



An  
Bord  
Pleanála

## Inspector's Report ABP-301414-18

### Development

Construct 7 dwelling houses, each with their own individual waste treatment system and percolation area, including an estate road to serve the development and all associated works and services.

### Location

Clogharevaun, Kiltullagh, Athenry  
County Galway

### Planning Authority

Galway County Council

### Planning Authority Reg. Ref.

17/1838

### Applicant(s)

Stan Lawless

### Type of Application

Outline Permission

### Planning Authority Decision

Grant

### Type of Appeal

Third Party

### Appellant(s)

Patrick McInerney

### Observer(s)

None

### Date of Site Inspection

10/07/2018

### Inspector

Gillian Kane

## 1.0 Site Location and Description

1.1. The subject site is located to the south of the small east Galway village of Kiltullagh. The third-class county road the L3115 runs south of the village towards the M6. The subject site is located on the eastern side of the L3115. To the north of the site is a single dwelling set well back from the road. A similar dwelling is located on the western side of the road. On the date of the site visit, some construction work was ongoing on the site to the east of the subject site - Kiltullagh GAA club. Further east of the sport field runs the Raford River, a tributary of the Dunkellin River that ultimately discharges into the Rahasane Turlough SAC.

## 2.0 Proposed Development

2.1. On the 20<sup>th</sup> December 2017 outline planning permission was sought for the construction of 7 no. houses each with their own waste water treatment system and percolation area, an estate road and all associated works and services on a site of 1.986ha. The application was accompanied by

- a letter of consent to the making of the application, signed by the 4 no. joint owners of the site,
- site characterisation form for each of the 7 no. sites,
- waste water service report for each of the 7 no. sites,
- design of stormwater soakaways report and
- design of stormwater soakaway per dwelling house report

2.1.1. A cover letter submitted with the application states that each 0.5ha site is intended to comprise a bungalow or dormer type dwelling. The letter states that a flood risk assessment and screening for AA were carried out and both concluded that no restrictions were necessary.

2.1.2. Unsolicited additional information was submitted on the 25<sup>th</sup> January 2018 in the form of a copy of the Flood Risk Assessment, AA Screening report and site sections of the site.

2.1.3. On 21<sup>st</sup> February the Applicant emailed requesting an extension of time.

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

- 3.1.1. On the 20<sup>th</sup> of March 2018 the Planning Authority issued notification of their intention to GRANT permission subject to 19 no. conditions. Conditions of note:

4: single storey only

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

- 3.2.1. Email from **Environment** Section: “not in favour of many individual systems in close proximity, even though it is more likely to pose less of a risk than a communal system”. Best practice is to provide access to a public waste water plant that has sufficient capacity. If permission is to be granted, applicant should be requested to detailed drawing of the polishing filters, including plan and longitudinal cross sections. Maintenance contract required.
- 3.2.2. Email from **Executive** Engineer: No objection in principle, condition required to ensure that the details of kerblines and paths and drainage are agreed and carried out under road opening licence. Connectivity, the provision of continuous footpaths is a problem as there are no paths to connect to. However given the rural nature of the road environment, insistence would be harsh.
- 3.2.3. **Planning Report:** Site is within 20m of a flood risk area. FRA submitted with the file states that development is in flood zone C. Proposed development not likely to have significant effects on a European site. 100m sightlines available. Planning Authority is satisfied that domestic waste water can be adequately treated and disposed of on-site. As site is elevated, it has capacity to accommodate single storey dwellings only. Proposed development can be viewed as a rural cluster which is more favourable than linear development. Recommendation to grant subject to conditions.

#### 3.3. **Third Party Observations**

- 3.3.1. Two objections to the proposed development were submitted to the Planning Authority. The issues raised include that the site floods frequently, that the site is an illegal dump and that permission was refused by the Board on a nearby site on flooding grounds.

## 4.0 Planning History

- 4.1.1. Planning Authority reg. ref. **16/598**: Outline planning permission refused for the construction of 8 no. dwelling houses and a waste water treatment system on the grounds that the site could not satisfactorily treat and dispose of the effluent arising from the development.
- 4.1.2. Planning Authority reg. ref. **05/2782**: Planning permission granted for the construction for 12 no. dwellings. This was not implemented.

## 5.0 Policy Context

### 5.1. Galway County Development Plan 2015 -2021

- 5.1.1. The subject site is located to the south of the village of Kiltullagh, which is listed as an "Other settlement & the Countryside" in the settlement hierarchy of the development plan. Section 2.6.7 of the development plan states that development in the un-serviced countryside requires careful management, in order to balance the need to revitalise and support communities, while ensuring the overall sustainable development of these areas.
- 5.1.2. **Objective SS7** refers to the Development of Small Settlements and states that in the case of smaller settlements for which no specific plans are available, development shall be considered on the basis of its connectivity, capacity (including social, cultural, and economic, infrastructural and environmental capacity) and compliance with the Core Strategy and Settlement Strategy, good design, community gain and proper planning and sustainable development.

### 5.2. Natural Heritage Designations

- 5.2.1. The subject site is located 8.1 km south of the Lough Corrib SAC, 9.1km north-east of the Rahasane Turlough SPA and SAC and 8.9km north of the Lough Rea SAC and SPA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. A third-party appeal against the decision of the Planning Authority to grant permission was submitted to the Board. The appeal comprises two letters from two residents adjoining the subject site.

6.1.2. The grounds of the appeals can be summarised as follows:

6.1.3. **Patrick McInerney:** The appeal is accompanied by a map showing the location of the appellants home to the north of the subject site, photos of flooding in the wider area, and a copy of the planning application form.

- The appellant states that flooding of his dwelling house and farmland is his number one concern. He states that the flooding of the village is documented as far back as 1883. This is due to the 10-hectare turlough and the Dunkellin River.
- Planning permission (Planning Authority reg. ref. 99/4302) was refused by Galway County Council and again by An Bord Pleanála (PL07.120289) on a site within 100m of the subject site.
- This area is within the catchment area of Rahasane Turlough SAC no. 000322
- Enclosed maps and drone photos of the flooding of Kiltullagh village adjacent to Dunkellin River and M6 Motorway.
- Subject site was an old sandpit. It is suggested that the infilling of the site twenty years ago used inappropriate material. An independent EIS is required to address public safety concerns.

6.1.4. **Abbie Wing:**

- Shares a boundary fence with the proposed development.
- Despite the applicant being a resident of the village and knowing the history of flooding, question 17 no. of the application form regarding flooding of the application site was ticked “No”
- The question on the application form about dumping on the site was also ticked no. The Board is referred to the objection made to the Planning Authority which outlined the initial concerns. Copy attached to appeal.
- Regarding condition no. 6 of the Planning Authority’s decision to grant, it is asked if the proposed pressurised soil polishing filter system and soak pit are appropriate in areas prone to flooding. It is asked if they are effective in prolonged wet periods. A high underground water table would render the soakpits useless, increasing the risk of pollution and flooding the surrounding land. It is asked who is responsible for the operation and maintenance of the systems.

- A more comprehensive flood risk assessment for the surrounding lands is required. Photo attached showing 2015 floods.
- The Board refused permission on a nearby site (99/4302). Notwithstanding an enforcement notice, illegal infill of the site was not removed.
- Appeal accompanied by photos, copy of objection made to the Planning Authority, and copy of application form.

## 6.2. Applicant Response

6.2.1. An agent for the applicant responded to the appeals as follows:

- Question no.s 16, 17 & 19: AA screening was carried out and found that the development will not impact any Natura 2000 sites. There is no requirement for an EIS. Letter for ecologist attached.
- Question 17: There is no history of flooding on the site. A flood risk assessment has been prepared. A response to the appeal is addressed by a Hydrologist.
- Question 19: The site is served by a public water mains.
- Enforcement EN 15/125: This does not relate to the subject site.
- There is no history of fill being removed from the site. It is evident that the site is elevated and undisturbed. Seven trial holes excavated to a depth of 2.1m showed natural sand and gravel. No material has ever been imported to the site.
- Each dwelling will be served by a surface water soakway with a central soakaway for the estate road. Trial hole excavation did not encounter a high water-table, ground conditions were found to be excellent.
- Condition no. 8 of the Planning Authority's decision provides that the public areas will be taken in charge by the Council.
- Response accompanied by design cover letter submitted with the application and a Flood Risk Assessment.

## 6.3. Planning Authority Response

6.3.1. None on file.

## 7.0 Assessment

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance and inspected the site. I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Flood Risk Assessment
- Appropriate Assessment
- Environmental Impact Assessment

### 7.2. Principle of Development

7.2.1. The proposed development is located on unzoned lands, to the south of the village of Kiltullagh. The village has a very small defined centre, around the church and the national school. Two small housing developments are located to the north-east close to the small shop / petrol station and to the north-west of the crossroads.

7.2.2. Appendix 4 of Sustainable Rural Housing Guidelines, in recommending against the creation of ribbon development, advises that as clustered development, well set back from the public road and served by an individual entrance can be used to overcome these problems in facilitating necessary development in rural areas. Indeed, the advantages of the proposed development over further ribbon development was noted by the Planning Authority in their planning report. The county development plan does not have a policy on grouped or clustered development outside of settlement nodes.

7.2.3. Section 2.6.7 of the development plan refers to rural areas, noting the importance of smaller villages in providing services to local communities. The plan recognises the need to support the growth and development of these small settlements whilst carefully managing the sustainable development of the area. Objective SS7 refers to the Development of Small Settlements and states that in the case of smaller settlements for which no specific plans are available, development shall be considered on the basis of its connectivity, capacity (including social, cultural, and economic, infrastructural and environmental capacity) and compliance with the Core

Strategy and Settlement Strategy, good design, community gain and proper planning and sustainable development.

### **7.3. Flood Risk Assessment**

- 7.3.1. The primary concern of both of the appellants is flooding. They provide photographic evidence of widespread flooding in the village of Kiltullagh and their properties which bound the subject site.
- 7.3.2. A flood risk assessment was submitted as unsolicited additional information. A copy was submitted with the appeal. The FRA concludes “that the ground is much higher and that all the proposed dwelling houses have freeboard values of more than 2m”. Responding to the grounds of the appeal the author of the FRA states that flooding that has occurred in Kiltullagh village will not spread on to the subject site.
- 7.3.3. The FRA describes the environment around the subject site, noting the River Clogharevaun (also known as the Rafood River) to the east and the underlying limestone bedrock. The proximity of the river dictates that fluvial flooding is the greatest risk. Section 3.2 of the report notes the documented flooding history in the village – to the north, south and east of the subject site (figure 6). The report states that “anecdotal evidence suggests that the subject site did not flood during these events”. Figure 9 is an extract of the preliminary flood risk assessment of the CFRAM which shows that the subject site is not located within an area for further assessment (AFA), is not identified as an Individual Receptor (IR) or a flood risk review (FRR) site. The subject appeal site is however in close proximity to an AFA to the east and west of the site and that the maps are indicative only is noted in the report.
- 7.3.4. Section 6.1 of the report states that the 0.1% to 1% chance of occurrence of a flood event lies at 37-37.25mAOD whereas the proposed dwellings have FFL of 39.75 to 42mAOD. The proposed treatment systems and polishing filters for each of the seven proposed dwellings lie between 38.2m and 41.5mAOD, providing a minimum freeboard of 1.25m above the 1 in 1000-year flood level. Given that the propose development is in flood zone C, the report concludes that the risk of sewer flooding caused by submergence of the wastewater system is very low.
- 7.3.5. Regarding the impact of the proposed development on flooding, section 6.4 of the report states that as the proposed development is not obstructing the natural flow



path of the River Clogharevaun, it will not cause flooding elsewhere. The final conclusion of the FRA (section 7) is that the proposed development is in accordance with the Flood Risk Management Guidelines and will not have adverse effects on the flood risk to adjacent properties.

- 7.3.6. That the village of Kiltullagh and surrounding lands have experienced significant and widespread flooding can not be disputed. The subject site appears to have escaped such flooding due to its elevation, notwithstanding its proximity to the river to the east. While the applicants FRA has indicated that the proposed dwellings will not flood, nor will their waste water treatment systems lie within flood waters, one has to question the appropriateness of introducing further residential development into a well-known flood area. The subject site and the proposed dwellings might never experience flood water, however, the residents of the proposed estate will almost certainly experience flooded roads leading to and from the site and a flooded village centre. The spirit of the flood risk guidelines was not to identify isolated pockets of land that will not flood but to protect people and property from the worst extremes of flood events.
- 7.3.7. It is not apposite to permit dwellings on the highest points of wider flooded lands solely on the grounds of elevation. A flood risk assessment is only one factor within the consideration of the proper planning and sustainable development of a proposal. Demonstrating that a proposed development will not flood is not sufficient grounds to recommend a grant of planning permission. I note that the Board previously refused permission on a site in the centre of the village on the grounds of flooding. That other sites in the centre of the village are susceptible to flooding cannot be ruled out.
- 7.3.8. The proposed development is on an unserviced site with no physical connectivity to the village. The policy objective of the development plan is to encourage development into existing small settlements that can continue to serve the needs of the local community. The proximity of the village to both Athenry and Lough Rea cannot be ignored, as the likelihood of commuting to the larger towns is high.
- 7.3.9. Further it is considered that that the elevated topography will result in a visually obtrusive development in a very rural landscape.

#### 7.4. **Appropriate Assessment**

- 7.4.1. An AA screening report was submitted with the application. It identifies a small stream 100m to the south of the site and the Clogharevaun River 200m to the east. The report states that there are no direct hydrological links with the Rahasane Turlough SAC (site code 000322) / SPA (004134) 8.8km away. The likelihood that the sites will be impacted by the proposed development is stated to be negligible. The main threat identified is that of pollution of ground or surface waters which may come in contact with the Clogharevaun River. The report states that as there is no direct hydrological link and as high quality waste water treatment systems are proposed, that it is unlikely that there will be a negative impact on water quality. The overall conclusion of the report is that the proposed project is not likely to have any significant impacts on any Natura 2000 sites, alone or in combination with other plans and projects in the area.
- 7.4.2. The subject site is located 8.9km from the Lough Rea SAC (site code 000304) and Lough Rea SPA (site code 004134), 8.1km from the Lough Corrib SAC (site code 000297) and 9.5km from Monivea Bog SAC (site code 000311). None of these designated sites were addressed by the Screening Report – not even a reason for screening them out. The water body that links the subject site and the Rahasane Turlough (the Dunkellin River) also links the site to the Lough Corrib SAC.
- 7.4.3. There is no direct hydrological link between the subject site and the Monivea Bog SAC or the Lough Corrib SAC. I am satisfied that without a source-pathway-receptor route, there will not be any significant adverse impact on the conservation objectives of the designated sites and that therefore they can be screened out.
- 7.4.4. As noted above however there is a hydrological link between the subject site and the **Rahasane Turlough SAC** and **the Lough Rea SAC**.
- 7.4.5. Lough Rea is a hard water lake situated directly south of the town of Loughrea, Co. Galway. The lake is 2.5 km at its longest axis. The underlying geology of the area is of Carboniferous limestone and water transparency is very high. The lake, which is fed by springs and by a stream, reaches a maximum depth of 15 m. The qualifying interest for the SAC is [3140] Hard oligo-mesotrophic waters with benthic vegetation of Chara spp, otherwise described as 'Hard Water Lakes'. The conservation objective for this qualifying interest is to maintain or restore the favourable

conservation condition of the hard water lake. Favourable conservation status of a habitat is achieved when: its natural range, and area it covers within that range, are stable or increasing, and the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and the conservation status of its typical species is favourable. The site is largely surrounded by intensively farmed pasture and consequently the main threat to the lake comes from agricultural run-off. The lake is also vulnerable to nutrient input from the town of Loughrea. The potential impact on the conservation objective is the possibility of contaminated water entering the surface water body of the Rafor River 200m to the east of the subject site or the small stream 100m to the south. Given that the Lough Corrib SAC is part of a different tributary of the Dunkellin River, it is considered unlikely that such an event would occur. Further, I note the proximity of the SAC from the subject site and the nature of the built up environment of the town of Lough Rea. I am satisfied that this identified risks is not significant nor is it likely. I am satisfied that the proposed development itself would not be likely to have a significant effect on the Lough Rea SAC.

- 7.4.6. The NPWS data sheets describes the Rahasane Turlough SAC (000322) as lying in gently undulating land, approximately 2 km west of Craughwell, Co. Galway. It consists of two basins which are connected at times of flood but separated as the waters decline. The larger of these, the northern basin, takes the Dunkellin River westwards. The turlough is closely grazed by cattle, sheep and horses. Grazing is a critical factor in maintaining a balance between open swards and woodland development at the edges of the turlough. Drainage is a major threat to turloughs, but the Dunkellin River has not been arterially drained. The river was straightened many years ago where it crosses the turlough, and the artificial channel was dredged again in 1992, but this does not appear to have affected winter flooding. Some degree of artificial enrichment of the basin is occurring from the farming areas upstream, and local enrichment is associated with grazing practices. Eutrophication is among the major threats to turlough systems in general. The conservation objective for the qualifying interest (turlough) is to maintain or restore the favourable conservation status. Noting the frequency of the Dunkellin River and the wider area to flood events, it is considered that the possibility of surface water run-off from the subject site could entering the stream 100m to the south or the river 200m to east

cannot be ruled out. The failure of any of the 7 no. individual waste water treatment plants could lead to contaminated water entering the adjoining water bodies, both of which ultimately discharge into the SAC. Having regard to the precautionary principle, it is considered that the possibility of effects on the conservation objectives of the Rahasane Turlough SAC cannot be reasonably excluded. In the case of reasonable doubt / uncertainty as to the absence of significant effects a Stage 2 AA must be carried out. Such an assessment has not been undertaken for the proposed development.

## **7.5. Environmental Impact Assessment Screening**

- 7.5.1. Having regard to nature of the development comprising extension to and alteration of an existing dwelling and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **8.0 Recommendation**

- 8.1. I recommend outline permission be REFUSED for the following reasons:

- 1 Taken in conjunction with existing and permitted development in the area, the proposed development would give rise to an excessive density of development in a rural area lacking certain public services and community facilities. It is an objective of the planning authority, as expressed in the current Development Plan for the area, to channel housing into "rural settlements". This objective is considered reasonable. It is considered that the proposed development may constitute urban generated housing, would contravene the objective of the planning authority and would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 2 Having regard to the location of the site in an area which is prone to flooding and on the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the proposed

development would not give rise to an increased risk of flooding of property in the vicinity. The proposed development would, therefore, be prejudicial to public health safety and contrary to the proper planning and sustainable development of the area.

- 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 European site No. 000322 Rahasane Turlough SAC, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.

---

Gillian Kane  
Senior Planning Inspector

19 November 2018