



An
Bord
Pleanála

inspector's Report ABP-303014-18

Development	Construction of house, domestic garage/fuel store, septic tank, treatment system and percolation area and all ancillary site works.
Location	Flaskaghmore, Co Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	18996
Applicant(s)	James Kelly.
Type of Application	Outline Permission.
Planning Authority Decision	Grant Outline Permission.
Type of Appeal	Third Party
Appellant(s)	Liam Madden.
Observer(s)	Department of Culture Heritage and the Gaeltacht.
Date of Site Inspection	3 rd February 2019.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site has a stated area of .285hectares located within the townland of Flaskaghmore approximately 20 km north east of Tuam, 6km north east of Dunmore Village and 7km west of Williamstown and 4.6km south east of Cloonfad in north County Galway. The site is within a rural area south of the Galway Mayo Roscommon Border. The area is characterised by agricultural farm holdings, extensive forestry, quarrying with significant one-off housing development and rural commercial enterprises. The landscape is relatively flat with an esker ridge running to the north east of the site. A national Monument GA00127 Rath is located within the adjacent field within 80m of the site. The Williamstown Turloughs SAC Site Code 002296 is located within 1.1km to the east of the site. The appeal site is part of a larger field pattern with evidence of recent removal of hedgerows. Front roadside boundary is defined by a mix of fence and low stone wall.

2.0 Proposed Development

2.1. The application involves outline permission for the construction of a dwellinghouse, domestic garage, / fuel store, septic tank treatment system, percolation area and all ancillary site works.

3.0 Planning Authority Decision

3.1. Decision

By order dated 24th October 2018, Galway County Council issued notification of its decision to grant permission and 15 conditions were attached which included.

Condition 3. Proposed design to comply with Galway County Council's Rural Housing Design Guidelines 2015-2021.

Condition 11. Front roadside boundary shall be set back 3m from road. Any new wall constructed using local stone.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial planner's report sought additional information with regard to wastewater treatment, clarification of winter water table level. Report noted distance to national monument which was considered to be a sufficient buffer. Site is not within GTPS area and demonstration of housing need not required.

Second report recommends permission subject to conditions.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

No submissions to local authority.

3.4. Third Party Observations

Submission from Liam Madden, Convent Road Longford asserts that the application takes no account of proximity to ringfort. Local need has not been demonstrated.

Proposal is speculative and contrary to development plan policy.

4.0 Planning History

Adjoining Site

AP303025-18 Concurrent appeal relating to application for outline permission on adjoining site to the north.

5.0 Policy and Context

5.1. Development Plan

The Galway County Development Plan 2015-2021 refers.

In terms of rural Housing Policy the site is located within a structurally weak area.

Key objectives are to accommodate residential development proposals as they arise subject to satisfactory site suitability and technical considerations and to maintain and strengthen existing towns and villages and to direct urban generated housing

demand into these areas. To protect areas located in Landscape Category 3, 4 and 5. (Site is within landscape category 1 and 2)

Objective RHO 2 – Rural Housing Zone 2 (Structurally Weak Area) “It is an objective to the Council to facilitate the development of individual houses in the open countryside in “Structurally Weak Areas” subject to compliance with normal planning and environmental criteria and the Development Management Standards and Guidelines outlined in Chapter 13 and other applicable standards.”

5.2. **Natural Heritage Designations**

The Williamstown Turlough SAC Site Code 002296 is located within 1km to the east of the site.

5.3. **EIA Screening**

Having regard to the nature and scale of the development which consists of a single house in a rural 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The appeal is submitted by Liam Madden, Convent Road Longford. Grounds of appeal are summarised as follows:

- Ambiguity regarding agent’s title and capacity. Referenced variously as Sean Maloney & Associates, or Sean Maloney & Associates Limited. Since the transposition of Services Directive 2006/123/EC into local law it is illegal to provide design services via limited liability corporate entity.

- Applicants agent has indicated that the applicant James Kelly is owner of the site. This is a false declaration and application is invalid.
- Land registry printout confirms that the owner of the folio of which the site is part is Sraid Thais Limited. No letter of consent has been provided from the registered owner.
- Sightline visibility setback is inaccurate. Sightline visibility dependant on consent for maintenance of sightline from owner of adjoining land.
- Proposal in conjunction with adjoining proposal will lead to a proliferation of treatment units in confined sites with poor soil percolation qualities.
- Applicant has not demonstrated any need to reside in the rural hinterland of Flascaghmore.
- Proposed development would have an unwarranted and unwelcome adverse effect on the national monument.

6.2. Applicant Response

The applicant did not respond to the grounds of appeal

6.3. Planning Authority Response

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

6.4. Observations

Observations from Prescribed Body, Department of Culture Heritage and the Gaeltacht asserts that Galway County Council must ensure that the existing wastewater treatment system and percolation area for this application is adequate to safeguard against adverse effects or damage on Williamstown Turlough SAC. (European Code Code 002296)

7.0 Assessment

7.1 I note the questions raised by the third party with regard to the perceived ambiguity regarding the title and capacity of the agent for the first party on the basis of various reference to Sean Maloney & Associates or Sean Maloney & Associates Limited. I consider that the abbreviation of title does not preclude identification of the agent for the applicant. As regards the issue of the applicant's legal interest in the land, the third party has submitted documentation from the land registry which refers to the registered owner of the site as Sráid Thais Limited. I would note in response to issues regarding legal interest that this is essentially a civil matter and not strictly a matter for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: *"A person shall not be entitled solely by reason of a permission under this section to carry out any development."*

7.2 I consider that the planning issues raised in the appeal can be addressed under the following broad headings.

- Rural Housing Policy
- Impact on the amenities of the area
- Wastewater Treatment
- Appropriate Assessment

7.3 Rural Housing Policy

7.3.1 I note that the site is located within a structurally weak area where the key development plan objective is to accommodate residential development proposals as they arise and subject to satisfactory site suitability and technical considerations whilst also maintaining and strengthening existing towns and villages and directing urban generated housing demand into these areas. I note that the Local Authority Planner has concluded that on the basis of location within a structurally weak area a housing need does not have to be demonstrated. The proposed development which is apparently speculative would clearly increase the pattern of suburbanisation in a rural area and is in my view contrary to the rural housing strategy. On this basis I conclude

that the proposal conflicts with the objective to direct urban generated housing demand to existing towns and villages and is therefore contrary to the proper planning and sustainable development of the area.

7.4 Impact on the amenities of the area.

7.4.1 As regards the impact of the development on the amenities of the area, I consider that the proposal in conjunction with the adjoining proposal would result in development which is entirely out of character on a rural site. The proposal would represent suburban type development which would be visually incongruous in this rural landscape. In relation to impact on the adjacent archaeological monument I consider that the cumulative visual impact would be detrimental to archaeological heritage and rural amenity.

7.4.2 As regards sightline requirements at the entrance, as the site abuts a minor local road the achievement of 70m sight distance is feasible. I note however that the proliferation of entrances in this area has the potential to interfere with safety and free flow of traffic on the public road.

7.5 Wastewater Treatment.

7.5.1 On the issue of wastewater treatment I note that it is proposed to service the site by way of a biocell quick one+ sewage treatment plant followed by Filter pod tertiary treatment system. I note that site characterisation form indicates that the soil character of loose clay with small stones of irregular shape. Traces of peat at 0.4m. Water ingress was visible at 1.8m below ground level and bedrock encountered at the base of trial hole 2.3m below ground level. A T value of 8.06 and P value of 10.22 was recorded. Following request for additional information the site was re inspected in mid September following period of heavy rain and winter water table was recorded at 1.3m BGL.

7.4.2 I consider that the issue of water pollution potential and cumulative impact of multiple treatment systems is a relevant concern in this case. In considering the proposal in conjunction with that on the adjoining site, the addition of two individual treatment systems within a limited area would be prejudicial to public health and would give

rise to an unacceptable risk of water pollution. The EPA Code of Practice sets out minimum separation distances between wastewater treatment systems and certain features, including separation distance from other wastewater treatment systems and wells. I note that the wider area comprises several houses which are serviced by single wastewater treatment systems which arguably could collectively lead to increased nitrate levels in the receiving groundwater, giving rise to potential for significant cumulative impacts on groundwater quality. In this context, I am not satisfied that there is sufficient information regarding dilution calculations and the potential cumulative impact of the proposed wastewater treatment system on groundwater quality. Accordingly, I recommend that planning permission is refused on the basis that the proposed development has the potential to give rise to significant cumulative impacts on groundwater quality and be prejudicial to public health.

7.5 Appropriate Assessment

7.5.1 Having regard to the nature and scale of the development and its location relative to European sites, 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 European Site No. 002296, or any other European site, in view of the site's Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6 Recommendation

7.6.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I recommend that outline permission is refused for the following reasons and considerations.

Reasons and Considerations

1. The proposed development in conjunction with concurrent proposed development on the adjoining site would constitute undesirable suburban type development in a rural area outside lands zoned for residential development and would therefore be contrary to the Sustainable Rural Housing Guidelines Department of Environment Heritage and Local Government 2005 and to the settlement policies of the Galway County Development Plan 2015-2021. The proposed development would militate against the preservation of the rural environment and would therefore be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied that, when taken in conjunction with the high concentration of waste water treatment units in the area, the development would not contribute to unacceptable increase of nitrate levels in the receiving groundwater and result in an excessive concentration of development served by waste water treatment units in the area. Accordingly, it has not been demonstrated that the effluent which would be generated as a result of the development can be adequately treated and safely disposed of on-site without risk to groundwater quality. The proposed development would, therefore, be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector

25th February 2019