



An
Bord
Pleanála

Inspector's Report

ABP-306584-20

Development	House, septic tank/treatment plant and all associated site works.
Location	An Chluain (Cloon) , Claregalway, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	191751
Applicant(s)	Ronan Fleming & Ines Thiele
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First party
Appellant(s)	Ronan Fleming & Ines Thiele
Observer(s)	(1) Patrick O'Halloran. (2) Malachy O'Halloran.
Date of Site Inspection	06 th May 2020
Inspector	Colin McBride

1.0 Site Location and Description

1.1 The appeal site, which has a stated area of 0.83 hectares, is located in the townland of Cloon approximately 10km to the north east of Galway City centre. The appeal site is located off the the L62131-0 which is a relatively short section of road that has a junction with the Cloon Road approximately 180m to the south east. The L62131-0 has a width of approximately 4m and serves a number of dwellings and farm buildings. To the south of the site the L62131-0 changes in terms of surface condition and width from a 4m wide tarmac surface to a narrower unsurfaced roadway approximately 3m in width. This transition occurs just beyond the last existing dwelling off the L62131-0. This site is located approximately 120 north of where there is a change in road conditions. The site is a field defined by existing boundary hedgerow.

2.0 Proposed Development

2.1 Permission is sought for a dwelling house, new septic tank/treatment plant with percolation area and associated site works. The dwelling is a two-storey dwelling with a floor area of 274sqm and a ridge height of 5.8m. The dwelling features a pitched roof with external finishes of painted render, natural stone and blue/black natural slate with a single-storey section of the dwelling having monopitch roof with a metal profiled roof finish.

3.0 Planning Authority Decision

3.1 Decision

Permission refused based on one reasons...

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the minor local road (in extremely poor condition) directly serving the site which is substandard in width and alignment and where visibility at the proposed

site entrance of the is seriously substandard to the south east. Furthermore, it is considered that the proposed development would contribute to a pattern of unsustainable housing development along the local road in a rural area lacking sufficient infrastructure provision, which would militate against the preservation of the rural environment, and lead to demands for the uneconomic provision of further services and community facilities and unsustainable travel patterns to access such services and facilities. The proposed development would, therefore if permitted, be contrary to the proper planning and sustainable development of the area.

3.2 **Planning Authority Reports**

3.2.1 Planning Reports

Planning report (08/01/20): The carrying capacity and alignment of the public road serving the site was determined to be deficient. Permission was refused based on the reason outlined above.

3.2.2 Other Technical Reports

Area Engineer (10/12/19): The road abutting the site has not been included in annual road works funding for 2019-2021. Conditions recommended regarding setback and specification along the road frontage of the site and surface water drainage.

3.3 **Prescribed Bodies**

None

3.4 **Third Party Observations**

3.4.1 A submission was received from...

Patrick O'Halloran, Cloon, Claregalway, Co. Galway.

The issues raised can be summarised as follows...

- Ribbon development, substandard access in width, alignment and surface, access road is not a public road, adverse visual impact.

4.0 Planning History

4.1 No planning history on site.

4.2 98/2318: Permission granted for a dwellinghouse, domestic garage and septic tank on a site to the south west of the appeal site.

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 National 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**

Sites within 15km radius of the site.

Ross Lake and Woods SAC.

Lough Corrib SAC

Galway Bay Complex SAC

Inner Galway Bay SPA

Lough Corrib SPA

Cregganna Marsh SPA

5.4 **EIA Screening**

5.4.1 Having regard to the nature and scale the development which consists of a 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 Ronan Fleming & Ines Thiele, Cregcarragh, Claregalway, Co. Galway, H91 Y9Y0. The grounds of appeal are as follows...

- The appellants note that the appeal site is served by a section of roadway that is public road (L62131-0) and is taken in charge by the Council. It is noted that funds have been allocated in the past to surface this section of roadway and despite such not occurring it is unreasonable to refuse permission on the basis that the road has not been upgraded or maintained adequately by the Council.

- The appeal indicates that roads report submitted with the appeal indicates that the section of roadway serving the site is not heavily trafficked and the applicants indicates that it is sufficient in width to cater for traffic. The appellants note that the works proposed would improve the alignment of the road and that issues regarding setback, entrance layout and surface water drainage can be dealt with by way of condition if deemed necessary.
- The appellants indicate and repeat strongly that the section of roadway adjoining the site is a public road and under the charge of the Council. The appellants indicate that there are funds available to upgrade and maintain the section of roadway adjoining the site and that they have offered to provide funds themselves to this end. In this regard the proposal would not be premature pending upgrade of the roadway.
- It is noted that the planning history of area shows permission was granted for a dwelling in 1998 under ref no. 98/2318 and that since this period the level of traffic using the roadway to access lands served by it has reduced (reduced levels of activity on bog lands served by the roadway).
- It is noted that there has been a dwelling on site and such is indicated on historic maps.
- The appellants indicate that the proposal would not constitute ribbon development as defined under the County development plan and that there is an existing cluster of dwellings at this location with the proposal being a continuation of such.
- The appellants indicate that the proposal would not constitute unsustainable development as the appellants complies with development plan settlement policy under Objective RHO1. The appellants notes that existing dwellings off the public road at this location relate to a number of families and that the proposal is a continuation of such with the applicants meeting the criteria for a dwelling at this location.
- The appellants note that the visual impact of the proposal would be satisfactory and with a significant level of existing trees and vegetation on site and that such are to be retained. It is also noted that the dwelling design is in

keeping with Galway County Council's Design Guidelines for Single Rural Houses.

- The applicants submitted a flood report with the application and there are no flooding issues concerning the appeal site.

6.2 Planning Authority Response

No response.

6.3 Observations

6.3.1 An observation has been submitted by Patrick O'Halloran, Cloon, Claregalway, Co. Galway.

- The site is within the GTPS and an Area of Strong Urban Influence. The applicant have not demonstrated a special need to live in the countryside.
- The observation notes that Sustainable Rural Housing Guidelines and that insufficient justification exists to permit the applicants a rural dwelling outside of an established settlement.
- The site is lacking services and would require significant excavation works to provide a water supply.
- The road serving the site floods in part and there have been flood incidents on part of the site.
- The proposal would give rise to an unsustainable pattern of development.
- Construction traffic would cause damage to existing walls serving dwellings along the road.

6.3.2 An observation has been submitted by Malachy O'Halloran, Cloon, Claregalway, Co. Galway.

- The road is inadequate, has not been taken in charge by the Council and is not of a standard that would be taken in charge.

- The site is lacking services and would require significant excavation works to provide a water supply.
- The road way serving the site floods in part and there have been flood incidents on part of the site.
- The proposal would give rise to an unsustainable pattern of development.
- Construction traffic would cause damage to existing walls serving dwellings along the road.

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 applicants (Ronan Fleming) in this case is originally from the area with the site located a short distance from his family home (located at the junction of the L062131-0 and the Cloon Road). The applicants currently rent a dwelling in Claregalway and work in Galway City. It would appear that based on the criteria (attached) the applicant would be compliant with 1.(b) 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 amenity:

7.3.1 The appeal site is located on a site that is neither elevated or at a prominent location. It is located off a lower category county road and on a section of road itself that currently serves agricultural and bog land and is not highly visible or prominent in the surrounding area. The appeal site has existing trees and hedgerow, which is to be retained and will aid integration of the dwelling at this location. The design of the dwelling itself is of a reasonable standard and has regard to design of the Galway County Council Design Guidelines for Single Rural Housing. I would consider that the design and scale of the dwelling would be satisfactory in the context of visual amenities.

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 not encountered within the 2.3m deep trial hole. The percolation tests result for T tests for deep 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 drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).

7.5 Traffic/access:

7.5.1 The reason for refusal noted that the proposed development would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the minor local road (in extremely poor condition) directly serving the site which is substandard in width and alignment and where visibility at the proposed site entrance of the is seriously substandard to the south east.

7.5.2 The appellants' note that the section of road adjacent the site is part of the public road (the L62131-0) and has been taken in charge by the Council. The observers note the contrary and that the public road ends short of the site and that the section of roadway serving the site is substandard. The L62131-0 is a relatively short section of road than has a junction with the Cloon Road approximately 180m to the south east. The L62131-0 has a width of approximately 4m and serves a number of dwellings and farm buildings. To the south of the site the L62131-0 changes in terms of surface condition and width from a 4m wide tarmac surface to a narrower unsurfaced roadway approximately 3m in width. This transition occurs just beyond the last existing dwelling off the L62131-0. This site is located approximately 120 north of where there is a change in road conditions. On the matter of whether the section of roadway serving the site is a public road or in charge by the Council, it is noted in the Planning report that such is the case and was taken in charge in July

2019. It is notable the observers indicate that the section of roadway adjoining the appeal site has not been taken in charge and is inadequate in condition and alignment to cater for the proposed development.

7.5.3 There appears to be a difference in opinion regarding the status of the section of roadway adjacent to the site. Based on the information on files and the Planning Report I would accept that the section of roadway immediately adjoining the site is classified as a public road and that such is confirmed by the Council in the documents associated with this application. Notwithstanding such the section of existing roadway between the appeal site and the nearest dwelling to the south is of poor condition in terms of surface, is narrow, does not facilitate two way traffic and is poor in alignment. This section of roadway serves agricultural and bog lands. The appellants' notes that there was a dwelling on site and such is indicated on historical maps. It would appear that this dwelling is long gone and I saw no evidence of its existence or any remains of such on site at the time of the inspection. I would consider that the existing section of roadway serving the site is substandard in terms of condition, width and alignment and at present is a roadway designed to service agricultural lands. The proposal for a new dwelling is inappropriate as it would generate additional traffic and set a precedent for further housing development. The issue of whether the road is taken in charge/a public road is immaterial. The construction of a dwelling on this section of roadway creates a demand for additional services and upgrade of the road that does not currently exist regardless of its status as a public road or not.

7.5.4 The existing road serving the site is substandard in width and alignment and would generate additional traffic with potential conflict between such additional traffic and existing agricultural traffic using the road. I would consider that the proposed development would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the minor local road (in extremely poor condition) directly serving the site which is substandard in width and alignment. Furthermore, it is considered that the proposed development would contribute to a pattern of unsustainable housing development along the local road in

a rural area lacking sufficient infrastructure provision, which would militate against the preservation of the rural environment, and lead to demands for the uneconomic provision of further services and community facilities and unsustainable travel patterns to access such services and facilities. The proposed development would, therefore if permitted, be contrary to the proper planning and sustainable development of the area.

7.6 Appropriate Assessment:

7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed 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 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 existing road serving the site is substandard in width and alignment and would generate additional traffic with potential conflict between such additional traffic and existing agricultural traffic using the road. I would consider that the proposed development would endanger public safety by reason of traffic hazard due to the additional traffic movements that would be generated onto the minor local road (in extremely poor condition) directly serving the site which is substandard in width and alignment. Furthermore, it is considered that the proposed development would contribute to a pattern of unsustainable housing development along the local road in a rural area lacking sufficient infrastructure provision, which would militate against the preservation of the rural environment, and lead to demands for the uneconomic provision of further services and community facilities and unsustainable travel patterns to access such services and facilities. The proposed development would, therefore if permitted, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Planning Inspector

18th May 2020