



An  
Bord  
Pleanála

## Inspector's Report ABP306796-20

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<b>Development</b>	Construction of dwelling, garage and proprietary effluent treatment system.
<b>Location</b>	Newline Road, Gweesalia, Ballina, County Mayo.
<b>Planning Authority</b>	Mayo County Council.
<b>Planning Authority Reg. Ref.</b>	19/790.
<b>Applicant</b>	Owen Ginty.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellant</b>	Susan Clarke.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	23 <sup>rd</sup> June, 2020.
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP306796-20 relates to a third party appeal against the decision of Mayo County Council to grant planning permission for the construction of a dwellinghouse, garage and proprietary wastewater treatment system together with associated works at a rural site outside the village of Gweesalia in West Mayo. The grounds of appeal argue that a genuine rural housing need has not been demonstrated in this instance, the proposal would impact on the visual amenities of the area and could also give rise to pollution on the basis of the site's proximity to Natura 2000 sites and the inherent unsuitability of the site to accommodate a wastewater treatment system.

## 2.0 Site Location and Description

- 2.1. The appeal site is located approximately 3 kilometres south-west of the small village of Gweesalia in North-West Mayo. Gweesalia is located approximately 15 kilometres south-east of Belmullet and 12 kilometres south-west of the village of Bangor Erris in North-West Mayo.
- 2.2. The site is located off a third-class road running south-westward from the village towards the coastal area near Blacksod Bay.
- 2.3. The subject site comprises of a rectangular area of land located within a larger field in a rural area characterised by some scattered one-off housing and ribbon development. The area is predominantly agricultural and rural in nature. There are expansive views across the site towards the north and north-west including views towards the Belmullet Peninsula at Blacksod Bay.
- 2.4. The site itself is relatively level incorporating a slight downward slope northwards from the roadside. A drainage ditch runs along the front boundary of the site adjacent to a low stone wall which is covered perennial vegetation. A similar low drystone wall covered in vegetation runs along the south-eastern boundary of the site with a low post and wire fence on top. The site itself comprises of grassland with intermittent clusters of rushes which are most dominant near the roadside boundary. The wider landscape is generally exposed with little or no vegetation. The site has a road

frontage of approximately 60 metres and a depth of approximately 120 metres. The stated area of the site is 0.5851ha.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought for the construction of a large dwellinghouse set out as a cluster of contiguous elements around a courtyard to the rear (north) of the configured building. Most of the living area is set out at ground floor level. However, the main structure facing south-westwards towards the access road incorporates a second-floor element within the roof profile providing additional sleeping accommodation. The building accommodates a gross floor area of 372 square metres with 284 square metres at ground floor level and 84 square metres at first floor level. The building rises to a maximum height of just over 6.26 metres. The main ground floor elements of the proposal rise to a height of just less than 5 metres. The building incorporates a series of angled pitched roofs. It appears from the site layout that the single storey element on the south-eastern side of the structure is to provide a separate granny flat accommodation in the form of a bedroom, kitchenette and living area, this is to accommodate a family member with specialised medical needs. The dwelling ostensibly incorporates a nap plaster finish.
- 3.2. A separate single storey garage is to be located to the south-east of the main dwellinghouse adjacent to the boundary. A proprietary wastewater treatment system is to be located to the rear of the dwellinghouse. Proposed vehicular access is located centrally along the roadside boundary. The dwelling is to be served by the public mains in terms of water supply.

### **4.0 Planning Authority's Decision**

#### **4.1. Decision**

- 4.1.1. Mayo County Council issued notification to grant planning permission for the proposed development subject to 15 conditions.

## 4.2. Documentation submitted with the Planning Application

- 4.2.1. The planning application was accompanied by a completed planning application form together with drawings, public notices, statutory fee etc. The planning application form indicates that the applicant is the owner of the subject site.
- 4.2.2. Also submitted with the application is a declaration by the applicant stating that the proposed development is intended for occupancy by the applicant and his family.
- 4.2.3. A site characterisation form submitted indicates that the site is located in an area where the groundwater protection response is R<sup>1</sup>. The aquifer category is characterised as poor and the aquifer vulnerability is characterised as moderate. The trial hole indicated that the water table was 1.2 metres below ground level. A T value of 14 and a P value of c.12 was recorded in the percolation tests carried out on site.

## 4.3. Additional Information Request

- 4.3.1. On 28<sup>th</sup> November, 2019 Mayo County Council requested additional information in relation to the following:
  - The submission of an assessment under Article 6 of the EU Habitats Directive (NIS).
  - A section of the site from the south-west to the north-east showing existing and proposed levels.
  - A contextual elevation of the proposed development when viewed from the road to the north of the site which is identified as a scenic route/scenic view in the Mayo County Development Plan.
- 4.3.2. Further information was submitted on 13<sup>th</sup> January, 2020.

### Natura Impact Statement

- 4.3.3. The NIS sets out details of the proposed development as well as an overview of the Appropriate Assessment process. Section 3 of the report sets out an ecological impact assessment providing a description of the proposed development and a description of the Natura 2000 sites in the vicinity together with their Conservation Objectives.

4.3.4. The assessment of likely effects is set out in Section 4 of the NIS. The impact is assessed in terms of:

- Habitat loss.
- Fragmentation.
- Disturbance.
- Species Impact.
- Water Quality.
- Hydrological Effects.
- Visual Impacts.
- Cumulative Effects.

4.3.5. The only potential impact identified relates to water quality where construction activity has the potential to increase run-off into nearby drains. Mitigation measures are set out to address this issue. It concludes that a small number of potential impacts during the construction phase have been highlighted. However, these impacts are very unlikely to be significant and can be minimised with the incorporation of the mitigation measures set out above.

4.3.6. Also submitted is Drawing EJSA9 showing a cross-section through the site and a photomontage showing the proposed house in the context of the surrounding landscape.

#### 4.4. **Final Assessment**

4.4.1. The planning report notes the contents of the EIS and concludes that the proposed development by itself or in combination with other development in the vicinity would not be likely to have a significant effect on the European site. The contextual elevation and photomontage submitted by way of further information was also noted. This information clearly indicates that the proposal will integrate into the landscape and is therefore considered acceptable.

4.4.2. A report from the Environment Section of Mayo County Council dated 4<sup>th</sup> February, 2020 (the Board will note that this report was prepared subsequent to the planner's

report referred to above). This report notes that there were a number of deficiencies in the Natura Impact Statement and the site suitability assessment submitted.

- 4.4.3. Notwithstanding the concerns raised by the Environmental Section planning permission was granted for the proposed development on 6<sup>th</sup> February, 2020.

## 5.0 Planning History

There appears to be no planning history associated with the subject site. Details of two applications in the wider area are referred to on page 29 of the NIS submitted.

## 6.0 Grounds of Appeal

- 6.1. The decision of Mayo County Council to issue notification to grant planning permission was the subject of a third-party appeal on behalf of Susan Clarke a resident living in a dwellinghouse directly opposite the subject site. The grounds of appeal set out details of the site location and description as well as a description of the proposed development. It is argued that the proposal at 372 square metres constitutes a substantial dwelling. The grounds of appeal also note the natural heritage designations located within the wider area.
- 6.2. Section 6 sets out the main concerns in respect of the proposed development and these are set out below.
- It is acknowledged that the appeal site is located in a designated structurally weak area. It is stated that the applicant recently purchased the property and became the registered owner in April, 2018. It is suggested that the lands which form part of a larger landholding have little or no agricultural value. It is noted that the applicant or his wife is not native to the area and do not appear to have any close family ties to the area. It is suggested that the applicant may be providing speculative residential development at this location. It is also suggested that the area does not appear to have suffered from sustained population loss since 1951.
  - Reference is made to Section 2.3.4 which states that in areas along the sea estuaries and shorelines only planning permission for replacement housing,

extensions or where a farmer has no other land will development be permitted.

- The development is located adjacent to an area which is a designated scenic route. Furthermore, the proposed development is not considered an infill development instead it represents a new development on the opposite side of the road of the established linear groupings of cottages. In this regard the development would create an undesirable precedent.
- It is also argued that the subject site is elevated above the surrounding main road network and is located in an area of high scenic amenity which has extensive views of Broadhaven Bay and the Belmullet Peninsula. Much of the development along the access road constitutes established traditional development as opposed to new build houses.
- Reference is made to Objective VP-01 which seeks to preserve and protect views and prospects of the landscape from scenic routes. Coupled with this it is argued that the proposed dwellinghouse is of an inappropriate size, mass and scale with the proposed house incorporating a gross floor area of 370 square metres together with an additional garage of 72 square metres. It is also proposed to remove a stone wall and hedgerow along the frontage of the site in order to improve sightlines. Notwithstanding efforts to break up the design of the development, it is still considered that the proposal is out of character with the surrounding pattern of development in the immediate area. It is further considered that the landscaping plan proposed is wholly out of character with the area.
- The grounds of appeal also suggest that the site is unsuitable for the safe disposal of foul effluent. It is argued that the site suitability assessment underestimates the extent or rushes present on the appeal site. It is suggested that most of the lands in the area are reclaimed from blanket peats and as such the soils are generally wet and boggy. Also, concerns are expressed that there is insufficient percolation depth above groundwater level to attenuate the effluent properly. It is also noted that there are open drains in the vicinity that provide direct pathways to nearby European sites.



For these reasons it is considered that the proposed development would pose an unacceptable risk to groundwater and surface water.

- The fact that there is an open drain running along the front of the site and there is an open drain running along the rear of the lands which discharge directly into Blacksod Bay constitutes a real and significant threat to surrounding Natura 2000 sites. Natura 2000 sites are located a mere 500 metres from the north-west of the appeal site. Concerns are expressed that groundwater was encountered in the trial hole excavated on site.
- Furthermore, it is stated that the NIS submitted with the application has a number of shortcomings and these include the failure to consider cumulative effects arising from the proposed development. The concerns raised in the internal report prepared by the Environmental Section of Mayo County Council are also referred to in the grounds of appeal. On this basis it is not possible to reasonably rule out the potential for significant effects on European sites in the area.
- The grounds of appeal also suggest that the proposal is contrary to many of the policies and objectives contained in the current County Development Plan. It is argued that the proposal contravenes many policy statements in relation to:
  - Policies in respect of settlement and settlement hierarchy.
  - Rural Housing Guidelines.
  - Water Quality.
  - Scenic Amenity Policies.
  - Landscape Protection Policies.
  - Housing Design Criteria.

Finally, the grounds of appeal suggest that the proposal would create an undesirable precedent for similar type development. It is stated that in the last three years the Board has granted planning permission only once for a rural dwelling in County Mayo.

## 7.0 Appeal Responses

7.1. It appears that Mayo County Council have not submitted a response to the grounds of appeal.

### 7.2. Applicant's Response to the Grounds of Appeal

- 7.2.1. With regard to the applicant's tie with the area it is stated that the applicant was born and raised in Aughness, North Ballycroy approximately 3 miles away from the proposed development. It is stated that the applicant went to the local school in Ballycroy and the secondary school in Belmullet. The applicant bought the lands in question and plans to use the lands to accommodate a dwelling and to facilitate sheep farming. The applicant's family are Irish speaking and the two children currently go to school in Belmullet. The applicant's daughter currently suffers from cystic fibrosis. The applicant and his family are currently renting accommodation. The applicant's daughter has medical needs and thus meets the criteria set out in the development plan in relation to rural housing need (as per Section 2.3.1.3 of the said Plan). The applicant's daughter is currently on the waiting list for a lung transplant. The applicant needs to be in a place with clean air and the subject site is ideally suited to meet the applicant's needs. Details of medical evidence to support the application is set out and attached to the grounds of appeal.
- 7.2.2. The suggestion that the house is speculative in nature is refuted and it is stated that the applicant is willing to enter into an occupancy clause in accordance with the provisions of Section 47 of the Planning and Development Act.
- 7.2.3. It is also noted that applicant is proposing to build within a structurally weak area where permanent residential development (both urban and rural generated) will be accommodated. Details are also provided which shows that the area has experienced a persistent population decline. The applicant has a large family consisting of 8 person who will be able to support local schools and create work for local businesses in the area.
- 7.2.4. It is not accepted that the proposed development will in any way adversely impact on the sensitive and scenic rural landscape. The proposed development is located on a lower elevation than the houses surrounding it and does not break the skyline. Furthermore, it is argued that the proposal is fully in accordance with Mayo County

Council's Rural Design Guidelines. The design of the house is broken down deliberately into several smaller forms rather than one large house in order to reduce its volume and to reflect the scale, form and proportioning of older traditional vernacular architecture.

- 7.2.5. Contrary to what is stated in the grounds of appeal, Mayo County Council have granted planning permission for a number of developments in the vicinity. The grounds of appeal point out that a number of dwellinghouses have been granted planning permission by Mayo County Council in the immediate area over the previous 12 years. Furthermore, it is argued that the proposed development does not constitute ribbon development as it does to contribute to five houses within 250 metres of road frontage as defined in the development plan.
- 7.2.6. With regard to the size, mass and scale of the development, the development design has to a large extent been dictated by the medical necessity associated with the requirements of the family. The self-contained section of the house is specifically designed to cater for the daughter's medical condition.
- 7.2.7. With regard to visual impact, it is noted that the County Development Plan considers that rural dwellinghouses in Policy Area 1 and Policy Area 2 have a low potential to create adverse impacts on the existing landscape character. The landscaping proposal will also help mitigate the visual impact and is fully in accordance with Mayo County Council's Rural House Design Guidelines.
- 7.2.8. With regard to the suitability of the site for the disposal of foul effluent, notwithstanding what is stated in the grounds of appeal, the proposed effluent treatment plant is located on silty sandy clay with a brownish/reddish colour and is not characteristic of any peaty type soil. The P and T tests clearly indicate that the soil in question has suitable percolation qualities. The proprietary wastewater treatment system proposed requires only 0.9 metres of free draining soil and there is c.1.2 metres of free draining soil available on site. The trial hole was left open for over a year and this explains the presence of water in the bottom of the hole.
- 7.2.9. With regard to appropriate assessment, the application was the subject of a Natura Impact Statement which raised no concerns in relation to the proposal. Specifically relating to the issues raised in the grounds of appeal, it is stated that the drains in the vicinity are located approximately 100 metres from the development site. Any

roadside hedge removal relates to non-native invasive species and that the removal of hedgerows and the replacement with post and rail fencing will have no impact on the integrity of neighbouring Natura 2000 sites. It is also stated that rushes are very much confined to the front part of the site and are not in great evidence to the rear of the site.

7.2.10. The response to the grounds of appeal go on to highlight numerous policy statements contained in the development plan which would support the provision of a house at this location and specific reference is made to economic development strategy. Reference is also made to various policy statements which seek to ensure the viability of rural communities and various policy statements which seek to facilitate people with medical conditions in terms of providing housing in rural areas. It is also suggested that the proposal is not at variance with policy statements and objectives in relation to protecting visual amenity.

7.2.11. Various documentation relating to the applicant's personal circumstances are contained in Appendix A of the response to the grounds of appeal.

### **7.3. New Notices**

7.3.1. The Board determined that new notices were required specifically referring to the fact that an NIS was submitted with the application.

7.3.2. The Applicant published new notices on 02/06/2020, inviting further submissions on foot of the public notices.

7.3.3. A further submission was received by the Board on behalf of the appellants from Mc Ginty Planning and Development Consultants. It is summarised below.

7.3.4. It is argued that the requirement of new notices questions the validity of the application. A more prudent course of action would be to invalidate the application and request a new application.

7.3.5. It is stated that subsequent to the appeal being lodged, extensive site improvement works have been undertaken involving a tractor and a digger on site. The works it is argued sought to remove rushes and improve drainage.

- 7.3.6. Concerns are re-iterated with regard to the accuracy and sufficiency of the information submitted in the NIS. These inadequacies are highlighted in the original grounds of appeal.
- 7.3.7. Concerns are expressed that the Board, in seeking a re-advertisement, maybe pre-disposed towards granting planning permission for the proposal and this, it is argued would be unfair.

## **8.0 Development Plan Provision**

- 8.1. The site is governed by the policies and provisions contained in the Mayo County Development Plan 2014 – 2020.
- 8.2. The subject site is located in a structurally weak area.
- 8.3. Policy P01 states that it is the policy of the Council to ensure the sustainable development of the linked hub and key towns in the county and to manage development outside these towns in a way that ensures the viability of rural communities while ensuring environmental protection through the implementation of the objectives and development guidance document of this Plan.
- 8.4. P06 states that it is the policy of the Council to support the sustainable development of the countryside and rural villages in the county.
- 8.5. In relation to rural housing, policy RH01 states it is an objective of the Council to ensure that future housing in rural areas complies with the Sustainable Rural Housing Guidelines for Planning Authorities (Map 1 Core Strategy Conceptual Map) and the Development Guidance document of this Plan.
- 8.6. RH02 states that it is an objective of the Council to require rural housing to be designed in accordance with Design Guidelines for Rural Housing (Mayo County Council). Consideration will be given to minor deviations from these guidelines where it can be demonstrated that the deviation will not have an adverse visual impact on the landscape or on the local residential amenity of the area.
- 8.7. In terms of landscape protection, LP01 states that it is an objective of the Council through the landscape appraisal of County Mayo to recognise and facilitate appropriate development in a manner that has regard to the character and sensitivity of the landscape and to ensure that development will not have a disproportionate

effect on the existing or future character of the landscape in terms of location, design and visual prominence. The subject site is located in Landscape Policy Area 1.

- 8.8. Rural dwellings are considered to have a medium to low potential to impact on the landscape sensitivity of Policy Area 1. The subject site is located within the vicinity of a designated scenic view.
- 8.9. Volume 2 of the development plan sets out details for residential development in rural areas. Section 2.3.1.3 states that persons who have exceptional health circumstances and require them to live in a particular environment or close to family support will qualify for rural development under rural areas of strong urban influence.
- 8.10. In areas classified as 'structurally weak areas', permanent residential development (urban and rural generated) will be accommodated. In particular special consideration will be given to the provision of housing in rural areas that have sustained population loss since 1951 subject to good planning practice.
- 8.11. It is the objective of the Council to recognise the distinctive traditional patterns that have evolved in coastal areas of the county in the form of small clusters such as *Clahan's* and linear groupings and to strengthen such patterns to appropriately scaled infill development subject to good planning practice in matters such as site location, drainage and design requirements. In such cases the Planning Authority shall distinguish between infill development within the areas that have a tradition of linear development over generations and new areas of ribbon development.
- 8.12. In areas along the sea estuaries and shorelines (referred to as scenic areas), only planning permission for replacement housing, extensions or where a farmer has no other land except in those areas will be allowed and scenic views will be protected as much as possible.
- 8.13. Section 3 sets out requirements in relation to occupancy conditions. These primarily relate to areas classified as rural areas under strong urban influence.
- 8.14. In relation to ribbon development, ribbon development is more than or equal to five houses in a row over 250 metres of road frontage. Ribbon development will not be permitted in any area outside the 50 kmp speed limit.
- 8.15. Section 7.3.1 states that rural housing shall be designed in accordance with Design Guidelines for Rural Housing.

- 8.16. With regard to wastewater treatment. The plan states that in unserved rural areas where a proposed dwelling cannot connect to a public sewer, a site suitability assessment will be required. This assessment must be carried out in accordance with the EPA Code of Practice taking into account the cumulative effects of existing and proposed developments in the area. The assessment shall be carried out by a certified and suitably qualified person with professional indemnity insurance.
- 8.17. In coastal and lakeside areas any effluent disposal system or percolation area for single dwellings shall be located at least 100 metres from the high water mark and 100 metres away from any lands liable to flooding.

## 9.0 Natural Heritage Designations

9.1. The subject site is not located within or adjacent to a Natura 2000 site. The nearest Natura 2000 sites are located approximately 500 metres to the north and north-west of the site. They are:

- Belmullet/Blacksod Bay Complex SAC (Site Code: 000470).
- Blacksod Bay/Broadhaven SPA (Site Code: 004037).

9.2. The qualifying interests associated with Belmullet/Blacksod Bay Complex SAC are as follows:

- *Mudflats and sandflats not covered by seawater at low tide.*
- *Large shallow inlets and bays.*
- *Reefs.*
- *Salicornia and other annuals colonising mud and sand.*
- *Shifting dunes along the shoreline with *ammophila arenaria*.*
- *Fixed coastal dunes with herbaceous vegetation.*
- *Atlantic decalcified fixed dunes.*
- *Machairs (priority habitat in Ireland).*
- *Natural eutrophic lakes with *magnopotamion* or *hydrocharition* type vegetation.*
- *Alkaline fens.*

- *Lutra*.
- *Petalophyllum ralfsii*.

9.3. *The features of conservation interest for Blacksod Bay/Broadhaven SPA are as follows:*

- *Red Throated Diver.*
- *Great Northern Diver.*
- *Slavonian Grebe.*
- *Light Bellied Brent Goose.*
- *Common Scoter.*
- *Red Breasted Merganser.*
- *Ringed Plover.*
- *Sanderling.*
- *Dunlin.*
- *Bartailed Godwit.*
- *Curlew.*
- *Sandwich Tern.*
- *Wetland and Water Birds.*

## 10.0 EIA Screening Assessment

Having regard to the nature of the development comprising of a single dwelling in a rural area, it is considered that there is no real likelihood of significant effects on the environments arising from the proposed development. The need for an environmental impact assessment can therefore be excluded by way of preliminary examination.



## 11.0 Planning Assessment

I have read the contents of the file, visited the subject site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. I think the critical issues in determining the current application and appeal are as follows:

- Compliance with Housing Need Criteria
- Scenic Amenity and House Design Issues
- Onsite Wastewater Treatment Issues
- Appropriate Assessment Issues.
- Other Issues

### 11.1. Compliance with Housing Need Criteria

11.1.1. As referred to in the section above in my report in relation to development plan policy the subject site is located in a designated structurally weak area. Section 2.3.2 of Volume 2 of the Development Plan is clear and unambiguous in stating that permanent residential development (urban and rural generated) will be accommodated, in particular special consideration will be given to the provision of housing in rural areas that have sustained population loss since 1951, subject to good planning practice. Thus, subject to qualitative safeguards in relation to siting and design and traffic considerations etc., permanent residential development is acceptable in principle in areas classified as structurally weak areas. Therefore, much of the rural housing criteria referred to in the third party appeal is not required to be met in the case of housing in structurally weak areas. The grounds of appeal suggest that the rural area in question has not experience sustainable population loss. Reference is made to a net difference in population of just five persons between 2011 and 2016. No statistics are provided for the 60-year period between 1951 and 2011 in the grounds of appeal. The applicant's response to the grounds of appeal suggests that the area has experienced a population decline of 30 persons between 2011 and 2016. Whether it be a loss of five persons or 30 persons over the last intercensal period there can be no doubt that the area has experienced population loss and it is quite likely that the area suffered sustained population loss during the previous decades. One of the criteria in designating areas as being structurally weak, relates to demographic trends. Thus for an area to be classified as

structurally weak, it would have experienced population loss over preceding inter-census periods. I am satisfied therefore that the proposed dwellinghouse is located in a structurally weak area that has experience population loss and therefore falls within a category of area that seeks to attract permanent residential development. The appellant in the grounds of appeal suggests that the proposed development may be speculative in nature. However, no evidence is presented to support this contention. The applicant in his response to the grounds of appeal has made it clear that he is happy to accept an occupancy condition of Section 47 of the Act and this would suggest that the development proposed is not speculative in nature.

- 11.1.2. While not specifically required in an area classified as a structurally weak area, the applicant does meet many of the criteria set out in relation to housing need in that the applicant appears to be local to the area with the family dwelling located approximately 4 miles to the east of the subject site in the townland of Aughness North Ballycroy, between the subject site and the N59.
- 11.1.3. The applicant has also submitted evidence that his daughter, suffers with cystic fibrosis and therefore would greatly benefit from living in a rural area away from sources of air pollution that might be associated with more density populated areas. Section 2.3.1.3 of the County Development Plan specifically states that persons who exceptional health circumstances require them to live in a particular environment or close to family support, should be given special consideration in respect of meeting the housing need criteria. Applicants qualifying under this category of housing need will “be required to demonstrate by way of supporting documentation why their need is exceptional”. The applicant in this instance has provided adequate evidence of his daughter’s medical requirements.
- 11.1.4. Finally, the applicant in response to the grounds of appeal notes that the overall landholding bought in which the proposed dwellinghouse is located includes a relatively large tract of agricultural land which the applicant proposes to raise sheep on the lands in question. Therefore, the applicant is intending to farm the lands in question albeit perhaps on a part-time basis.
- 11.1.5. I would therefore conclude that the principle of developing a dwellinghouse in this designated structurally weak area is acceptable in my opinion.

## 11.2. **Scenic Amenity and House Design**

- 11.2.1. A major issue raised in the grounds of appeal argues that the proposed development will have an unacceptable visual impact having regard to (a) the size and scale of the proposed dwelling and (b) the scenic amenity associated with the surrounding environment. The subject site is located in Policy Area 1 with regard to Landscape Sensitivity. Policies in this area seek to encourage development that will not have disproportionate effect on the existing character of the coastal environment in terms of location, design and visual prominence. Rural dwellings are listed as having a low to medium impact on the receiving landscape.
- 11.2.2. The site is also located in proximity to a designated scenic route. Scenic routes indicate public roads from which views and prospects of areas of natural beauty and interest can be enjoyed. Sightseeing visitors are more likely to be concentrated along these routes. In relation to planning applications, the onus should be on the applicant when applying for planning permission to develop in the environs of a scenic route, to demonstrate that there will be no obstruction or degradation of the views towards visually vulnerable features nor significant alterations to the appearance or character of sensitive areas. The Board will note that the subject site is located in proximity to a scenic view and it approximately 500m from the coast. The development plan differentiates between scenic views and highly scenic views. The subject site is located in the vicinity of the former.
- 11.2.3. The landscape is devoid of vegetation and this results in a very exposed and scenic rugged terrain. Expansive views are apparent both across the peninsula particularly to the north and north-west of the subject site towards Broadhaven and the Blacksod/Belmullet Peninsula. The subject site is located on lower ground which rises to the south to form a ridge to the south of the roadway serving the site. The Board should also note that the subject site is not located contiguous or adjacent to the coastline and is approximately half a kilometre from the coastline. The proposed dwellinghouse in my view will sit comfortably within the receiving landscape. The ridge height of the predominantly single storey structure will not break the skyline as pointed out in the response to the grounds of appeal. The dwellinghouse is located at a lower level c.7 metres below the ridgeline to the south and therefore will not be visually prominent when viewed from the designated scenic route. Furthermore, while the dwellinghouse has an extensive footprint, it is broken up into a series of substructures centred around a courtyard area and as such is more reflective of the

traditional vernacular style cluster of buildings associated with rural dwellings and their associated farm buildings. The cluster type layout is in my view appropriate in design terms and would not significantly detract from the visual amenities of the area. The design approach is sympathetic to the environment and I consider that the applicant in both the siting and design of the dwellinghouse has demonstrated that the proposal will not result in an obstruction or degradation of the views along the scenic route and therefore complies with the policy set out under Section 3.6(b) of the Landscape Appraisal for County Mayo.

### **11.3. On-site Wastewater Treatment Issues**

- 11.3.1. I inspected the subject site and had particular regard to the ground conditions during my inspection. The appellant is correct in stating that the upper part of the site closest to the roadway is dominated by rushes. However, I noted that the area to the rear of the site is more free draining and appears to have better percolation characteristics. I refer the Board to the photographs on file which clearly indicate that the vegetation in the southern portion of the site is not dominated by rushes. The appellant suggests that site improvement works were undertaken post appeal to improve the suitability of the site to the treatment of effluent. I cannot comment on whether or not improvement works took place specifically to enhance the suitability of the site. I can only conclude having inspected the site that the ground was relatively firm and dry underfoot and there was no evidence of any ponding either within the site or any extensive water in the drainage ditches in the wider area. Concerns were expressed in the grounds of appeal that water was encountered during the excavation of the trial hole. The trial hole was excavated in March, 2019 and there was no evidence of the trial hole when I inspected the site. The fact that the trial hole was excavated at the end of March suggests that the excavation took place during a period when the water table is generally at its highest within the subsoil horizon. In this regard the site assessment was carried out during the period of the year which represents a worst case scenario in terms of the likely maximum height of the water table on site.
- 11.3.2. The site characterisation form indicates that the percolation tests carried out yielded desirable P and T values in terms of attenuating effluent prior to discharge to groundwater. The applicant also points out in his response to the grounds of appeal that the package wastewater treatment system to be used requires only 0.9 metres

of soil and subsoil to attenuate the effluent. The trail hole excavated clearly demonstrates that under a worst case scenario 1.2 metres of aerobic, free draining soil is available.

11.3.3. With regard to the proximity of drainage ditches, it is noted that the proposed percolation area is located in excess of 10 metres from the nearest boundaries where the drainage ditches are situated and as such the proposal would meet the separation distances set out in Table 6.1 of the EPA Code of Practice.

11.3.4. On the basis of the information contained on file together with my detailed site inspection with regard to the drainage characteristics of the site, I am satisfied that the site is suitable to accommodate an on-site wastewater treatment system such as that proposed.

#### 11.4. **Appropriate Assessment Issues**

11.4.1. The grounds of appeal express concerns that the proposed development could constitute a potential risk to qualifying interests associated with two Natura 2000 sites located approximately 500 metres away within Broadhaven/Blacksod Bay. The qualifying interests and features of conservation interests associated with the Natura 2000 sites in question are set out above in my report. I note that the applicant submitted an NIS on foot of a request from the Planning Authority. The NIS screened-in the Belmullet/Blacksod Bay Complex SAC and the Blacksod Bay/Broadhaven SPA. I would agree with the conclusion in the NIS that it is only these two sites that could potentially be affected by the proposal. Having regard to the nature and scale of the proposed development all other Natura 2000 sites in the wider area are sufficiently removed so as not to be potentially affected. The conservation objectives associated with each of the qualifying interests are set out in the NIS and the potential impact arising from the proposed development on the conservation objectives are assessed in relation to:

- Habitat loss.
- Fragmentation.
- Disturbance.
- Species Impact.
- Water Quality.

- 11.4.2. Hydrological Effects, Visual Impacts and Cumulative Effects are set out in the document. No impacts are anticipated in relation to habitat loss, fragmentation or disturbance due to the generous separation distances between the subject site and the Natura 2000 sites in question. In terms of species impacts, the NIS notes that there are a number of invasive species on the subject site and there is a potential that during the construction works that the removal of invasive species could spread from the site to the Natura 2000 sites. However, the potential for this is extremely small again having regard to the generous separation distances involved.
- 11.4.3. In terms of the impact on water quality it is noted that during the construction phase of the project construction activity has the potential to increase run-off into nearby drains. Measures can be taken during construction to ensure that these risks are kept to an absolute minimum. The incorporation of a proprietary tertiary wastewater treatment system will ensure that the proposal during the operational phase will not adversely impact on Natura 2000 sites during the operational phase. No potential cumulative effects arising from other developments in the area are identified in the NIS. The final part of the NIS sets out measures to mitigate potential adverse impacts particularly in relation to the threat from invasive species and the threat in terms of water pollution. The mitigation measures incorporate best construction practice to ensure that mobilisation of silts and sediments into adjoining drains and watercourses are kept to the absolute minimum. The NIS therefore concludes that there is no potential for significant effects.
- 11.4.4. It is a requirement for the Board in considering the issue of appropriate assessment to carry out an independent assessment of the potential of the development in question to impact on the Natura 2000 sites in question. Both the grounds of appeal and the environmental report prepared by Mayo County Council express concerns that the source pathway receptor model should have been used in assessing the potential effects on European sites. The subject site is located approximately half a kilometre from the boundary of the Natura 2000 sites in question. The nature of qualifying interests associated with the SAC are predominantly habitats as opposed to species. The NIS in my opinion correctly points out that having regard to the separation distances between the subject site and the SAC that there is no potential for the loss, fragmentation or disturbance of the habitats associated with the SAC. There is however a possibility that some of the habitats which form the qualifying

interests associated with the SAC could potentially be affected by increased pollution either through surface water or groundwater. And these potential threats are assessed independently below.

- 11.4.5. The potential to pollute surface water arises primarily during the construction phase of the development where construction works could potentially result in excessive siltation and sedimentation entering watercourses and drainage ditches in the vicinity of the works. These drainage ditches most likely discharge into the coastal areas which coincide with the designated European sites. The applicant as per the NIS submitted, has given an undertaking to employ best practice and mitigation measures to ensure that any potential surface water pathway is not contaminated or polluted in terms of increases in suspended solid loadings. With the employment of mitigation measures prohibiting sediment run-off from the development to nearby watercourses, and ensuring that concrete pouring is carefully monitored and only carried out in dry weather together with the incorporation of shuttering to ensure that no leakage of concrete occurs, the potential to adversely impact on the qualifying interests of the Natura 2000 sites in question is negligible. The watercourses should remain free of pollution. The distance between the watercourses and the Natura 2000 sites is such, that in the event that a pollution episode were to occur, dilution and dispersion within the watercourses/ditches that form the pathway to the European Site would significantly lessen any potential impact that could occur on qualifying interests associated with Natura 2000 sites in the vicinity.
- 11.4.6. During the operational phase, the only potential adverse impact that could arise on Natura 2000 sites in the vicinity is through groundwater contamination and this would most likely occur in the case where the site was deemed to be unsuitable to accommodate an on-site wastewater treatment system. I have argued above in my assessment that the site incorporates appropriate and adequate attenuation properties to ensure that any wastewater generated by the proposed development would be adequately treated prior to discharging to groundwater. The fact that the applicant proposes in this instance to incorporate a packaged wastewater treatment system capable of providing tertiary treatment together with a polishing filter should further protect groundwater in the vicinity of the percolation area. As in the case of surface water, any potential pollution episodes to groundwater would incur adequate

dilution and dispersion within the groundwater body before reaching the Natura 2000 sites in question.

- 11.4.7. Therefore, during the construction phase and the operational phase, I am satisfied that appropriate measures have been put in place to ensure that any potential threats to the Natura 2000 sites in question have been removed.
- 11.4.8. In terms of in combination effects there are no plans or projects which have been undertaken or are proposed to be undertaken in the vicinity of the subject site which could result in cumulative impacts on Natura 2000 sites in the surrounding area.
- 11.4.9. In terms of indirect impacts, the only potential indirect impact which could arise relates to a potential impact on the feeding grounds associated with the bird species associated with the Blacksod Bay/Broadhaven SPA. Any pollution episode which could occur may have the potential to affect the feeding grounds associated with the bird species. However, I have argued that the proposed development will not result in any pollution and therefore potential impacts in terms of pollution which alter the feeding regime of the birds will not occur. I consider it reasonable to conclude on the basis of the information on file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of European Site No. 004307 or European Site 004470 or any other European Site in the view of the sites' conservation objectives.

#### **11.5. Other Issues**

- 11.5.1. The Board is perfectly within its rights to request the re-advertisement of a development where it is considered that pertinent information relation to the application should be contained in the public notices. There is no requirement to invalidate an application on the basis of inadequate public notices. A more appropriate course of action is to seek the re-advertisement of the notices to allow for public submissions on the basis of the notices so as to ensure 3<sup>rd</sup> party rights are not prejudiced.
- 11.5.2. The re-advertising of notices does not in any way confer or infer that the Board would be more disposed towards granting permission. Where an NIS has been submitted there is a statutory requirement to refer to this matter in the public notices.



## 12.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars located based on the reasons and considerations set out below.

## 13.0 Reasons and Considerations

It is considered that the proposed dwelling which is located in a structurally weak area where it is the policy of Mayo County Council to accommodate any permanent residential dwelling subject to good planning practice. It is considered that the proposed dwelling would, subject to the conditions set out below, not seriously injure the visual or residential amenities of the area, would not be prejudicial to public health and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 14.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the plans and particulars submitted to Mayo County Council on the 13<sup>th</sup> day of January, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by

other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

- 3. The entrance for the proposed development shall be constructed as indicated on the site layout plans submitted to the planning authority on the 10<sup>th</sup> October, 2019. Details of the proposed recessed entrance shall be agreed in writing with the planning authority prior to commencement of development. Gates shall open inwards only.

**Reason:** In the interest of traffic safety.

- 4. The proposed front boundary wall shall consist of natural local stone the exact height and location of which shall submitted to and agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. The finished floor level of the proposed dwelling shall be at 13.5 metres as indicated in the site layout plan submitted to the planning authority on 10<sup>th</sup> October, 2019.

**Reason:** In the interest of visual amenity and to avoid flooding.

7. The proposed garage/shed shall be used only as a private domestic garage/shed and shall not at any time be used for agricultural, industrial or commercial purposes or be converted for human habitation.

**Reason:** In the interest of residential amenity.

8. (a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner.

**Reason:** In the interest of public health.

9. The developer shall inform ESB of the intention to start work and to arrange for diversion of lines if necessary.

**Reason:** In the interest of orderly development.

10. Details of all materials, colours and textures of all external finishes to the proposed dwelling and shed shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

**Reason:** In the interest of visual amenity.

11. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

12. The developer shall pay to the planning authority a financial contribution of €357 (three hundred and fifty seven euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme

made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Paul Caprani,  
Senior Planning Inspector.

13<sup>th</sup> July, 2020.