation of percolation test results within the *EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single houses for a p.e. less than or equal to 10 (EPA 2009)* (EPA Code of Practice.) A "T" test should have been carried out in accordance with the EPA Code of Practice (Section 6.2.3) to identify suitability for discharge to the ground having regard to Figure 6.2. However, no evidence of high water table or ponding was observed during the inspection and no water table was encountered, according to the trial hole log.

A packaged wastewater treatment system followed by a soil polishing filter constructed using topsoil from the site was proposed in the initial application.

However, in the appeal, the applicant's agent has included proposals for a Kingspan KLargest BioDisc working on the principle of a Rational Biological Contactor. (RBC.) In addition, tertiary treatment via an Ecoflo Coco filter which it is stated provides final treatment to further improve the quality of effluent prior to discharge to a raised bed soil polishing filter on which the effluent emerging from the Ecoflo Coco System would be pumped. Provision is also made for monitoring.

7.3.3. The combined system, bearing in mind the proposed tertiary treatment based on the satisfactory "P" test results, is acceptable having regard to the provisions of the EPA Code of Practice. The proposed arrangements, incorporating the modifications to the proposal included in the appeal submission should not give rise to concerns as to adverse impact on the waters within Lough Corrib and is acceptable. For this reason, it is considered that permission should not be refused on grounds of unsatisfactory arrangement for effluent treatment and disposal.

#### **7.4. Impact on rural character and amenities of the area.**

7.4.1. The location is elevated above Lough Corrib and within an area of outstanding natural beauty. Furthermore, it is a back land site that rises above the site of the existing two storey dwelling which faces onto the road frontage. Notwithstanding the various design mitigation measures that have been incorporated in the proposal with regard to the finished floor level, height and maximisation of existing screening potential to achieve assimilation into the landscape, the proposed development entails alteration of the landscape character and clustering of residential development which is suburban in character, with the insertion of proposed development into the slope that rises behind and above the existing dwelling. The planning authority decision to refuse permission based on interference with and diminution of the natural beauty of the location is supported.

#### **7.5. Appropriate Assessment.**

7.5.1. Four Special Areas of Conservation (SAC) and three Special Protection Areas (SPA) are within 15 kilometres of the site location but the Lough Corrib SAC (000297) is in the immediate vicinity at circa 250 metres from the site location. Given the limited scale and residential nature of the proposed development which incorporates proposals for a high-quality effluent treatment system incorporating tertiary treatment and pumped disposal to a raised bed polishing filter and a monitoring system it is

considered that that no appropriate assessment issues arise. The proposed development would not 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 the planning authority decision to refuse permission be upheld based on failure to demonstrate an established rural housing need and because of interference with and diminution of the natural beauty of the landscape at the site location. It is considered that the applicant has demonstrated that the satisfactory arrangements for effluent treatment and disposal at the site location can be achieved and that the proposed development is acceptable in this regard.

## 9.0 Reasons and Considerations

- 1 The site of the proposed development is located within an area subject to the zoning objective: "A" which is to encourage sustainable agricultural activities and protect the rural character of the lands, according to the Galway City Development Plan 2017-2023. It is an objective of the planning authority to allow for limited residential development in these areas and not to grant permission for dwellings unless a convincing case of established housing need is demonstrated or the applicant is an immediate member of a householder residing in the area, a farmer, or an immediate member of a farming family. The applicant has failed to demonstrate an established local housing need in accordance with this policy. As a result, the proposed development would be in material contravention of a development objective of the development plan and would be contrary to the proper planning and sustainable development of the area.
- 2 The site location is at an elevated location at the rear of an existing dwelling within an area designated within the Galway City Development Plan 2017-2023 as an area of outstanding natural beauty. It is considered that the

proposed development, which entails alteration of the existing landscape character and clustering of residential development which is suburban in character, by way of insertion of proposed development into the slope that rises behind and above the existing dwelling would interfere with and diminish the natural beauty of the location. The proposed development would therefore be contrary to the proper planning and development of the area.

**Jane Dennehy**  
Senior Planning Inspector  
13<sup>th</sup> December, 2017