



An  
Bord  
Pleanála

## Inspector's Report ABP-304592-19

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<b>Development</b>	Construction of house.
<b>Location</b>	Roscam Td, Galway, Co. Galway.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	1989
<b>Applicant(s)</b>	Mary Harriet Madden
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	James McCarthy Martin J. Fahy
<b>Observer(s)</b>	Sophie Cacciaguidi-Fahy An Taisce – Galway Association
<b>Date of Site Inspection</b>	29 <sup>th</sup> August 2019.
<b>Inspector</b>	Ronan O'Connor

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## 1.0 Site Location and Description

- 1.1. The subject site is a relatively flat agricultural field set along the coastline of Galway Bay, within the townland of Roscam, to the east of Galway City. The site is accessed by a narrow local road and the surrounding area is characterised by large one-off rural dwellings set on individual sites.
- 1.2. There is an agricultural access into the site. The boundary treatment around the site consists of mature trees and hedging. There is an existing dwelling located along the north of the site and open rolling fields to the south towards the coastline.

## 2.0 Proposed Development

- 2.1. The proposal is for the construction of a detached split-level dwelling house, a wastewater treatment system, landscaping works, access road and all associated site works. The proposed development site is approximately 0.68 Ha.
- 2.2. The total floor area of the dwelling house is 567 sq. m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Grant permission. There are no conditions of particular note.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the planning officer reflects the decision of the planning authority. Points of note are as follows:

- The planning history on the site is noted including the recent refusal by ABP.
- Application is similar to that which was refused.
- However additional supporting documentation has been submitted.

- Of note the previous Inspector did not raise any concerns in relation to the principle of development, design, visual impact, archaeology, residential amenity or traffic issues.
- Galway City Council Development Plan includes a specific objective of this site – development shall be restricted to two houses only/reserved for the use of the immediate family members of the landowner.
- Principle of providing a dwelling is acceptable, subject to the applicant being an immediate family member of the landowner.
- Water connections proposals acceptable.
- Not considered the proposal will give risk to groundwater.
- Agree with the conclusions drawn in the NIS.
- In light of the existing topography and vegetation on site, proposed landscaping, proposed ground levels, and the overall design of the dwelling, the proposed development will not be visually prominent in the landscape.
- Not considered that Protected View No. 9 will be impacted upon.
- Not considered that the proposed development will impact on archaeology, subject to conditions.
- Notes that the site is well screened/proposed landscape design considered acceptable.
- Sightlines considered acceptable.
- Recommendation that permission be granted.

### 3.2.2. Other Technical Reports

Environment and Climate Change – No objection subject to conditions.

### 3.3. Prescribed Bodies

#### 3.3.1. None.

### 3.4. Third Party Observations

- 3.4.1. Three no. objections are on file from (1) Dr. Martin Fahey (2) Dr. James McCarthy and (3) Peter Sweetman & Associates. The issues raised in the objections are covered in the Grounds of Appeal, as set out in Section 6.1 of this report.

## 4.0 Planning History

- 4.1.1. There are two recent appeal decisions on this site, that related to two concurrent appeals, each for a dwelling house. These are detailed below.

- 4.1.2. ABP Reference 301019-18 (17/295) - Refuse – Construction of a House – for one reason

1. The site is located within an area identified as a Regionally Important Aquifer-Karstified and is located circa 300 metres from a Karst Spring and 200 metres from the edge of the Galway Bay Complex Special Area of Conservation (site code 00268) and the Inner Galway Bay Special Protection Area (site code 04031). It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in an area which is considered to be a highly sensitive groundwater environment. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development, would, therefore, be prejudicial to public health.

- 4.1.3. ABP Reference 301417-18 (18/44) – Refuse – House – for one reason:

1. The site is located within an area identified as a Regionally Important Aquifer-Karstified and is located circa 300 metres from a Karst Spring and 200 metres from the edge of the Galway Bay Complex Special Area of Conservation (site code 00268) and the Inner Galway Bay Special Protection Area (site code 04031). It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in an area which is

considered to be a highly sensitive groundwater environment. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development, would, therefore, be prejudicial to public health.

4.1.4. ABP reference 301019-18 was for a larger dwelling than ABP Reference 301417-18.

## 5.0 Policy Context

### 5.1. Development Plan

The site is located on lands zoned as Low Density Residential (LDR) where it is an objective “To provide for low-density residential development which will ensure the protection of existing residential amenity.”

- Residential is a permissible use.

Fig 11.32: A specific zoning objective for the site:

Development on each site outlined in red shall be restricted to two houses only, reserved for the use of immediate family members of the land owner.

Policy 2.9 Low Density Residential Areas (LDR)

Protect the character of these areas by ensuring new development has regard to the prevailing pattern, form and density of these areas.

Protect the characteristics of these areas through development standards and guidelines.

#### Protected Views

Section 4.5.3 Views of Special Amenity Value and Interest include the view below as a “panoramic protected view”

V 9- Views towards the sea at Roscam.

Policy 4.5.3. Requires the protection of views and prospects of special amenity value and interest from inappropriate development and requires planting schemes to be limited so as they do not have a detrimental impact on any views.

## Archaeology

The site lies in the proximity to recorded Monuments GA094-072002- Ecclesiastical enclosure, GA094-072004- Round Tower and GA094-072001- Church and GA094-072012/13, GA094-072013.

Policy 8.5- Archaeological Heritage requires the protection of archaeological sites/ remains, requires surveying, recording or excavation during development and where a proposal has the potential to impact on an archaeological heritage shall include an archaeological assessment.

### **5.2. Natural Heritage Designations**

- 5.2.1. The site is located 300m from the edge of the Galway Bay Complex SAC (site code 00268) and the Inner Galway SPA (site code 04031).

### **5.3. EIA Screening**

- 5.3.1. Under Items 10(b)(i) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2018, where more than 500 dwelling units would be constructed, the need for a mandatory EIA arises. The proposal is for the development of a single dwelling house. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

## **6.0 The Appeal**

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

- 6.1.1. 2 no. Third Party Appeals have been submitted from 1. Dr. Martin J. Fahy, Rosshill Road, Roscam, Galway and 2. James McCarthy, 298 Vallee de Vautruchot, 37210 Noizay, France.
- 6.1.2. The Grounds of Appeal are as follows:

#### General

- Current application was not reviewed by Traffic and Transportation, Parks and Recreation, Heritage Officer, NPWS, The Heritage Council, DoCHG or an Taisce.
- Previous application were submitted to the aforementioned bodies and the Heritage Officer recommended refusal and An Taisce raised serious concerns in relation to the original rezoning of the site, impact on archaeology and additional provision of services to facilitate an additional dwelling.
- Application might be invalid due to existing works taking place on site.

### Zoning

- Proposed development does not meet the zoning objective for the site.
- The permission does not stipulate a condition that restricts occupancy to the immediate family members of the legal land owner/This issue was raised by the Inspector in the consideration of the two previous appeals.
- Confusion remains as to the legal ownership of the lands – site is registered with a company of which the applicant is a Director and sole shareholder. In previous applications the applicant declared her legal interest as that of ‘part-owner/Applicant has applied as an Individual rather than on behalf of a company.
- Legal ownership of the land is with the company (Sunmile Ltd)/applicant cannot fulfill the qualifying condition/legally impossible for a company to have immediate family members/Conditions regarding occupancy could be circumvented should the applicant decide to sell the company or by other methods.
- Proposed development does not address a pressing housing need or compelling public interest.
- Rezoning was granted despite Chief Executive opposing rezoning due to proliferation of septic tanks in the proximity to protected ecological sites where water quality is a key factor.
- By approving the proposed development, GCC sets a precedent that will encourage others to acquire agricultural lands and or high amenity areas and lobby to have it rezoned.
- Planning History as described in the planner’s report is incomplete – does not include the rezoning.



- Planning report does not include details of land ownership.

#### Appropriate Assessment

- Site is c200m from 2 no European Protected Sites
- Conclusions of the NIS are in sharp contrast to those made by RPS at the AA Screening Stage of the GDP Material Alterations
- At a minimum the application should be reviewed by the NPWS, given that a NIS has been submitted.
- A full review and assessment of the application by the NPWS is required.
- GCC failed to interrogate the NIS and accepted its content at face value.
- Applicant acknowledge the proximity of the site to the Galway Bay Complex SAC in their various reports.
- Site is located inside the precautionary areas of 11 no. EU protected sites.
- Application must fully comply with the Habitats Directive and relevant CJEU case law.
- NIS assessment is contrary to the intent on the Habitats Directive.
- For example consideration of 'Earth Works' is limited to two general statements/Failed to consider the proposed development will require extensive excavations to a depth of 3m/Other excavations will also be required/Will impact the underlying watercourses – real risk of directly compromising the SAC and SPA .
- Risk of changes or contamination to the groundwater/Poor working practices/leakage/spillages/noise/vibration/runoff have not been considered/No modelling has been carried out/ Equipment has been seen to be leaking hydraulic fluid on the site.
- Cannot be confident beyond all reasonable scientific doubt that the proposed development will not have a significant impact on EU protected sites.
- NIS does not identify all relevant species/protected species/protected habitats.
- Baseline information on which the NIS has relied on is out of date – other up to date scientific data should have been consulted.

- NIS relies on best practice as mitigation.
- Board must adopt the precautionary principle
- Any assessment must take into account data from the EPA National Inspection Plan 2017 which states that *inter alia* 50% of all septic tanks in Ireland are failing/only 5% of tertiary systems are properly installed.
- Impact from the existing houses/from approved development
- No assessment of surface water
- Inconsistencies within the application documents.

### Wastewater

- Two previous applications have been rejected by the Board – (301019, 301417) for reasons relating to wastewater treatment.
- Located in a Regionally Important Aquifer (RKc) 300m down gradient from 1 no. karst spring with a groundwater vulnerability classified as Extreme at the northern boundary of the site and High on the remainder of the site.
- Proposed wastewater treatment system over-relies on a technological solution that may prove to be unreliable in the long-term/may fail.
- Cumulative assessment assumes that the hydrology of all 38 no dwellings is the same – this is not the case.
- Failed to assess the performance of existing wastewater treatment plants – 3 no. septic tanks east of the site are known to have failed during the summer of 2018.
- Contradictory information in relation to the actual location of the 2.9m trail hole and the location of the percolation area.
- Proposed development would result in excessive concentration of developments served by septic tanks/wastewater systems/other dwellings have been permitted/planned.
- Impact of permitted dwellings on aquifer
- Impact of dairy farming/grazing in adjacent and nearby sites/previously on the site itself.

- Site is located 300m from a karst spring/reports failed to assess the impact on same.
- Clear evidence of groundwater from the Roscam karst spring flowing in Galway Bay Complex SAC can be seen during low tides/
- Fail to identify nearby boreholes, shallow inlets, wells
- No groundwater analysis carried out.
- No explanation as to the difference in bedrock depth between this and the previous applications.
- Impact on groundwater

#### Visual Impact/Landscape Impact/Impact on views

- Is located alongside 3 no. protected panoramic views.
- Is within the green network.
- Site would sit in the highest site on the Western end of the Peninsula (see relevant GSI map).
- Dwelling sits directly opposite Roscam Tower at a higher elevation than the tower.
- Strategic Goal 6 of the GDP seeks to protect the Green Network.
- The submitted Landscape and Visual Impact Assessment (VIA) fails to consider that the site lies within the green network.
- Will impact on protected views, including views over the development site.
- Planner erred in his interpretation of panoramic views.
- VIA provides no assessment in relation to the removal of the existing hedgerow.
- Discrepancies and errors within the VIA.
- Provides no evidence of what the actual visual impact will be on the protected views facing east towards Galway Bay.
- Not all views are considered.
- Visual impact of the development.

### Conservation/Archaeology

- Is c100m from 1 no. Protected Structure and recorded monuments.
- Contrary to Policy 8.2 of the Galway City Development Plan 2017-2023, which relates to Built Heritage.
- Of note is the Boards previous decision to refuse a previous application due to the impact on the adjacent protected structure and national monument (232894).
- Development is located 117m from the protected Roscam early ecclesiastical enclosure.
- Development will adversely impact the setting and integrity of the monument.
- Will be the closest dwelling to the Roscam Tower.
- Impact on archaeology as a result of works.
- Impact on the Monastic site – will destroy the visual isolation/ photos provided are poor
- Previous opposition to rezoning was based on protecting the monastic site.
- Very little known about the site.
- Proposal will dominate the Monastery
- Proposals for a further house
- None of the existing houses have any significant visual impact on the Monastic site/much further away/at lower elevations/or screened
- Some probability that these lands were once part of the original Ancient Monastic grounds. Sufficient studies need to be carried out before any approval is given.
- Loss of green spaces/impact on the Galway City Coastal Green Belt.
- Will restrict the possibility of future access to the monastic site.
- Will limit the ability to restore this monument.

### Transport

- Details of the proposed junctions with the existing Rosshill Road should have been settled before granting of planning permission/raises road safety concerns.

- A second application for a dwelling will be sought and will utilise the same entrance.
- Impact on road safety as a result of increased traffic

#### Impact on Amenity

- House should follow the building line
- House is too close to appellants property – should be moved further south,.
- Will overlook property
- Will reduce impacts on views from the appellant's property.

## 6.2. Applicant Response

6.2.1. A response to the two no. appeals has been submitted by the applicant. This is summarised as follows:

#### Zoning

- Proposed dwelling adheres to the zoning objective of the lands.
- Dwelling has been designed to be sympathetic to the surrounds while respecting the existing pattern of development in the Rosshill Area.
- Appeal process is not the correct forum in which to challenge or query the zoning designation of the site.
- The zoning process is not a material consideration in this appeal.
- Proposal is not a generic design – external materials and finishes have been chosen to assimilate into the landscape/design derived from courtyard forms.
- Works on site have been in relation to percolation test holes and archaeological test trenching.

#### Archaeology

- The outer enclosing element of the monument is located c116m to the south-east of the development site boundary/is separated by a pasture field.
- Archaeological Impact Assessment was submitted with the application.

- Dwelling will be located nearly 200m from the boundary of the national monument.
- It is considered that it will have no impact on the setting or impact on the ongoing protection of the monument.
- Archaeological test trenching discovered no archaeological material on the site

#### Impact on Views/Landscape

- Will not impact on views
- A Landscape and Visual Impact Assessment has been submitted which has assessed the proposed development in the context of the surrounding landscape, the protected views over Galway Bay, and the church and tower site.
- Lands surrounding the monument are zoned 'Agriculture and High Amenity' – type of development is severely restricted – unlikely to be developed.
- Landscape Plan identifies an area of new tree planting along the south-western boundary of the site/new areas of hedging to complement and enhance the existing hedgerow along the southern boundary of the application site.
- Landscape and Visual Impact Assessment concluded that the predicted landscape impact is considered low and the overall landscape character of the area will not be affected.
- A Landscape design statement accompanied the application.
- Planner's report raised no concerns or issues in respect of potential impacts on the landscape.
- While trees proposed for entrance may slightly impede views in a short section of road, the same applies to newly planted trees on the adjacent property.
- Protected View (V9) is along two sections of public road to the east and west of the development site, 340m and 400m respectively – applicant has chosen location that is considered 'worst-case' scenario – contended the visual impact will be very limited from Protected Panoramic View V9.
- The protected view is from the public road and not from the north-eastern part of the proposed development site as shown in Exhibit 17 of the appeal.

### Loss of High Amenity Lands

- There is no designation of a 'contiguous coastal green belt' in the Galway City Development Plan.
- There is an identified green network for Galway City – does not relate exclusively to the coast/nor it is contiguous from east to west.
- The application site is not located on or adjacent to the Wild Atlantic Way/this passes within 1km of the site/not clear from the submission how the development of a dwelling house will have any negative impact on the Wild Atlantic Way.

### Environment and Ecology

- Submitted NIS is based on best practice scientific knowledge and has been undertaken in accordance with the precautionary principle as detailed in Article 191 of the Treaty of the Functioning of the European Union.
- No Annex 1 habitats or potential supporting habitats for Qualifying Interest (QI)/Special Conservation Interest (SCI) Species associated with European Sites present at the development site/consequently there is no potential for direct impact on the conservation objectives of any European Site as a result of the proposed development.
- A potential pathway for indirect impact resulting from a deterioration in groundwater quality was identified in relation to Galway Bay Complex SAC and Inner Galway Bay SPA/Considering this pathway a Natura Impact Statement was prepared.
- Measures have been put in place to ensure that the construction and operation of the proposed development does not adversely affect the integrity of European Sites.
- Will have no adverse direct or indirect impact on any European site/there will be no cumulative/in-combination impact on European Sites.

### Hydrological Impact

- A detailed hydrological assessment of the proposed development was submitted with the application.

- A supplementary letter has been submitted with the appeal statement (Appendix 2).

#### Wastewater Management

- Note the previous refusal related to alleged deficiencies with the Site Suitability Assessment.
- Detailed review has been undertaken by the project engineers/submission enclosed in Appendix 3.

### **6.3. Planning Authority Response**

6.3.1. None.

### **6.4. Observations**

6.4.1. Two no. observations have been received in relation to this appeal from (1) An Taisce and (2) Dr. Sophie Cacciaguidi-Fahy

#### An Taisce

- An Taisce were consulted in relation to previous applications (17/295 and 18/44) but not for this application.
- Dr. Higgins, City Heritage Officer, was not consulted – had previously contested development at this location.
- Roscam/Rosshill Townlands acts as a buffer between urban and rural Co. Galway.
- Reiterate Mr. Lumley's previous comments regarding the zoning of the site
- Need for NPWS to review and assess the application which it has not – the likelihood of a significant development impact given the close proximity of the application site to 2 no. EU protected sites.
- Roscam Round Tower Site – Policy 8.2 of CDP requires the Galway CC to ensure new development enhances the character or setting of a protected structure.
- Points made in Dr. Fahey in his appeal appear to be correct



- Request that the Board overturn the decision taken by Galway City Council.

Dr. Sophie Cacciaguidi-Fahy

- Proposal materially contravenes the CDP as the applicant does not meet the required specific zoning objective for the site.
- Granting planning permission to the applicant by executive order contravenes core principles of company law and would unlikely withstand a review.
- Planning Authority did not give proper consideration to the objections raised by Dr. Fahy (and Mr. Peter Sweetman) with regard to (1) the impact of the proposed development on the nearby 2 no. European protected site and (2) groundwater pollution due to the hydrological features of the Peninsula on which the development site sites and the proximity of the Roscam karstic spring, and existing and granted planning numbers of septic tanks.
- Application should have been review by the NPWS, An Taisce, the Heritage Officer, and the NTA for reasons as set out in the appeals.
- Executive planner should have submitted a detailed and reasoned assessment of the application itself in the Planning taking into account the relevant EU Directives and case law particularly in light of (1) the significant earth excavation work required (2) over-reliance on best practice measures (3) failure to apply the precautionary principle (4) previous negative environmental and Natura assessments carried out by RPS at the time of the rezoning of the development site.
- The NIS submitted by the applicant does not consider all the various stages of the project and their respective impact(s) on the protected sites, specifically the one concerning significant amount of earth works.
- The analysis submitted on the cumulative impact of the proposed development is also lacking.
- Zoning for development and the close proximity of previously completed projects do not create a presumption for development.

## 6.5. Further Responses

6.5.1. None.

## 7.0 Assessment

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

- Principle of development
- Wastewater/Surface Water/Water Supply
- Visual Impact/Landscape Impact
- Archaeology
- Residential Amenity
- Transport
- Appropriate Assessment

### 7.2. Principle of Development

7.2.1. The site is zoned as Low Density Residential (LDR) where it is an objective “To provide for low-density residential development which will ensure the protection of existing residential amenity”. A specific zoning objective of the Galway City Council Development Plan states that development shall be restricted to two houses only and reserved for the use of immediate family members of the land owner.

7.2.2. I note that the submissions on file state that the land is in fact owned by a company. The applicant is stated as being ‘part-owner’ of the site and is the same applicant named in previous applications on this site and has been previously accepted by the Board as complying with the zoning objective for the site.

7.2.3. Should the Board be minded to grant, I recommended the inclusion of a condition restricting occupancy to the applicant, which is necessary to ensure compliance with the site specific zoning and prevent speculative development.

### 7.3. Wastewater/Surface Water/Water Supply

#### Waste Water

- 7.3.1. The proposed development includes a connection to the public water mains system and includes a secondary waste water treatment system with soil polishing filter to accommodate 8 persons.
- 7.3.2. GSI Groundwater maps show that the site lies over a groundwater Aquifer Category of 'Regionally Important' (Rk). The northern portion of the site lies within an area with a groundwater vulnerability classification of 'Extreme' but the majority of the site, including the area where the wastewater treatment system is proposed to be located, is located within an area with a vulnerability classification of 'High' representing a GWPR response of R2<sup>1</sup> under the EPA Code of Practice. According to the response matrix, on-site treatment systems are acceptable in such areas subject to normal good practice.
- 7.3.3. No karst features were recorded on the site but a spring is noted on GSI maps approximately 300m to the north of the site.
- 7.3.4. The trial hole assessment submitted by the applicant indicates a trial hole depth of 3m, and it appeared bedrock was encountered at 3m. Bedrock consists of limestone boulders. The soil type encountered was loam to a depth of 0.3m, clay loam to a depth of 0.5m and a mix of siltgravel and coarse sands pockets/lens with cobbles and boulders.
- 7.3.5. The trial hole appeared to be relatively dry at the time of my site visit and the soil appeared to be of the nature described above.
- 7.3.6. The site characterisation form records a T-test value of 28.56. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for use of a septic tank system or secondary treatment system discharging to groundwater.
- 7.3.7. It is proposed to utilise a secondary treatment system in conjunction with a sand polishing filter loaded at 10 litres per sq. m. per day. This will provide tertiary treatment to the effluent prior to discharge. There is at least 2.5m of unsaturated free draining soil beneath the proposed sand filter. A pumped discharge to the sand filter is proposed.
- 7.3.8. A cross-section drawing of the proposed treatment system is provided (Dwg No. PL-02) as well as a site layout plan indicating location of same and setbacks from the proposed dwellinghouse and site boundaries. 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. These distances have been achieved in this instance.

- 7.3.9. The applicant has also submitted a letter from Brenden Slevin & Associates Chartered Engineers (dated 29<sup>th</sup> April 2019) which was submitted with the application, and as part of the response to the appeals. This seeks to respond to the previous Inspector's comments in relation to the previous proposal on this site, specifically in relation to the depth of trial hole required. It was previously stated that a trial hole depth of 3m was required. A trial hole of 1.4m was previously recorded in the site characterisation form submitted as part of the previous applications (ABP Refs 301019-18 and 301417-18). This was considered to be insufficient to ensure that the site was suitable for the system as proposed, given that the potential for groundwater contamination is high where the rock is close to the surface. In summary, the submitted letter states that a 3m trial hole is only required where a septic tank is proposed, which was not the case. The letter states that a secondary treatment system is being used which requires minimum depth of 0.9m below the base of a polishing filter.
- 7.3.10. As per the previous applications, a secondary treatment system is being used which requires minimum depth of 0.9m below the base of a polishing filter, as per Table 8.2 'Sand Filter Requirements' of the COP. This has been exceeded in this instance (there is a 2.5m below the base of the filter). It would appear that bedrock was only encountered at 3m.
- 7.3.11. The applicant has also submitted a Groundwater Protection Analysis Report, which considers the cumulative impact of surrounding domestic dwellings on Nitrate levels. This assumes that there is approximately 35 no. dwellings in the study area, with an increase of 10% as a factor of safety. The methodology is as per Appendix D.2 of the COP. The report concludes that cumulative nitrate concentration levels of 13.99 mg/l NO<sub>3</sub>/Hectare is below the trigger value of 29.71 mg/l NO<sub>3</sub> Ha. I am satisfied with the conclusions of the submitted report and do not consider that the concentration of dwellings would result in groundwater contamination.
- 7.3.12. I note the previous reason for refusal, as relates to the previous concurrent proposals on this site (ABP Refs 301019-18 and 301417-18), referred to the site's

location within an area identified as a Regionally Important Aquifer-Karstified, its location 300 metres from a Karst Spring and 200 metres from the edge of the Galway Bay Complex Special Area of Conservation (site code 00268) and the Inner Galway Bay Special Protection Area (site code 04031) and also referred the cumulative impact of existing development served by septic tanks in the area. The Board was not satisfied that, the effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system.

7.3.13. However, while I note this reason for refusal, it is my view, the key issue to overcome was to demonstrate that the site could satisfactorily accommodate the wastewater treatment proposed, having regard to the provisions of the EPA Code of Practice (COP), and to demonstrate the impact of the cumulative concentration of wastewater treatment systems in the area. I consider that the applicants have done so and have demonstrated compliance with the provisions of the COP, and having regard to the above information provided with the application, I am satisfied that the site is suitable for the wastewater treatment proposed, and that no significant risk of ground or surface water pollution exists, subject to correct installation and adequate maintenance of the proposed treatment system.

7.3.14. Surface Water: Four soakpits are located along the northern boundary of the dwelling, adjacent to the proposed driveway beside the appellants dwelling and two within the site. This was proposed under previous applications and was considered acceptable.

7.3.15. Water: Access to the public water supply would be via an existing 50mm water main along the front of the site. This was proposed under previous applications and was considered acceptable.

#### 7.4. **Visual Impact/Landscape Impact**

7.4.1. The site is located along the coastline to the north of Galway City. There are no specific views protected on the site although, the road leading up to (north) and past the site (west) includes protected "Views and prospects", V9: Views towards the sea at Roscam. The proposed dwelling is located at the upper end of a relatively flat site. The design of the dwelling is a contemporary, flat roof, single storey dwelling with two larger sections interconnected. The grounds of appeal are concerned the

location and design of the dwelling will have a negative visual impact on the surrounding area, would impact negative on protected views.

- 7.4.2. A Visual Impact Assessment (VIA) has been submitted with the application and I have had regard to same. Having regard to the overall design of the dwelling and its location relative to protected views, I do not consider the proposal will have a negative impact on the protected views along the road defined as V9 in the development plan. I note that the proposal is comparable the proposal as set out under Appeal References ABP-301019-18 and 301417-and the visual impact and the impact on landscape has been previously found to be acceptable.

#### **7.5. Residential Amenity**

- 7.5.1. Having regard to the location and design of the proposed dwelling and distance from the closest dwelling to the north, I do not consider the proposed dwelling would have a significant negative impact on the residential amenity of the dwellings in the vicinity.

#### **7.6. Transport**

- 7.6.1. As per the previous applications (Appeal References ABP-301019-18 and 301417-18) there is adequate sightlines of 70m in both directions provided. I do not consider that the proposal would give rise to a material increase in the level of traffic utilising this local road and would not give rise to a traffic hazard.

#### **7.7. Archaeology**

- 7.7.1. The grounds of appeal are concerned that the location of the dwelling will have a negative impact on both the archaeology and the visual impact of the round tower and the graveyard.
- 7.7.2. As noted above, the proposal is very similar in nature that as proposed under Appeal References ABP-301019-18 and 301417-18, and impacts on the ecclesiastical enclosure associated with a round tower, church and graveyard (monuments GA094-072001, GA094-072002, GA094-072003 and GAO09-72004) were considered to be acceptable, subject to conditions.

#### **7.8. Appropriate Assessment (AA)**

- 7.8.1. This section of the report considers the likely significant effects of the proposal on European sites with each of the potential significant effects assessed in respect of

each of the Natura 2000 sites considered to be at risk and the significance of same. I have had regard to the submitted Natura Impact Statement, prepared by McCarthy Keville O'Sullivan Ltd (dated 22/03/2019) and make reference to same below.

- 7.8.2. Section 2.2.2 of the NIS sets out Best Practice Measures and these measures relate to pollution prevention, earth works, waste management, disturbance limited measures, invasive species prevention measures and environmental monitoring.
- 7.8.3. Section 2.3 of the NIS sets out Characteristics of the Existing Environment and describes the habitats and fauna on the site. In relation Habitats, it is stated that the site of the proposed works comprises of a field of Improved Agricultural Grassland (GA1). The field is surrounded by a stone wall categorised as Stone Walls and Other Stone Work (BL1), Treeline (WL2) and Hedgerow (WL1). The NIS notes that there are no watercourses within or adjacent to the proposed development site, and that none of the habitats within or adjacent to the works area correspond to those listed in Annex 1 of the EU Habitats Directive.
- 7.8.4. In relation to fauna, it is stated within the NIS that no evidence of Annex II protected species associated with Galway Bay Complex SAC were recorded within or adjacent to the site boundary. No dedicated bird survey was undertaken. Incidental records of Robin, Blackbird and Chaffinch were made during the site walkover. No species as listed as a Special Conservation Interest were recorded during the site visit or breeding or significant foraging habitat for these species were recorded.

### **The Project and Its Characteristics**

- 7.8.5. See the detailed description of the proposed development in section 2.0 above.

### **The European Sites Likely to be Affected Stage I Screening**

- 7.8.6. Table 3.1 of the NIS lists all European Sites within 15km of the proposed development and assesses which are within the 'Likely Zone of Impact'. There are 12 no. sites in total listed as being within 15km of the proposed site.
- 7.8.7. In determining a zone of influence, I had had regard to the scale and nature of the project and I have had regard to the EPA Appropriate Assessment Mapping Tool<sup>1</sup>. I consider that the only SAC that would be within the zone of influence would be the Galway Bay Complex SAC, which is approximately 300m to the south of the site.

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<sup>1</sup> [www.epa.ie](http://www.epa.ie) accessed 15/01/2019

The next nearest SAC is the Lough Corrib SAC, a distance of approximately 4.6km from the site. The only SPAs within the zone of influence are the Inner Galway Bay SPA (004031) and the Cregganna Marsh SPA (004142), which are a distance of approximately 300m and 3.8km from the site respectively. The next nearest SPA is Lough Corrib SPA, a distance of approximately 7.1km from the site.

7.8.8. I consider then that the zone of influence of the project comprises those three Natura 2000 sites noted above. Other sites are such a distance from the proposed development site that there would not be any significant effects on them as a result of habitat loss and/or fragmentation, impacts to habitat structure, disturbance to species of conservation concern, mortality to species, noise pollution, emissions to air and emissions to water.

7.8.9. These 3 no. sites and their Qualifying Interests/Species of Conservation Interest are listed below:

<b>Site Name (Code)</b>	<b>Distance/Direction</b>	<b>Qualifying Interests/Special Qualifying Interests</b>
Galway Bay Complex SAC (000268)	300m S	<u>Habitats</u> 1140 Mudflats and sandflats not covered by seawater at low tide 1150 Coastal lagoons* 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts



		<p>1310 Salicornia and other annuals colonising mud and sand</p> <p>1330 Atlantic salt meadows (Glauco-Puccinellietalia maritimae)</p> <p>1410 Mediterranean salt meadows (Juncetalia maritimi)</p> <p>3180 Turloughs*</p> <p>5130 Juniperus communis formations on heaths or calcareous grasslands</p> <p>6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites)</p> <p>7210 Calcareous fens with Cladium mariscus and species of the Caricion davallianae*</p> <p>7230 Alkaline fens</p> <p>8240 Limestone pavements*</p> <p><u>Species</u></p> <p>1365 Harbour Seal</p>
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		(Phoca vitulina) 1355 Otter (Lutra lutra)
Inner Galway Bay SPA (004031)	c300m S	<u>Birds</u> A137 Ringed Plover (Charadrius hiaticula) A169 Turnstone (Arenaria interpres) A182 Common Gull (Larus canus) A140 Golden Plover (Pluvialis apricaria) A017 Cormorant (Phalacrocorax carbo) A052 Teal (Anas crecca) A162 Redshank (Tringa totanus) A003 Great Northern Diver (Gavia immer) A142 Lapwing (Vanellus vanellus) A191 Sandwich Tern (Sterna sandvicensis) A179 Black-headed Gull (Chroicocephalus ridibundus) A193 Common Tern (Sterna hirundo) A069 Red-breasted Merganser (Mergus

		serrator) A160 Curlew (Numenius arquata) A050 Wigeon (Anas penelope) A157 Bar-tailed Godwit (Limosa lapponica) A149 Dunlin (Calidris alpina) A028 Grey Heron (Ardea cinerea) A046 Light-bellied Brent Goose (Branta bernicla hrota) A056 Shoveler (Anas clypeata) <u>Habitats</u> Wetlands
Cregganna Marsh SPA (004142)	3.8km SE	<u>Birds</u> A395 Greenland White-fronted Goose (Anser albifrons flavirostris)

7.8.51. In relation to the Cregganna Marsh SPA (004142), I note that the Species of Qualifying Interest associated with this site is the Greenland White-fronted Goose. The Conservation Objective for this Natura 2000 site is ‘to maintain or restore the favourable conservation condition of the Greenland White-fronted Goose. Information on the NPWS website, including the site synopsis, note that the predominant habitats on the site are lowland wet grassland and improved grassland, but areas of limestone pavement and other exposed rock, Hazel (Corylus avellana)

scrub, freshwater marsh, drainage ditches and dry grassland are also represented. The site is of major conservation importance as a feeding site for a nationally important flock of Greenland White-fronted Goose. Information sourced from x, indicates that they increasingly winter in freshwater marshes and wet grassland. The appeal site does not support such habitats and is a significant distance from the Cregganna Marsh SPA (3.8km) and as such, potential likely significant effects on this site can be ruled out, having regard to its Conservation Objective.

- 7.8.52. In relation to Galway Bay Complex SAC (000268), I note that this is approximately 300m from the site at the closest point. The Conservation Objectives relating to the site are to maintain the favourable conservation condition of the Habitats and Species associated with the site. There is a potential pathway by way of groundwater which could have a likely significant effect on the 'Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*' and 'Alkaline fens' habitats. Information the NPWS website states that maintenance of groundwater, surface water flows and water table levels within natural ranges is essential for this wetland habitat. A target for both habitats is to ensure appropriate water quality to support the natural structure and functioning of the habitat. While surface water provides another potential pathway to the site, given the distance to the nearest boundary of the site (approximately 300m), it is unlikely that surface water from the site, either at construction stage or at the operational stage, would have likely significant effects on the site, having regard to its conservation objectives.
- 7.8.53. In relation to Inner Galway Bay SPA (004031), I note that this is approximately 300m south of the site, at the closest point. The conservation objectives for this site are to maintain the favourable conservation condition of the bird species and habitat associated with the site. The development site is within sufficient proximity to the SPA, in my view, to result in potential likely significant effects on the SPA, in view of the site's conservation objectives as relates to bird species, having regard to potential habitat loss and/or fragmentation, impacts to habitat structure, disturbance to species of conservation concern, mortality to species and noise pollution.
- 7.8.54. Having regard to the above, I therefore consider that significant likely effects on the Galway Bay Complex SAC (000268) and the Inner Galway Bay SPA (004031) cannot be rule out, having regard to the sites' conservation objectives, and a Stage 2 Appropriate Assessment is required.

7.8.55. While an NIS was not submitted as part of the more recent concurrent applications for a dwelling on this site (Appeal References ABP-301019-18 and 301417-18), the Board Directions in relation to same note that the Board could not be satisfied that the submission of a NIS was not warranted.

### **Stage 2 – Appropriate Assessment**

7.8.56. As noted above, a Natura Impact Statement (NIS) has been submitted with the application and I have summarised same below.

7.8.57. The NIS considers 12 no. Natura Sites within a 15km range of the site and concludes that all but two of these sites can be excluded from the 'Likely Zone of Impact' due to lack of pathways to the other Natura 2000 sites. The sites that are considered to be within the 'Likely Zone of Impact' are as follows:

- Galway Bay Complex SAC (000268)
- Inner Galway Bay SPA (000431)

7.8.58. Galway Bay Complex SAC was considered to be within the 'Likely Zone of Impact' as, in the absence of best practice design in relation to wastewater treatment there is potential for deterioration in groundwater, resulting in indirect effects on this SAC and potential for negative impacts on the habitats and species of Qualifying Interests.

7.8.59. Inner Galway Complex SPA was considered to be within the 'Likely Zone of Impact', although the reasoning behind its inclusion is not clear from the NIS. It is stated that the potential for surface water run-off to result in deterioration of water quality was considered, but there is no conclusions made in relation to this issue.

7.8.60. Section 4 of the NIS is an Impact Assessment for European Sites. Table 4.1 sets out Pathways for Direct and Indirect Effects on the 2 no. sites that fall within the 'Zone of Impact'. No direct pathways are identified. An indirect pathway in the form of groundwater pollution was identified in the case of Galway Bay Complex SAC (000268) and Galway Bay SPA (004031), but impacts were ruled out having regard to the nature and scale of the project, and having regard best practice construction measures.

7.8.61. Section 4.2 of the NIS considers likely cumulative impacts of the Proposed Development on European Sites, in-combination with other plans and projects. No potential for cumulative and/or in combination pollution, disturbance or habitat loss

effects on any QI of any European Site has been identified with regard to the Proposed Development.

- 7.8.62. Section 5 of the NIS is the concluding statement and is stated that all identified potential pathways for impact are robustly blocked through the use of appropriate design and mitigation measures as set out within the report. It is concluded proposed development, individually or in combination with other plans or projects will not adversely affect the integrity of any European Site.
- 7.8.63. I have a number of concerns in relation to the submitted NIS. These are as follows:
- 7.8.64. There was no dedicated bird survey carried out, which is of concern given the site's proximity to the Inner Galway Bay Complex SPA. A number of bird species were identified as being present at the time of the site visit (Robin, Blackbird and Chaffinch) but no reference is made to which site visit is being referred to (i.e. the site survey of 2016 or the confirmation survey of 2019). As such it is my view that the baseline data, upon which the NIS is based, is flawed.
- 7.8.65. The reasoning behind including the Inner Galway Bay SPA within the 'Zone of Impact' is not clear, although reference is made to surface water run-off. However when considering pathways to the Galway Bay Complex SAC surface water runoff was ruled out as a potential pathway, given the lack of connectivity between the development site and Galway Bay SAC.
- 7.8.66. The NIS identifies potential pathways to the 2 no. Natura Sites considered to be within the 'Zone of Impact' but appears to give consideration to mitigation measures in order to rule out likely significant impacts on these sites, which is contrary to relevant case law on this issue.
- 7.8.67. I consider that the assessment of impacts as set out in Section 4 of the NIS is inadequate. The assessment does not consider in detail the nature of potential construction impacts of the development, nor the nature of operational impacts of the development, on the two no. Natura 2000 sites. The third party appeal submissions, and the observers on the appeal, point to the need for significant groundworks to facilitate the development, and note these have not been considered in the NIS, and that these groundworks have potential to impact on groundwater. I concur with these submissions, and a detailed consideration of these groundworks is required in the NIS. Other potential impacts include the potential release of contaminated water and

other contaminants, which could find a pathway to groundwater, resulting in potential effects (both temporary and long-term) on the Qualifying Interests/Special Conservation Interests of the two Natura 2000 sites. Potential impacts also include potential loss of feeding grounds as well as potential disturbance to birds (both temporary and long-term), from noise, vibration, physical or visual disturbance resulting in potential effects on the Special Conservation Interests of Inner Galway Bay SPA.

#### AA determination – Conclusion

7.8.68. On the basis of the information provided with the application and appeal, and having regard to the deficiencies in the submitted Natura Impact Statement, as described above, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (000431), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting approval/permission.

## **8.0 Recommendation**

8.1. Refuse permission.

## **9.0 Reasons and Considerations**

On the basis of the information provided with the application and appeal, and having regard to the deficiencies in the submitted Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (000431), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting approval/permission.

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Rónán O'Connor  
Planning Inspector

17<sup>th</sup> February 2020

