



An
Bord
Pleanála

Inspector's Report

ABP-308502-20

Development	Extension to dwelling house and installation of a effluent system.
Location	Mannin, Ballyconneely, Co Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	201122
Applicant(s)	Martin McDonagh
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Martin McDonagh
Observer(s)	None
Date of Site Inspection	16 th December 2020
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.257 ha is located towards the end of a narrow cul de sac in a rural area approx. 3km north west of Ballyconneely. There is an existing single storey structure with a galvanised pitched roof on the site with a bungalow located to both the west and east of the site. The overall area is characterised as rural coastal with a large network of narrow local roads interspersed with linear residential development.
- 1.2. 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 an extension to an existing dwelling house and installation of a new effluent treatment system. Gross floor space of proposed work is; 22.03sqm. Gross floor space of work to be retained; 49.38sqm. The application was accompanied by the following:
 - Site Suitability Report (Kingspan) and Site Characterisation Form
 - Copy of a 1980 Galway County Council decision to grant permission to John McDonagh for the demolition of a house and the erection of a dwelling house in the townland of Mannin More (Reg Ref 36375 refers).
 - Letter from John McDonagh, brother of the applicant setting out the context and history of the structure on site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Galway County Council issued a notification of decision to refuse permission for 3 no reasons relating to (1) intensification of an existing unauthorised development on site, (2) prejudicial to public health and (3) appropriate assessment.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Officer** recommended that permission be refused for the unauthorised works on site for which retention is sought (and may necessitate substitute consent), the implications of the proposal on the adjoining designated sites (SAC & NHA) and in light of the above combined with the absence of any trial hole being encountered on site and the lack of a fulsome ecological impact assessment (NIS & Ecological Impact Assessment) accompanying the application. The notification of decision to refuse permission issued by Galway County Council reflects this recommendation.

3.2.2. Other Technical Reports

- None

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

3.4.1. None

4.0 Planning History

4.1. There was no previous appeal on this site. No planning history has been made available with the appeal file. The following history is noted from the Case Planners Report:

- **Reg Ref 19/1565** – Martin & Jo McDonagh **incomplete application** for (1) change of use from existing shed into a new dwelling house (2) permission to construct a new porch and rear elevation extension as well as all associated external and internal alterations, (3) install new effluent treatment system and polishing filter as well as all ancillary site works.
- **Reg Ref 36375** – John McDonagh **granted permission** to erect a dwelling house.

5.0 Policy Context

5.1. Development Plan

5.1.1. The operative plan for the area is the **Galway County Development Plan 2015-2021**. The site is located in a Structurally Area Under Strong Urban Pressure (GTPS), Class 5 Landscape Category (Unique - Negligible alterations will be allowed only in exceptional circumstances) with a Landscape Value Rating of Outstanding. Relevant policies and objectives are set out below:

- **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*. In addition an Applicant may be required to submit a visual impact assessment of their development, where the proposal is located in an area identified as “Focal Points/Views” in the Landscape Character Assessment of the County or in Class 4 and 5 designated landscape areas. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis. 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.*

**Substantiated Rural Housing Need: Is defined as supportive evidence for a person to live in this particular area and who does not or has not ever owned a house/received planning permission for a single rural house or built a house (except in exceptional circumstances) in the area concerned and has a need for a dwelling for their own permanent occupation. In addition the applicants will also have to demonstrate their rural links as outlined above.*

- **Objective WW5 – Waste Water Treatment Associated with Development in Un-Serviced Areas** *Permit development in un-serviced areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed waste water treatment system is in accordance with the Code of Practice Treatment and Disposal Systems Serving Single House EPA (2009)/ EPA Wastewater Treatment Manuals – Treatment Systems for Small Communities, Business, Leisure Centres*

and Hotels (1999) (or any superseding documents) and subject to complying with the provisions and objectives of the EU Water Framework Directive.

- **Objective NHB 1** – *Protected Habitats and Species Support the protection of habitats and species listed in the Annexes to and/or covered by the EU Habitats Directive (92/43/EEC) (as amended) and the Birds Directive (2009/147/EC), and regularly occurring-migratory birds and their habitats and species protected under the Wildlife Acts 1976-2000 and the Flora Protection Order.*
- **Objective NHB 2** – *Biodiversity and Ecological Networks Support the protection and enhancement of biodiversity and ecological connectivity within the plan area, including woodlands, trees, hedgerows, semi-natural grasslands, rivers, streams, natural springs, wetlands, stonewalls, geological and geo-morphological systems, other landscape features and associated wildlife where these form part of the ecological network and/or may be considered as ecological corridors or stepping stones in the context of Article 10 of the Habitats Directive.*

5.2. Natural Heritage Designations

- 5.2.1. The site is located within the Slyne Peninsula SAC (002074) and is proximate to the Slyne Head to Ardmore Point Islands SPA (004159); Connemara Bog Complex SPA (004181) and Connemara Bog Complex SAC (002034)

5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, 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 first party appeal has been prepared and submitted by John McDonagh on behalf of the applicant and may be summarised under the following general headings:

6.1.2. **Unauthorised Development**

- In 1980 planning permission was granted permission to demolish the original farmhouse and the erection of a new dwelling house (Reg Ref 36375)
- Galway County Council have failed to acknowledge the fact that the building currently on the site is an authorised construction and consider the application to extend and modernise the property
- The application was not assessed on its merits as is demonstrated by the reference to “existing unauthorised development on site”. There are no unauthorised structures on site.

6.1.3. **Wastewater Treatment**

- The second reason for refusal is given as “*lack of evidence of the EPA test excavation area on site*”. There are cattle grazing on the site, so all trial holes were backfilled for safety. The precise location would be difficult to locate. Had Galway County Council contacted the applicants agent to give notice of their intended site visit arrangements could have been made for someone who knew the location for the trial holes to be present on site.
- The test results and the treatment plant designed and specified by Kingspan Klargester has been proven to be suitable for the safe treatment of waste products and there is no evidence of any risk to public health.

6.1.4. **Appropriate Assessment**

- The third reason for refusal is given as the absence of a NIS and EIAS and concerns over the implications of the proposal on receiving waters and conservation objectives of protected European sites. The reason for the absence of such submissions is simply because they were not asked for. Further no indication was given at a preplanning meeting that such statements were required. Further information was requested on the site characterisation only.

6.1.5. **Drawings**

- The differences between the existing elevations and submitted drawings is acknowledged but the differences, changes to the entrance doorway made by the applicant after the drawings were originally prepared and are not significant and have no implications for the proposed scheme as submitted.

6.2. **Planning Authority Response**

6.2.1. None

6.3. **Observations**

6.3.1. None

6.4. **Further Responses**

6.4.1. 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:

- Principle
- Wastewater Treatment
- Appropriate Assessment
- Other Issues

7.2. **Principle**

7.2.1. Galway County Council in their first reason for refusal stated the proposed development would if permitted perpetuate and intensify existing unauthorised development on site.

7.2.2. Permission is sought for an extension to an existing dwelling house and installation of a new effluent treatment system. Gross floor space of proposed work is; 22.03sqm. Gross floor space of work to be retained; 49.38sqm. A copy of a 1980 Galway County Council decision to grant permission to John McDonagh for the demolition of a house and the erection of a dwelling house in the townland of Mannin More (Reg Ref 36375

refers) accompanied the planning application. No further plans or details are provided regarding location, design drawings or waste water treatment.

- 7.2.3. I note the letter from John McDonagh that accompanied the planning application. It is stated that he obtained planning permission in 1980 to demolish his grandfather's house and build a new 4-bedroom bungalow; the site was cleared, the foundations and the blocks purchased and delivered to site. However, in 1981 the applicant decided to stay in the UK and in order to avoid unnecessary expenditure a smaller structure was built and made weatherproof. It is stated that a concrete block septic tank was also built but this was later infilled because of the risk to cattle falling into it. When his parents moved into a residential care home they gave him their home. The property now belongs to his youngest brother, Martin who is seeking to complete the works to a smaller scale.
- 7.2.4. Together with my site inspection I am concerned with the description of the structure on site as an existing dwelling house. The infilling of the septic tank, as described above, indicates that the building is not a habitable structure. This aligns with my observations on site where it was evident that the structure was a single room building with a crude concrete floor, no ceiling, no obvious insulation or heating and no obvious connection to the mains electricity supply.
- 7.2.5. In addition, I share the concerns raised by the Planning Authority with regard to the planning status of the structure on site. Having regard to the planning history on site and the comments submitted with the application the existing structure does not appear to have the benefit of planning permission. Therefore, the Board is not in a position to approve intensification of an existing unauthorised use. I also agree with its status may have implications from an appropriate assessment perspective in any subsequent applications concerning the appeal site given its location within the Slyne Peninsula SAC.
- 7.2.6. Having regard to the failure of the applicant to demonstrate satisfactory evidence within submissions received in relation to the planning status of the existing development on site, in conjunction with the proposal to augment and further intensify the said entity, the proposed development would if permitted and in the absence of demonstrable contrary evidence perpetuate and intensify existing unauthorised development on site. Refusal is recommended.

7.3. Wastewater Treatment

- 7.3.1. Galway County Council in their second reason for refusal stated that having regard to the lack of evidence of the EPA test excavation area on site, the Planning Authority was not satisfied that the safe disposal of domestic effluent on site can be guaranteed in strict accordance with the EPA Code of Practice Manual 2009.
- 7.3.2. I note the site characterisation form submitted with the application. No maps or photos of the test sites accompanied this report. The Case Planner stated that there was no evidence of any trial hole during their site visit. I support this finding as there was no evidence of any trial holes during my site inspection. I note the applicant in their appeal states that the trial holes were backfilled for safety.
- 7.3.3. In the absence of appropriate supporting detail accompanying the site characterisation form identifying the location of the trial holes with accompanying photos of the test site together with the stated observations of the Case Planner and my site inspection I share the concerns raised by the Planning Authority.
- 7.3.4. In line with *Objective WW5 - Waste Water Treatment Associated* development in un-serviced areas may be considered where it is demonstrated to the satisfaction of the Planning Authority that the proposed waste water treatment system is in accordance with the Code of Practice Treatment and Disposal Systems Serving Single House EPA (2009)/ EPA Wastewater Treatment Manuals – Treatment Systems for Small Communities, Business, Leisure Centres and Hotels (1999) (or any superseding documents). I am not satisfied that it has been demonstrated in this case. Refusal is recommended.

7.4. Appropriate Assessment

- 7.4.1. Galway County Council in their third reason for refusal stated that having regard to the site being within Slyne Head Peninsula SAC & pNHA and no Natura Impact Statement & Ecological Impact Assessment accompanying the application the development has the potential to materially contravene Objectives NHB1 & NHB2 of the Galway County Development Plan 2015-2021.
- 7.4.2. The site is located within the Slyne Peninsula SAC (002074) and is proximate to the Slyne Head to Ardmore Point Islands SPA (004159); Connemara Bog Complex SPA

(004181) and Connemara Bog Complex SAC (002034). A Screening Report for Appropriate Assessment was not submitted with this application / appeal case. Therefore, this screening assessment has been carried out de novo.

7.4.3. Stage 1 Screening for Appropriate Assessment

7.4.4. As stated, the appeal site is not located within a designated Natura 2000 site. Sites considered relevant to this appeal site are set out below. Where a possible connection between the development and a European Site has been identified, these sites are examined in more detail below.

Code	Site Name	Distance	Screening Conclusion
002074	Slyne Peninsula SAC	Located within site	Screened in due to potential direct effects due to construction and development related impacts
002998	West Connacht Coast SAC	2.1km West	Screened in due to potential hydrological connection by reason of surface water flow and the source-pathway-receptor model
000328	Slyne Head Islands SAC	1.8km West	Screened out. No hydrological impact and distance sufficient for no impacts due to works
004159	Slyne Head to Ardmore Point Islands SPA	7.2km West 4.3km South	Screened out. No hydrological impact and distance sufficient for no impacts due to works
004181	Connemara Bog complex SPA	4.1km East	Screened out. No hydrological impact and

			distance sufficient for no impacts due to works
002034	Connemara Bog complex SAC	4.7km East	Screened out. No hydrological impact and distance sufficient for no impacts due to works

7.4.5. As documented above, with the exception of Slyne Peninsula SAC and West Connacht Coast SAC there are no hydrological connections with the other 4 no Natura 2000 sites listed above and are therefore screened out from further consideration.

7.4.6. There are potential direct effects due to construction and development related impacts on the Slyne Peninsula SAC. In line with the source-pathway-receptor model and the identification of potential impact pathways there is potential for a in-direct hydrological link between the appeal site and West Connacht Coast SAC.

7.4.7. The West Connacht Coast SAC site consists of a substantial area of marine waters lying off the coasts of Counties Mayo and Galway in the west of Ireland. Predominantly coastal in nature, the site extends westwards into Atlantic continental shelf waters up to approximately 7-11 km from the mainland, although in its southern component it remains mostly inshore of the main islands: Clare Island, Inishturk, Inishbofin and Inishshark. The conservation objective for the site is *to maintain the favourable conservation condition of bottlenose dolphin in West Connacht Coast, which is defined by the following list of attributes and targets*. The West Connacht Coast SAC is designated for the Annex II species *Tursiops truncatus* (common bottlenose dolphin, also known as bottlenose dolphin or bottle-nosed dolphin), a comparatively large dolphin species that occurs extensively in Irish and European waters, both coastally and offshore. As stated the West Connacht Coast SAC is designated for mobile species occurring within its boundaries and as there are no suitable habitats in the locality of the proposed development for the mobile species in question; Bottlenose Dolphin the potential impacts to this site can be excluded from further consideration.

7.4.8. The Slyne Peninsula SAC comprises the peninsula west of Ballyconneely, Co. Galway. It extends northwards to Errislannan Point to include the shallow waters of Mannin Bay. It is noted that this SAC overlaps with Slyne Head to Ardmore Point Islands SPA (004159). It adjoins Slyne Head Islands SAC (000328) and West

Connaught Coast SAC (002998). See map 2. The overall conservation objective is *to maintain or restore the favourable conservation status of habitats and species of community interest*. Specific conservation objectives are set out for each of the qualifying interests below. The qualifying interests are as follows:

- Coastal lagoons
- Large shallow inlets and bays
- Reefs
- Annual vegetation of drift lines
- Perennial vegetation of stony banks
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Embryonic shifting dunes
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)
- Machairs (* in Ireland)
- Oligotrophic waters containing very few minerals of sandy plains (*Littorelletalia uniflorae*)
- Oligotrophic to mesotrophic standing waters with vegetation of the *Littorelletea uniflorae* and/or *Isoeto-Nanojuncetea*
- Hard oligo-mesotrophic waters with benthic vegetation of *Chara* spp.
- European dry heaths
- *Juniperus communis* formations on heaths or calcareous grasslands
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (* important orchid sites)
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*)
- Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*)
- Alkaline fens
- *Tursiops truncatus* (Common Bottlenose Dolphin)
- *Petalophyllum ralfsii* (Petalwort)
- *Najas flexilis* (Slender Naiad)

7.4.9. The potential for impact on the features of interest and conservation objectives of the Slyne Peninsula SAC (002074) are considered below:

- There may be direct habitat loss and therefore impacts arising from habitat loss / fragmentation are screened in.
- There may be construction and operational related impacts from uncontrolled surface water / silt / construction related pollution and is therefore screened in.
- There is potential risk to water quality during the construction and operational phase of the proposed works and is therefore screened in.

7.4.10. The Slyne Peninsula SAC (002074), could potentially be impacted by a number of factors during construction and operation. Further consideration is required in the context of the conservation objectives for the Slyne Peninsula SAC (002074 paying particular attention to the Qualifying Interest Feature. In the absence of a Natura Impact Statement, it is not possible to conclude a finding of no significant effects in relation to the potential for direct effects on Slyne Peninsula SAC.

7.4.11. On the basis of the information provided with the application and the appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not result in adverse effects on the integrity of Slyne Peninsula SAC (002074) in view of the sites Conservation Objectives. In such circumstances the Board is precluded from granting permission. Refusal is recommended.

7.5. Other Issues

7.5.1. **Development Contribution** – I refer to the Galway County Council Development Contribution Scheme 2016. The proposed development is not exempt. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

8.1. It is recommended that permission be **REFUSED** subject to the reasons and considerations set out below

9.0 Reasons and Considerations

- 1) Having regard to the failure of the applicant to demonstrate satisfactory evidence within the submissions received in relation to the planning status of the existing development on site, in conjunction with the proposal to hereby augment and further intensify the said entity, the Board considered that the proposed development would if permitted and in the absence of demonstrable contrary evidence would if permitted perpetuate and intensify existing unauthorised development on site. Accordingly, to grant the development as proposed would therefore be contrary to the principles of the proper planning and sustainable development of the area.
- 2) Having regard to the lack of adequate supporting evidence of the EPA test excavation area on site, the Board is not satisfied that the safe disposal of domestic effluent on site can be treated in strict accordance with the EPA Code of Practise Manual 2009 for Wastewater Treatment and disposal systems serving single houses. Accordingly, to grant the proposed development would be prejudicial to public health, would be contrary to the EPA Code of Practise Wastewater Manual and to Objective WW5 of the County Development Plan.
- 3) On the basis of the information provided with the application and the appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually or in combination with other plans or projects would not result in adverse effects on the integrity of the Slyne Peninsula Special Area of Conservation (Site code 002074) in view of the sites Conservation Objectives by reason of the appeal sites location within this Natura 2000 site that may result in direct effects due to construction and development related emissions associated with the development and therefore the Board is precluded from granting permission.

Mary Crowley

Senior Planning Inspector

8th February 2021