



An  
Bord  
Pleanála

## Inspector's Report ABP-301729-18

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<b>Development</b>	Elevation alterations and attic conversion. Gross floor space of work to be retained 146sqm.
<b>Location</b>	Ballylee, Co Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	171574
<b>Applicant(s)</b>	Peter Garvey
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Peter Garvey.
<b>Date of Site Inspection</b>	26 <sup>th</sup> July 2018.
<b>Inspector</b>	Brid Maxwell

## 1.0 Site Location and Description

- 1.1. The appeal site has a stated area of .23 hectares relates to a dwelling site located within a rural area approximately 5km to the northeast of Gort, Co Galway. The site is occupied by a bungalow type dwelling with accommodation also at attic level and lies within a line of similar dwellings in a ribbon development pattern.

## 2.0 Proposed Development

- 2.1. The application seeks permission for the retention of elevation alterations and attic conversion. Application drawings outline the amendments for retention including removal of one rooflight from the front elevation, provision of rooflight and additional door to rear elevation and provision of a rooflight to both side elevations. First floor layout provides for games room, landing / library and a fourth bedroom.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 2<sup>nd</sup> May 2018, Galway County Council issued notification of the decision to refuse permission for the development for the following reasons:

*“Objective RHO 1 of the 2015-2021 Galway County Development Plan sets out qualifying criteria for those with a genuine rural generated housing need seeking to construct a house within the GTOS Area, It is considered, based on the information provided in the planning application, that the applicant does not come within the scope of the housing need criteria set out in the Galway County Development Plan or Sustainable Rural Housing Guidelines for a house at this location. Accordingly, to grant the proposed development would be contrary to the provisions of the 2015-2021 Galway County Development Plan, would be contrary to ministerial guidelines issued to the planning authorities under Section 28 of the Planning and Development Act 2000, as amended, and therefore would be contrary to the proper planning and sustainable development of the area.*”

*Condition no 2 of planning reference file no 05-623 enures the property to Pat Farrell. Given that this applicant is not the applicant granted permission under 05-623, the development if permitted would be contrary to a condition attached to a previous permission on sit and therefore would be contrary to County Galway Development Plan 2015-2021 and to the proper planning and sustainable development of the area.”*

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

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

The initial planner's report sought additional information to include a demonstration of compliance with enurement clause - condition 2 of governing permission, a demonstration of satisfactory operation of existing wastewater treatment plant and demonstration that adjoining landowner has no objection to *velux* window on northern elevation of the site boundary.

Subsequent report asserts that the applicant is not the original applicant and housing need case does not accord with RH01. Refusal recommended.

### **4.0 Planning History**

**04/3496** Application made by Patrick Farrell for permission to construct dwellinghouse, septic tank and all associated services (gross floor space 202sq.m) Withdrawn prior to determination.

**05/623** Permission granted April 2005 to construct dwelling, septic tank and all associated services (gross floor space 20221 sq.m. to Pat Farrell subject to 19 conditions including the following of particular note:

Condition 2. "Use of the proposed house(s) shall be restricted to use as a house by the applicant, applicant's family, heirs, executors and administrators or persons involved in agricultural or related activities, returning immigrants or those with an essential housing need in this rural area, unless otherwise agreed by the Planning Authority for a period of 10 years. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the

Planning Authority pursuant to Section 47 of the Planning and Development Act 2000. The period of restriction shall have effect from the date of first occupation of the house. Within two months of the occupation of the proposed dwelling. The applicant shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling

Reason: In the interest of proper planning and sustainable development.”

Condition 7 “The first floor side elevation windows shall be omitted. Prior to the commencement of development, revised details in this regard shall be submitted to the Planning Authority for written agreement.

Reason: In the interest of residential amenity.”

Condition 18 “There shall be no accommodation within the roof, and notwithstanding any regulations exempting such development, no such development, no additional windows or rooflights shall be installed in the roof,

Reason: In order to integrate the development into the landscape in the interests of visual amenity.”

## **5.0 Policy Context**

### **5.1. Development Plan**

The Galway County Development Plan 2015-2021 refers. The site lies within an area identified as a rural area under strong urban pressure.

- Objective RHO 1 – Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure – GTPS)
- Objective RHO 9 – Design Guidelines.

### **5.2. Natural Heritage Designations**

Lough Coy SAC is within 25 metres to the east of the site

Carrowbaun, Newhall and Ballylee Turloughs SAC is within 315metres to the west of the appeal site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The grounds of appeal area submitted by Grealish Glynn & Associates on behalf of the applicant. Grounds of appeal are summarised as follows:

- Decision of Galway County Council is unfair.
- Applicant has lived in the area since 2002 and has two sisters and a brother living within 500m of his current residence and his recently deceased mother's residence also nearby. Strong social need to live in the area.
- Applicant purchased the site in 2007 and previously lived in the area for 5 years.
- Applicant was of the view that he satisfied the terms of the enurement condition at the time of purchase.

### 6.2. Planning Authority Response

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

## 7.0 Assessment

7.1 On a procedural issue, I note that the submitted plans are not to scale and the dimensions detailed thereon are illegible. Thus, the question of validity of the application and compliance with the requirements for plans, drawings, maps as set out in Article 23(a) of the Planning and Development Regulations 2001 as amended, arises. I note, however, that the Planning Authority accepted the application as valid and did not address this issue within the request for additional information. On this basis I propose to consider the reasons for refusal as set out in the decision of the Council and to assess the planning merits of the case as presented.

7.2 The basis for the Council's decision to refuse relates to a determination that the applicant does not comply with the housing need criteria set out in the development

plan and rural housing guidelines for a house at this location. I note that the Development Plan policy is to facilitate the rural generated housing requirements of the local rural community whilst also directing urban generated rural housing to areas zoned for new housing development in the city, towns and villages. Objective RHO1 – Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure - GTPS provides at 1(a) *“Those applicants with Rural Links (defined as a person who has strong links to the rural area and wishes to build a dwelling generally within an 8km radius of where the applicant has lived for a substantial continuous part of their life) to the area through long standing existing and immediate family ties seeking to develop their first home on existing family farm holdings”*.

7.3 The second reason for refusal relates to a determination of non-compliance with of condition 2 of the governing permission relating to the site (Reference 05-623) which was as follows: - *“Use of the proposed house(s) shall be restricted to use as a house by the applicant, applicant’s family, heirs, executors and administrators or persons involved in agricultural or related activities, returning immigrants or those with an essential housing need in this rural area, unless otherwise agreed by the Planning Authority for a period of 10 years. No development shall be commenced until an agreement embodying a provision to that effect has been entered into with the Planning Authority pursuant to Section 47 of the Planning and Development Act 2000. The period of restriction shall have effect from the date of first occupation of the house. Within two months of the occupation of the proposed dwelling. The applicant shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling. Reason: In the interest of proper planning and sustainable development.”*

7.4 I note that the original permission was granted in April 2005 and the house was apparently constructed, between 2005 and 2006. I note that the commissioning certificate submitted for approval (compliance with condition 15a) with respect to the proprietary effluent treatment system refers to the installation of the system on 16<sup>th</sup> September 2006 and Peter Garvey, the first party in the current appeal, is referenced as the customer. Other details provided on the current appeal file including land registry information indicates that the site was formally purchased by the First Party in December 2007.

- 7.5 In the context of consideration of the decision of the local authority I consider that retrospective application of the current development plan policy to the principle of development of a dwelling on the site is not appropriate in the context of the current appeal case which relates to retention of elevational alterations and attic conversion.
- 7.6 On the issue of non-compliance with the enurement condition of the original permission, I note the details submitted by the first party to demonstrate a strong local connection. However, in any case I consider that having regard to the limited nature of the development as proposed for retention, this issue of housing need is not relevant to the appeal case. On this basis, I consider it appropriate to assess the detail of the development proposed for retention as part of the current appeal on its planning merit.
- 7.7 I note that the original permission omitted the upper floor windows and potential for use of the attic space by condition (Conditions 7 and 18). In my view the prohibition of use of the attic space and omission of windows is unnecessary based on the separation distance to adjoining properties, established landscaping and the mixed character of development in the vicinity. Additional landscaping could be provided to further integrate the dwelling into the landscape. On this basis and notwithstanding the apparent disregard for the terms and conditions of the original permission, I consider that the development proposed for retention is acceptable.
- 7.8 As regards Appropriate Assessment, I note that the development is located adjacent to designated Lough Coy SAC Site Code 002117. The site is designated for the priority habitat [3180] Turloughs. Site synopsis for Lough Coy notes that it is an excellent example of a riverine type of turlough and is in essence the floodplain of an underground river. Lough Coy is an excellent example of a eutrophic (nutrient-rich) turlough. The extreme water fluctuation supports a distinctive zonation of vegetation and provides many niches for specialist plants. It is an important site for wintering waterfowl. Having regard to the nature and scale of the development proposed for retention 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 Recommendation**

- 8.1 Having regard to the foregoing I recommend that the decision of the local authority be overturned and permission granted for the following reasons and considerations and subject to the following conditions.

### **Reasons and Considerations**

Having regard to the pattern of development in the area, it is considered that subject to compliance with the conditions below the development proposed for retention would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Conditions.**

1. The development shall be carried out and completed in accordance with the plans and lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The site shall be landscaped using only indigenous deciduous trees and hedging species in accordance with details which shall be submitted to and agreed in writing with the planning authority within one month of the date of permission. This scheme shall include the following:



(a) The planting of trees [which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder] [which shall not include *prunus* species] along the northern, southern and eastern boundaries of the site. Any plants which die, are removed or become seriously damaged or diseased within a period of 5 years from the date of permission shall be replaced within the next planting season with others of similar size and species.

(b) A timescale for implementation

**Reason:** In the interests of residential and visual amenity.

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Bríd Maxwell  
Planning Inspector  
31<sup>st</sup> August 2018