



An  
Bord  
Pleanála

## Inspector's Report ABP-300288-17

### Development

CONSTRUCT DWELLING HOUSE,  
DOMESTIC GARAGE,  
WASTEWATER TREATMENT AND  
DISPOSAL SYSTEM INCLUDING  
SEPTIC TANK, SECONDARY  
TREATMENT SYSTEM AND  
POLISHING FILTER ALONG WITH  
ALL ANCILLARY SITE WORKS.

### Location

CLAGGAN, KILMEENA, WESTPORT,  
CO MAYO

### Planning Authority

Mayo County Council

### Planning Authority Reg. Ref.

P17/386

### Applicant(s)

Joe Gibbons

### Type of Application

Permission

### Planning Authority Decision

Refuse Permission

### Type of Appeal

First Party

### Appellant(s)

Joe Gibbons

**Observer(s)**

None

**Date of Site Inspection**

6<sup>th</sup> February 2018

**Inspector**

Una O'Neill

## Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision .....	5
3.1. Decision .....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies .....	6
3.4. Third Party Observations .....	6
4.0 Planning History.....	6
5.0 Policy Context.....	6
5.1. National Policy .....	6
6.0 The Appeal .....	8
6.1. Grounds of Appeal .....	8
6.2. Planning Authority Response .....	8
6.3. Observations .....	8
6.4. Further Responses.....	9
7.0 Assessment .....	9
8.0 Recommendation.....	14
9.0 Reasons and Considerations.....	14

## 1.0 Site Location and Description

- 1.1. The subject site is located between Newport and Westport, in the townland of Claggan, in north Co. Mayo. The site is rural in character and is located at the end of a peninsula at Claggan which is accessed from a minor road, west off the N59.
- 1.2. This greenfield agricultural site, which has a stated area of 0.49ha, is located on a west facing drumlin hillside, which slopes down toward the shoreline, and has significant scenic views over Clew Bay. Part of the land to the west was developed as a golf course (now closed). Sheep were observed on land in proximity to the site down near the shoreline. The site is part of a larger landholding.

## 2.0 Proposed Development

The proposed development comprises the following:

- New detached dwelling, 261sqm in area and garage 38.5sqm in area. The dwelling will be serviced by a septic tank with pumping chamber and polishing filter. The percolation area is proposed approx. 130m northeast and uphill of where the proposed dwelling is to be located.

The following works are also proposed as part of the development:

- It is proposed to divert and pipe existing land drain which runs through middle of the site to run along the western boundary.
- It is proposed to divert existing land drain which runs approx. north-south along the proposed driveway to run in an east-west direction around the northern site boundary.
- 5ft fencing posts with geotextile membrane are to be positioned along the north, west and south of the proposed dwelling to mitigate against any silt from earth works migrating from the site.
- A total of 1,110 cubic metre of excavation soil material will be dug to facilitate the proposed dwelling and garage. Of this 460 cubic metre of soil is to be deposited in

area north to west of the proposed dwelling, and on top of this an earth berm 1.5m high will be constructed, comprising 200 cubic metre of soil. The remaining 450 cubic metre of soil will be removed from site and deposited in an old disused sand/gravel pit located on the family farm (which is away from any watercourses).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission REFUSED for the following reasons:

**R1:** The proposed development does not meet the criteria within Volume 2 Section 2.3.4 of the Mayo County Development Plan 2014-2020 and would interfere with the character of the landscape at this location.

**R2:** Adverse impact on the character of the landscape at this sensitive coastal location and would contravene materially Objective LP-01 of Volume 1 of the Mayo County Development Plan 2014-2020.

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

##### **3.2.1. Planning Reports**

The Planning Officer's report generally reflects the decision of the Planning Authority. I note that Further Information was requested in relation to requirement of documentary evidence to show compliance with rural housing policy; map of entire family landholding having regard to section 2.3.4 of the development plan; and to clarify discrepancy in stated floor area of the dwelling. The Planning Authority stated it was concerned with the exposed and elevated nature of the coastal site location proposed.

Following the receipt of Further Information, a decision to refuse permission was issued.

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

None.

### 3.3. Prescribed Bodies

An Taisce: Having regard to policy area 2 and section 2.3.4 of the Mayo County Development Plan and considering the surrounding landscape, the proposed development would have a negative impact on the character of the area, would set an undesirable precedent, and would be contrary to the policies and objectives of the Mayo County Development Plan.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

**16/648** – Permission REFUSED for a dwelling; applicant Joe Gibbons.

**R1:** Proposal contrary to section 2.3.4 of the development plan.

**R2:** An assessment under Article 6 of the Habitats Directive was not prepared. Proposal would impact negatively on Clew Bay SAC.

## 5.0 Policy Context

### 5.1. National Policy

- Sustainable Rural Housing, Guidelines for Planning Authorities (2005)
- EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009)

### 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).

5.2.2. **Volume 2, Section 2.3.1:** 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..:

- 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)

5.2.3. **Volume 2, Section 2.3.4:** In areas along the sea, estuaries and lake shore lines (referred to as scenic areas) only planning permission for replacement housing, extensions or where a farmer has no other land except in those areas will be allowed and the scenic views will be protected as much as possible.

5.2.4. **Landscape Protection Policy Area 2: Lowland Coastal Zone.** Housing in this area is identified on a Landscape Sensitive Matrix as being between medium and low, with the level of impact linked to siting and design. The following landscape policies apply:

- Objective LP-01: Effect on the character of the landscape.
- Objective LP-02: Proposed development to be considered in the context of the Landscape Appraisal of County Mayo.
- Objective LP-03: Protection of the landscape.

5.2.5. **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.

5.3. **Natural Heritage Designations**

Clew Bay Complex SAC, European Site No. 001482 is approx. 80m west of the appeal site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- Applicant requires a home for his partner and her children, as he is separated from his wife and has a housing need. He is retired and farming 40 acres. The applicant's partner is returning home with her three children after living abroad for 30 years. The applicant has lived all his life in Claggan and lands have been in the family since 1847. It is intended the former family home will be passed to the applicant's children.
- The proposed development will not adversely affect the landscape. An Environmental Screening Report and site management plan is proposed to minimise any effect on the character of the landscape.
- Site will not impact on Clew Bay SAC complex and percolation area meets EPA requirements.
- Site is not visible from any public road or from Mayo Sailing Club.
- Site is bounded by terrain on three sides and can only be viewed when walking the shoreline, it is not therefore an unnecessary obstruction on the shoreline. A proposed mound on the westerly aspect would mitigate any impact from the sea or shoreline. Dwelling does not break the skyline.
- The use of an alternative site would reduce acreage on better farmland, which was developed as a golf course and closed in the recession in 2012. The golf course and infrastructure remain and to build a house on that land would affect potential of reopening the golf course. Also an alternative site would be more visible than the proposed dwelling.

### 6.2. Planning Authority Response

None.

### 6.3. Observations

None.



## 6.4. Further Responses

None.

## 7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Rural Housing Policy
- Visual Amenity
- Wastewater Treatment System
- Appropriate Assessment

### **Rural Housing Policy**

7.2. The site is located in an area identified as a 'Rural Area Under Strong Urban Influence' set out in section 2.3.1 of the development plan. The applicant states he complies with the policy, being a retired farmer with 40 acres wishing to build on the family farm. The applicant indicates that a second family home southwest of the original family home is required due to personal circumstances arising from a separation from his wife and a requirement for a new dwelling with his current partner.

7.3. While 2.3.1 addresses rural housing policy in general, a more restrictive policy under section 2.3.4 is applied to scenic coastal areas. Section 2.3.4 states that in areas along the sea, estuaries and lake shore lines (referred to as scenic areas) only planning permission for replacement housing, extensions or where a farmer has no other land except in those areas will be allowed and the scenic views will be protected as much as possible. The relevant policy for consideration is section 2.3.4 and not section 2.3.1.

7.4. The subject site is located on the coastal side of the road, falling down toward Clew Bay, with significant views over Clew Bay and is clearly considered a scenic coastal location.

7.5. The applicant has a wider landholding in the area of the site. The type of farming the applicant is involved in is not clear, however from the grounds of appeal it would appear the farm is primarily a golf course. The applicant states that the use of an

alternative site would reduce acreage on better farmland, which was developed as a golf course and closed in the recession in 2012. The golf course and infrastructure remain and to build a house on that land would affect potential of reopening the golf course. Based on the information before me and having regard to the extent of the applicant's landholding, the applicant does not comply with section 2.3.4 of the Mayo County Development Plan 2014-2020.

- 7.6. I furthermore note there is no indication as to whether the applicant currently owns another home, other than the original family home. While the applicant's address is Claggan, Kilmeena, it is unclear from the address if this is the original family home or another home in his ownership in the area.

### **Visual Amenity**

- 7.7. The applicant argues that the proposed dwelling is not visible from any public road and that given the location of the site below the ridgeline with significant cut and fill proposed, alongside the creation of a land berm, overall it will not be an obtrusive feature on the landscape.
- 7.8. The subject site is located at the end of a peninsula, on west facing drumlins with exceptional views over Clew Bay, with the land sloping down toward the shoreline west of the site. There are a number of rural dwellings on this peninsula, however they are primarily clustered further east on the peninsula, with this western end of the peninsula primarily in use for agricultural and the now closed golf course. I have significant concerns in relation to the suitability of this rural scenic site for development given the modifications to the natural environment required to accommodate the dwelling and impact on the character of the existing landscape as a result of the works required, including extensive cut and fill, modification of existing land drains, the creation of a berm and the removal of the existing natural habitat of this coastal location. I am in general in agreement with the planning authority's first reason for refusal which considers the proposed development would be contrary to objective LP-01 given the impacts on the character of the landscape at this sensitive coastal location, albeit I note the planning authority stated the proposal materially contravenes LP-01, however in accordance with Section 37(2)(b) of the Planning and Development Act 2000, I do not consider the proposal materially contravenes

LP01 and therefore the Board should not consider itself restrained by section 37(2)(b) in its decision.

### **Wastewater Treatment System**

- 7.9. The applicant proposes a septic tank system and effluent pumping chamber located on the main development footprint, which will connect to a percolation area/polishing filter to be located within a greenfield area north of the existing dwelling house, approx. 130m northeast and uphill of the site.
- 7.10. The site characterisation form states there is no water course within 250m of the site and that Clew Bay is 200m west of the site. However, I note from the mapping and as stated on the Appropriate Assessment report, the boundary of Clew Bay SAC is located 80-100m west of the site and there is an existing open drain which flows through the middle of the site (which is to be diverted to run along the west boundary line of the site) and another land drain alongside the proposed driveway, which is to be diverted to the northern site boundary. There are 4 more open wet drains identified west of the site in figure 1 of the Appropriate Assessment Screening Report.
- 7.11. The GSI maps and site characterisation form indicate the site is located in a karst area over a regionally important aquifer, with groundwater vulnerability classified as moderate. In accordance with the EPA CoP, this indicates a vulnerability rating of R1, whereby an on-site treatment system is acceptable subject to normal good practice.
- 7.12. From site inspection I noted the ground was steep at the entrance, sloping down toward a more gently sloping section, leading down toward the coast/stoney beach. Ground conditions were very wet/boggy underfoot, with scrub/rushes observed, on what was a very frosty day. The AA Screening Report identifies the habitat as being scrub/wet heath, wet grassland and improved grassland.
- 7.13. The trial hole depth was 2.1m. The soil type comprises a topsoil and at 0.5m depth silt loam with some rounded cobbles and sands present. Signs of mottling were observed at 1.9m deep. It is stated on the form that maximum groundwater level is estimated at 1.9m.

- 7.14. A T-test result of 9.14 min/25mm is indicated. The CoP states that a figure between 3 and 50 indicates the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater.
- 7.15. A P test was undertaken, with the value stated to be 16.28 min/25mm. P test values of between 3 and 75 indicate the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.16. The proposal complies with separation distances to key features and scale of percolation area required is acceptable.
- 7.17. While the site characterisation form submitted indicates the wastewater treatment system proposed can adequately deal with wastewater from the site, I note that the applicant has located the percolation area a significant distance from where the house is to be sited and a pumping system will be required to transfer the waste 130m away to an uphill location. The location of the dwelling itself is on land which is partially improved grassland and partially on grounds comprising wet grassland and heath with a number of rushes observed on site. I note that significant works are proposed to the site to relocate drains running through and across the site to cater for the development. Given the level of works required to the site and the level of treatment required, I am not satisfied that the risk presented, should the pumping system fail, is justified and I am not satisfied that the proposed development would not be prejudicial to public health in a highly sensitive location in close proximity to Clew Bay SAC. I am furthermore not satisfied that the location of the dwelling is on ground suitable for development, given the observed wet site conditions and based on the information submitted with the application. There are a large number of rural dwellings located further east on the peninsula, all of which are presumably connected to individual wastewater treatment systems. The addition of a dwelling at this location would, in my view, result in a proliferation of such systems in an area close to the Clew Bay SAC, which is a sensitive coastal environment.

### **Appropriate Assessment**

- 7.18. Clew Bay Complex SAC, European Site No. 001482 is located approx. 80m-100m west of the appeal site.
- 7.19. The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (\* = priority;

numbers in brackets are Natura 2000 codes): [1140] Tidal Mudflats and Sandflats; [1150] Coastal Lagoons\*; [1160] Large Shallow Inlets and Bays; [1210] Annual Vegetation of Drift Lines; [1220] Perennial Vegetation of Stony Banks; [1330] Atlantic Salt Meadows; [2110] Embryonic Shifting Dunes; [2120] Marram Dunes (White Dunes); [21A0] Machairs (\* in Ireland); [91A0] Old Oak Woodlands; [1013] Geyer's Whorl Snail (*Vertigo geyeri*); [1355] Otter (*Lutra lutra*); and [1365] Common (Harbour) Seal (*Phoca vitulina*).

- 7.20. The juxtaposition within Clew Bay of a wide variety of habitats, including 10 listed on Annex I of the E.U. Habitats Directive, and the combination of important flora and fauna, including one Red Data Book plant and three animals listed on Annex II of the E.U. Habitats Directive, make this a site of considerable national and international importance.
- 7.21. An Appropriate Assessment (AA) Screening Report has been submitted with the application. The report notes the main potential link to the SAC is via a drainage ditch, however this ditch is a very minor water conduit and observed flows were very small. Proposals for the management of surface water during construction will not result in significant increases of surface water to the SAC. The proposed measures for management of spoil and in-site drainage during and post-construction are considered to be adequate such as to plausibly eliminate the potential for mobilisation of silt/fine solids into waters of the local drainage network, and by extension the receiving waters of Clew Bay SAC. With regard to the wastewater treatment system, it is stated that the percolation area appears to be reasonably drained, has a flat surface profile, and has adequate depth of soil cover. It is considered that no impacts to the SAC will arise from installation and operation of the proposed wastewater treatment facility.
- 7.22. The risk factors to the SAC from this development relate to surface water and ground water, both of which act as source – pathway – receptors. While the percolation area has been located northeast of the site at higher ground and the overall wastewater treatment system is to be constructed to EPA standards, I note that all groundwater and surface water flows to the SAC. I note furthermore the high number of dwellings along this access road and a proliferation of septic tanks in the vicinity and that this issue was not considered in the AA Screening Report. I also note the sloping site onto which it is proposed to position the dwelling. I noted the poor ground conditions

at the time of my site visit. Having regard to the precautionary principle and on the basis of the information provided with the application and appeal, I am not satisfied that the proposed development individually, and in combination with other plans and projects would not be likely to have a significant effect on the European Site No. 001482 in view of the site's conservation objectives.

## **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. Section 2.3.4 of the Mayo County Development Plan 2014-2020 states that in areas along the sea, estuaries and lake shore lines (referred to as scenic areas) only planning permission for replacement housing, extensions or where a farmer has no other land except in those areas will be allowed and the scenic views will be protected as much as possible. This policy is considered reasonable. Having regard to the coastal location of the site, it is considered that the proposed development would be contrary to section 2.3.4, would militate against the preservation of the rural environment, and would seriously injure the amenities of the area.
2. Having regard to the positioning of the proposed development along the coast, the topography of the site, and level of cut and fill proposed, it is considered that the proposed development would fail to be adequately absorbed and integrated into the natural landscape and would be contrary to policy LP-01 of the Mayo County Development Plan 2014-2020. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. Having regard to the slope of the site, the ground conditions observed on site, and proximity to the Clew Bay SAC, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a wastewater

treatment system including a secondary treatment system. The proposed development would, therefore, be prejudicial to public health and would pose an unacceptable risk of environmental pollution.

---

Una O'Neill  
Senior Planning Inspector

6<sup>th</sup> March 2018