



An
Bord
Pleanála

Inspector's Report ABP-303122-18

Development	Construction of a house, garage, treatment unit and all associated services.
Location	Ballardiggan, Gort, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	18/739
Applicant(s)	James Carey.
Type of Application	Permission.
Planning Authority Decision	Grant Permission subject to conditions.
Type of Appeal	Third Party
Appellant(s)	John Fahy.
Observer(s)	None.
Date of Site Inspection	4 th February 2019.
Inspector	Brid Maxwell

1.0 Site Location and Description

- 1.1. The appeal site is located within the townland of Ballardiggan approximately 4.5km to the south east of Gort in south County Galway in the foothills of the Slieve Aughty Mountain Range. The site, which has a stated area of .558 hectares, is located opposite an established row of six dwellings and is part of two field patterns. Boundary hedgerows and treelines consist of semi mature to mature ash, birch, sitka spruce and hawthorn. There is substantial vegetation within the site with an impressive treeline running NE/SW through the centre of the site. ESB lines and poles traverse the north-western edge of the site.
- 1.2. The appeal site is elevated over the road level and rises to the northeast. Spot levels on the submitted site layout plan indicate a spot level of 39.679 towards the south-western end of site frontage with a spot level of 49.97 at the northern boundary of the site. The site overlooks Ballyturin Lough which is located within approximately 75m to the southwest. The former Kilbeacanty NS, and current local Ballyturin National School is located a short distance to the southwest with a number of dwellings and farm buildings also.
- 1.3. The site lies within the Slieve Aughty Mountains SPA (Site Code 004168) and approximately 1.05km from the Lough Cutra SAC (Site Code 00299) and SPA (Site Code 004056).

2.0 Proposed Development

- 2.1. The application seeks permission for the construction of a dwellinhouse, garage, treatment unit and all associated services. The proposed dwelling is a single storey structure with gable breakfront, set back 20m from the front roadside boundary and with south-westerly orientation set at a finished floor level of 47m. External finishes are to include stone and render. A single storey detached garage is also proposed to the rear of the dwelling.

3.0 Planning Authority Decision

3.1. Decision

By order dated 2nd November 2018 Galway County Council decided to grant permission subject to conditions including the following.

Condition 2. Occupancy Condition.

Condition 3. Windows - powder coated aluminium or timber framed or non-white pvc. Doors of timber/ Nap plaster / natural stone finish. Blue/black roof slates.

Condition 4. Sight distance triangles to be maintained.

Condition 5. Parking space as indicated on site layout map provided immediately adjoining the edge of the margin of the roadway. Space shall be cleared, graded level and surfaced.

Condition 9. Field boundaries shall be retained except for the provision of the site entrance works / sight distance triangles. Lighting within the site attached to the buildings and directed downward and away from treelines and hedgerows.

Landscaping using only native / indigenous deciduous trees and hedging species.

New front boundary shall be indigenous hedgerow or local, unplastered stone which shall not exceed 1m in height viewed from the roadside.

Condition 13. Prior to commencement of development consultation with ESB with regard to electricity lines and poles on site and relocation of same.

Condition 14. Development Contribution €3,281.00 in accordance with the Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Initial planner's report sought additional information to include a bat survey to ascertain the direct indirect impact of the proposed development on bat roosting or foraging.
- Final planner's report recommends permission subject to conditions.

3.2.2. Other Technical Reports

None

3.3. Prescribed Bodies

3.3.1 Submission from Department of Culture Heritage and the Gaeltacht. Notes location within the Slieve Aughty Mountains SPA (Site Code 004168) designated for Hen Harrier and Merlin. Department recommends that existing field boundaries are retained where possible. Native tree and scrub species should be used in landscaping where possible.

3.4. Third Party Observations

3.4.1 Submission from the third-party appellant to the local authority objects to the proposal on grounds of its location directly opposite his property. Opposing entrances would create a pinch point for traffic. Negative impact on privacy.

4.0 Planning History

4.1 No planning history on the appeal site.

- Two recent Board Decisions on Site to the southwest.

249274 Permission granted to Raymond Glynn for construction of dwellinghouse, garage treatment unit and associated services.

247397 Refusal of permission Raymond Glynn for dwellinghouse garage treatment unit and all associated services. Refusal on grounds of negative visual impact and in absence of NIS significance effect on Lough Cutra SAC and Slieve Aughty Mountains SPA cannot be excluded.

- Site to east

234640 Refusal of permission for dwelling, garage, treatment unit and associated services at Drummin on grounds of non-compliance with rural housing policy and negative impact on sensitive landscape of the Slieve Aughty Mountains SPA/

- Site Opposite

04/2313 Permission granted for construction of a new roof from existing pitch of 30 degrees to 40 degrees and to convert attic space to 2 no bedrooms and study area having 3 no dormers to existing house.

5.0 Policy and Context

5.1. Development Plan

5.1.1 The Galway County Development Plan 2015-2021 refers.

- Chapter 2 provides the core Strategy for the County.
- Chapter 3 refers to Urban and Rural Housing.
- Section 3.7 refers to single housing in the countryside with distinction made between urban and rural generated housing and the requirement for sustainable rural housing Section 3.8 identifies rural area types. The site is located within an area designated as Rural Area under Strong Urban Pressure (GTPS) Map RH-1. Objective RH01 refers.

- **Objective RHO 1 - Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure-GTPS)**

It is an objective of the Council to facilitate Rural Housing in the open countryside subject to the following criteria:

1.(a) Those applicants with Rural Links* to the area through long standing existing and immediate family ties seeking to develop their first home on existing family farm holdings. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1.(b) Those applicants who have no family lands but who wish to build their first home within the community in which they have long standing Rural links* and where they have spent a substantial, continuous part of their lives i.e. have grown up in the area, schooled in the area and have immediate family connections in the area e.g. son or daughter of longstanding residents of the area. Consideration shall be given to special circumstances where a landowner has no immediate family and wishes to accommodate a niece or nephew on family lands. Having established a Substantiated Rural Housing Need*, such persons making an application on a site within a 8km radius of their original family home will be accommodated, subject to normal development management criteria and provided the site does not encroach into the Urban Fringe* of the towns of Gort, Loughrea, Athenry or Tuam.

Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1.(c) Those applicants who can satisfy to the Planning Authority that they are functionally dependent on the immediate rural areas in which they are seeking to develop a single house as their principal family residence in the countryside. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1.(d) Where applicants can supply land registry or folio details that demonstrate that the lands on which they are seeking to build their first home, as their permanent residence, in the area have been in family ownership for a period of 20 years or more, their eligibility will be considered. Where this has been established to the satisfaction of the Planning Authority, additional intrinsic links will not have to be demonstrated.

OR

1.(e) In cases where all sites on the family lands are in a designated area, family members will be considered subject to the requirements of the Habitat's Directive and normal planning considerations

2.(a) Those applicants who lived for substantial periods of their lives in the rural area, then moved away and who now wish to return and build their first house as their permanent residence, in this local area. Special consideration will be given to one member of the immediate family of emigrants returning to this local area to live near their immediate family. Documentary evidence shall be submitted to the Planning Authority to illustrate their links to the area in order to justify the proposed development and it will be assessed on a case by case basis.

2.(b) To recognise that exceptional health circumstances, supported by relevant documentation from a registered medical practitioner and disability organisation, may require a person to live in a particular environment or close to family support. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

3. An Enurement condition shall apply for a period of 7 years, after the date that the house is first occupied by the person or persons to whom the enurement clause applies.

***Rural Links:**

For the purpose of the above is 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.

***Substantiated Rural Housing Need:**

Is defined as supportive evidence for a person to live in this particular area and who does not or has not ever owned a house/received planning permission for a single rural house or built a house (except in exceptional circumstances) in the area concerned and has a need for a dwelling for their own permanent occupation. In addition the applicants will also have to demonstrate their rural links as outlined above.

- In terms of landscape sensitivity category Category 1(low)-5 (unique). The site falls within a low sensitivity area Class 2.

5.2. Natural Heritage Designations

5.2.1 The site is located within the Slieve Aughty Mountains SPA (Site Code 004168)

5.2.2 The Lough Cutra SAC (Site Code 000299) and SPA (Site Code 004056) is within approximately 1km to the south west of the site.

5.3. EIA Screening

5.3.1 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

6.1.1 The appeal is submitted by Brendan McGrath and Associates on behalf of John Fahy.

- Proposal taken in conjunction with existing development in the area would constitute an excessive density of suburban type non-essential development in an unserviced area would interfere with rural character and would seriously injure the rural amenities of this area.
- Appropriate assessment carried out by Galway County Council is deficient having regard to location within the Slieve Aughty Mountains SPA.
- Significant in combination effects as a result of proliferation of small scale development. Note decision of Board to refuse permission 234640.
- Site is part of a recently acquired parcel of land most likely bought for housing development. May therefore not qualify under criterion 1a of the development plan

under Objective RHO1 as the site is not part of the family farm. Nor is the applicant functionally dependent on the local area as he works in Shannon (a 50km drive) and therefore does not qualify under 1(c).

- Council assessment does not give sufficient consideration to potential for multiple in combination effects.
- 2015 survey of breeding Hen Harrier in Ireland found a decline in the national population since 2010. Extensive and widespread decline since 2005 (27 pairs) to 2010 (23) and the rate of decline does not appear to have slowed to 2015 (14 pairs) is noted. The available evidence suggests that the status of the hen harrier population in Ireland's SPAs continue to decline. Potential for further development on the land of concern.
- Undesirable precedent of a permission would have negative impact on the integrity of the SPA.

6.2. Applicant Response

6.2.1 The response by Grealish Glynn and Associates responds to the grounds of appeal as follows:

- Objection is unfair and unwarranted.
- Objections outlined in submission to the council related to location opposite the appellants dwelling, concerns with regard to traffic safety and loss of privacy. Appeal does not include any of original concerns.
- Site is located within an area which although within the GTPS has suffered rural decline. The next nearest National school to the east, Derrybrien, was one of the few in the country to be closed in 2016 due to population decline.
- Proposal is opposite an existing cluster of dwellings and will strengthen this cluster. Location on opposite side of the road means it is not ribbon development.
- Location adjacent to cluster means impact on hen harrier habitat can be ruled out.
- Design for a modest three bedroomed bungalow is in accordance with Rural Housing Guidelines on moderate slope of the hill with limited views from public road or surrounding areas.

- Designation within Slieve Aughty SPA does not result in blanket housing restriction.
- Submission from Department indicated no objection subject to field boundary retention and use of native trees and shrubs.
- Screening assessment carried out by the Local Authority concluded that the proposal in conjunction with other developments in the vicinity would not be likely to have a significant effect on European Sites.
- Applicant complies with Policy RH01. Born and grew up across the road. Family have a long tradition of landownership in the area.
- No basis for contention of further development adjacent.
- Site has low risk water protection response of R1 and aquifer is locally important with low vulnerability. Risk to ground water is low.
- Letter from homeowners of adjacent dwellings indicate support for the application.
- Proven family housing need with three children including twins born October 2018.
- Submission from Eire Ecology notes that the habitats on site are not suitable breeding habitats for hen harrier or merlin. Should the Board be concerned it is suggested that a breeding bird survey be carried out as a condition of approval. Should breeding evidence be found construction works will be completed outside the breeding season for these species April to August inclusive.

6.3. **Planning Authority Response**

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

6.4. **Observations**

None

7.0 **Assessment**

7.1 I note that the first party has questioned the motives of the appellant on the basis that initial concerns expressed to the local authority referred to location opposite his

dwelling leading and to potential traffic and privacy issues which were not expressly repeated within the grounds of appeal. I note that the third party engaged an agent at appeal stage who elaborated on the concerns with regard to the principle and details of the development which is in my view a reasonable and indeed commonplace approach. I note that the grounds of appeal raise a number of planning issues and in my view the Board's assessment of the case can be addressed under the following broad headings

- Settlement Strategy
- Visual impact and impact on the amenities of the area
- Wastewater Treatment and Water Supply
- Appropriate Assessment Screening

7.2 Settlement Strategy

7.2.1 I note that the site is located within a rural area under strong urban pressure GTPS in the Galway County Development Plan 2015-2021. The Development Plan policy in such areas is to facilitate 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 refers where the objective is to facilitate rural housing in the open countryside subject to a number of distinct possible criteria. In this Context I consider that the documentation submitted outlining that the applicant was born and currently lives in the family home opposite and has strong local links and is seeking to develop his first family home on the family farm holding 1(a). I note that the applicant, his partner and three children are currently residing in the family home and I consider that the documentation submitted has demonstrated a substantiated rural housing need. Within the grounds of appeal, the agent for the appellant has questioned compliance with 1(a) on the basis that the land was purchased approximately 2 years ago and as the appellant works in Shannon the functional need to live in this area has, it is argued, not been shown. However, I consider that the documentation submitted demonstrates compliance with Rural Housing Objective RH1(a). I note that the assessment of rural links and

the facilitation of rural housing is in the context of case by case analysis of each individual site and the carrying capacity of the area. I conclude therefore that in the event of favourable consideration of the proposed development, an occupancy condition should apply.

7.3 Visual Impact and impact on the amenities of the area.

7.3.1 As regards the visual impact of the development, I note the proposed siting of the dwelling on an elevated slope overlooking Ballyturin Lake. Whilst the application asserts that the existing site boundary trees are to be retained, the site layout plan shows the extent of roadside boundary setback to facilitate the achievement of sightlines. I further note that internally on site the provision of the proposed wastewater treatment unit and soil polishing filter and indeed the proposed siting of the dwelling and garage structures adjacent to the established treeline gives rise to potential for damage to the established trees and possible conflict where an ultimate case for tree removal might be envisaged. In such circumstance the visual impact of the proposed dwelling would be exacerbated. Even in the absence of tree and hedgerow removal I consider that the proposed dwelling by reason of its siting and design would be visually incongruous in this rural landscape. I note that chosen site comprises the more elevated part of the landholding with more open views to Ballyturin lake where the visual impact of construction of a dwelling would be at its most stark. I note that in the context of the established ribbon of dwellings on lower grounds opposite the proposal represents an abrupt insertion particularly when viewed from low lying grounds to the west and southwest.

7.3.2 On the matter of 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 provision of this sightline necessitates removal of established trees hedgerow in conflict with proposed ecological and visual mitigation measures. The proposal would in my view have a significant negative impact on rural amenity.

7.4 Wastewater Treatment and Water Supply

7.4.1 On the issue of wastewater treatment I note that it is proposed to service the site by way of a packaged wastewater treatment system and polishing filter (Mollloy

Environmental Systems Aswaflow Pumped wastewater treatment system and raised polishing filter). I note that site characterisation form indicates that the soil character of gravelly clay loam to 0.3m with subsoil of silt clay with sand cobbles and rare boulders. Water table was encountered at 1.5m below ground level. A T value of 81.95 was recorded indicating that the site is not suitable for the treatment of septic tank waste water by soil percolation. Hence the proposal to provide a packaged system. I note that the P test indicated a value of 67.57. I note that the proposal provides for a substantial 250sq.m raised soil polishing filter which would also have a visual impact on the third-party dwellings opposite.

7.4.2 The EPA Code of Practice, Wastewater Treatment Manuals Treatment Systems for Single Houses, EPA 2000, sets out minimum separation distances between wastewater treatment systems and certain features, including separation distance from other wastewater treatment systems and wells. I note the minimum separation distances for in situ intermittent filters percolation areas as set out and polishing filter which is 30m in relation to Wells / springs¹ (This applies to wells down-gradient or where flow direction is unknown). The proposed development provides for the polishing filter 30m from the well serving the family home of the applicant (also the proposed water supply source in the case of the proposed development). The source of water supply serving the existing dwelling to the west of the family home is not detailed. There is a further well within approximately 40m to the southwest of the proposed soil polishing filter. Based on the site assessment details and in light of the numerous domestic wells in this area I consider that the proposal would be prejudicial to public health. I consider that the issue of water pollution potential and cumulative impact of multiple treatment systems is also a relevant concern in this case. 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 would be prejudicial to public health.

¹ Table 4, Page 19 EPA Wastewater Treatment Manuals Treatment Systems for Single Houses EPA 2000.

7.4.3 In relation to water supply, I note that good practice would dictate the provision of a separate supply by way of bored well for each individual site save where a public water supply is available. In the case of the current application it is proposed to connect to the existing well at the family home and a wayleave agreement is submitted. A chemical analysis was carried out and an Official Public Analysts laboratory report from the Health Service Executive was submitted with the application. Results in terms of water quality are submitted indicating hard water. The level of manganese exceeds the limit for drinking water whereas all other chemical parameters analysed comply with drinking water regulation limits and a manganese removal strategy is outlined. Microbiology analysis was also performed and the report by Medical Microbiology Department, University Hospital Galway. Report notes that water was acceptable with respect to the bacteriological parameters assessed. Well output results indicate that the well delivered 960 litres per hour pumped continuously over 48 hours. I note that the Local Authority raised no concerns with regard to this proposed water supply. As noted above the proposed siting of the soil polishing filter at the limit of the minimum separation distance from the well would clearly result in a pollution risk to this water source.

7.5 Appropriate Assessment Screening

7.5.1 The site is located within the Slieve Aughty Mountains SPA (Site Code 004168) and within 1km of the Lough Cutra SAC (Site Code 00299) and Lough Cutra SPA (Site Code 004056). A further twenty-two European sites fall within 15km of the site location, however having regard to the distance involved and scale of and nature of the development no appropriate assessment issues arise and the potential for impact having regard to the source receptor pathway model can be ruled out.

7.5.2 The feature of interest in the Lough Cutra SAC [Site Code 00299] is the Lesser Horseshoe Bat (*Rhinolophus hipposideros*) [1303] Annex 2 Species. The feature of interest for the Lough Cutra SPA is the Cormorant (*Phalacrocorax carbo*) [A017]. The conservation objective is to maintain or restore favourable conservation condition of the species. The Slieve Aughty Mountains SPA (Site Code 004168) is designated an SPA under the EU Birds Directive, of special conservation interest for the Hen Harrier (*Circus*

cyaneus)[A082] and Merlin (*Falco columbarius*) [A098] The conservation objective (Generic Version 6.0) is to maintain or restore favourable conservation condition of the bird species listed as special conservation interest for the SPA.

7.5.3 I note in relation to the Lough Cutra SAC a bat report carried out by Eire Ecology notes survey work which reported that while examination of trees showed no signs of occupation, both night time detector survey and the static detector surveys revealed several bat species using the fields and in particular the existing treelines for feeding purposes. No observations for Lesser Horseshoe bat were made and a review of previous records reveal no evidence of this species within the locality. The report noted that the conservation objective for the SAC referred to a minimum target of 100 bats using the summer roost and 76 bats using the winter roost. No significant decline in potential foraging habitat within 2.5km of the roost and no significant loss of linear features such as hedgerows treelines and stone walls within 2.5km of the qualifying roost. The site lies 1.05km from the Lough Cultra SAC and c 4.86km from the winter and summer roost sites and is therefore outside of the foraging habitat and linear features buffer. Report concludes that retention of treelines and hedgerows and subject to omission of outdoor lighting the proposed development will have minimal impact on the local bat population. I have noted above my concern with regard to conflicting objectives for the achievement of sightlines and the practicalities of retention of established trees and hedgerows having regard to the proposed siting and layout.

7.5.4 As regards the Lough Cutra SPA, the conservation interest is the Cormorant. Having regard to the source pathway receptor model potential for impact on Cormorant can be ruled out.

7.5.5 In relation to Slieve Aughty Mountains SPA I note the details of the screening document submitted by Eire Ecology in response to the grounds of appeal. The report notes that lands surrounding the site (improved pasture lands within 100m of occupied dwellings) are not suitable for nesting hen harrier, breeding hen harrier or merlin. Consultation with the NPWS local conservation ranger noted the unsuitability of the site for hen harrier and merlin and noted that the closest recorded breeding hen harrier was over 2km away. I note that the submission from the Department of Culture Heritage and the Gaeltacht, to

the Council refers to the location within the Slieve Aughty Mountains SPA and recommends a condition requiring that all field boundaries be retained and native tree and scrub species should be used in landscaping. I have noted my concerns with regard to potential conflict and I question the feasibility of retention of trees and field boundaries.

- 7.5.6 I conclude however that in view of the distance to suitable breeding habitat and having regard to the small scale of the development, the proposed development on its own or in combination with other plans or projects will have no impacts on the integrity of the designated sites identified. 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 Sites : Slieve Aughty Mountains SPA (004168), Lough Cutra SAC (000299) and Lough Cutra SPA (004056) or any other European Site in view of the sites' conservation objectives, and a Stage 2 Appropriate Assessment (and submission of an 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 permission is refused for the following reasons and considerations.

Reasons and Considerations

1. The site of the proposed development is on a steeply elevated and visually prominent location overlooking Ballyturin Lough within a sensitive landscape. It is considered that the proposed development by reason of its siting and design would be dominant and obtrusive, seriously injurious to the rural landscape character and visual amenities of the area, would militate against the preservation of the rural environment and would set a precedent for further similar development in the area. The proposed development 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 proximity to a number of private well water supply sources serving established dwellings in the vicinity and based on the details of the site suitability assessment provided in relation to the site, that the proposed development notwithstanding the use of the proposed proprietary treatment system, would give rise to an unacceptable pollution risk. The proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell

Planning Inspector

5th March 2019