



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307908-20

<b>Development</b>	Change of house plan (from type D) and garage/store and all associated services previously granted under Planning Reg. Reference 10/212 and 16/109.
<b>Location</b>	4 Ros Odhrain, Roshill Road, Roscam, Galway.
<b>Planning Authority</b>	Galway City Council
<b>Planning Authority Reg. Ref.</b>	20110
<b>Applicant(s)</b>	Michael & Marian Madden
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Martin J Fahy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> October 2020
<b>Inspector</b>	Mary Crowley

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## **1.0 Site Location and Description**

- 1.1. The appeal site with a stated area of 0.186 ha is located on the southern side of Rosshill Road in the Galway village of Roscam. The village reads as a series of one-off dwellings rather than a defined settlement. The area is rural, with narrow country roads and dwellings on large plots with no uniformity of design.
- 1.2. The site relates to an internal plot Site 4 that forms part of a larger development of four individual sites. The site is accessed via an internal service road serving the development. The internal road has not been surfaced dressed but a concrete footpath and narrow landscaping strip service the site. To date no dwellings have been constructed within the wider development site.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

## **2.0 Proposed Development**

- 2.1. Permission is sought for a change of house (219.75 sqm) plan (from Type D) and garage / store (21.75 sqm) and all associated services previously granted under Reg Ref 10/212 and 16/109. It is proposed to manage wastewater through an on-site treatment system. The application was accompanied by a Site Characterisation Form and proposed effluent treatment and disposal system.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Galway City Council issued notification of decision to grant permission subject to 7 no conditions. Condition No 7 requires that the proposed wastewater treatment system comply with the provision of the current EPA Code of Practise.

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

- 3.2.1. Planning Reports

- The Case Planner referred to the previous grant of permission on site and recommended that permission be granted subject to conditions. The notification of decision to grant permission issued by Galway City Council reflects this recommendation.

#### 3.2.2. Other Technical Reports

- **Transportation** – No objection subject to conditions.
- **Environment & Climate Change** - No objection subject to conditions including compliance with the Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009

### 3.3. Prescribed Bodies

#### 3.3.1. None

### 3.4. Third Party Observations

- #### 3.4.1.
- There are 2 no observation from (1) Dr Martin J Fahy and (2) Deirdre Greally recorded on the appeal file. The issues raised relate to design, incorrectly stated that the house is to be connected to a public sewer, AA and requirement for an EIA.

## 4.0 Planning History

### 4.1. Overall Site

- Planning Authority Reg Ref 16/109 - Extension of time granted to Reg Ref 10/212
- Planning Authority Reg Ref 10/212 - Planning permission granted for the construction of 4 no. dwellings and individual effluent treatment plants and percolation areas

### 4.2. Individual Sites

- **ABP 306460** - Permission **granted** for a change of house type to residential dwelling & garage store.
- **ABP-305377** - Permission **granted** for a change of house type to residential dwelling & garden shed.

- **ABP-302635** - Permission was **granted** for the retention of changes to the vehicle and pedestrian layout and **refused** for the change of house type for reason of the suburban design.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The operative plan for the area is the **Galway City Development Plan 2017-2023**. The site is located on lands zoned as **Low Density Residential (LDR)** where it is an objective “*to provide for low-density residential development which will ensure the protection of existing residential amenity.*” Residential use is permitted in principle in such areas.
- 5.1.2. **Policy 2.9 Low Density Residential Areas (LDR)** seeks to *protect the character of these areas by ensuring new development has regard to the prevailing pattern, form and density of these areas and protect the characteristics of these areas through development standards and guidelines.*

### 5.2. Natural Heritage Designations

- 5.2.1. The site is located 300m east of the Galway Bay Complex SAC (site code 00268) and the Inner Galway SPA (site code 04031).

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development comprising change of house type only and the location of the site on zoned lands there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The third-party appeal has been prepared as submitted by Dr Martin J Fahy and may be summarised as follows:

- The site is located c.330m west and c310m south of the Galway Bay Special Area of Conservation (Code 000268) and the Inner Galway Bay Special Area of Protection (Code 004031) respectively, at the closest points; and c.440m west from the Galway Bay Complex proposed Natural Heritage Area (Code 000268).
- The site is located close to the Roscam karst spring which outflows in an intertidal spring to the south in the Galway Bay complex SAC. Connectivity is presumed to be present between the site and the Natura site, unless the applicant can prove to the contrary.
- The trial holes for this site did not reach 1m in depth and as such do not comply with the EPA Code of Practice requirements.
- Any principle for planning for a dwelling and / or dwellings on the application and / or development site under Reg Ref 10/212 and Reg Ref 16/109 was awarded in error as it failed to consider the Habitats and EIA Directives and relevant EUCJ case law. Neither the 2010 grant of permission nor the 2016 extension of permission contained any such findings as no AA or EIA reports submitted to the Planning Authority. Accordingly, the 2010 permission and 2016 extension cannot be relied on to rule out the risk of adverse effects on the nearby SAC, SPA and pNHA.
- The grant of planning for a dwelling on the application / development site remains subject to EIA Directive regardless of the Galway City Councils SEA, AA and NIS at the time of drafting the relevant Galway City Development Plan. The SEA and NIS which were carried out as part of the Galway City Development Plan 2017-2023 and which established the land use zoning policies and objectives under that Plan are not sufficient to meet the threshold test for an individual development / project. In the absence of an AA and EIA the Planning Authority has no basis for

dispelling any reasonable scientific doubt as to the impact of the proposed development / project on the protected sites.

- Had the site been the subject of an AA the applicant would have noted the recorded presence of bats on and near the appclaiton site and the project development site. Bat species in Ireland are protected under domestic and European legislation.
- The proposed house remains contrary to the proper planning and sustainable development of the area. Amending the design and size of the dwelling is not in keeping with the character and nature of the permitted development.
- Further the development site continues to be non-compliant with the awarded planning permission with respect to the missing traffic calming measure, the positioning of the street light on the wrong side of the entrance road, the electrical ducting and the provision of approved power and water connections.

## **6.2. Applicant Response**

6.2.1. The first party response to the appeal has been prepared and submitted by James Roache B.E. Consulting Engineer and may be summarised as follows:

- Since the grant of permission for the overall site there have been applications on three of the four sites for a change of house plan.
- Galway City Council granted permission for all of the change of house plans, but the appellant appealed all these decisions.
- An Bord Pleanála confirmed the grant of permission for change of all three applications.
- The current application should be considered in a similar manner to the earlier two appeals by the appellant.
- The design, layout and location are an improvement on the original approved dwellings.

## **6.3. Planning Authority Response**

6.3.1. The response from Galway City Council may be summarised as follows:



- The principle of a house on this site was established under Reg Ref 10/212 and 16/109 and this application relates only to a change of house design.
- In the context of the source-receptor pathway model, precautionary principle and characteristics of the site, it is clear that the regional karst acquirer, its water quality and the ecological status of potential receptor European Site of Galway Bay is duly protected by the provision of a surface water system and proposed wastewater treatment system which adhere to EPA Code of Practise Wastewater Treatment and Disposal Systems Serving Single house (EPA 2010) and requirements therein.
- Appropriate mitigation measures, that is suitably designed drainage system which complies with relevant EPA and City Council standards, has been incorporated into the development to protect the pathway and receiving environment.
- It is noted that the land use zoning objectives and policies (including those related to this site) of the current Galway City Development Plan was subject to comprehensive SEA and AA processes.
- The site is zoned for low density residential development and the proposed change of house design is a development objective which is compatible with the land use zoning objective and the specific development objective for these lands as expressed under Fig 11.14 LDR Roscam Village of the Development Plan.
- In relation to protected bat populations it is noted that the proposed site has not been designated as an Annex I host habitat nor has a bat roost been identified on site. The site has been subject to a degree of development under Reg Red 10/212 and 16/109 and it is unlikely that it is used for foraging purposes.
- Reference is made to the previous appeals on the overall site. It is submitted that the same parameters of assessment apply to this appeal.
- The proposed contemporary dwelling design currently proposed is similar and reminiscent of the design of dwellings permitted on the adjacent sites in the general area.

#### 6.4. Observations

##### 6.4.1. None

## 6.5. Further Responses

6.5.1. None

## 7.0 Assessment

7.1. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings. The matter of EIA has been addressed in Section 5.3 above.

- Principle
- Design
- Wastewater Treatment
- Ecology
- Non-Compliance with Parent Permission
- Appropriate Assessment

### 7.2. Principle

7.2.1. As documented planning was granted for a “mini-estate” of four “one-off houses” each with their own domestic wastewater treatment system under Reg Ref 10/212. This was extended under Reg Ref 16/109. A change of house type for House D only is being sought under these permissions and is therefore considered acceptable in principle.

### 7.3. Design

7.3.1. Concern is raised that the amended design and size of the dwelling is not in keeping with the character and nature of the permitted development.

7.3.2. The general area is characterised by large, detached dwellings reflecting a mix of design types and finishes. The proposed design has been well considered and has been suitably designed and scaled to avoid appearing visually obtrusive or

overbearing to neighbouring properties. Overall, I consider the design response, scale and finishes proposed to be acceptable at this location.

#### **7.4. Wastewater Treatment**

- 7.4.1. I note the concerns raised that the trial holes for this site did not reach 1m in depth and as such do not comply with the EPA Code of Practice requirements.
- 7.4.2. I have considered the Site Characterisation Form submitted with the planning application and note that the depth of the test hole from ground surface to base of hole is 900mm. I further note the recommendation to manage wastewater through an on-site treatment system. Details of same have been provided with the application. GCC Environment & Climate Change have no stated objection subject to conditions including compliance with the Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ )" – Environmental Protection Agency, 2009.
- 7.4.3. I further note that according to the GSI Mapviewer there should be a Karst Spring in the adjacent field. The site was inspected by Galway City Council Environment & Climate Change Section where it was reported that no spring or other Karst features were noted. However, the location of the feature is said to be accurate to within 20m. The Code of Practice requires a minimum separation distance of 15m. The distance from the DWWTS to the indicated location of the Karst spring is greater than 35m. Therefore, as stated by the Environment Section, even if the spring is present and even if it's located in the most unfavourable location to the site there would still be sufficient distance.
- 7.4.4. Having regard to the planning history pertaining to the overall site, the proposal to install an on-site treatment system together with the recommendation of Galway City Council there is no objection to the proposed scheme subject to conditions.

#### **7.5. Ecology**

- 7.5.1. Concern is raised that there is a presence of bats on and near the appclaiton site and the project development site. As stated bat species in Ireland are protected under domestic and European legislation.

7.5.2. As pointed out by Galway City Council the proposed site has not been designated as an Annex I host habitat nor has a bat roost been identified on site. I agree with the Planning Authority that the site has been subject to a degree of development under Reg Red 10/212 and 16/109 and it is unlikely that it is used for foraging purposes. Habitat choice can be species specific and include habitats such as waterways, woods or grasslands. The existing linear features such as site boundary hedgerows and stone walls are being retained. The latter features are being supplemented by additional planting improving biodiversity and the inclusion of these features in the development will provide potential roosts and hedgerows to commute along and from foraging areas.

7.5.3. Having regard to the foregoing I do not consider this matter to be material to the consideration of this scheme.

#### **7.6. Non-Compliance with Parent Permission**

7.6.1. I note the appellants comments that the overall site continues to be non-compliant with the awarded planning permission. Matters pertaining to compliance with the terms and conditions of a grant of planning permission is a matter for the local authority.

#### **7.7. Appropriate Assessment**

7.7.1. The proposed development is not directly connected with or necessary to the management of any European site.

7.7.2. The site is located less than 1km from of the Galway Bay Complex SAC (site code 00268) and the Inner Galway SPA (site code 04031). The Galway Bay Complex is a very large (14,408.98ha) marine dominated, made up of subsidiary bays, inlets and islands. The Inner Galway Bay SPA is a very large, marine dominated, site which supports internationally important wintering populations.

7.7.3. Having regard to the location of the site on zoned lands and given the nature of the proposed development which is a change of house type and the nature of the receiving environment which is a built-up residential area, no appropriate assessment issues arise and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

## 8.0 Recommendation

8.1. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I recommended that permission be **GRANTED** for the following reasons and considerations.

## 9.0 Reasons and Considerations

9.1. Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the general pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the visual amenities of the area or residential amenity of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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. 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 commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development, including site boundary treatments, shall comply with the terms and conditions of the planning permissions granted under planning register reference numbers 10/212 and 16/109, and any agreements entered into thereunder.</p> <p><b>Reason:</b> In the interest of clarity.</p>

3.	<p>a) Prior to commencement of development, details of external stone finish shall be submitted to, and agreed in writing with, the planning authority.</p> <p>b) The roof(s) shall be blue/black in colour.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
4.	<p>The proposed garage / store / shed shall not be used for commercial purposes or for human habitation or for any other purpose other than a purpose incidental to the enjoyment of the dwelling house as such.</p> <p><b>Reason:</b> In interest of proper planning and sustainable development.</p>
5.	<p>Water supply and drainage arrangements, including disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority, 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, 2009. 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.</p> <p>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 in accordance with the standards set out in the EPA document.</p> <p><b>Reason:</b> In the interest of public health</p>
7.	<p>Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Irish Water.</p>

	<b>Reason:</b> In the interest of public health.
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**Mary Crowley**

**Senior Planning Inspector**

**2<sup>nd</sup> November 2020**