



An
Bord
Pleanála

Inspector's Report

ABP-307823-20

Development	Application for Substitute Consent for a house.
Location	Formna, Inis Oirr, Aran Islands, Co. Galway.
Local Authority	Galway County Council.
Type of Application	Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (local authority development requiring appropriate assessment)
Prescribed Bodies	Department of Housing, Local Government and Heritage – Development Applications Unit. An Taisce.
Observer(s)	None.
Date of Site Inspection	25 March 2024.
Inspector	Stephen Rhys Thomas.

Contents

1.0 Introduction	3
2.0 Proposed Development	3
3.0 Site and Location	4
4.0 Planning History.....	4
5.0 Legislative and Policy Context.....	5
6.0 Consultations	11
8.0 Assessment.....	13
9.0 Recommendation.....	22

1.0 Introduction

- 1.1. This is an application for substitute consent under Section 177E of the Planning and Development Acts 2000-2011 as amended. It follows a decision by An Bord Pleanála, dated 19th May 2020, to grant the applicant's leave to apply for substitute consent ABP-306153-19 refers. The Board's decision under ABP-306153-19 considered that an appropriate assessment was required in respect of the development concerned.
- 1.2. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections 10 to 21, sections 23 to 40 and subsections (8) to (12) of section 41, of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Consequently and as now required, my assessment of this application for substitute consent that follows includes consideration of 'exceptional circumstances'.
- 1.3. Board Direction BD-014493-23 requests a report to be prepared in relation to the proper planning and sustainable development of the proposal for substitute consent having regard to the considerations set out in section 177K(2)(a) to (l) of the Planning and Development Act 2000 as amended.

2.0 Proposed Development

- 2.1. House, driveway, with optional ground based solar panel array, and domestic wastewater treatment system and raised bed percolation area.
- 2.2. The dormer style bungalow is 7.89 metres in height.
- 2.3. **Accompanying documents:**
 - Planning Report
 - Drawings
 - Remedial Natura Impact Statement
 - Public Notices

3.0 Site and Location

3.1. The subject site is located on the island of Inisheer. The site is located to the south of the airport and to the west of An Loch Mhor. The subject site is occupied by an existing dwelling located on the eastern side of the public road. There is an existing dwelling adjacent to the site immediately to the north. To the west, east and south are agricultural lands, enclosed by stone walls, a feature across the entire island. There are a limited number of dwellings in the vicinity, this being the furthest extent of modern expansion of the settlement on the island. A single dormer style bungalow is located further south along the public road and historic light house cottages are located at the end of the laneway at the coast. The subject site has limited landscaping, owing to the maritime climate and exposed nature of the site, stonewalls have been used in vehicular entrance flanking walls. The house on site is of a dormer bungalow style, with a painted render finish.

4.0 Planning History

4.1. Site

ABP-306153-19 - Leave to apply for substitute consent for a house. GRANT leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended.

19/236: Permission sought for retention for the change of house type which has been built on this site (which is a different dwelling to the development which was previously granted permission under planning register reference number 15/1313, along with the retention of all associated site development works. The structure which has been erected on this land contains a gross floor space of 244sqm. The application also proposes to change the fenestration pattern on the front façade of the house. The application is accompanied by a Natura Impact Statement. Gross floor space of work to be retained: 244.0 sqm. The application was deemed incomplete on the basis that the application requires a full Appropriate Assessment.

18/1822: Permission sought for retention for the change of house type which has been built on this site (which is a different dwelling to the development which was previously granted permission under Planning Register Ref. No. 15/1313) along with

the retention of all associated site development works. The structure which has been erected on this land contains a gross floor space of 244 sqm.) The application also proposes to change the fenestration pattern on the façade of the house. Gross floor space of work to be retained 244.0sqm. The application was deemed incomplete on the basis that the application requires a full Appropriate Assessment.

17/1265: Permission refused for retention of development that will consist of: (a) the retention of the change of house type (which is a change of house type from the previously granted permission (granted under planning register reference number 15/1313); (b) completion of minor internal works and (c) all associated site development works (gross floor space 244sqm). Permission refused on the basis that the design and scale of the proposal would interfere adversely with landscape character/visual amenity, would be contrary the preservation of the rural environment and contravene development objectives of the County Development Plan and set an undesirable precedent.

15/1313: Permission granted for (a) Proposed new 4 bedroom house (b) Envirocare mechanical aeration system or similar approved system and percolation area (c) All associated site development works. Gross floor space of proposed works: 136.64sqm.

14/366: Permission sought for (a) Proposed new 4 bedroom house (b) Envirocare mechanical aeration system or similar approved system and percolation area (c) All associated site development works. Gross floor space of proposed works: 136.64sqm. Application withdrawn.

5.0 Legislative and Policy Context

- 5.1. **The EU Habitats Directive (92/43/EEC):** This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).
- 5.2. **European Communities (Birds and Natural Habitats) Regulations 2011:** These Regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats) (Control

of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements. The Regulations in particular require in Reg 42(21) that where an appropriate assessment has already been carried out by a 'first' public authority for the same project (under a separate code of legislation) then a 'second' public authority considering that project for appropriate assessment under its own code of legislation is required to take account of the appropriate assessment of the first authority.

5.3. **National nature conservation designations:** The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

5.4. European sites located in proximity to the subject site include:

- Inisheer Island SAC (site code 001275)

5.5. **Planning and Development Acts 2000 (as amended):** Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

Under Section 177K(2) of the Planning and Development Act 2000, as amended, a decision of an application or substitute consent shall be made after consideration of the proper planning and sustainable development of the area, regard being had to:

- (a) The provisions of the development plan or any local area plan for the area;
- (b) The provisions of any special amenity area order relating to the area;
- (c) The remedial environmental impact statement, or remedial Natura impact statement, or both of those statements, as the case may, submitted with the application;
- (d) The significant effects on the environment, or on a European site, which have occurred or which are occurring or could reasonably be expected to occur because the development concerned was carried out;

(e) The report and the opinion of the planning authority under section 177I; (f) Any submissions or observations made in accordance with regulations made under section 177N;

(g) Any report or recommendation prepared in relation to the application by or on behalf of the board, including the report of the persons conducting any oral hearing on behalf of the Board;

(h) If the area is in a European site or an area prescribed for the purposes of section 10(2)(c), that fact;

(i) Conditions may be imposed in relation to a grant of permission under section 34(4);

(j) The matters referred to in section 143;

(k) The views of a Member state where the member state is notified in accordance with regulations under this Act;

(l) Any relevant provisions of this Act and regulations made thereunder

S177(3) The conditions referred to in subsection (1) may include –

(a) one or more than one condition referred to in section 34(4)

(b) a condition or conditions relating to remediation of all or part of the site on which the development the subject of the grant of substitute consent is situated,

(c) a condition or conditions requiring a financial contribution in accordance with section 48, or

(d) a condition or conditions requiring a financial contribution in accordance with a supplementary development contribution scheme under section 49.

Section 177F provides that:

(1) A remedial environmental impact statement shall contain the following:

(a) a statement of the significant effects, if any, on the environment, which have occurred or which are occurring or which can reasonably be expected to occur because the development the subject of the application for substitute consent was carried out;

(b) details of –

- (i) any appropriate remedial measures undertaken or proposed to be undertaken by the applicant for substitute consent to remedy any significant adverse effects on the environment;
- (ii) the period of time within which any proposed remedial measures shall be carried out by or on behalf of the applicant;
- (c) such information as may be prescribed under section 177N
- (d) and may have appended to it, where relevant, and were the applicant may wish to rely upon same; (i) a statement of imperative reasons of overriding public interest; (ii) any compensatory measures being proposed by the applicant.

5.6. The **Planning and Development, Maritime and Valuation (Amendment) Act 2022** (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) 16th December 2023.

Section 30 amends Section 177K of the 2000 Act as follows:

(a) by the insertion of the following subsection after subsection (1I):

“(1J) In considering whether exceptional circumstances exist under subsection (1A)(a) the Board shall have regard to the following matters:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

(g) such other matters as the Board considers relevant.”,

5.7. Policy Context

5.7.1. The Galway County Development Plan 2022-2028 is the operative statutory plan for the area. The site is subject to the following designations:

- A Structurally Weak Area.
- Rural Housing Policy - Zone 4
- Landscape Sensitivity Category 2-4.
- Landscape Sensitivity – 4 Iconic
- Landscape Character Area – Island Landscape

5.7.2. There are a number of relevant policies and objectives, and they include:

Chapter 2 Core Strategy, Settlement Strategy and Housing Strategy

Policy Objectives Settlement Hierarchy

SS8 Development of Rural Communities

Galway County Council shall recognise the important role of rural communities to the sustainable development of County Galway and shall ensure the careful management of development in these areas, having due regard to the relevant policy objectives set out elsewhere in the plan.

Chapter 13 The Galway Gaeltacht and Islands.

IS 1 Economic and Tourism Development on the Islands

Support the economic and tourism development of the islands for the benefit of island communities generally and to encourage the development of speciality or niche economic sectors that might be appropriate to different islands.

IS 2 Development Proposals on the Islands

- a) Support sustainable development proposals that contribute to the long term economic and social development of the islands;
- b) Priority shall be given to development that contributes to retention of the year-round population on the islands, that has a clear and identifiable economic and social benefit and that is compatible with the capacity of the local community to accommodate it;
- c) Ensure that new development of any kind is sympathetic to the individual form and character of the islands landscapes and traditional building patterns.

IS 4 Rural Housing on the Islands

Support permanent rural housing on the islands for applicants who can demonstrate that they have permanently lived on the island for a substantial and sustained period of time and can contribute to the long-term viability of the islands. An Enurement condition shall apply for a period of 7 years, after the date that the house is first occupied by the person or persons to whom the enurement clause applies.

5.7.3. Section 15.3 Rural Living and Development

DM Standards 7, 8, 9, 11, 36, 38, 43, 46, 47 and 61.

Policy Objective RC 2 Rural Housing in the Countryside

To manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Rural Housing Policy Objectives as outlined in Section 4.6.3.

RH 4 Rural Housing Zone 4 (Landscape Classification 2,3 and 4)

Those applicants seeking to construct individual houses in the open countryside in areas located in Landscape Classification 2,3 and 4 are required to demonstrate their demonstrable economic or social Rural Links or Need* as per RH 2.

5.7.4. Landscape Policies and Objectives:

LCM 1 Preservation of Landscape Character

LCM 2 Landscape Sensitivity Classification

Appendix 4 - Landscape Character Assessment

Appendix 5 – Design Guidelines for Single Rural Housing

5.8. Environmental Impact Assessment Screening

I note that having regard to the scale and nature of the development the likelihood of significant effects on the environment can be excluded for the purposes of EIA, appendix 1 of my report refers.

6.0 Consultations

6.1. Planning Authority Report

A request issued to Galway County Council inviting submission of a report pursuant to Section 177I of the Planning and Development Acts 2000 as amended, however the planning authority elected not to submit a report.

6.2. Statutory Consultees

The application was circulated to the following bodies:

- Department of Housing, Planning and Local Government (National Parks and Wildlife Service - NPWS)
- The Heritage Council
- An Taisce
- Irish Aviation Authority
- Údarás na Gaeltachta

Responses were received and can be summarised as follows:

NPWS - Nature Conservation – the site is located in an Annex 1 Dry grasslands and scrubland facies, a qualifying habitat for the Inisheer SAC. It is noted that the current rNIS states a walkover survey was conducted in November 2019, this is not the optimal time for such a habitat survey. However, the findings of the survey in the rNIS are noted and accepted, the site is highly modified. The minor alterations to design and siting will not result in direct or indirect impacts.

An Taisce – that the regime for Substitute Consent has been struck down by the Supreme Court, Supreme Court Record No: 9/19 refers.

6.3. Further Responses:

The Applicant – under section 177K(1C)(a) of the Act the applicant has submitted information that can be summarised as follows:

A background to the development is provided, the house is the current and sole residence of the applicant. The applicant is the principal of the island national school at which their children attend. Rural housing need has been met, permission was granted and a house constructed, 15/1313 refers. During construction the height of the house was increased from the permitted 6.55 metre ridge height to 7.8 metre ridge height and position on site altered. The floor area was increased from the permitted 136 sqm to 244 sqm, with a change to fenestration and inclusion of three dormers. Permission to retain these changes was refused by the planning authority, 17/1265 refers. A further application was made to retain changes and appropriate assessment documentation was not included, the planning authority refused to consider the application, 18/1822 refers. A final application was lodged in 2019 and this time included an NIS, but the planning authority considered that an application should be made directly to the Board under section XA of the Act, 19/1236 refers.

Exceptional Circumstances – as listed under section 177D(2) of the Act, the applicant sets out their reasoning as to why exceptional circumstances exist.

I note that all of these issues were addressed by the Inspectors Report with respect to the leave to apply for substitute consent, and the matters raised were accepted by the Board, hence this current application, ABP-306153-19 refers.

6.4. Further Responses:

The applicant submitted public notices concerning the current application for substitute consent, received by the Board on the 31st July 2023

8.0 Assessment

8.1. I note the specifics of the application as made which describes the development as a four bedroomed detached house, which extends to a height of 7.9 metres and which contains a total of 244 square metres of floor area. The description does not expressly refer to the access driveway and domestic wastewater treatment system but refers to all other site development works and to the works that represent a change of house design from that permitted under planning authority reference 15/1313. I address the main issues in this application for substitute consent under the following broad headings:

- Exceptional Circumstances
- Proper Planning & Sustainable Development
- The likely effects on the environment
- The likely significant effects on a European site: Appropriate Assessment

8.2. Exceptional Circumstances

8.2.1. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 (Commencement of Certain Provisions) (No.2) Order 2023 (S.I. 645 of 2023) came into effect on 16th December 2023. The Commencement Order brings into operation sections 10 to 21, sections 23 to 40 and subsections (8) to (12) of section 41, of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Consequently and as now required, my assessment of this application for substitute consent that follows includes consideration of 'exceptional circumstances'. I note that the Board previously granted leave to apply for substitute consent and have already considered the matter of exceptional circumstances that arose in this case, ABP-306153-19 refers. I am satisfied that the documentation that forms this current application, enable me to answer the tests with reference to exceptional circumstances as set out below.

8.2.2. The tests / matters to have regard to in considering exceptional circumstances in an application for substitute consent are inserted by section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Section 30 amends Section 177K of the 2000 Act as follows:

(a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

I note that as part of the application ref 15/1313 a Natura Impact Statement (NIS) was submitted and a full Appropriate Assessment was carried out. It was noted that the site did not contain any protected orchid species or an Annex I habitats and would have no significant effects on the Inisheer Island SAC. This was accepted by the Planning Authority and permission was granted. Also noted is that the screening assessment for ref 17/1256 concluded that no significant effects were likely on any Natura 2000 sites and that no further assessment was required in relation to habitats.

It is noted that the Planning Authority's opinion on AA screening changed in the applications under ref 18/1822 and 19/1236 as they concluded that they were precluded from considering applications for retention. Even though the alterations subject to ref 17/1256, 18/1822 and 19/1236 meant that the proposed development would have no significant effects on the Inisheer SAC. In any case the applicant has prepared a Remedial Natural Impact Statement as part of the documentation submitted with this application, the content and findings of which were accepted by the NPWS. I am satisfied that the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.

(b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

A grant of permission was received by the applicant for a dwelling house. I note that the applicant at the time of construction was residing abroad and managing construction remotely led to issues of oversight. The applicant notes that there was belief that the alterations made during construction could be considered 'de minimis' or non-material at the time of construction. The applicant now acknowledges that the alterations to the permitted dwelling are material and require permission, but at the time of construction they did not believe this to be the case.

(c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an

appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

No, the applicant advertised their intentions by the appropriate form of public notice and submitted them to the Board, dated 31st July 2023. In addition, permission was granted for a dwelling under ref 15/1313 and it was concluded that there were no significant effects in the Inishheer Island SAC. Subsequent applications have complied with the relevant regulations in terms of public notices to facilitate public participation.

(d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

The applicant reiterates that the permitted dwelling under ref 15/1313 was subject to an NIS that concluded no significant effects on any Natura 2000 site. The same conclusion was reached when the retention application under ref no. 17/1265 was assessed, with permission refused based on design/visual amenity grounds. A screening assessment has been carried out by the applicant's agents and concludes the proposed development, individually or in combination with other plans and projects, will not have a significant effect on Inishheer Island SAC and that a stage 2 Appropriate Assessment is not required. In any case the applicant has prepared a Remedial Natural Impact Statement as part of the documentation submitted with this application.

(e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

Of no relevance in this instance, as the findings of screening, NIS and rNIS all conclude no adverse effects. I also note the comments made by the Department of Housing, Planning and Local Government (National Parks and Wildlife Service - NPWS) that tally with the findings contained in the rNIS. Finally, I note the submission of An Taisce that highlights that the regime for Substitute Consent has been struck down by the Supreme Court, Supreme Court Record No: 9/19 refers.

(f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

The applicant notes that they have not been granted any previous permissions and have not previously carried out any unauthorised development. The applicant takes full responsibility for the material alteration of the permitted dwelling and wishes to regularise the planning status of their dwelling.

(g) such other matters as the Board considers relevant,

These matters are considered in full within the following sections of my report.

8.2.3. Exceptional Circumstances Conclusion

I have had regard to the previous Board considerations with reference to the applicant's exceptional circumstances with reference to their leave to apply for substitute consent and that decision stands apart from my assessment of this case. In addition, I note the submissions received from the applicant with reference to this current application for substitute consent and the exceptional circumstances as they have been set out and reiterated. Given the foregoing, I am satisfied that the applicant has adequately demonstrated that there are exceptional circumstances pertaining, with specific reference to section 177K(1J) of the Planning and Development Act 2000 as amended.

8.3. **Proper Planning & Sustainable Development**

Provisions of the Development Plan for the area

- 8.3.1. Rural housing Policy - the site is located in a Class 4 Landscape (Iconic), Policy RH4 sets out the qualifying criteria for those with a housing need to build in Rural Housing Zone 4. The applicant was granted permission under ref no. 15/1313 for a single-storey dwelling and associated site works. The issue of housing need was established at that time and permission was granted. However, the provisions of the current development plan for permitting rural housing are now in play and housing is restricted to those that can demonstrate a housing need in accordance with Policy Objective RH4 Rural Housing Zone 4 (Landscape Classification 2,3 and 4). In this regard, the information on file describes that this is the only and sole residence of the applicant, a native of Inis Oirr, the principal of the island national school and the house is built on family land.
- 8.3.2. There is no information or documentation on the current file with regard to the rural housing qualifying criteria set out in Policy RH4 of the development plan, other than

the situation as it is described by the applicant's agent. I am satisfied that this is a case where the applicant has demonstrated a rural housing need in accordance with the development plan policy that was in force at the time and the current plan. Despite the publication of a new development plan, rural housing policy is more or less the same and it is likely that the applicant would satisfy the criteria as it is outlined by Policy RH4. As demonstrated by previous reasons for refusal by the planning authority it is the provision of the altered dwelling and its impact on the landscape that is at stake with reference to planning matters.

Landscape Policy

- 8.3.3. The substitute consent application site is located in a landscape that is defined as an Island Landscape with a landscape sensitivity rating of 4 (Iconic) in the current development plan. A previous planning application to regularise development of this house was refused on the basis that the design and scale of the proposal would interfere adversely with landscape character/visual amenity, PA ref 17/1265 refers. The applicant explains that during the construction of the permitted dwelling, alterations were made including a reorientation/relocation of the dwelling on the site, an increase in scale/accommodation (from 136 sqm to 244 sqm), provision of an increased ridge height (from 6.55 metres to 7.9 metres) and three dormer windows at first floor accommodation and changes to the external elevations including fenestration. The applicant concludes that all of these changes are minor and do not result in any degradation of the landscape.
- 8.3.4. The iconic classification of the Inisheer and the Aran Islands group together, means that such a unique landscape has a high sensitivity to change. This has always been the case and I note that the previous development plan placed similar values on the landscape of the Aran Islands. I have visited the site and viewed the application site from a number of vantage points. I observed that there is already some development in the vicinity of the site, of a similar scale and design as the now completed dwelling. This is not the last house that advances out into the wild landscape of the island, there is a bungalow of dormer proportions a little further south, and this is the last modern house on the laneway. The South Island Lighthouse and associated cottages are located at the coast, but these are not in the same category as recent developments and are protected in their right from a historical and architectural perspective, RPS reference number 795 refers. There is also a large agricultural

shed, set back from the roadside to the east of the site and it is highly visible. To summarise, the location and siting of the dwelling has already been approved by the planning authority. The departures from the permitted development are notable but marginal in the greater scheme of things and when taken into account with existing development nearby and back towards the main settlement at the north of the island, the impact in landscape terms is marginal and not readily perceptible. I am satisfied, that the unwitting deviations from the permitted development do not significantly impact the landscape to such a degree that permission should be refused on that basis.

- 8.3.5. Public Health - In terms of wastewater management on the site, I note that the suitability of the site to receive domestic wastewater from a proprietary treatment system and raised bed percolation area was approved by the planning authority, PA reference 15/1313 refers. I note the contents and findings of the Site Characterisation Form prepared by Cyril J Kelly and Associates Consulting Engineers and dated the 6th March 2014 that accompanied the documentation for the initial planning application that was permitted by the planning authority. Specifically, I note the comments of Mr Kelly that reference the need for a mechanical aeration system with discharge to a peat bed polishing filter with treated effluent to be pumped to a raised soil filter with a 'P' value of 10-15. There is no documentation on file that suggests something other than that recommended and required by condition 5 of the notification to grant permission was installed and so I am satisfied that Policy Objective WW 6 Private Wastewater Treatment Plants would be met by the development as proposed and constructed. In this respect, it is the purview of the planning authority to ensure that Policy Objective WW 6 Private Wastewater Treatment Plants that seeks to ensure that private wastewater treatment plants, where permitted, are operated in compliance with Environmental Protection Agency (EPA) Code of Practice for Domestic Waste Water Treatment System 2021 (Population Equivalent ≤ 10).

8.4. The likely effects on the environment

- 8.4.1. In terms of Environmental Impact Assessment, having regard to the scale and nature of the development, the likelihood of significant effects on the environment can be excluded for the purposes of EIA, appendix 1 of my report refers.

8.5. The likely significant effects on a European site: Appropriate Assessment

Appropriate Assessment

- 8.5.1. Introduction - The applicant submitted an Appropriate Assessment Screening Report and Natura Impact Statement as part of the originally permitted planning application, PA reference 15/1313. Having reviewed the documents and submissions available to me, in terms of screening I am satisfied that the information on file including the submitted remedial Natura Impact Statement provides a reasonable basis for the examination and identification of potential significant effects of the development, alone, or in combination with other plans and projects on European sites. In addition, I note that the Board's Order with reference to grant the Application for Leave To Apply For Substitute Consent, it states that the Board considered that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment or Habitats Directive; and that the ability to carry out an environmental impact assessment and an appropriate assessment and provide for public participation has not been substantially impaired. Section 8.2 Exceptional Circumstances, of my report also sets out why I am satisfied that the tests in considering exceptional circumstances in an application for substitute consent as inserted by section 30 of the Planning and Development, Maritime and Valuation (Amendment) Act 2022. Section 30 amends Section 177K of the 2000 Act, have been passed.

Remedial Natura Impact Statement

- 8.5.2. The application included a rNIS which examines and assesses the potential adverse effects of the proposed development on the Inisheer Island SAC (site code 001275). It was prepared in line with current best practice guidance and provides an assessment of the potential impacts to the designated sites and no mitigation measures have been proposed.
- 8.5.3. Having reviewed the documents, submissions and consultations I am satisfied that the information allows for a complete assessment of any adverse effects of the development, on the conservation objectives of Inisheer Island SAC alone, or in combination with other plans and projects.

Effects on the integrity of Natura 2000 sites

8.5.4. The site lies within the Inisheer Island SAC (site code 001275) and 4.5 kilometres from the Inishmaan Island SAC (site code 000212). The applicant has submitted a remedial Natura Impact Statement (rNIS), prepared by McCarthy Keville O'Sullivan Ltd. (MKO). A baseline ecological survey was undertaken on the 21st November 2019 by Olivia O' Gorman (BSc., MSc.) of McCarthy Keville O'Sullivan (MKO). The report was prepared by Olivia O' Gorman and reviewed by John Hynes (BSc, MSc, MCIEEM). The rNIS which reasonably concludes in my view, that Inisheer Island SAC (site code 001275), given the location of the site proximity and the nature of the works undertaken on site for which substitute consent is sought, is the most likely Natura 2000 site which could be potentially affected by the development undertaken. The rNIS only takes the Inisheer Island SAC into the assessment as potential impact to all other sites, including the Inishmaan Island SAC, Black Head-Poulsallagh Complex SAC, Inishmore SAC, Inishmore SPA and Cliffs of Moher SPA, are excluded. The proposed development is not linked to the management of those European Sites.

8.5.5. The following are listed as Qualifying Interests for the Inisheer Island SAC (site code 001275):

Coastal lagoons [1150]

Reefs [1170]

European dry heaths [4030]

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]

Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]

Limestone pavements [8240]

8.5.6. Potential Adverse Impact - In terms of direct effects the rNIS states that the retention application relates to minor alterations to design and structural components of a dwelling house that was granted permission under PI Ref. 15/1313. The nature and scale of the project remains commensurate with that described and assessed in the original NIS for the permitted development.

8.5.7. With regard to indirect impacts the rNIS states that all alteration works were confined to the permitted site boundary and there has been loss of Annex I habitat associated

with the development. The development is serviced by a domestic wastewater treatment system which operates in accordance with the requirements of the EPA Code of Practice. Consequently, no potential for indirect impact on local ground/transitional/marine water quality or the water dependent QI habitats Coastal Lagoon and Reefs will occur during the operational phase of the development. There is no potential for the design/structural alterations to have resulted in direct or indirect impacts on the QI's of the Inisheer Island SAC. The rNIS concludes that there is no potential for adverse effects on this European site. No residual Impact or cumulative impacts have been identified as being a factor in this instance.

Evaluation of Effects

- 8.5.8. I note that a submission has been received from the NPWS with respect to nature conservation. With reference to the rNIS, the NPWS note that the site is located in an Annex 1 Dry grasslands and scrubland facies, a qualifying habitat for the Inisheer SAC. It is noted that the current rNIS states a walkover survey was conducted in November 2019, this not the optimal time for such a habitat survey. However, the findings of the survey in the rNIS are noted and accepted, the site is highly modified. The NPWS conclude that the minor alterations to design and siting will not result in direct or indirect impacts and I concur with these findings.

Conclusion

- 8.5.9. Based on the scientific information presented, the comments made by the NPWS, I concur with the applicant's conclusion that there are no likely significant effects to the SAC due to the construction works that have now been carried out and completed, and the activity of the ongoing occupation of the dwelling. I also note that no mitigation measures were or are proposed. An Appropriate Assessment was required of the implications of the project on the qualifying features of those sites in light of its / their conservation objectives. Following an Appropriate Assessment, it has been ascertained that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the Inisheer Island SAC (site code 001275), or any other European site, in view of the site's Conservation Objectives.
- 8.5.10. Further to the above, I consider that the rNIS submitted provides an adequate analysis of the potential impact arising from the works and activity which is being

undertaken on the subject site. In summary, the integrity of the site has not and will not be significantly impacted upon by the development carried out and no mitigation measures specific to this site were either proposed or carried out. On this basis I consider it reasonable to conclude on foot of the information contained on file and specifically in the remedial Natura Impact Statement, which I consider adequate in order to carry out a screening and 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 the Inisheer Island SAC (site code 001275) or any other European Site in view of the site's conservation objectives.

9.0 Recommendation

On the basis of the above assessment, I recommend that the Board approve the proposed development subject to the reasons and considerations below and subject to conditions including requiring compliance with the submitted details and noting that no mitigation measures are set out in the NIS.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the Inisheer Island SAC (site code 001275),
- (e) the policies and objectives of the Galway County Development Plan, 2022-2028,
- (f) the nature and extent of the proposed works as set out in the application for approval,

- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the remedial Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development,
and
- (i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Inisheer Island SAC (site code 001275), is the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Inisheer Island SAC (site code 001275), in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the absence of any requirement for mitigation measures as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives.

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. (a) The development shall be served by the existing effluent treatment and disposal system installed on site, and shall be operated and maintained in accordance with the details received by the planning authority on the 22nd August 2017, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. 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) A maintenance contract for the treatment systems shall be kept in place at all times. The maintenance contract shall be signed by a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

3. The site shall be landscaped, using only indigenous deciduous trees and hedging species suited to this maritime and exposed site. This scheme shall include the following:

(a) the establishment of an appropriate hedgerow and/or vernacular stone wall along all side and rear boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the date of this order, 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.

4. 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 and surface water management.

5. The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Stephen Rhys Thomas
Senior Planning Inspector

04 April 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-307823-20			
Proposed Development Summary	House.			
Development Address	Formna, Inis Oirr, Aran Islands, Co. Galway.			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓	
		No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	✓	The development is of a class specified in Part 2, but it does not exceed the threshold.	Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	✓	10. Infrastructure projects, (b) (i) Construction of more than 500 dwelling units.	Development is for a single dwelling house within a Designated Site. Having regard to the nature and scale of the proposed development it is considered that the issues arising from the proximity/	No EIAR or Preliminary Examination required

			connectivity to European Sites can be adequately dealt with under the Habitats Directive (Appropriate Assessment) as there is no likelihood of other significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.	
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	N/A	Preliminary Examination required
Yes	N/A	Screening Determination required

Inspector: _____ **Date:** _____