



An
Bord
Pleanála

Inspector's Report

ABP-306978-20

Development	House, garage/fuel store, wastewater treatment system, percolation area and all associated site works.
Location	Mullaghmore North, Moylough, Ballinasloe, Co Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	19/675
Applicant(s)	Michael Dolan.
Type of Application	Permission.
Planning Authority Decision	Grant permission subject to conditions.
Type of Appeal	Third Party
Appellant(s)	Paul Dempsey.
Observer(s)	None.
Date of Site Inspection	5 th May 2020.
Inspector	Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site has an area of .216 hectares and is located within the townland of Mullaghmore North, Moylough to the north of the N63 in east County Galway. The site is within a rural area circa 4km west of the village of Moylough and 8km west of Mountbellew Bridge. There is an established dwelling on the adjoining site to the north. Access is via a local road L392 which runs north east of the N63. The area is characterised by gently undulating topography. The appeal site itself is part of a larger agricultural field pattern which is presently under grass. The front roadside boundary is defined by a low bank. To the rear / eastern part of the site there is a depression and further depression to the southeast where I noted on the date of my site visit visible vegetation signs of poor drainage including rushes and reeds.

2.0 Proposed Development

- 2.1. The proposal involves permission to construct a new dwelling house, domestic garage/fuel store with wastewater treatment system, percolation area and all associated site works. The proposed dwelling is two storey in design with gross floor area of 195sq.m and incorporates a single storey side annex and central gable breakfront.
- 2.2. The proposed dwelling is to be set back 35.6m from the front roadside boundary in line with the established dwelling to the northwest with garage to the rear adjacent to the northern boundary. The proposed treatment plant is to be located to the rear. Front roadside boundary is to be setback in its entirety with additional setback of boundary on the lands adjoining to the south.

3.0 Planning Authority Decision

3.1. Decision

Following a request for additional information Galway County Council issued notification of its decision to grant permission and 16 conditions were attached which included:

Condition 2. Recommendations of the flood risk assessment to be implemented in full.

Condition 8. A parking space not less than 15m long and 3m wide to be provided immediately adjoining the edge of the margin of the roadway. Space to be cleared graded, levelled and surfaced.

Condition 11. Wastewater treatment system to be located constructed and maintained in accordance with details received on 3 May as amended by further information received on 23 December and 10th January. Polishing filter shall be maintained a minimum separation distance of 10m from any house existing or proposed rain or watercourse. Polishing filter shall maintain a minimum separation distance of 10m from any house, existing or proposed land or waterdrains.

Condition 16. Development Contribution €2,150 in accordance with the Development Contribution Scheme.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planner's initial report sought additional information to clarify ownership of lands adjacent to the site intended to be subject to modification in terms of the provision of the requisite sightlines. A site-specific flood risk assessment was also requested and a revised site characterisation report noting location within the Mid Galway Inner Source Protection area and associated groundwater response R(2)4. A P test, and longitudinal section was also requested. The applicant was also invited to revise the location for wastewater treatment system away from pluvial flood risk area to the rear of the site.

3.2.2. Other Technical Reports

3.2.2.1 Area Engineers report recommends the inclusion of a condition regarding maintenance of roadside drainage. Surface water not to discharge onto the public road.

3.3. **Third Party Observations**

None

4.0 **Planning History**

306683-20 Application for leave to appeal granted to Paul Dempsey under Section 27(6) of the Planning and Development Act 2000, as amended on basis that the development in respect of which a decision to grant permission has been made will differ materially from the development as set out in the application by reason of condition 11(b) and the imposition of Condition 11(b) will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission or reduce the value of the land.

18/1046 Withdrawn.

11/776 Permission for serviced dwellinghouse and garage on the adjoining site.

5.0 **Policy Context**

5.1 **National Planning Framework**

5.1.1 **National Policy Objective 19**

In rural areas which are not under urban influence it is an objective to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.2 **Development Plan**

5.2.1 The Galway County Development Plan 2015-2021 refers.

In terms of rural Housing Policy, the site is located within a structurally weak area.

At 3.7.2 Sustainable Rural Housing - It is important to distinguish between rural generated housing and urban generated housing demand.

Key objectives in relation to Structurally Weak Areas 3.8.2 are to accommodate residential development proposals as they arise subject to satisfactory site suitability and technical considerations and to maintain and strengthen existing towns and villages and to direct urban generated housing demand into these areas. To protect areas located in Landscape Category 3, 4 and 5. (Site is within landscape category 1)

Objective RHO 2 – Rural Housing Zone 2 (Structurally Weak Area) “It is an objective to the Council to facilitate the development of individual houses in the open countryside in “Structurally Weak Areas” subject to compliance with normal planning and environmental criteria and the Development Management Standards and Guidelines outlined in Chapter 13 and other applicable standards.”

5.3 Natural Heritage Designations

5.3.1 The site is not within a designated area. The nearest Natura 2000 sites include the Shankill West Bog SAC Site Code 000326 c5.5km northeast, Derrinlough Bog SAC c5.5km to the north, and Lough Corrib SAC which is within 4.5km to the north west.

5.4 EIA Screening

5.3.1 Having regard to the nature and scale of the development 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 The Appeal

6.1 Grounds of Appeal

6.1.1 The appeal is submitted by Paul Dempsey, neighbouring resident and as noted above follows the decision by the Board ABP306683-20 to grant leave to appeal. The grounds of appeal are summarised as follows:

- Noting Location within a karst limestone region where the type of bedrock is known to have large caves / tunnels which carry water and re-emerge as a spring some kilometres away. The appeal site incorporates a turlough and is liable to flooding.
- Turlough c840m to the northeast of the site not examined within the flood risk assessment.
- Photographs and maps attached highlight the area in question which is linked to area to the southwest of the site identified as are X within the hydrological report.
- Proposed raised percolation area would not be effective and cannot meet the condition of being 10m away from any water area
- Additionally, groundwater may add pressure to the percolation area serving the existing dwelling.

6.2 Applicant Response

6.2.1 The first party response to the appeal by O Brien Survey and Design Services Ltd. Engineers and also includes a response by Hydro S, Engineering Hydrology Consultants. Response is summarised as follows:

- Third Party appellant purchased the site from the first party and would not have built house on the land if it was prone to flooding.
- Third-party appellant was made aware prior to site purchase that further houses would be built on the land.
- Appeal made to prevent neighbouring house being built.
- Regarding contention that depression area to the north east of the site is a turlough, topsoil and sub soil on the area do not have marl or alluvium soil and do not show any lake deposits. GSI maps do not show extreme vulnerability location or a karst feature at this location. Moreover, if it is a turlough the water has high carbonate content and once the floods recede this could be seen on exposed rock and bottom of the turlough. There is no such evidence at this location.

- Rush growth indicates low drainage and is not vegetation seen in turloughs.
- Area to the back of the site is not a turlough and is not a groundwater flood risk area.
- Pluvial flood risk location 1 on the north corner of the site was assessed in the flood risk assessment. This is slightly lower, approximately 0.7m from the higher area of the site.
- As the proposed development is on higher ground to the west of the flow path it will not affect flow paths and will not affect Mr Dempsey's property.
- Reason the low-lying area to the rear of the site has standing water is because of the type of soil on the field. The trial hole log on the site characterisation form describes the soil as clayey. Due to compaction by farm animals the top soil acts as a hard pan. As evidenced in results of P test indicating higher P test. The proposed tree line on the boundary of Mr Dolan's site will break the hard pan and improve infiltration of water downwards thereby having a positive impact.
- No potential for impact on percolation area to the rear of the appellant's property.
- Area to the west of the site experiences flooding every winter and was taken into account in flood risk assessment.

6.3 Planning Authority Response

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

6.4 Observations Prescribed Bodies

- 6.4.1 Submission from Department of Culture Heritage and the Gaeltacht notes location 3km south east and north east of the Grange River and Abbert River part of Lough Corrib SAC and 4km south of Derrinlough (Cloonkeenleananode) Bog SAC. As there are other dwellings and roads between the site and the European sites to the north south and west the approval of this development is unlikely to have a significant effect on the European site, Lough Corrib SAC or Derrinlough (Cloonkeenleananode) Bog SAC. Obligations under the EC (Birds and Natural Habitats) Regulations 2011 (SI477 of 2011) must be observed and prior to granting consent the competent

authority must ensure that the proposed development will not negatively impact on nearby European site, either during construction or operational phases.

7 Assessment

7.1 I consider that the planning issues raised in the appeal can be addressed under the following broad headings.

- Rural Housing Policy
- Impact on the amenities of the area
- Wastewater Treatment and Flooding
- Appropriate Assessment

7.2 Rural Housing Policy

7.2.1 I note that the site is located within a structurally weak area where the key development plan objective is to accommodate residential development proposals as they arise and subject to satisfactory site suitability and technical considerations whilst also maintaining and strengthening existing towns and villages and directing urban generated housing demand into these areas. At 3.7.2 it is stated that *'it is considered pertinent to include measures to control rural housing with a presumption against unnecessary rural dwellings and urban generated urban housing.'* and at section 3.8.2 *'structurally weak rural areas'* the listed key objectives, *'to accommodate residential proposals as they arise subject to satisfactory site suitability and technical considerations... to maintain and strengthen existing towns and villages and to direct urban generated housing demand into these areas'*. In addition, National Policy Objective 19 of the National Planning Framework notes that in rural areas which are not under urban influence, it is an objective *'to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.'* I note that no details are provided on the appeal file with regard to housing need and I would be concerned that were the proposal speculative it would clearly increase the pattern of suburbanisation in this rural area contrary to the statutory rural housing policy and

National Policy Objective 19. I would be concerned that in the absence of a demonstrable housing need the proposal conflicts with the objective to direct urban generated housing demand to existing towns and villages. I note that this is a new issue and if the Board were to consider a permission within the landholding further detailed information would be required to demonstrate the nature of the proposal in the context of settlement policy objectives and to thereby exclude any proposal which is urban generated.

7.3 Impact on the amenities of the area.

7.3.1 As regards the impact of the development on the amenities of the area, I consider that the proposal dwelling would not visually be unduly prominent in the landscape. As regards sightline requirements at the entrance, I note that the achievement of 70m sight distance is feasible however this does involve extensive hedgerow removal which is detrimental to rural amenity. I consider that extensive landscaping would be required to assimilate the proposal in this setting.

7.4 Wastewater Treatment and Flooding

7.4.1 On the issue of wastewater treatment I note that it is proposed to service the site by way of a secondary waste water treatment system followed by 45sq.m polishing filter. I note that the site characterisation form indicates that the soil comprises firm silty clay to .6m with silt clay with cobbles and boulders. Neither water table nor bedrock were encountered in the trial hole excavated to 2.1m. A T value of 13 and P value of 18 were recorded.

7.4.2 The third party appellant contends that the area to the rear of the site comprises a turlough and is linked to the turlough area to the south east of the site identified as Area X within the hydrological report submitted in response to the request for additional information. Within the grounds of appeal it is stated that the flooded area extends within 6m of the rear boundary of the appellants site and on this basis it is asserted that minimum separation distances as set out within the EPA Code of Practice cannot be achieved. Extensive photographic evidence is provided by the appellant to elucidate the case made. As noted above the low lying area to the rear

of the site whilst dry on the date of my site visit has vegetation indicative of poor drainage.

7.4.3 The first party within the response to the appeal outlines that rather than a turlough the area in question is a low lying pluvial flood risk location. It is asserted that the reason the area has standing water is because of the type of soil in the field and due to soil compaction from farm animals. It is asserted that the siting of the treatment unit at 74.08mAOD and of the invert of percolation pipes of the raised polishing filter at 74.9m AOD relative to pluvial flood level of 73.5m OD will ensure that “the risk of sewer flooding caused by submergence of the wastewater treatment system is low”. Having visited the site reviewed all the submitted documentation I consider that the precautionary principle should apply. I consider that the issue of water pollution potential and cumulative impact of multiple treatment systems proximate to an area liable to flooding is a significant and relevant concern in this case. The proposed development would clearly be prejudicial to public health and would give rise to an unacceptable risk of water pollution. Accordingly, I recommend that planning permission is refused on the basis that the proposed development has the potential to give rise to significant cumulative impacts on groundwater quality and would be prejudicial to public health.

7.5 Appropriate Assessment

7.5.1 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European site, in view of the site’s Conservation Objectives. A Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6 Recommendation

7.6.1 Having read the submissions on file, visited the site and had due regard to the provisions of the Development Plan and all other matters arising, I recommend that permission is refused for the following reasons and considerations.

Reasons and Considerations

1. The Board is not satisfied that, on the basis of the information submitted with the application, specifically with regard to the location and form of wastewater treatment system and the pattern of flooding in the vicinity that the proposed development would not have significant adverse impacts on groundwater. The proposed development when taken in conjunction with existing and permitted development in the vicinity would therefore be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

Bríd Maxwell
Planning Inspector
10th July 2020