



An  
Bord  
Pleanála

## Inspector's Report ABP-305234-19

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<b>Development</b>	Construction of a house, garage and tertiary waste water treatment installation.
<b>Location</b>	Knockaunnacarragh, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	19870
<b>Applicant(s)</b>	Aoife Kilbane
<b>Type of Application</b>	Outline permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Aoife Kilbane
<b>Date of Site Inspection</b>	11 <sup>th</sup> October 2019
<b>Inspector</b>	Colin McBride

## **1.0 Site Location and Description**

1.1. The appeal site, which has a stated area of 0.27 hectares, is located in the townland of Knockaunnacarragh in the rural area just west of Galway City and to the north east of Bearna. The appeal site is currently part of the curtilage of an existing detached dwelling. The appeal site is part of the garden to the north of the existing dwelling. The site and existing dwelling is accessed from a vehicular entrance off the public road to the east and a long driveway. The site has established hedgerow boundaries along its northern and western boundary. Adjoining lands are agricultural in nature, however there is a significant level of one-off housing located on each side of the public road in the vicinity of the site.

## **2.0 Proposed Development**

2.1. Outline permission is sought for construction of house, garage, wastewater treatment system and associated site works. The appeal site is taken from the curtilage of an existing two-storey detached dwelling and the site is to be accessed using the existing laneway and vehicular access off the public road as the existing dwelling.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission refused based on three reasons...

1. Having regard to the high water table level on site, in conjunction with the number of septic tanks/wastewater treatment systems in the vicinity of the site and proximity of the site to a designated European site, the Planning Authority consider that the satisfactory treatment and disposal of wastewater arising from the proposed development cannot be guaranteed on site, Therefore, if permitted as proposed, the development would be prejudicial to public health and would pose an unacceptable risk to water quality, which has the potential to have a likely significant effect on the conservation objectives of nearby protected sites for flora and fauna, would materially contravene Objective DS 6 of the Galway County Development Plan 2015-

2021, and therefore, would be contrary to the proper planning and sustainable development of the area.

2. The proposal represents the subdivision of an existing residential site. Having regard to the proposed layout, the orientation and location of the dwelling house to the south, on an elevated area which would overlook the subject dwelling house and private amenity space, it is considered that the proposed development would represent haphazard and disorderly development, would seriously injure the amenities or depreciate the value of property in the vicinity, impact on the residential amenity of the occupants of the proposed dwelling house, set an undesirable precedent for similar developments in the area, and would be contrary to the proper planning and sustainable development of the area.

3. The proposed development is located in a Class 2 rural landscape, at Knockaunnacarragh, within Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure-GTPS), where special planning controls exist, and where housing needs are restricted to those with a Substantiated Rural Housing Need and Rural Links as set out in Objective RHO 1 of the Galway County Development Plan 2015-2021. Having regard to requirements of Objective RHO 1 of the Galway County Development Plan 2015-2021, and in absence of any housing need documentation included with the planning application, it is considered the applicant has not demonstrated long standing local intrinsic rural links to the area and therefore they do not meet the Substantiated Rural Housing Need and Rural Links criteria to build a new house in this rural area. Accordingly to grant the proposed development would contravene materially objective RHO 1 of the Galway County Development Plan 2015-2021 and would be contrary to the Sustainable Rural Housing Guidelines, and therefore would be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning Report (30/07/19): It was deemed the site was unsuitable for a wastewater treatment system, the proposal would have an adverse impact on the residential amenities of the existing dwelling and that the applicant as failed to demonstrate a housing in need in accordance with Development Plan policy.

### **3.3. Prescribed Bodies**

3.3.1 None.

### **3.4. Third Party Observations**

3.4.1 None.

## **4.0 Planning History**

4.1 19/869: Permission granted for retention of (1) existing dwelling house/garage and associated site works on a reduced site area. (2) Construct tertiary waste water treatment installation to service existing dwelling house. Gross floor space of work to be retained: 386.6 sqm.

4.2 01/5268: Permission granted for the construction of an extension to an existing dwelling.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Galway County Development Plan 2015-2021. The site is in an area classified as Rural Housing Zone 1 (Rural Areas Under Strong Urban Pressure-GTPS). Key objectives for this area are...

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

#### Policy RHO 1 - Management of New Single Houses in the Countryside

It is a policy of the Council to facilitate the management of new single houses in the countryside in accordance with the Rural Housing Zones 1, 2, 3 and 4 and to support the sustainable re-use of existing housing stock within the County.

#### Policy RHO 2 - Adherence to the Statutory Guidelines & County Development Plan

It is a policy of the Council to ensure that future housing in rural areas complies with the *Sustainable Rural Housing Guidelines for Planning Authorities 2005* (DOEHLG), the Core/Settlement Strategies for County Galway, Rural Housing Objectives and the Development Management Standards and Guidelines of this plan.

#### 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 (attached).

## 5.2 Guidelines

Department of Housing, Planning, Community and Local Government. Circular Letter PL 2/2017:

The European Commission originally issued an infringement notice against Ireland in 2007 in relation to the “local needs criteria” in the 2005 Guidelines. This infringement notice was subsequently deferred pending the outcome of an

infringement case taken against Belgium, now referred to as the Flemish Decree case and on which the European Court of Justice (ECJ) delivered its Judgement in 2013. In this Judgement, the ECJ ruled that the Flemish Decree constituted an unjustified restriction on fundamental freedoms under the Treaty on the Functioning of the European Union (the EU Treaty), in particular that it breached article 43 of the EU Treaty on the freedom of movement of citizens.

Further to the ECJ Judgement in the Flemish Decree case, the European Commission re-engaged with the Department regarding the 2007 infringement notice and its previously expressed concerns in relation to the “local needs criteria” in the 2005 Guidelines, particularly requirements incorporated in local authority development plans further to these criteria that persons wishing to apply for planning permission for a house in designated rural areas should fulfil a prior minimum residency requirement in the rural area in question or have familial ties to that specific rural area. Requirements that planning applicants have occupational or employment related ties to the rural area in question is not considered problematical in this context as such criteria are non-discriminatory between locals and non-locals.

Planning authorities were advised that the existing 2005 Guidelines remain in place and that pending the conclusion of the two national policy review processes (the Working Group deliberations and the publication of the NPF) and advised otherwise by the Department, they should defer amending their rural housing policy/ local housing need criteria in existing statutory development plans either by way of the cyclical review or variation procedures. This was considered prudent in order to avoid planning authorities adopting different approaches on the matter in the interim.

Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

To ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated.

National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

Sets out guidance on the design, operation and maintenance of on site wastewater treatment systems for single houses.

### **5.3 Natural Heritage Designations**

5.3.1 There are a number of designated sites within 15km of the site...

Galway Bay Complex SAC (000268) 193m from the site.

Lough Corrib SAC (000297) 5.6km from the site.

Connemara Bog Complex SAC (002034) 8km from the site.

Rose Lake and Woods SAC (001312) 12.2km from the site.

Black Head-Poulsallagh Complex SAC (000020) 12.8km from the site.

East Burren Complex SAC (001926) 13.3km from the site.

Moneen Mountain SAC (000054) 13.7km from the site.

Inner Galway SPA (004031) 600m from the site.

Lough Corrib SPA (004042) 5.7km from the site.

Connemara Bog Complex SPA (004181) 11.8km from the site.

Cregganna Marsh SPA (004142) 13.4km from the site.

## 5.4 EIA Screening

5.4.1 Having regard to the nature and scale the development which consists of single house in an unserviced 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 A first party appeal has been lodged by Leahy Planning Ltd on behalf of the applicant, Aoife Kilbane.

- The applicant wishes to return to the location where she has resided for most of her life adjoining her family home.
- The appeal site was formerly within the boundaries of the Bearna Local Area Plan 2007-2017 but is not in the rural area where Objective RHO-1 applies. The applicant is compliant with the criteria outlined under RHO-1 (1(a), (b) and (c), and 2(a). The applicant/appellant has submitted additional details to demonstrate her links to the area.
- The site characterisation including soil suitability tests indicate that the conditions on site are suitable for the operation of a wastewater treatment system in accordance with the EPA Code of Practice.



- An Appropriate Assessment screening report submitted with the application demonstrates that the proposal is likely have no significant effects on any designated Natura 2000 site.
- The proposal is an outline application with no detailed design proposed. It is noted that the proposal would have no adverse impact on the amenities of the adjoining property and that the final design would have regard to the amenities of adjoining property. It is also noted that the Planning Authority gave permission for a subdivision of the curtilage of the existing dwelling under ref no. 19/869.
- There is a social planning gain associated with the proposal in that the applicant will be in close proximity to her family in circumstance care is needed.
- The proposal is in keeping with the pattern of development.

## **6.2. Planning Authority Response**

6.2.1 No response.

## **6.3. Observations**

6.3.1 An observation has been submitted by An Taisce.

- The site is underlain by a groundwater body that is linked to a number of designated sites. The degradation of water quality would be contrary to the Water Framework Directive and have potential adverse impact on the protected sites. It is considered that the screening report included insufficient information to conclude no likely significant effects on designated sites.

## **7.0 Assessment**

7.1. Having inspected the site and examined the associated documents, the following are the relevant issues in this appeal.

Compliance with rural housing policy

Design, scale, visual amenity

Wastewater treatment

Traffic/access

Appropriate Assessment.

7.2. Compliance with rural housing policy:

7.2.1 The appeal site is located in a rural area outside of the defined boundaries of any urban settlement. The appeal site is in an area classified as Rural Housing Zone 1 (Rural Areas Under Strong Urban Pressure-GTPS). With regard to the Sustainable Rural Housing Development Guidelines, the subject site is located in an area designated as 'Area Under Strong Urban Influence'. This is an area where urban generated development is to be directed to areas zoned for new housing in towns and villages. National Policy Objective 19 of the National Planning Framework refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence.

7.2.2 Under 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 a number of criteria (attached). The applicant in this case is originally from the area with the site taken from the curtilage of the family home. The applicant currently lives abroad, but wishes to move home and construct a dwelling adjoining her parents' home. It would appear that based on the criteria (attached) the applicant would be compliant with 1.(a) and 2.(a) of the Rural Housing Objective under the County Development Plan. I would however consider that in this case that although the applicant has links to the area the applicant has no definable social or economic need to live in the open countryside. I would also note that national policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as

this. In this case the applicant does not have a defined social or economic need to live in this area of strong urban influence and the development would be contrary to Objective 19 of the National Planning Framework, would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines.

7.3. Design, scale, visual/adjoining amenity:

7.3.1 The proposal is for a subdivision of the curtilage of an existing dwelling to provide an additional dwelling. It is proposed use the existing access driveway and vehicular access to serve the new dwelling as well as continuing to serve the existing dwelling. The existing dwelling has a sizeable curtilage and it is proposed to dedicate 0.27 hectares of such to new dwelling, which is located to the north of the existing dwelling. I am of the view that there is sufficient space within the curtilage of the existing dwelling to provide for a new dwelling and still retain sufficient open space with the existing dwelling and provide sufficient open space with the new dwelling. The proposal is an outline application with no detailed design provided at this stage. I am of the view that the pattern of development, the size and layout of the site would mean that it is feasible to provide for a new dwelling without having any significant impact on the amenities of the existing dwelling. I would note that in the event of grant of permission any proposed design would be subject to further assessment under a permission consequent on an outline application. In terms of visual amenities, the appeal site is located well away from the public road due to it being access through and existing long laneway/driveway. I would consider that subject to an appropriate design at permission consequent at outline stage that the proposal is likely to have a satisfactory impact in relation to visual amenity.

7.4. Wastewater Treatment:

7.4.1 The proposal entails the installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was encountered at a depth of 0.7m (depth to bedrock) from the top of the trial hole (0.8m deep). The percolation tests result for P tests for shall soil/subsoils and/or water table, indicate percolation values that are within the standards that would be considered acceptable for the operation

of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).

7.4.2 The test results indicate that the water table level is high at this location and there is significant amount existing dwellings serviced by individual wastewater treatment systems at this location. The proposal would give rise to the provision of another such system at a location where underlying conditions are not ideal. I would consider that the proposed development would give rise to a proliferation of wastewater treatment systems at a location where the water table level is at a high level and the proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

7.5 Traffic/access:

7.5.1 The proposal is to use an existing vehicular access and driveway off the public road. I would consider that the existing access arrangement is of a sufficient standard to deal with the additional traffic likely to be generated by the proposed development and that the proposal would be satisfactory in the context of traffic safety and convenience.

7.6 Appropriate Assessment:

7.6.1 Appropriate Assessment (AA) considers whether the plan or project in combination with other projects and plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures necessary to avoid, reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the

proposed development alone or in combination with other plans and projects would not adversely affect the integrity of a European site in view of the site's conservation objectives. Guidance on appropriate assessment is set out in the European Commission's Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission 2002) and in the Department of the Environments' Appropriate Assessment of Plans and Projects Ireland, Guidance for Planning Authorities (December 2009, revised February 2010).

7.6.2 A screening report was submitted, which identified all designated site with 15k of the appeal site....

Galway Bay Complex SAC (000268) 193m from the site.

Lough Corrib SAC (000297) 5.6km from the site.

Connemara Bog Complex SAC (002034) 8km from the site.

Rose Lake and Woods SAC (001312) 12.2km from the site.

Black Head-Poulsallagh Complex SAC (000020) 12.8km from the site.

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Connemara Bog Complex SPA (004181) 11.8km from the site.

Cregganna Marsh SPA (004142) 13.4km from the site.

The report outlines the conservation objectives and qualifying interests of each. It was concluded that there is insufficient connection between the appeal site and designated sites, by virtue of distance or the lack of adjacent watercourses and that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on a European site. The two nearest sites are the Galway Bay Complex SAC (000268) 193m from the site and Inner Galway SPA (004031) 600m from the site. The Galway Bay Complex SAC is characterised by qualifying interest such as mudflats and sandflats, coastal lagoons,

large shallow inlets and bays etc, and I do not consider there is a direct source pathway receptor between the appeal site and the designated site. In the case of the Inner Galway SPA (004031) the qualifying interests are all bird species. I am also satisfied that there would be no connection between the appeal site and the designated site or its qualifying interests. In the case of the other designated sites such are remote from the appeal site with no source pathway receptors between them. I am satisfied that sufficient information has been provided in the screening report to conclude that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on a European site and in this case a Stage 2 Appropriate Assessment is not required.

## **8.0 Recommendation**

8.1. I recommend refusal based on the following reasons.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site within an area under urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy to “facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area...having regard to the viability of smaller towns and rural settlements”, it is considered that the applicant has not demonstrated an economic or social need to live in this rural area in accordance with national policy. The proposed development, in the absence of any definable or demonstrable need for the house, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the Ministerial Guidelines and be contrary to national policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development entail the provision of a dwelling to be serviced by an individual wastewater treatment system at an unserved rural location. The proposal would give rise to the provision of another such system at a location where underlying conditions are not ideal with a high water table level. The proposed development would give rise to a proliferation of wastewater treatment systems at a location where the water table level is at a high level and would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Planning Inspector

04<sup>th</sup> December 2019