



An
Bord
Pleanála

Inspector's Report ABP-301760-18

Development	Construction of a two storey dwelling house and associated site works.
Location	Carrowmanagh, Glann Road, Oughterard, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	171746
Applicant(s)	Charles Cormican
Type of Application	Permission.
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Charles Cormican.
Observer(s)	None.
Date of Site Inspection	11 th of September 2018.
Inspector	Karen Hamilton

1.0 Site Location and Description

- 1.1. The subject site is an agricultural field located along the main Glann Road in the townland of Carrowmanagh, north of Oughterard, Co Galway. There is an agricultural entrance into the site and a temporary storage shed on the North West corner. The site is bound by mature hedging along the main road and trees along the north, east and south. The Owenriff River runs along the east of the site.

2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
 - Construction of a two storey dwelling house and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse permission for two reasons which have been summarised below:

1. On the basis of the information provided and in conjunction with the poor characteristics of the site, the high water table and the proximity to the Owenriff River, which forms part of the Lough Corrib c SAC (000297) the planning authority is not satisfied the site can be serviced by a waste water treatment system which would comply with the EPA guidelines. Accordingly to grant permission would be contrary to EPA code of conduct, endanger human health, and pose an unacceptable risk to surface waters and indirectly have an adverse impact on the conservation objectives of a European Site.
2. The Owenriff River and Lough Corrib c SAC (000297) contains the Freshwater Pearl Mussel. The habitats and species are protected under European Legislation and policies of the development plan including Policy NHB 1, Objectives DS 6, NHB 1, NHB2, NHB3, AFF 5, and DM Standard 40 of the development plan. Based on the information supplied with the application form, the planning authority is not satisfied that the proposed development will not have a significant negative impact on the integrity of the conservation objectives of a designated European Site.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to refuse permission for the reasons above. The report of the planner initially included three reasons for refusal including, fluvial flooding, inability to service the site adequately with a treatment system and the impact of the proposal on the conservation objectives of an adjoining SAC. Following an Extension of time (EoT) on the application, unsolicited information was submitted to the planning authority as summarised below:

- A Flood Risk Assessment undertaken by a hydrologist included the provision of geo-cellular units with a base level at 8.30m AOD to the west of the 10m strip along the river, therefore the development will not displace the flood water.
- An Engineer's report proposed the use of a tertiary sand polishing filter system designed to reduce the hydraulic loading rate of just 45 litres a further reduction of 25%.
- An Appropriate Assessment Screening Report includes a revised proposed management and mitigation measures to ensure no significant impact on the adjoining European Site.

The planner considered the submitted unsolicited information and concluded that the waste water could not be sufficiently treated and therefore any proposed development would have a significant negative impact on the conservation objectives of the Lough Corrib SAC.

3.2.2. Other Technical Reports

None received.

3.3. Prescribed Bodies

Inland Fisheries Ireland- Recommend refusal.

An Taisce- Request for additional information on the impact of the proposed on the adjoining European Site.

Department of Culture, Heritage and the Gaeltacht (DoCHG)- The proposed development would affect the qualifying features/interests of a SAC.

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

27672

Outline permission granted for a single dwelling for John King in 1978.

5.0 **Policy Context**

- 5.1. The Planning System and Flood Risk Management Guidelines for Planning Authorities (OPW 2009)
- 5.2. EPA Code of Practice: Wastewater Treatment Systems for Single Houses (2009)
- 5.3. **Galway County Development Plan 2015- 2021.**

The site is zoned as agricultural in the Oughterard Local Area Plan 2006-2012, where residential development is restricted to rural housing need.

The site is located in an areas designated as Landscape Sensitivity 4 (where Class 1 is the least sensitive and Class 5 the most sensitive).

Objective DS 6 Natura 2000 Network and Habitats Directive Assessment

Protect European sites that form part of the Natura 2000 network.

Policy NHB 1 Natural Heritage and Biodiversity

It is the policy of Galway County Council to support the protection, conservation and enhancement of natural heritage and biodiversity, including the protection of the integrity of European sites, that form part of the Natura 2000 network.

Policy NHB2 Non-Designated Sites

Recognise that nature conservation is not just confined to designated sites and acknowledge the need to protect non-designated habitats and landscapes and to conserve the biological diversity in the County.

Policy NHB3 Green Infrastructure

Protect existing green infrastructure and provide additional green infrastructure where possible such as green roof technology and energy efficiency pumps

Policy AFF 5 Compliance with the EU Habitats Directive

New agricultural projects that may potentially affect Natura 2000 Sites, individually or in combination with other plans and projects shall be subject to Appropriate Assessment to ensure that there are no likely significant effects on the integrity of any Natura 2000 Sites in the County.

DM Standard 40 Environmental Assessments

Screening for Appropriate Assessment and/or Appropriate Assessment will be required with all applications where it is considered that the proposed development may impact (directly and indirectly), or in combination with other projects, on a Natura 2000 designated site to inform the decision making.

Flood risk assessment**Policy FL 1 – Flood Risk Management Guidelines****Policy FL 4 – Principles of the Flood Risk Management Guidelines**

Apply the key issues of flood risk management in terms of avoidance, substitution and mitigation.

5.4. Natural Heritage Designations

The site is partially located in the Lough Corrib SAC (000297). The Owenriff River which flows along the east of the site is listed in the Site synopsis¹ as an important river for the Atlantic Salmon.

¹ <https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000297.pdf>

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from the applicant in relation to the refusal of permission and the issues raised are summarised as follows:

Flood Risk Assessment

- A summary of the flood risk assessment prepared by an expert hydrologist, submitted as additional information and confirms that the site is suitable for the proposed development and will accommodate more water from a 0.1% chance flood within the terraces.

Waste Water Treatment & Disposal

- An engineer's letter submitted with the additional information confirmed that the site has been assessed and is in full accordance with the EPA code of practice, the proposed treatment and disposal units include an advanced mechanical wastewater treatment system and associated polishing filter to comply with EN12566-3 CE Certification.
- The proposed sand polishing filter has been over designed to reduce hydraulic loading and the provision of a Sandcel Sand polishing filter system eliminates the risk of a substandard non-compliant installation.

Ecology

- The Appropriate Assessment Screening includes the alterations to the proposed works i.e. no excavations within 10m of the riverbank, provision of geo-cellular units, silt traps and silt dewatering bags and concluded that there would be no significant effects on the SPA & SAC.

The Council have failed to adequately consider the expert evidence submitted as part of the additional information.

6.2. Planning Authority Response

None received.

7.0 Assessment

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

- Principle of development
- Water and Waste Water
- Appropriate Assessment
- Environmental Impact Assessment

Principle of Development

7.2. The site is located on lands zoned as agricultural in the Oughterard Local Area Plan 2006-2012 where residential development is restricted to a fully substantiated housing need and those of sons or daughters of a farmholder which can demonstrate an intrinsic connection to the area. The application has not submitted any justification or need to live on agricultural lands. I note the report of the area planner refers to a residential zoning on the site and considers the development acceptable in principle. The residential zoning does not correspond with the zoning map. The proposed dwelling is a contemporary two storey dwelling, which is compliant with the general characteristics of the dwellings in the vicinity of the site.

7.3. I note the Oughterard Local Area Plan 2006-2012 remains in force until such times as the review of the County Development Plan subsumes the smaller towns and village and whilst I note the plan should be read in connection with the County Plan I note the agricultural land use zoning on the site and the absence of any rural housing need to link a residential development on the site. Therefore, I do not consider the principle of development acceptable on the site.

Water and Wastewater

7.4. The proposed development includes a connection to the public water mains system and includes a waste water treatment system with sand polishing filter. The reason for refusal relates to the high water table on the site, the inability to accommodate a waste water treatment system and the location of the site along the Owenriff River and the planning authority considered the proposal would seriously endanger the health and safety of the persons occupying the dwelling and pose an unacceptable risk to the surface waters.

- 7.5. The grounds of appeal consider the information submitted as additional information sufficiently addressed the concerns raised by the planning authority and consider the site can be adequately serviced. A submission from IFI raised concern over the use of an engineered raised percolation bed, the ground conditions on site (limestone bedrock at 0.6m below ground level) and the proximity of the site to a newly commissioned treatment plant in Oughterard which they consider all new development should connect.
- 7.6. A site suitability assessment accompanied the application form which stated that the site is located in an area identified with a “High” vulnerability classification in the GSI Groundwater maps, this is incorrect. Karst features are present 3m south of the site (www.gsi.ie) and the Groundwater Vulnerability classification is X Rock or near Surface or Karst. The site is on a Locally Important Aquifer (LI) representing a GWP response of R2¹ under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B3). The trial hole assessment submitted by the applicant encountered no bedrock/ water table at a depth of 0.6m. The ground conditions were noted as dry and firm underground although surface water ponding was noted on-site inspection. This GWP response R2¹ requires particular attention to the minimum depths of subsoil. Section 3.2 of the site characterisation form requires a trial hole of a minimum depth of 2.4m as the potential for groundwater contamination is high where the rock is close to the surface. As stated above bedrock was encountered at 0.6m therefore the minimum depth for the trial hole could not be achieved.
- 7.7. The submitted site characterisation did not record a T- test value. Having regard to the permeability of the bedrock (limestone) a P-test provided a value of 19.89 min/25mm, which would indicate good percolation. It is proposed to install a packaged treatment system with a sand polishing filter and no height of any percolating material is provided.
- 7.8. Having regard to the location of the waterlogged site conditions, 3m north of a karst feature and within an area identified as extreme ground water vulnerability, I consider a minimum depth of 2.4m trial hole for the purpose of the percolation test (Section 3.2 of the site characterisation form). In addition, the location of part of the site in Lough Corrib SAC and partially within flood zone B and C indicate a highly sensitive site. Therefore, I do not consider the site can accommodate a waste water

treatment system and I consider the proposed development would have a significant risk of ground water pollution and would be prejudicial to public health.

Flood Risk Assessment

- 7.9. The site is located along the edge of the Owenriff River which is subject to pluvial flooding (Catchment- based Flood Risk Management www.cfram.ie).
- 7.10. A Flood Risk Assessment was submitted as part of additional information which indicated that, having regard to the shape files provided it could not be confirmed if the site was within the flood envelope. I note Figure 10, Western CFRAM Study, in the submitted Flood Risk Assessment and I consider the site is subject to 0.1% AEP Fluvial extent. The proposed development is in Flood zone C and part of the site, along the river edge, is in Flood zone B. Figure 3.2 of the national Flood Risk Guidelines requires a justification test for developments within Zone B. A terraced edge was included in a revised design along the river, Flood zone B, and the dwelling and treatment system is located along the west of the site within Flood Zone C.
- 7.11. The submitted Flood Risk Assessment includes a “site specific growth curve” as a method to estimate the design flood and concludes that the design flood for the site, with an allowance for climate change, with a 0.1% chance of occurrence (Q_{100}) is $66.29\text{m}^3/\text{sec}$. In addition, this assessment states that, having regard to the topography on the site and a finished floor level of the dwelling house at 9.2 AOD the proposed dwelling has a very low risk against fluvial flooding.
- 7.12. The submission from the IFI refers to section 6.3 of the Flood Risk Assessment submitted by the applicant which stated “reduce the levels of the subject site at the bank of the river so as to accommodate the Flood zone B without displacing flood water” and considers the modifications to the ground levels along the Owenriff River will impact the Lough Corrib SAC and the salmonid spawning habitat. As there are no additional details on the proposed terracing in the application I could not assess the impact on the river or the surrounding area.
- 7.13. Section 8.6.3 of the development plan includes guidance on flood zones and the sequential approach and states that highly vulnerable developments (housing) is not permitted in development zone A or B, as per the national guidance. Figure 3.2 of the national guidelines states that development in Zone B should be avoided unless it can meet the justification test (Box 5.1). The justification test requires the lands to

be zoned for the particular use and be subject to adequate flood assessment guidance. In the first instance the principle of development of the site is not deemed acceptable, as detailed above. In addition, whilst the proposal includes a terraced effect along the lands to the east, it has not been demonstrated that this will not increase flood risk elsewhere. Therefore, I do not consider the proposed development can meet the justification test.

Appropriate Assessment

- 7.14. The site is located along the edge of the Owenriff River which forms part of the Lough Corrib SAC (site code: 000297). The Conservation Objectives of the SAC² lists 15 habitats of which 5 of these are priority and 9 species. A Screening for Appropriate included proposed management of the site and mitigation measure including the use of a silt fence and silt bag to prevent sedimentation and concluded there would be no potential impacts on any European Site subject to certain works which included the installation and maintenance of a sewerage treatment system according to EPA regulations. The grounds of appeal are concerned the Council did not adequately consider the expert opinion of the ecologist which accompanied the application.
- 7.15. The Freshwater Pearl Mussel (*Margaritifera margaritifera*), a protected species under EU Habitats Directive Annex II, is seriously endangered in every part of its range throughout the world. The Owenriff is one of 3 or 4 rivers in Ireland that still has an actively breeding Freshwater Pearl Mussel population, and is one of the most important rivers for the mussel in this country. In most Irish rivers the numbers of adult mussels are too low to allow ongoing reproduction so the populations are functionally extinct³.
- 7.16. Submissions were received from the DoCHG and the IFI which refer the importance of the Owenriff River for spawning grounds for salmon and Fresh Water Pearl mussel and consider the proposed development would affect the conservation objectives and features of interest of the adjoining SAC. In addition, An Taisce recommended additional information on the possible effects on the SAC.

² NPWS (2017) Conservation Objectives: Lough Corrib SAC 000297. Version 1 National Parks and Wildlife Service, Department of Arts, Heritage, Regional Rural and Gaeltacht Affairs

³ Oughterard Local Area Plan 2006-2012

- 7.17. As stated above, I do not consider effluent can be adequately treated within the site and the proposal cannot can comply with the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009), therefore there is a potential risk for groundwater or surface water pollution on a site which located within the Lough Corrib SAC.
- 7.18. Therefore, having regard to the nature and scale of the proposed development, the conservation objectives and distance from the European Sites, on the basis of the information provided with the application and appeal, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Lough Corrib SAC or any other European site, in view of the site's Conservation Objectives.

Environmental Impact Assessment

- 7.19. Having regard to the nature and scale of proposed development it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on environment, and an Environmental Impact Assessment Report is not therefore required.

8.0 Recommendation

- 8.1. It is recommended that the proposed development is refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the agricultural zoning of the site in the Oughterard Local Area Plan 2006-2012, where residential development is restricted to a fully substantiated housing need and to those sons and daughters of a farm holder who can demonstrate intrinsic links connection to the area and in the absence of any supporting documentation, it is considered that the proposed development, would contravene materially the said zoning objective and

would be contrary to the proper planning and sustainable development of the area.

2. The site is located 3m north of a karst feature, within an area which Groundwater Vulnerability classification is X Rock or near Surface or Kars and bedrock was encountered at 0.6m. There was evidence of surface water ponding within the site during a site inspection. It is considered that the proposed septic tank drainage system would be prejudicial to public health because of the poor percolation characteristics of the ground and the high water table, as indicated by a trial hole excavated on the site which would render it unsuitable for the on-site treatment/disposal of effluent from the development, notwithstanding the proposed use of a proprietary wastewater treatment system.

3. The proposed development is in an area which is deemed to be at risk of flooding, by reference to the current Development Plan for the area and the documentation on file. Having regard to the provisions of the Development Plan and the national guidance "The Planning System and Flood Risk Management Guidelines for Planning Authorities" in relation to development proposals in areas at risk of flooding, it is considered that, the use of proposed mitigation measures to terrace the lands along the river bank are not sufficient to prevent flooding and the Board is not satisfied that the proposed development would not give rise to an increased risk of flooding of the site or of property in the vicinity. The proposed development would be contrary to the proper planning and sustainable development of the area.

4. The site of the proposed development lies partly within the Lough Corrib (cSAC Site Code 000297), a site of European importance for the *Margaritifera margaritifera* Fresh Water Pearl Mussel (1029). It is also located in close proximity to the Owenriff River, part of what is currently recognised as a floodplain and in an area which is deemed to be at risk of flooding. Having

regard to the submissions made in connection with the application and appeal, and notwithstanding the flood risk mitigation measures proposed, the Board is not satisfied that the proposed flood relief works would not have significant adverse effects on both the natural heritage of the area and the future use of the river and adjoining lands (including the alteration of the riverbank and the associated risk of increased flooding of other lands in the vicinity) and sedimentation of the river. In addition, it is not considered that effluent can be treated within the site in compliance with the EPA Code of Practice: Wastewater Treatment Systems for Single Houses (2010), therefore the proposed development would have a negative impact on the hydrological conditions of the Owenriff River resulting in a significant negative impact on the features of interest of the Lough Corrib (cSAC Site Code 000297). It is considered that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Karen Hamilton
Planning Inspector

11th of October 2018