



An
Bord
Pleanála

Inspector's Report

ABP-308083-20

Development	Permission to construct a new dwelling house, domestic garage, effluent treatment system and polishing filter.
Location	Fakeeragh, Clifden, Co. Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	191972
Applicant(s)	Maria Dolan
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Donal & Maria Staunton
Observer(s)	None
Date of Site Inspection	04 th of December 2020
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. The appeal site is in the rural area of Fakeeragh, Clifden Co. Galway, c. 1.5 - 2 km west of Clifden. The site is accessed off the Sky Road that runs west of Clifden. The site is along a local road that runs south off the Sky Road. This road is known locally as the Beach Road. The site is located on a more than 90 degree bend in this local road. The road is narrow in places c.3-3.5m and has a grass verge in its middle in many places.
- 1.2. To the northern boundary of the site there is an existing agricultural style gate. This gate provides access along a private road to elevated lands that appear to be under development. There is a low stone wall bounding the northern boundary of the site to this private road. Approximately 15-20m of the western boundary of the site fronts the local road and is fenced off with a post and barbed wire railed fence.
- 1.3. The lands around the site are elevated and fall from north to south as the Beach Road runs down to the coast c. 300m to the south. The site itself is uneven with a steep drop towards the south. The site is overgrown and not in any clear use. The stated site area is 0.2024ha.
- 1.4. There is one other house directly opposite the site across the road. This is a single storey style house with first floor accommodation. There are a number of other houses located along this local road.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
 - A 195 sq.m, four bedroom house.
 - A split level, flat roof design with a height of 6.5m to its southern side and 3.5 m to the northern side.
 - An attached 25.2 sq.m garage .
 - An effluent treatment system with polishing filter
 - The application form indicates a new connection to the public mains for water supply.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant permission on the 06/08/20, subject to 13 conditions of a standard nature, including the following:

- Condition no. 2 a setback not less than 15m long and 3m wide along the roadside boundary to facilitate a car parking space.
- Condition no.11 requires the applicant to enter into a connection agreement with Irish Water

4.0 Planning Authority Reports

4.1. Planning Reports

4.1.1. The report of the Planning Officer (which appears to be signed and approved by email dated 05/08/20) reflects the decision of the Planning Authority. Following requests for further information dated 19/02/20 and clarification of further information dated 25/05/20 the following is noted:

- The Roads and Transportation Unit reviewed the application and recommended certain conditions be attached
- The site characterisation report in relation to section 3.3 (T Test) now meets to the Planning Authority's satisfaction.

4.2. Other Technical Reports

- None on file

4.3. Prescribed Bodies

- None on file

4.4. Third Party Observations

One submission has been received. The issues raised include-

- Impact on privacy and views southwards
- Speculative sale of sites from the landholding
- Neither the applicant nor landowner own the land to which the access is proposed
- Road safety/traffic hazard concerns

5.0 Planning History

This Site

- 308086 - Leave to appeal- Invalid grounds 04/09/20

Adjoining Site-

- 191543 - Construction of a house, Grant 26/11/2019

6.0 Policy Context

6.1. National Planning Framework (NPF) – Project Ireland 2040 (2018)

Objective 19 of the National Planning Framework states-

“Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:.....

In rural areas elsewhere, 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”

6.2. Section 28/Other Guidelines

6.2.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. Planning Authorities are recommended to identify and broadly locate rural area typologies that are characterised as being under strong urban influence, stronger rural areas, structurally weak, or made up of clustered settlement patterns.

The appeal site is located in an area identified Structurally Weak, as set out under Section 6.3 below. In these areas the guidelines advise that-

'The key development plan objective in these areas should refer to the need to accommodate any demand for permanent residential development as it arises subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.'

(Appendix 3, Box 3).

Appendix 4 deals with 'Ribbon Development' and recommends against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. The guidelines go on to state-

In assessing individual housing proposals in rural areas planning authorities will therefore in some circumstances need to form a view as to whether that proposal would contribute to or exacerbate ribbon development. Taking account of the above and the dispersed nature of existing housing in many rural areas, areas characterised by ribbon development will in most cases be located on the edges of cities and towns and will exhibit characteristics such as a high density of almost continuous road frontage type development, for example where 5 or more houses exist on any one side of a given 250 metres of road frontage.

Whether a given proposal will exacerbate such ribbon development or could be considered will depend on:

- *The type of rural area and circumstances of the applicant,*

- *The degree to which the proposal might be considered infill development, and*
- *The degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development.*

Planning authorities will need to arrive at a balanced and reasonable view in the interpretation of the above criteria taking account of local circumstances, including the planning history of the area and development pressures.

6.2.2. Development Management Guidelines for Planning Authorities 2007

Section 5.13 Issues relating to title to land-

‘Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.’

6.2.3. EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) and the Code of Practice - Design Capacity Requirements August (2013),

The CoP provides guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses (p.e. less than or equal to 10).

6.3. Local Policy

6.3.1. Galway County Development Plan

Section 3.8.2 states the key objectives of the Council for *Structurally Weak Areas* are to-

- *‘accommodate residential development proposals as they arise subject to satisfactory site suitability and technical considerations;*
- *To accommodate residential development proposals in accordance with Chapter 13 (Development Management Standards and Guidelines);*
- *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.’*

Section 3.9 sets out Rural Housing Policies and Objectives

Policy RHO 1 - Management of New Single Houses in the Countryside, Map RHO1- Structurally Weak Area.

Objective RHO 2 - Rural Housing Zone 2 (Structurally Weak Area)

It is an objective of 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 with the exception of those lands contained in Landscape Categories 3, 4 and 5

Objective RHO 3 - Rural Housing Zone 3 (Landscape Category 3, 4 and 5)

‘Those applicants seeking to construct individual houses in the open countryside in areas located in Landscape Categories 3, 4 and 5 are required to demonstrate their Rural Links to the area and are required to submit a Substantiated Rural Housing Need*.....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.’*

Please see attached Appendix which shows the site is located in Landscape Category 2 as per Map RHO2 and Landscape Sensitivity and Character Areas – Map LCM2.

Objective RHO 9 Design Guidelines

Objective RHO 12 Waste Water Treatment Associated with Development in Un-Serviced Areas

Development Management Standards & Guidelines

Section 13.4 Rural Residential Considerations

DM Standard 5: Rural Housing

DM Standard 6: Assimilation of Development into Landscape

DM Standard 7: Site Size for Single Houses Using Individual On-Site Wastewater Treatment Systems.

DM Standard 8: Landscaping

Landscape

Policy LCM 1 – Preservation of Landscape Character

Objective LCM 1: Landscape Sensitivity Classification

Objective LCM 2: Landscape Sensitivity Ratings

The site is located within Medium Value (P. 169 of DP) and Class 2- Moderate Sensitivity (P.170 of DP)

6.4. Natural Heritage Designations

- 6.4.1. The site is located c. 1.5 km west of the Twelve Bens/Garraun Complex SAC (002031), c. 2 km north west of the Connemara Bog Complex SAC (002034) and c. 3.8km east of the West Connacht Coast SAC (002998).
- 6.4.2. The site is located c. 3.5 km north west of the Connemara Bog Complex SPA (004181).

6.5. EIA Screening

- 6.5.1. Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from

the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 The Appeal

7.1. Grounds of Appeal

One third party appeals has been received from-

- Donal and Maria Staunton. It is noted the appellants are the owners and developers of the site to the immediate north of the subject site.

The grounds of appeal can be summarised as follows-

- The application process and numerous further information requests has been convoluted and complicated.
- The site boundary as shown on the OSi Map and the site layout maps submitted with the application are not in the ownership of the applicant. A small identified section belongs to the appellant and parts of the site (access to the property) belong to another landowner who has not consented to the application.
- Road Traffic and Safety. The applicant will be required to provide a set down parking area outside of her site boundary Two adjoining entrances would lead to intensification of traffic on an already busy narrow lane which includes dangerous bends. A document submitted for the appellant's application has incorrectly been submitted to show sightlines for the proposed application as part of a further information submission.

The traffic survey was carried out in February and does not take into account heavier traffic periods during the tourist season. This road is lived on by two retained firefighters. Seven members of the Clifden RNLI live on Sky road and its environs. The RNLI station is located on Beach Road. There are 12 households, 14 agricultural gates and the main access to Clifden Castle on this road. The road is not wide enough to facilitate two large vehicles e.g. camper vans and the proposed set down area will be needed to facilitate traffic flow. These scenarios from two accesses off the existing bend would

intensify the existing traffic situation and could compromise the safety and wellbeing of the wider public using the road.

- Errors and Discrepancies in the application including the maps, forms and site notice. The land was never used for agricultural purposes.
- There is no public water mains supply available in the townland of Fakeeragh. Documentation from Irish Water is submitted. In the absence of a public supply a well must be bored raising concerns over separation distances from the proposed polishing filter.
- Errors and Discrepancies in the Site Characterisation Report (SCR). The photographs submitted with the SCR are clearly from another site. There is no physical evidence that a 'T' test was ever conducted on site. Incorrect dimensions for the 'P' Test holes are provided. Changed indicated in depth of trial holes from original submission and Clarification of further information submission.
- Concerns are raised over the applicants legal interest in the site. It is noted in the application form it is stated the applicant owns the site. It appears the applicant does not reside in Clifden and her housing need is questioned. The appeal argues the applicant is not a 'family' member but is a cousin.
- The application has been granted without an enurement clause and the appellant believes the site could be sold with planning or used as a holiday home. Three other sites from this landholding have been developed as holiday homes, sold with planning or used for short term letting.
- Planners Report- the planning report for the application lacks the usual layout and details to be expected from the planner including names, signatures and dates as well as the date and name of the person inspecting the site.

7.2. Applicant Response

- None on file

7.3. Planning Authority Response

- None on file

7.4. Observations

- None

8.0 Assessment

8.1. Main Issues

8.1.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues to this appeal are as follows:

- Principle of Development /Rural Housing Policy
- Ribbon Development
- Wastewater
- Road Safety and Traffic Hazard
- Other Matters
- Appropriate Assessment

8.2. Principle of Development /Rural Housing Policy

8.2.1. National Policy Objective 19 of the National Planning Framework (NPF) seeks to facilitate the provision of single housing in rural areas not under urban influence 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.

8.2.2. The Sustainable Rural Housing Guidelines for Planning Authorities (2005) defines 'Structurally weaker rural areas' as-

'These areas will exhibit characteristics such as persistent and significant population decline as well as a weaker economic structure based on indices of income, employment and economic growth.'

- 8.2.3. The application site is located in a rural area which has been identified in Section 3.8.2 and Map RH02 of the County Development Plan as Structurally Weak in accordance with the 2005 Guidelines.
- 8.2.4. The three planners report accompanying the application do not make reference to the sites location with a structurally weak area or any other area type. It is noted there is no documentation on file to support a rural housing need and an occupancy condition has not been imposed on the applicant through the conditions of the permission. In relation to 'local housing need' the planners reports for planning applications 19/1543 (immediately north of the site) and 20/1414 (520 metres east of the site) both state that these sites are within class 2 landscape outside the GTPS.
- 8.2.5. Accordingly. I am satisfied the site is within a Structurally Weak area where Objective RHO3 does not apply. The applicant is not required to demonstrate her "Rural Links" and "Substantiated Rural Housing Need" to the area and an occupancy condition would not be required should permission be granted.

8.3. Ribbon Development

- 8.3.1. The local road is under significant pressure from one-off rural housing. I note at least 10 existing houses accessing this local road from both sides and in the immediate vicinity of the site. There is also one recently permitted house to the north of the site that appears to be under construction.
- 8.3.2. Appendix 4 of the 2005 Rural Housing Guidelines provides an example of ribbon development where 5 or more houses exist on any one side of a given 250 metres of road frontage.
- 8.3.3. The proposed development would be the fourth existing and permitted house within c. 250m on this side of this road. In this regard I am satisfied the proposal will not exacerbate such ribbon development in the context of the example given. However, this is only one example given and should not preclude consideration of other examples including the extent of one off houses on the other side of the road and the extension and coalescence of same over a larger but reasonable distance.
- 8.3.4. Appendix 4 of the guidelines provide other factors to consider when determine ribbon development-

- The type of rural area and circumstances of the applicant,
- The degree to which the proposal might be considered infill development, and
- The degree to which existing ribbon development would be extended or whether distinct areas of ribbon development would coalesce as a result of the development.

Appendix 4 requires planning authorities to arrive at a balanced and reasonable view in the interpretation of the above criteria.

- 8.3.5. As per section 8.2 above the site is located in a Structurally Weak area and there is no information on file in relation to the circumstances of the applicant. I do not consider the proposal to be infill development. The proposal would be the eighth house within 300m accessing this road on both sides and the proposed development would in my opinion contribute to the coalescence of houses in this area. As such, and having regard to the proximity of the site c.700m west of the development boundary and zoned lands of Clifden, I consider that the proposed development would consolidate and contribute to the build-up of ribbon development in this rural area. The proposed development should be refused.

8.4. Wastewater

- 8.4.1. The applicants submitted a Site Characterisation Report (SCR) (dated 19/12/19) to the Planning Authority with the original application. The Planning Authority raised concerns through further information in relation to the carrying out of the 'T' and 'P' tests as no 'T' value were recorded and the depth dimensions for the 'P' Test was recorded as 0. A cross section through the site showing the proposed polishing filter was also requested.
- 8.4.2. Following the submission of Further Information, a new SCR was submitted (dated 17/04/20) including 'T' and 'P' value results. The Planning Authority raised further concerns over the SCR and in particular the dimensions of the 'T' and 'P' test holes. Clarification of Further Information was sought.
- 8.4.3. A third SCR (dated 21/06/20) has been submitted in response to the Planning Authority's concerns through Clarification of Further Information. In this regard a 'T' test result and dimensions for both sets of test holes have been supplied. It is also

noted that the depth of the trial hole has changed in the third SCR from the depth shown in the two previous SCR's.

- 8.4.4. The overall proposal is for a packaged wastewater treatment system and polishing filter to accommodate a stated population equivalent of 6 persons.
- 8.4.5. The SCR identifies the site within a Locally Important and Poor aquifer category with an Extreme Vulnerability classification in the GSI Groundwater maps. I have reviewed the GSI maps and note they show the site within an area where 'Rock is at or near Surface or Karst'. This is as per the Vulnerability Map submitted with the first SCR.
- 8.4.6. The SCR indicates that the site falls within the R2(1) response category where on-site systems are generally -

“Acceptable subject to normal good practice. Where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Section 6 are met and that the likelihood of microbial pollution is minimised.”

The SCR states the main target at risk is groundwater.

- 8.4.7. The trial hole assessment in the third SCR indicates the trial hole was opened on 11/04/19 and examined on the 15/04/19. It was opened to 2.1m, bedrock was encountered at 1.75m and the water table was encountered within the base of the trial hole.
- 8.4.8. The trial hole was observed at the time of my site inspection and the water table was evidently higher than reported in the SCR. This is not unexpected given the time of year of the inspection. There was no evidence of ponding on site. The ground elsewhere on the site was generally firm underfoot.
- 8.4.9. The applicants have carried out a 'T' Test and it is noted the pre-soaking of the holes was carried out on the 11/03/20, almost eleven months after the trial hole was opened and the 'P' test was carried out. A 'T' test value of 22.47 was recorded and is within the acceptable range
- 8.4.10. The applicants have carried out a 'P' Test and it is noted the pre-soaking of the holes was carried out on the 15/04/19, almost eleven months before the 'T' tests were pre-soaked. I have reviewed the 'P' Test result with the SCR's submitted on the 19/12/19

and the 17/04/20. It is noted pre-soaking is recorded in both as started on the 15/04/19. This is also the case for the third SCR (dated 21/06/20). I note that the records given in section 3.3 (b) 'P' Test, Steps 1-4 in the SCR's submitted on the 17/04/20 and the 21/06/20 are the same with the exception of the dimensions of the holes. It is concerning that differing dimensions have now been provided for the 'P' test holes even though the 'P' test is indicated as having been carried out on the same day.

- 8.4.11. A 'T' test value of 22.47 was recorded and is within the acceptable range. A 'P' test value of 20.22 has been recorded in the SCR's submitted on the 19/12/19 and the 21/06/20, despite the differing dimensions and is within the acceptable range.
- 8.4.12. The proposed packaged wastewater treatment system with polishing filter appears to comply with the CoP requirements in relation to separation distances. It is noted that the area of the polishing filter has been calculated based on a Population Equivalent (PE) of 6 given an area of 54 sq.m.
- 8.4.13. It is noted that section 5.0 of the SCR recommends '*decommissioning and desludging of existing septic tank and percolation area to be completed prior to installation of new system.*' It is unclear what existing septic tank and percolation this recommendation refers to.
- 8.4.14. Having reviewed the three submitted SCR's and notwithstanding the submitted further information and clarification of further information, it is my opinion that there are significant discrepancies in the Site Characterisation Report in relation to the depth of the trial hole, the dimensions of the 'P' test holes, the recorded time difference in carrying out the assessment as a whole and the information recorded in the recommendation. As such I am not satisfied that the proposed development would not run a risk to groundwater and could be prejudicial to public health. The proposed development should, therefore, be refused.

8.5. Road Safety and Traffic Hazard

- 8.5.1. The appellant has raised concerns in relation to the capacity of the road to cater for the intensification of use of the road from an additional entrance.
- 8.5.2. The local road fronting the site is minor in nature c. 3m in width and appears to predominantly serve local traffic, although seasonal and tourist traffic would be

expected. The nature of the road, its width and in particular the sites location on a bend clearly contribute to very low road speeds in this area.

- 8.5.3. The proposed site layout plan as submitted in response to the Clarification of Further Information (dated 21/06/20) shows the entrance at the most northerly part of the site adjoining the existing entrance to the site to the north. Sight distances of 70m to the west and 68m are shown to the south west. A forward visibility of 55m is shown to the west for traffic travelling north and turning right into the site.
- 8.5.4. I consider the narrow nature of the road and in particular its vertical and horizontal alignment contribute to significantly restrict traffic speed and act as a traffic calming measure. The proposed entrance is therefore considered satisfactory for a one off house in this context and I do not consider the proposed entrance and associated traffic movements would create a traffic hazard or endanger public safety.

8.6. Other Matters

- 8.6.1. The appellant has raised significant concerns about the applicants ability to access the site over lands that do not appear to be in the control of the applicant. The appellant has submitted land registry and folio details to support this contention. While I understand these concerns and consider they may be valid, it is noted the applicant has indicated she is the owner of the application site in question 9 of the application form and accordingly the Planning Authority has accepted the application as valid.
- 8.6.2. As such, I am satisfied that the applicants has demonstrated her legal interest for the purposes of the planning application and its decision. Section 5.13 of the Development Management Guidelines 2007 deals with 'Issues relating to title to land' and states-

'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.'

Further consents in this regard are essentially a subsequent matter, and are outside the scope of the planning appeal. This is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the Act.

- 8.6.3. In terms of the appellants concerns in relation to the site notice I note the first planners report dated the 19-02-20 states the site was inspected on the 10/02/20 and a photograph is attached.
- 8.6.4. The appellant has raised concerns over the applicants proposal to connect to the public mains for water supply and they contend there is no such supply available in the area. Section 19 of the planning application form shows the applicant proposes to connect to the public mains. The site layout plan drawing shows the '*Existing Public Watermain*' in its legend but the watermain is not shown on the drawings. Condition no.11 of the Planning Authority's decision requires the applicant to enter into a connection agreement with Irish Water to serve the house prior to commencement of the development. As such I have no concerns in this regard.

8.7. Appropriate Assessment (AA)

- 8.7.1. Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on a European site.

9.0 Recommendation

- 9.1. I recommend that permission is refused for the following reasons-

10.0 Reasons and Considerations

1. The proposed development when taken in conjunction with existing and permitted development in the vicinity of the site would consolidate and contribute to the build-up and coalescence of ribbon development in this open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services

and community facilities. The proposed development would, therefore, be contrary to the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and to the proper planning and sustainable development of the area.

2. Based on the discrepancies set out in the site characterisation reports submitted with this application, it is considered taken in conjunction with existing and permitted development in the vicinity, the proposed development would result in an excessive concentration of development served by wastewater treatment systems. The proposed development would result in a proliferation of such systems in the area discharging to the groundwater. It is considered therefore, that the proposed development would be prejudicial to public health.

Adrian Ormsby
Planning Inspector

08 December 2020