



An  
Bord  
Pleanála

## Inspector's Report ABP 304321-18

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<b>Development</b>	Serviced Dwelling, Garage and wastewater treatment plant.
<b>Location</b>	Lissananny, Kilconly, Tuam, County Galway
<b>Planning Authority</b>	Galway County Council
<b>P. A. Reg. Ref.</b>	19258
<b>Applicant</b>	Sean Cooney
<b>Type of Application</b>	Permission
<b>Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party x Refusal
<b>Appellant</b>	Sean Cooney
<b>Date of Inspection</b>	25 <sup>th</sup> June 2019.
<b>Inspector</b>	Jane Dennehy

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## **1.0 Site Location and Description**

1.1. The site of the proposed development has a stated area of 4033 square metres and is located on lands to the east side of the L2209, a minor road extending northwards from a junction with the R332 Tuam-Ballinrobe Road a short distance to the west side of Kilconly. It is formed from an agricultural land, in the applicant's family ownership, at the rear east side and north side of a bungalow and is accessed from the road via a lane/rural track which traverses agricultural lands in an east west direction. The area is characterised by relatively flat agricultural lands and road frontage residential development.

## **2.0 Proposed Development**

- 2.1. The application lodged with the planning authority indicates proposals for permission for a serviced dwelling with a stated area of 180 square metres and a detached garage with a stated area of sixty square metres along with a private waste water treatment system. According to the written submission it is a 're-application' further to the refusal of permission under P. A. Reg. Ref. 18/1265, in that the applicant does not agree with the reasons for refusal of permission and seeks to address them in the current application.
- 2.2. The site lands are in the ownership of Jacqueline and Kevin Cooney who are the applicant's parents. The submission includes documentation containing details of the applicant's connections with the locality, a flood risk assessment report and a site characterisation form.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated, 18th July, 2019 the planning authority decided to refuse permission based on three reasons:

- Endangerment of public safety by reason of traffic hazard and obstruction of road users due to restriction vision to the south and at the junction with the

public road, and intensification of traffic movements at the public road interfering with free and safe flow of traffic.

- Insufficient information to demonstrate that flood risk can be satisfactorily addressed having regard to location within an indicative flood risk area and unauthorised works at the private lane and junction as a result of which the proposed development is contrary to the section 28 Ministerial Guidelines: “*The Planning System and Flood Risk Management*”, 2009.
- Consolidation and intensification of the unauthorised development in the form of upgrade works to the private road undertaken.

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

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

3.2.2. The planning officer in his report prepared further to review of the technical reports details of which are set out below in section 3.2.3 noted that private road at which the works had been undertaken is an agricultural access road, that the sightlines do not comply with standard DM 20 in the CDP and that the applicant fails to demonstrate housing need in accordance with DM standard 18 (b) of the CDP.

#### **3.2.3. Other Technical Reports**

The report of the Roads and Transportation Department dated 17th April, 2019 is not available but is referred to in the planning officer’s report. The report on the previous unsuccessful application under P. A. Reg. Ref 18/1265, (details of which are under section 4.1 below) is also not available among the application documents on the County Council’s website.

3.2.4. The report of the Tuam Area Office dated 11<sup>th</sup> March, 2019 indicates recommendations for inclusion of conditions relating to maintenance of the road side drainage and, that surface water run off from the development not be permitted to discharge onto the public road.

### **4.0 Planning History**

4.1. According to the planning officer report a prior application by Sean Cooney for Permission for a serviced dwelling and garage at a location stated to be twenty-

seven metres from the application site was refused under P. A. Reg. Ref. 18/1265 in June, 2018. The reasons relate to deficiencies in sightlines, flooding risk and a 'landlocked' site location at the rear of an existing dwelling. There is also a prior grant of permission for an extension to the adjoining dwelling under P. A. Reg. Ref. 03/3787.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. The operative development is the Galway County Development Plan, 2015-2021 according to which the site location is outside the GTPS area in a rural area within a Class 1 Landscape. Demonstration of rural housing need is not required.
- 5.1.2. Section 13.8 and DM standard 20 contains sight distance requirements for access onto National, Regional and Local Roads. There is a requirement for adequate provision for visibility so that drivers emerging from the access can enjoy good visibility of oncoming vehicles, cyclists and pedestrians. Where a new entrance onto a public road is proposed, the planning authority must consider traffic conditions and available sight lines.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. An appeal was received from Mr Cooney on his own behalf on 26<sup>th</sup> April, 2019 attached to which are some photographs with handwritten comments. Mr Cooney includes some observations on details on procedural matters, the technical reports providing for the assessment of the application by the planning officer, roads engineer and chief officer on the basis of which it is claimed that the decision to refuse permission is flawed and is not acceptable.
- 6.1.2. According to the appeal:
  - Mr. Cooney's private road is pre-existing and dates from the mid nineteenth century. As a new access road to the public road the required the sightline distances in the CDP are not applicable to the proposed entrance via a private

road onto a Local Road (L2207). THE DM20 standards apply to a national road or a regional road. There is a lack of sightlines at the junction of the L2207 with the R 332 which is a much busier junction and traffic moves much faster along the R332 and, it has not been improved because DM standard 20 applies to new accesses only.

- The application of DM Standard 20 is an unreasonably high standard for the proposed development and, if the private road was a public road these standards would not be applied. There are several examples of sites served by a public road, (L64452) which is narrower than the private road and in worse condition and there is no reference to sight lines on the R332. Visibility at its junction with the R332 is seriously impaired (P. A. Reg. Refs. 07.3288, 07.1203, 12.587, 12.586, 11,851, 06.3088, 11.852, 05.4983 and 14.902 refer.) The safety concern is addressed by mirrors which have been installed to provide clearer uninterrupted views in both directions. Sight to the edge of the road on both directions at seventy metres at a 2.4m setback is provided.
- The application of DM standard 18 applies to new accesses onto a public road network on a national road outside a 50-60 kph zone or restricted regional road. The private road is a pre-existing road that does not exit onto either such road.
- The recent works referred to in the planner report as unauthorised and in the reasons for refusal of permission is not acceptable. The works involved was a machine scraping work where brambles and overgrowth was cleared, and fresh unbound stone was laid as shown in the attached photographs. No widening took place. These works fall within Class 13, Schedule 2, part 1 of the Planning and Development Regulations, 2001 as amended.

*“The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving. “The width of any such private footpath or paving shall not exceed 3 metres”*

- Refusal of permission on grounds of water discharge onto the public road is not acceptable. Any runoff to the private road to the public road network will have always occurred and would continue to do so. Water does not discharge

to the public road from the private road as demonstrated in a series of flow visualisations. Water is driven to the side and along the leading edge of the private road due to the shape of the public road and there is no standing or surface water on the private road as shown in attached photographs. The public road rises to and falls away from a crest at the junction. The private road rises away at a height of 94.5 cm. There is no way that the private road could flood. Any water discharging to the public road will continue to do so irrespective of any grant of permission for the proposed development.

- The junction with the public road is safe. It is not agreed that traffic movements at the junction would increase jeopardising road safety as is addressed by Jacqueline Cooney in the submission dated 3th March, 2019. As the road has been used for parking for the family home a grant of permission would reduce the number of vehicles using the laneway. The mirrors installed opposite the junction will provide clear uninterrupted view along the road. At present, the applicant uses this private road for parking and the junction.
- The dwelling design follows the guidance in the Design Guidelines for Single Rural Dwelling Houses issued by the county council and the two nearest buildings are similar in shape. Lawns and hedgerow are shown on the site layout indicating a landscaping plan.
- The Tuam Area Office reviewed the application and requests conditions to be imposed on roadside drainage and surface runoff. The view of one County Council Office is therefore contrary to the planning report of the other County Council Office who was deprived from making an informed decision on the application.

## 6.2. Planning Authority Response

There is no submission on file from the planning authority.

## 7.0 Assessment

7.1. The issues considered central to the determination of the decision and considered below are:

To the adequacy of arrangements for access onto the public road (L2207) from the site. Unauthorised development.

Flooding risk

Backland development.

### 7.2. Access onto the public road (L2207) from the site. Unauthorised development.

7.2.1. The site is located at the rear of an existing dwelling in the ownership of and occupied by the applicant's family. This dwelling is single storey and has a setback space at the front which is used for parking by residents, including the applicant's vehicles according to the appeal. As clearly demonstrated in the application and appeal submissions, there is no direct access or frontage onto a public road from the site. Instead the proposed development is to have access onto the adjoining agricultural lane/track (which is in private ownership) from which it is to have access onto the L2207 a third-class public road linking the R332 (Tuam-Balinrobe route) with Milltown to the north east.

7.2.2. Works, that is, the installation of dry gravel have been carried out to the surface of the farm lane between the site frontage and the edge of the L2207. The issue as to investigation of the planning status of the installation of this material or any other alterations that may have been carried out is a matter for the planning authority and is outside the remit of An Bord Pleanála. However, it is apparent that the works carried out to the surface facilitates the provision of access to and from the site of the proposed development.

7.2.3. While it is acknowledged that the entrance /exit from the site is onto a private agricultural lane the contention that the sightline standards in each direction at the intersection with the L2207 are irrelevant due to the private ownership of the agricultural lane is not accepted. The proposed development if permitted, changes the nature traffic on the lane from that related to the established agricultural purposes to traffic generated by a residential development, which, without doubt increases the turning movements onto and off the public road, that is the L2207.



- 7.2.4. Application of relevant standards and requirements to the private agricultural lane's intersection with the public road functions is therefore appropriate given that it is in effect the entrance off the public road to the proposed development. The L2207 serves several individual road frontage dwellings and traffic between Milltown and the R332 and bearing in mind that attainable speeds by traffic on the L2207 are restricted by the alignment of the carriageway provision seventy metres sightline to the edge of the carriageway in each direction is a reasonable requirement.
- 7.2.5. There are no concerns about deficiencies in sightlines in the northerly direction at the intersection of the private agricultural lane with the public road, but it is agreed with the planning authority that sightlines in a southerly direction, (towards the junction with the R332) are deficient and rise to endangerment of public safety by reason of the additional turning movements on and off the carriageway. As pointed out by the planning officer in his report, the applicant would require the consent of a third party to the carrying out of interventions to the road frontage so that the required sightlines could be provided.
- 7.2.6. It is acknowledged that, should the applicant be successful in his application and reside in the proposed dwelling instead of the existing dwelling, the turning movements onto and off the public road would not increase. However, it is not accepted that this scenario justifies positive consideration of the proposed development in that allowance must be made for the longer term, possible additional residents or occupation by a third party at a future date.
- 7.2.7. Conditions and sightlines in each direction at the junction of the L 2207 with the R332, circa five hundred metres to the south are restricted, and there is significant traffic at the junction which is somewhat hazardous. However, it is not considered that the significance of the additional traffic movements at the junction generated by the proposed development would warrant refusal of permission.
- 7.2.8. In this regard it is also agreed with the appellant that the narrow width and poor conditions on the L64452 (which is a minor third-class road to the north circa two kilometres to the west) and at its junction of the R332 are considerably worse than the conditions at the intersection of the L2207 with the R332. The grants of permission referred to in the appeal in this regard have been noted but while the installation of mirrors providing for vision each direction is effective, it is not agreed

that new development reliant on such ameliorative measures either justifies or constitutes a satisfactory standard of development.

- 7.2.9. Given the foregoing, it is considered that the arrangements for access to and from the public road to the proposed development are unsatisfactory.

### **7.3. Flooding risk**

- 7.3.1. With regard to surface water drainage, the information and photographs provided by the application on flow of storm water to and from the public road has been noted. However, it is necessary for it to be established that there are sufficient measures incorporated into the proposed development which would demonstrate that it would not lead to a deterioration in conditions for surface water run-off that would result in increased flooding risk. The planning officer has referred to the works that have been carried out to the agricultural lane as a matter of concern in this regard. (It is noted that the OPW Flood Maps, have been consulted and it is noted that while the site and its immediate environs are not identified as being at flooding risk, locations within the area have been identified.)

- 7.3.2. It is considered that it is necessary for these outstanding issues to be clarified and satisfactorily resolved prior to determination a decision, if favourable consideration is being considered, notwithstanding the recommendation for conditions to be attached in the report of the Tuam Area Office to which the applicant refers in his appeal.

### **7.4. Backland development.**

- 7.4.1. Although the proposed site location is at the rear of an existing dwelling and is dependent on a private agricultural lane for access to and from the public road it is acknowledged that this issue has not been raised in the assessment and decision to refuse permission by the planning authority.
- 7.4.2. Notwithstanding the ownership and occupation of the existing dwelling on the site to the front facing onto the public road (L2207) by the applicant's family, it is considered that the proposed development constitutes substandard backland development and as such this scenario is haphazard, and seriously injures the residential amenities of both the existing and proposed development by reason of dependence on access to the site along the side and rear of the existing dwelling via an agricultural lane. Notwithstanding the relatively high capacity of the landscape to accept development having regard to the landscape category 1 designation, it is considered that

additional residential development, set back from the road frontage and behind road frontage development in combination with and in the context of the existing development would be disorderly, would seriously injure the visual amenities and rural character of the area, and would set undesirable precedent for further similar development. Furthermore, in this regard, although single storey, the proposed development of a dwelling, at 180 square metres in floor area and a detached garage at sixty square metres in floor area is considerable. The proposed development is therefore considered to be unacceptable, haphazard backland development.

- 7.4.3. As the planning authority did not include this matter among the reasons attached to the decision to refuse permission, it may be advisable for the Board to notify the parties of the issue so as to allow for further observations for consideration, prior to the determination of a decision.

#### **7.5. Environmental Impact Assessment Screening.**

- 7.5.1. Having regard to the nature of the proposed development and its location removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### **7.6. Appropriate Assessment Screening.**

- 7.6.1. Having regard to the small-scale nature of the proposed development and, to the location removed from any European sites, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

- 8.1. In view of the forgoing it is recommended that permission be refused based on the reasons and considerations set out in draft form below.

## 9.0 Reasons and Considerations

The proposed development by reason of the site location at the rear of the existing dwelling which faces onto the public road frontage and by reason of reliance on access to and from the public road via a private agricultural lane to the side and rear of the existing road frontage dwelling where sightlines to the south at the intersection with the public road are deficient would constitute substandard backland development which would seriously injure the residential amenities of the existing adjoining property and the visual amenities and rural character of the area; would endanger public safety by reason of traffic by reason of the additional turning movements onto the L2207 where sightlines to the south are deficient and, would set undesirable precedent for similar backland residential development accessed off the public road via agricultural lanes in rural areas. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

**Jane Dennehy**  
**Senior Planning Inspector**  
**9<sup>th</sup> July, 2019.**