



An
Bord
Pleanála

Inspector's Report ABP-302240-18

Development	For the construction of a dwelling house, detached garage, treatment plant and percolation area and all associated works. Gross floor space of proposed works 250sqm.
Location	Cahervoley, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	18/457
Applicant(s)	Aoife Ward
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	John Newell
Observer(s)	None
Date of Site Inspection	2nd October 2018
Inspector	Ronan O'Connor

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1.0 Site Location and Description

1.1. The appeal site is located within a rural area approximately 10km north of Claregalway and 10km south-west of Tuam, The site is in agricultural use and the immediate surroundings are agricultural fields with associated outbuildings. The nearest residential dwelling is located approximately 80m to the south-east. The site is accessed via a local road off the N83.

2.0 Proposed Development

2.1. For the construction of a dwelling house, detached garage, treatment plant and percolation area and all associated works. Gross floor space of proposed works 250sqm

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Grant permission. Conditions of note include:
- Condition 2 – use restricted to the applicant.
 - Condition 3 – Provision of a parking space.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The reports of the planning officer reflect the decision of the planning authority. Points of note are as follows:

- Drainage characteristics deemed satisfactory
- Design in compliance with design guidelines and development plan.
- Housing need established.
- Will not detract from amenity.
- Further Information requested in relation to (i) vehicular access provision and (ii) water supply.

- Further information received on 5th July 2018 – (i) letter from roads engineer of GCC (ii) Anbally gws letter of consent furnished.
- Further information was considered satisfactory.
- Recommendation to grant permission.

3.2.2. Other Technical Reports

3.2.3. None.

3.3. **Prescribed Bodies**

3.3.1. None.

3.4. **Third Party Observations**

3.4.1. Two number observations received from John Newell, who is also the appellant. The issues raised are covered within the grounds of appeal.

4.0 **Planning History**

4.1.1. None.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. The relevant Development Plan is the Galway County Development Plan 2015-2021. Relevant policies and objectives are as follows:

Objective DS 6 – Natura 2000 Network and Habitats Directive Assessment /
Objective DS 10 – Impacts of Developments on Protected Sites

Section 3.7 refers to Single Housing in the Countryside and has regard to the distinction between urban and rural generated housing and the requirement for sustainable rural housing.

S.3.8 identifies Rural Area Types – Map RH01 refers – the subject site is located in a Rural Area Under Strong Urban Pressure.

Section 3.8.1 refers and provides the objectives for such areas. This includes:

- To facilitate the genuine housing requirements of the local rural community (rural generated housing), subject to satisfactory site suitability and technical considerations;
- To direct urban generated development to areas for new housing development in the adjoining urban centres, town and villages as identified in the County Settlement/Core Strategies;
- To accommodate residential development proposals in accordance with Chapter 13 (Development Management Standards and Guidelines).

Map RHO2 shows that the appeal site is located in Zone 1 – Rural Areas under Strong Urban Pressure and Landscape Category 1&2 (where 1 is the least sensitive and 5 is the most sensitive).

Objective RHO 1 refers i.e. – Objective RHO 1 sets out the policy for rural housing development in areas that are under strong urban pressure. This states that it will be an objective to facilitate rural housing for applicants who *inter alia* have rural links to the area and who are seeking to develop their first home on a family farm, those with no family links but who have significant other connections to the area, those who are functionally dependant on the immediate rural area in which they are seeking to build. Provision is also made for exceptional health circumstances (2b).

Objective RHO 9 – Design Guidelines - have regard to GCC's Design Guidelines for the Single Rural House /Objective RHO 12 – Waste Water Treatment Associated with Development in Un-Serviced Areas

Chapter 5 refers to Roads and Transportation.

Chapter 6 includes regard to Wastewater Treatment Systems. Objective WW 5 refers to WWT associated with development in un-serviced areas.

Chapter 9 refers to Heritage, Landscape and Environmental Management.

Section 9.8 refers to Natural Heritage and Biodiversity and includes regard to Natura 2000 sites. S.9.9 provides the Natural Heritage and Biodiversity Policies and Objectives.

Objectives LCM1/2 are of note. Map LCM 1 sets out Landscape Value Ratings. – The site is within an area where the Landscape Value is low.

MAP LCM 2 sets out Landscape Sensitivity and Character Areas – The area is within the Northeast Galway (Tuam Environs) Character Area with a low sensitivity rating.

5.2. **The Sustainable Rural Housing Guidelines 2005**

5.2.1. This seeks to encourage and support appropriate development at the most suitable locations. Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working full-time or part-time in rural areas. Appendix 3 provides details of NSS Rural Area Types. Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.
- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.
- Section 4.4 is concerned with Access and regard is also had to Roadside Boundaries.

5.3. **Code of Practice Wastewater Treatment Disposal Systems serving Single Houses**

5.3.1. This document (2009) by the EPA relevant to single houses (p.e <10). The objective is to protect the environment and water quality from pollution and it is concerned with site suitability assessment. It is concerned with making a recommendation for selecting an appropriate on site domestic wastewater treatment and disposal system if the site is deemed appropriate subject to the site assessment and characterisation report. The implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing

development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

5.4. Natural Heritage Designations

5.4.1. None.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The Third Party Grounds of Appeal, as submitted by John Newell (appellant) are as follows:

- Site is accessed via a private road that has been constructed by the appellant.
- Has not been handed over to Galway County Council
- Will not be handed over until payment is made for the construction of the road
- Have proof that it is a private road.
- Will take this case to the High Court
- 3 no. maps are included showing extent of private road and land ownership
- Also included is documentation relating to a Local Improvement Scheme and 5 no. photographs of road in question.

6.2. Applicant Response

6.2.1. None.

6.3. Planning Authority Response

6.3.1. None.

6.4. Observations

6.4.1. None.

7.0 Assessment

7.1. The following assessment covers the points made in the appeal submissions and also encapsulates my *de novo* consideration of the application. The main planning issues in the assessment of the proposed development are as follows:

- Access/Land Ownership
- Compliance with Rural Housing Policy
- Landscape and Visual Amenity/Design
- Traffic/Parking
- Water Supply/Waste Water/Drainage
- Appropriate Assessment
- Environmental Impact Assessment

7.2. Access/Land Ownership

7.2.1. The appellant has stated that road facilitating access to the proposed dwelling is in fact a private road. The planning authority sought further information on the extent of the L-6238-0 Public Road as it was noted that it appears to terminate in the vicinity of the site. In response the applicant submitted an email from the Acting Executive Engineer, Roads Department confirming that the road that passes the site is the L-6238-0 Public Road and is in charge of Galway County Council.

7.2.2. The planning authority was satisfied then that the access road was in fact in public ownership. While I am cognisant of the statements made by the appellant, there is little in the way of unequivocal evidence that the road is in fact in private ownership, and that would contradict the evidence presented by the applicant. I am satisfied that, for the purposes of determining the appeal, the applicant has sufficient means to access the site, having regard to the communication from the Roads Department of Galway County Council, that confirms that road is a public road and is in charge of Galway County Council.

7.2.3. However, I also note the Board does not have remit in adjudicating on land ownership or rights of way issues as raised by the appellant and this is a matter that should be resolved in the Courts. In this regard I note the provisions of S.34(13) of

the Planning and Development Act 2000 (as amended) and Chapter 5.13 'Issues relating to title of land' of the 'Development Management – Guidelines for Planning Authorities' (DoECLG, June 2007).

7.3. Compliance with Rural Housing Policy

- 7.3.1. The appeal site is located in an area that is within the area identified in the County Development Plan (section 3.7) as being an area that is a Rural Area Under Strong Urban Pressure. The council policy for rural housing in this high pressure area is set out in Objective RHO 1 of the plan. This sets out that *inter alia* housing will be facilitated for those have rural links to the area and who are seeking to develop their first home on a family farm
- 7.3.2. The planning authority have accepted the housing need of the applicant. This housing need has not been questioned by the appellant.
- 7.3.3. A housing need form has been submitted by the applicant. The applicant works in Galway City but has demonstrated that she has lived in the area for all of her life and has demonstrated connections to the local community. The house is to be constructed on the family farm. I am satisfied that housing need has been established as per Objective RHO 1.

7.4. Landscape and Visual Amenity/Design

- 7.4.1. The site is within an area where the Landscape Value and Sensitivity is low, as per Map LCM 1 and Map LCM 2. While the proposed dwelling house will be visible from surrounding viewpoints, the scale and appearance of the dwelling is appropriate and is in compliance with the guidance set out in the Design Guidelines for the Single Rural House. While the dwelling is relatively large, the massing is broken down by well-proportioned ancillary wings and the use of traditional forms. However, while I consider the appearance and design to be appropriate, the site could benefit from additional landscaping, in order to reduce the visibility of the dwelling, especially when viewed from a westerly position, where the flat landscape affords relatively extensive views towards the site. Should the Board be minded to grant permission, a condition should be imposed requiring additional screening and landscaping of the site.

7.5. Sightlines

- 7.5.1. There are no sightlines standards for local roads within the Development Plan. However there are adequate sightlines from the proposed access point (70m in either direction) and the proposal will not result in traffic hazard.

7.6. Water Supply/Waste Water/Drainage

- 7.6.1. In relation to water supply, the dwelling is to be supplied by the Anbally Group Water Scheme and a letter of confirmation in this regard has been submitted as further information.
- 7.6.2. In relation to waste water, a Site Characterisation Form (SCF) was submitted with the application and I have had regard to same in my assessment.
- 7.6.3. The GSI Groundwater maps show that the site is located within an area with an Aquifer Category of 'Regionally Important (Rk) with a vulnerability classification of 'Extreme' representing a GWPR response of R2² under the EPA Code of Practice (COP). According to the response matrix, on-site treatment systems are acceptable in such areas subject to normal good practice and the following conditions:

There is a minimum thickness of 2 m unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system

or

A secondary treatment system as described in Sections 8 and 9 of the COP is installed, with a minimum thickness of 0.3 m unsaturated soil/subsoil with P/T values from 3 to 75 (in addition to the polishing filter which should be a minimum depth of 0.9 m), beneath the invert of the polishing filter (i.e. 1.2 m in total for a soil polishing filter).

- 7.6.4. The trial hole was excavated to a depth of 1.6m. The trial hole reported the presence of clay with silt pebbles and cobbles to a depth of 0.5m and sand with clay silt pebbles and boulders to bedrock at 1.6m.
- 7.6.5. On site I noted the trial hole and percolation test holes were dry. Weather conditions at the time of my site visit were changeable with intermittent rain showers. Ground conditions underfoot were relatively dry however.

- 7.6.6. Under Part C.2.3 of the EPA Code of Practice: Waste Water Treatment and Disposal Systems serving Single Houses (p.e. <10) (COP), there is a requirement that the standard 'T' test be carried out on all sites irrespective of a P Test. I note that based on the Trial Hole examination, the applicant states that a T value of 10 is likely. A T value of 7.83 was found on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a secondary treatment system discharging to groundwater.
- 7.6.7. I note the recommendation set out in Section 5 of the Site Characterisation form which sets out a proposal for a packaged wastewater treatment system and polishing filter discharging to ground water.
- 7.6.8. The location of the aeration plant and percolation area is indicated on the proposed site layout plan and on the proposed site section drawing. This shows the sufficient soil depth above and below the percolation trench as per the requirements of the COP.
- 7.6.9. I note the minimum separation distances in Table 6.1 of the COP. The percolation area should be located at least 10m from the dwelling and 4m from the road. In this instance, the separation distance of the percolation area from the dwelling is 20m and 30m from the road.
- 7.6.10. There are no wells on site and the applicant proposes to utilise a group water scheme to supply the dwelling.
- 7.6.11. In conclusion therefore I consider that the site is suitable for the wastewater treatment proposed and that no significant risk of ground or surface water pollution exists.
- 7.6.12. In relation to drainage, the site appears relatively well drained. A standard condition is recommended ensuring that all surface water run-off is contained within the site.

7.7. Appropriate Assessment

- 7.7.1. No Appropriate Assessment (AA) screening report has been submitted with the application. The planning authority carried out an AA screening exercise and ruled out significant impacts on the Natura 2000 network.
- 7.7.2. There are 2 no. Natura 2000 sites within 15km of the appeal site, Lough Corrib SAC (the closest boundary of which is located 2.3km to the south-east of the site) and

Lough Corrib SAC (the closest boundary of which is located 8.3km to the west of the site).

- 7.7.3. I am satisfied that the sites noted above can be 'screened out' on the basis that significant impacts on these European Sites can be ruled out on the basis of a lack of a source-pathway link to these European Sites and the distance to the European Sites.
- 7.7.4. In conclusion, having regard to the scale and nature of the proposed development, a domestic dwelling, with a waste water treatment system that presents no significant risk of ground or surface water pollution, I consider 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 any European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.8. Environment Impact Assessment

- 7.8.1. Having regard to the nature and scale of the proposed development, the construction of a single dwelling, and having regard to the separation distance to the nearest sensitive location, 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. Grant permission.

9.0 Reasons and Considerations

Having regard to:

- The general acceptability of the site in relation to access and services,
- The demonstrated housing need for the proposed dwelling,
- The scale and appearance of the dwelling and the landscape character,

- The pattern of existing and permitted development in the area,

it is considered that the proposed development, subject to compliance with the conditions set out below, would be acceptable in terms of compliance with policies for the control of rural housing, would not have unacceptable impacts on the character of the landscape, would not be prejudicial to public health, and would not have significant effects on any European Site. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 5th day of July 2018, 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. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) 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 in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. A parking space, not less than 15 metres long and 3 metres wide, shall be provided immediately adjoining the edge of the margin of the roadway. This space shall be cleared, graded, levelled and surfaced to a standard suitable for use as off-road parking to the satisfaction of the Area Engineer and the Planning Authority.

Reason: In the interests of road safety.

4. a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

(b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage.

Reason: In the interest of traffic safety and to prevent pollution.

5. Any new front boundary wall shall be of local unplastered natural stone and shall not exceed 1m in height.

Reason: In the interest of visual amenity.

6. All service cables associated with the proposed development (such as electrical, telecommunications and television) shall be located underground.

Reason: In the interests of visual and residential amenity.

7. 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 prior to commencement of development.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

8. a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 17th April 2018, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with

the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

9. The external finishes of the proposed garage shall harmonise in colour and texture with the finishes on the proposed dwelling house hereby permitted.

Reason: In the interest of visual amenity.

10. The proposed domestic garage shall not be used for habitable or commercial purposes or any other purpose other than those incidental to the enjoyment of the dwelling house.

Reason: In the interest of proper planning and development.

11. The source of the water supply to serve the development shall be obtained from the Anbally Group Water Scheme.

Reason: In the interest of public health.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Rónán O'Connor
Planning Inspector

9th November 2018