



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305995-19

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<b>Development</b>	Construction of house and wastewater treatment system.
<b>Location</b>	Fotish, Crossmolina, Ballina, Co Mayo
<b>Planning Authority</b>	Mayo County Council
<b>Planning Authority Reg. Ref.</b>	19435
<b>Applicant(s)</b>	Mark Reynolds.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Mark Reynolds.
<b>Observer(s)</b>	John Coyne.
<b>Date of Site Inspection</b>	7 <sup>th</sup> February 2022.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

- 1.1. This appeal relates to a site of .727 hectares located in the townland of Fotish, Crossmolina in north Co Mayo. The appeal site abuts a local road circa 1km north of Crossmolina Village Centre. The site comprises part of a larger field pattern and occupies an elevated position circa 500m west of the Deel River. The surrounding area is predominantly pastoral agricultural land with a significant amount of sporadic one-off housing.
- 1.2. Access to the site is via a local road which meets the R315 circa 170m to the south. The speed limit 80kph applies and the roadway is unmarked in the vicinity of the site. Forward visibility is limited by the vertical alignment of the road to the south and the horizontal alignment to the north. There are a number of existing residential properties in the vicinity of the site including two detached dwellings to the north. The original hedgerow roadside boundary has been removed and a post and wire fence provided along the set back boundary with an agricultural gateway type entrance located towards the northern end of the site frontage.

## 2.0 Proposed Development

- 2.1. The application involves permission for the construction of a dwellinghouse and wastewater treatment system with soil polishing filter including all other ancillary site works and services. The proposed dwelling is dormer in style with a floor area of 196 sq.m. and is to be set back circa 35m from the existing front roadside boundary.

## 3.0 Planning Authority Decision

### 3.1. Decision

Following an extension of the period for consideration of the application by three months Mayo County Council by order dated 29<sup>th</sup> October 2019 decided to refuse permission for the following reasons:

1. *It is the policy of the Mayo County Development Plan 2014-2020 “to support the sustainable development of the countryside and rural villages in the*

*County” (P-06). This policy is considered reasonable. The proposed development for a dwelling in a rural area in close proximity to the settlement of Crossmolina, would contravene the above policy and would further blur the distinction between the settlement and surrounding rural hinterland.*

*Furthermore, the proposed development, taken in conjunction with existing development in the area, would constitute an excessive density of suburban type dwellings in a rural area, which would militate against the preservation of the rural environment. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

2. *It is considered that the proposed development would exacerbate an excessive concentration of development dependent on on-site disposal of foul effluent in an area, that taken in conjunction with the level of existing development in the vicinity, therefore would result in a pollution risk and would be prejudicial to public health.”*

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

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

Planner’s report notes five previous refusals on the site (in various configurations). As Development Plan Policy has not changed significantly the fundamental reasons for refusal remain valid. Refusal recommended as per subsequent decision.

#### **3.2.2. Other Technical Reports**

Architects report – No objection subject to residency restrictions. New front boundary in native stone. 10 semi-mature deciduous trees minimum girth 30cms and native hedgerow boundaries to be planted.

### **3.3. Prescribed Bodies**

An Taisce Submission notes extensive planning refusal history by An Bord Pleanála. No justification for any favourable new consideration on this application.

### 3.4. Third Party Observations

Submission from John Coyne, Fotish, Crossmolina. Notes that this is the sixth application on this site and three previous refusals by An Bord Pleanála. The application does not address the pertinent issues and is contrary to policies which seek to address climate change. Land is zoned for agricultural purposes and is not development land. Proposal does not overcome previous reasons for refusal.

## 4.0 Planning History

4.1 There is an extensive planning history on the site or variation thereof including the following:

### **Mayo Co Council Reg Ref 17/637 ABP 300007-17**

Mark Reynolds was refused permission by the Board on 16<sup>th</sup> March 2018 for a dwellinghouse and wastewater treatment system with polishing filter including all other ancillary site works and services. The reason for refusal was stated as follows:

*“It is a policy of the current Mayo County Development Plan “to support the sustainable development of the countryside and rural villages in the County” (P-06). This policy is considered reasonable. The proposed development for a suburban style dwelling in a rural area in close proximity to the settlement of Crossmolina, would contravene the above policy and would further blur the distinction between the settlement and surrounding rural hinterland. Furthermore, the proposed development, taken in conjunction with existing development in the area, would constitute an excessive density of suburban-type dwellings in a rural area, which would militate against the preservation of the rural environment. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

*2. It is considered that the proposed development would exacerbate an excessive concentration of development dependent on on-site disposal of foul effluent in an area that is identified by the Environmental Protection Agency as being at high risk from domestic wastewater pollution. The proposed development, taken in*

*conjunction with the level of existing development in the vicinity, would, therefore, result in a risk pollution and would be prejudicial to public health.”*

**Mayo County Council Reg. Ref: 13/301 (PL16.242438)**

Mark Reynolds was refused permission by the Board on 20th November 2013 for a dwelling, garage and septic tank. The reason for refusal stated as follows: “Having regard to the pattern of development in the area where the density of housing has blurred the boundary between the settlement of Crossmolina and the surrounding rural hinterland, the nature, height and scale of the proposed dormer dwelling and the proposed removal of a significant part of the roadside hedgerow and boundary wall in order to obtain adequate sight distances, it is considered that, notwithstanding the site’s location in a Structurally Weak Rural Area, as set out in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, the proposed development would further erode the character of this rural area, would seriously injure the visual amenities of the area and would set an undesirable precedent for other similar developments in the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**Mayo County Council Reg. Ref: 14/510 (PL16.244455)**

Mark Reynolds was refused permission by the Board on 16th June 2015 for a dwelling house and septic tank. The reason for refusal related to the issue of suburbanisation as above.

**Mayo County Council Reg. Ref: 16/881**

Permission refused for a dwelling for similar reason to the above and for reasons relating to the absence of an Appropriate Assessment of the proposed development.

**Mayo County Council Reg. Ref: 17/464**

Permission was again refused by the Council for the same reasons.

**Mayo County Council Reg Ref 11/520**

Permission granted for a dwelling house, garage and septic tank on adjacent site to the north.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1 The Mayo County Development Plan 2014-2020 is the operative development plan.

The site falls within a structurally weak rural area. The Objective RH-01 is “to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG). Map 1 Core Strategy Conceptual Map and the Development Guidance Document of this plan.”

It is an objective of the Council RH02 “to require rural housing to be designed in accordance with the Design Guidelines for Rural Housing (Mayo County Council). Consideration will be given to minor deviations from the guidelines where it can be demonstrated that the deviation will not have an adverse visual impact on the landscape or on local residential amenity in the Area.”

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

The River Moy SAC (Site Code 002298) is approximately 320m north of the site and 470m to the east.

### **5.3. EIA Screening**

The proposed development while of a class is substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a single new dwelling and associated site works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

## **6.0 The Appeal**

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

The first party appeal submitted by Mark Reynolds is summarised as follows:

- The boundary of the town cannot be blurred by a single dwelling on a large site. There have been several other permissions granted surrounding Crossmolina demonstrating an inconsistency in the decision of the Council.
- Site is within a rural area under weak urban influence however even if the application were an area under strong urban influence the application would meet the requirements of the Mayo County Development Plan.
- The proposal is neither ribbon development nor is there a concentration of septic tanks.
- Detailed EPA report demonstrates suitable site conditions. Wastewater treatment unit to be installed at a location miles from any watercourse.
- First party has been farming this land for a number of years and it is intended as setting to home. Screening is proposed.
- No other lands are available. Family home is 0.5miles away. Applicant aims to establish home in proximity to aging parents.
- Noting the number of previous applications have been granted by Mayo County Council but refused by An Bord Pleanála following third party appeal, the concern is that the refusal is not based on application merit or precedence.
- Appeal is accompanied by letter from local GP certifying that the applicant is providing necessary support to ailing parents.
- Letter from Solicitor confirms that the applicant resides with his parents at Church Road, Crossmolina and the property at Fotish owned by the applicant is without buildings.

## 6.2. Planning Authority Response

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

### 6.3. Observations

6.3.1 Following a Judicial Review in respect of an error in the notification of date of lodgement of the appeal and against the subsequent invalidation by the Board of an observation submission by Order of the High Court Mr Justice Meehan made an order allowing Mr Coyle, Fotish Crossmolina to make a submission to the Board within 28 days of the date of perfected order 10<sup>th</sup> May 2021. The resulting submission of Mr Coyle is summarised as follows:

- Noting numerous applications on the site it is noted that the failure to remove site notices has hindered third parties in terms of notification of new applications.
- Development proposals on these lands dating back to 2005 are outlined. Despite reassurances from Council officials that the site was agricultural land permission was granted in 2011.
- Land was part of Abbeytown House Estate and burdens and notice of burdens attached to ensure that it would not be divided, or sub divided, let or sublet...
- Significant acts of destruction were carried out in the late 1980s when trees felled and vegetation on the site also removed prior to lodgement of this application.
- Applicant's housing need is questioned, and one-off housing policy overhaul required.
- Conclusions of the Board over previous decisions remain valid.
- Decisions of the local authority highlighted in the appeal serve to demonstrate inconsistency with the Board's decision with respect to rural housing.
- Applicant states that he is farming the land yet appears to be unaware of watercourse at the southern boundary of the field.
- Abbeytown lands of which the field is part come under the influence of the SAC and river Deel to the east. Fotish river borders the field to the south and travels easterly to the Deel River and to the north Toreen river. Area is vulnerable to flooding.
- Speculative sporadic one off houses are unsustainable.
- Significant personal toll of repeated applications.
- Request the Board to uphold the decision to refuse.



## 6.4. Further Responses

6.4.1 In the context of the timelapse in submission of the appeal and in the interest of natural justice the observer's submission was cross circulated to the parties and responses were received from An Taisce and from the applicant summarised as follows:

6.4.2 Submission from An Taisce:

- Concur with the decision of Mayo County Council to refuse permission.
- Application has failed to address the previous reasons for refusal and same development plan policies and objectives apply.
- Proposed development would be contrary to the proper planning and sustainable development of the area. The Board to uphold the decision of Mayo County Council to refuse permission.

6.4.3 Response submission of the applicant.

- Land was purchased following favourable pre-planning process.
- Current application is for a single dwelling and the remainder of the field will be used for agricultural purposes.
- Reference to Abbeystown House and Estate is unclear.
- Observer's submission raises concerns with regard to works predating the applicant's ownership of the site.
- Landscaping proposed to encourage biodiversity as part of sustainable agricultural approach.
- Applicant sought to engage with the observer to reach agreement regarding favourable design proposal.
- Site is elevated and not at flood risk.
- AA screening report carried out found no issues.

- Land purchased in good faith with the intention of constructing a family home. Applicant is now working locally as a maintenance fitter for Kaefer at Bellanaboy Gas Terminal Co Mayo.
- Applicant is taking part in the Results Based Environment Agri Pilot Programme REAP where part of the land is dedicated to re-wilding and wildlife preservation.

6.4.4 Further submission by Mr John Coyle, observer, reiterates objections outlined in previous submissions. Proposal represents an unsustainable pattern of development. Refusal is also warranted based on flood risk and climate change context. Road safety issues remain.

## 7.0 Assessment

7.1 I have noted the submissions of the observer regarding the repeated applications on this site, difficulties in terms of notification and evident toll and cost arising from the desire to participate in the planning process. In any case a valid application has been made on the site and it is therefore appropriate to assess the proposed development on its merit. As regards issues raised by the observer regarding burden attaching to these lands, as they formerly formed part of the Abbeytown Estate, I have no information on this matter. In this regard I would refer the parties to Section 34 (13) of the Planning and Development Act 2000, as amended as follows: “A person shall not be entitled solely by reason of a permission under this section to carry out a development.”

7.2 As outlined in the submissions of the parties there is an extensive history of planning refusal on this site and the proposal represents the applicant’s sixth attempt to secure permission for a dwelling at this location. The most recent application ABP300007-17 (Mayo Co Co Reg Ref P17/637) was refused by the Board on 16<sup>th</sup> March 2018 for two reasons regarding suburbanisation and excessive density within the rural area and secondly on the grounds of excessive concentration of effluent treatment systems. These reasons also formed the basis for the decision of Mayo County Council to refuse the current appeal case and therefore it is appropriate to

focus attention on these matters. The issue of appropriate assessment also needs to be addressed. I consider that the proposal should be assessed under the following broad headings.

- Rural housing policy, suburbanisation and the impact on rural amenity.
- Servicing Wastewater Treatment and Traffic Safety
- Appropriate Assessment

### **7.3 Rural Housing Policy, Suburbanisation and Impact on Rural Amenity**

7.3.1 Mayo County Council core strategy and settlement strategy is set out within Chapter 1 of the Mayo County Development Plan 2010-2016. The site is located in an area designated as a structurally weak rural area. The Objective RH-01 is “to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities 2005 (DoEHLG). Map 1 Core Strategy Conceptual Map and the Development Guidance Document of this plan. In terms of housing in rural areas, it is recognised that there is a tradition of dispersed settlement patterns in the county and the development plan does not require the establishment of any particular housing need to construct a dwelling at this location.

7.3.2 Policy Objective 19 of the National Planning Framework seeks to ensure that, in providing for the development of rural housing, a distinction is made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere. In rural areas under urban influence, 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

7.3.3 The Board’s previously refused permission on this site for the following reason:  
*“It is a policy of the current Mayo County Development Plan “to support the sustainable development of the countryside and rural villages in the County” (P-06).*

*This policy is considered reasonable. The proposed development for a suburban style dwelling in a rural area in close proximity to the settlement of Crossmolina, would contravene the above policy and would further blur the distinction between the settlement and surrounding rural hinterland. Furthermore, the proposed development, taken in conjunction with existing development in the area, would constitute an excessive density of suburban-type dwellings in a rural area, which would militate against the preservation of the rural environment. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

7.3.4 The pressure for one off housing development is clearly evident in terms of the site history and planning and development history in the locality. I note that the first party references other permissions granted by the local authority in the area which further demonstrate this pressure for on off housing development. I consider that the basis for refusal regarding suburbanisation and excessive density of development remains valid and there is no basis for an alternative decision in this case. The Board has consistently determined that the development in this area is such that the density of housing has blurred the boundary between the settlement of Crossmolina and the surrounding rural hinterland. A grant of permission would not comply with Policy Objective 19 of the National Planning Framework, would undermine rural housing policy and would be contrary to the proper planning and sustainable development of the area.

#### **7.4 Servicing - Wastewater Treatment and Traffic Safety**

7.4.1 The Council's second reason for refusal was as follows:

*"It is considered that the proposed development would exacerbate an excessive concentration of development dependent on on-site disposal of foul effluent in an area that is identified by the Environmental Protection Agency as being at high risk from domestic wastewater pollution. The proposed development, taken in conjunction with the level of existing development in the vicinity, would, therefore, result in a risk pollution and would be prejudicial to public health."*

7.4.2 As regards site suitability for effluent treatment I note that the site suitability assessment report outlines that in the trial hole excavated to 2.9m neither bedrock nor water table were encountered. The soil is described as a sandy silt / clay topsoil with sandy silt blocky layer in the .2m to .6m horizon with a granular sandy gravel from .6m to base of trial hole. A T value of 3.89 was determined. It is proposed to install a packaged wastewater treatment plant and soil polishing filter. I consider that whilst technically the site may meet the requirements of the EPA Wastewater Treatment Manual the application has not overcome the previous reason for refusal regarding the excessive concentration of treatment systems. On this basis the proposal would be prejudicial to public health.

7.4.3 I note that the third-party observer has raised the matter of traffic safety arising from restricted sightline visibility. While the restricted sightline visibility due to the vertical and horizontal alignment of the road is noted and it was also raised as an issue by the reporting Inspector in respect of most recent application ABP30007-17, it was not included by the Board as reason for refusal.

7.4.4 As regards submissions of the observer regarding flooding, having regard to the location of the appeal site is on an elevated part of the landholding it is not considered that the proposed development would be at flood risk.

## **7.5 Appropriate Assessment**

7.5.1 The River Moy SAC (site code: 002298) is approximately 320m north of the site and 470m to the east. Lough Conn and Lough Cullin SPA (site code: 004228) is approximately 2.1km to the south-east and Bellacorick Bog Complex SAC (site code: 001922) is 5.1km to the west.

7.5.2. Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. The physical distance from the appeal site to the nearest European sites is such that any impact from the hazard source will be well diminished along the pathways in question by the time it reaches the receptor. Having regard to the nature of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European sites, no

Appropriate Assessment issues arise and it is not considered that the development would 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 I recommend that permission be refused for the reasons stated in the attached schedule.

## **Reasons and Considerations**

It is a policy of the current Mayo County Development Plan “to support the sustainable development of the countryside and rural villages in the County” (P-06). This policy is considered reasonable. The proposed development for a suburban style dwelling in a rural area in close proximity to the settlement of Crossmolina, would contravene the above policy and would further blur the distinction between the settlement and surrounding rural hinterland. Furthermore, the proposed development, taken in conjunction with existing development in the area, would constitute an excessive density of suburban-type dwellings in a rural area, which would militate against the preservation of the rural environment. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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 the area. The proposed development, would, therefore, be prejudicial to public health.

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Bríd Maxwell  
Planning Inspector

17<sup>th</sup> February 2022