



An  
Bord  
Pleanála

## Inspector's Report

### ABP-308747-20

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<b>Development</b>	Construction of house, garage, treatment system and percolation area.
<b>Location</b>	Laghtonora, Cuddoo, Ballinasloe, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	20861
<b>Applicant(s)</b>	John Langan
<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>	Patrick and Mary Sheridan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	12 <sup>th</sup> of March 2021
<b>Inspector</b>	Adrian Ormsby

## 1.0 Site Location and Description

- 1.1. The appeal site is in the rural area of Laghtonora, Cuddoo, Ballinasloe, Co. Galway, c. 4.5km east of Monivea, c. 6.5 km south west of Menlough and c. 11 km north east of Athenry.
- 1.2. The site is on a local road that generally serves a number of residential properties and agricultural buildings and uses. The site is located on the southern side of the local road and opposite an existing single storey house and detached garage. To the east of the application site there is a woodland/forest area. The road to the front of the site is generally straight before a gentle bend towards the north eastern corner of the site.
- 1.3. There is an existing agricultural entrance and gate at the south west corner of the site. The roadside boundary includes a low level stone wall overgrown in place with a maintained earth and soil bund to the roadside.
- 1.4. The appeal site is triangular in shape and comprise a generally level field that falls towards the east. The site is firm underfoot in places however wet conditions were observed closer to the boundaries of the site. There are drainage ditches along the sites eastern and southern boundary. The site has a stated area of 0.4382 ha.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - A 226 sq.m, four bedroom house single storey house 5.8m to pitched ridge, with side annex to the south west gable. (It is noted the side annex is not shown in the site layout plan)
  - A c. 50 sq.m detached garage with standard pitch roof c. 4.99m high and narrow gable elevation 6m wide to public road.
  - An onsite wastewater treatment system discharging to a soil polishing filter of a minimum 45 sq.m
  - It is proposed to obtain a water supply from the public mains
  - A Flood Risk Assessment has been submitted with the application.

2.2. On the 20/08/20 the Planning Authority requested further information in relation to-

- opening the trial hole for inspection
- further documentation to support the requirement to have an economic and social need to reside at the location e.g. a herd number or other specific details of active farming.

2.3. The applicant responded to the FI request on the 05/10/20 and submitted-

- A new site characterisation report detailing the trial hole was excavated on the 19/09/20 and examined on the 21/09/20. T and P test holes were pre-soaked on the 19/09/20 and tested on the 21/09/20.
- Further documentary evidence in support of his application, including details of a herd number and other information.
- A response to a third party submission on the application.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. The Planning Authority decided to grant permission on the 29/10/20, subject to 13 conditions of a standard nature, including the following:

- Condition no. 2 placed a 7-year occupancy restriction on the house.
- Condition no.3 specifies details and requirements for external materials and finishes.

### **4.0 Planning Authority Reports**

#### **4.1. Planning Reports**

4.1.1. The report of the Planning Officer (dated 27&28/10/20) reflects the decision of the Planning Authority. The following is noted from the report:

- The site is partially in a flood risk area (pluvial). The submitted flood risk assessment details the proposed finish floor level allows a free board of 1.4m between the top floor water level and finished floor level.

- The applicant has included an assessment of the Natura 2000 sites within 15km of the site. The information is sufficient to allow the Planning Authority to conduct a screening determination. A stage 2 assessment is not required.
- The applicant has demonstrated 70m of sightlines in both directions. No works outside the boundary is required to provide sight distance triangles.
- The site is located in a rural area in a Class 1 landscape, inside the GTPS Area and Rural Housing Zone 1. On the basis of the documentation submitted including at FI stage it is considered that the applicant has demonstrated their functional need to locate in the rural area on the existing family farm and to continue the existing agricultural operations.
- The development is acceptable in term of design and can adequately dispose of effluent.

#### 4.2. Other Technical Reports

- None on file

#### 4.3. Prescribed Bodies

- None on file

#### 4.4. Third Party Observations

One third party submission has been received. The issues raised in this submission are those issues raised in the grounds of appeal and are summarised in section 7.1.

### 5.0 Planning History

This Site-

- 19/434, ABP-305409-19 house, garage and effluent treatment system,  
**Refusal 21/01/20-**
  - Having regard to the NPF policy objective 19, the applicant has not demonstrated an economic or social need to live in the area.
- 11/634 Extension of duration for 06/2196, **Decision to extend 27/06/2011**

- 06/2196 house with garage, septic tank and effluent treatment system, **Grant**  
04/09/2006

## 6.0 Policy Context

### 6.1. National Policy

#### 6.1.1. National Planning Framework (NPF)

Objective 19 of the NPF outlines-

*“In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and 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. Ministerial and 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 as under strong urban influence, as set out under Section 6.2 below. In these areas the guidelines advise that the housing needs of the local rural community should be facilitated, but that urban generated housing demand should be met on zoned and serviced land within settlements (Appendix 3, Box 1).

Section 3.2.3 deals with ‘Rural Generated Housing’ and ‘Persons who are an intrinsic part of the rural community’. It states-

*“Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include.....people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence.”*

6.2.2. 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**

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

*It is a policy of the Council to facilitate the management of new single houses in the countryside in accordance with the Rural Housing Zones 1, 2, 3 and 4 and to support the sustainable re-use of existing housing stock within the County.*

Rural Housing

The site appears to be located in an area where Objective RHO 1 - Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure-GTPS) applies-

It is an objective of the Council to facilitate Rural Housing in the open countryside subject to a number of criteria. Based on the contents of the application it appears the applicant is applying under the following criteria-

1. (a) *Those applicants with Rural Links\* to the area through long standing existing and immediate family ties seeking to develop their first home on existing family farm holdings. Documentary evidence shall be submitted to*

*the Planning Authority to justify the proposed development and will be assessed on a case by case basis....*

Point 3 of RHO 1 states-

*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.*

The following definition is relevant to the above criteria-

\*Rural Links:

*For the purpose of the above is defined as a person who has strong links to the rural area and wishes to build a dwelling generally within an 8km radius of where the applicant has lived for a substantial continuous part of their life.*

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 a Low Landscape Value (P. 169 of DP) and Class 1- Low Sensitivity landscape (P.170 of DP)

#### **6.4. Natural Heritage Designations**

6.4.1. The site is located-

- c. 175m west of the Lough Corrib SAC (000297)
- c. 2.8km east of the Monivea Bog SAC (002352)
- c. 180m west of the Lough Tee Bog NHA (000307)

#### **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 Patrick & Mary Sheridan (house opposite the application site). The grounds of appeal as laid out by the appellant can be summarised as follows-

- The appellants family home and the peace and tranquillity of the surrounding area would be adversely affected.
- The appellant refers to the previous application on the site which was refused by An Bord Pleanála and questions why that refusal reason is no longer applicable.
- The development infringes on privacy by direct overlooking. It would restrict natural light entering the appellants property and would impact upon views.



- Increased traffic, road safety concerns and noise.
- The size of the proposed house would be out of character with the area
- The proposal will contribute to an overburden on current infrastructure and community support services.
- The removal of hedgerow would destroy nests of wildlife in the area.
- There are flooding related matters with the application site.

## 7.2. Applicant Response

The applicant's response to the grounds of appeal can be summarised as follows-

- The proposed dwelling is 40m from the front of the appellants house and light entering his property should not be an issue. Views are also not interfered with.
- Felling of the forest will commence by Coillte in 2021.
- The appellants offer a room on Air BnB and evidence of same is submitted and concerns over increased traffic and noise are questioned.
- Photograph provided by the appellants appear to be taken at a high level i.e. the roof and should not be considered in terms of impacts on views.
- In terms of concerns relating to the size of the proposed house a number of houses/grants of permission within 1km of the area and their sizes are highlighted.
- The Galway Development Plan does not limit development size and for developments over 200 sq.m requires an additional 10 sq.m per 1 sq.m over 200 sq.m. The proposal complies with this requirement. A site area of 4382 sq.m is provided.
- There are no issues arising based on two cars entering each property. Sightlines are in accordance with requirements.
- A number of pictures are provided showing. The capacity of the road network has been assessed by the Council. There are a number of community facilities in the area. similar house designs permitted.

- A significant hedgerow does not exist along the frontage of the site.
- Flooding is not an issue at the site. In November 2019 storm water was retained outside the appellants site. Drainage ditches are kept open around the site.
- Document detailing the applicant's economic and social need to live in the area are submitted.

### 7.3. **Planning Authority Response**

- None received

### 7.4. **Observations**

- None

## 8.0 **Assessment**

### 8.1. **Introduction**

- 8.1.1. Planning permission was refused by An Bord Pleanála for a very similar application on the appeal site in January 2020 under ABP-305409-19. In the Board's assessment of the previous application and appeal the house design, matters relating to residential amenity, traffic safety, wastewater treatment and flooding were all addressed and deemed acceptable.
- 8.1.2. The Board decided not to accept the Inspector's recommendation and refused the application on the basis that the applicant has not demonstrated an economic or social need to live in the area having regard to the NPF policy objective 19.
- 8.1.3. The proposed application and appeal only differs in terms of the information submitted in support of the applicant's economic and social need to live in this area and by the submission of a new Site Characterisation Report and Assessment carried out on the 21/09/20 following the Planning Authority's request for further information.

8.1.4. Consequently, I consider the substantive planning issues arising from the grounds of this application and appeal, amount to the following matters-

- Principle of Development /Rural Housing Policy
- Wastewater and
- 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 the countryside based on the core consideration of demonstrable economic or social need to live in a rural area in areas under strong urban pressure.

8.2.2. The Sustainable Rural Housing Guidelines for Planning Authorities (2005) defines Rural Areas Under Strong Urban Influence as areas that-

*‘exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.’*

8.2.3. The application site is located in a rural area which has been identified in Section 3.8.1 of the County Development Plan as a Rural Area under Strong Urban Pressure (GTPS) in accordance with the 2005 Guidelines. The key objectives of the Council are to facilitate the genuine housing requirements of the local rural community (rural generated housing) and to direct urban generated development to areas for new housing development in the adjoining urban centres, town and villages.

8.2.4. In Section 9 of the application form the applicant indicates he is the owner of the site. According to the land registry information submitted with the appeal, he acquired these lands in March 2019.

8.2.5. Based on the information on file Objectives RHO 1 (a) is considered the appropriate criterion/ rural housing objective in the Galway County Development Plan. The applicant is required to demonstrate his “Rural Links” to the area.

8.2.6. In order to demonstrate the applicant's rural links to the area he has submitted supporting documentation including-

- A rural housing need application form stating he is living in rented property in Killarney Co. Kerry.
- This form indicates the proposed use of the site/dwelling will be for the occupation by a farmer engaged wholetime in agriculture and for occupation by a member of the farm family.
- The form indicates the applicant's employment and specifies the percentage basis the employment contributes to overall income. In this instance the applicant states 40% is from farming lands to be taken over from his father upon his retirement. 60% of income is derived from non-farming employment.
- The form identifies his current employer in Galway City where he works in the Munster region. He states he will be transferring to the Galway region following the move home. The applicant indicates his employer has agreed that he will cover the Galway area.
- A letter from the applicant accompanies the application and details-
  - The agricultural lands have been passed to the applicant by his father and submitted land registry details show this.
  - The applicant has farming qualifications, a copy of which have been provided.
  - The applicant currently commutes two days a week from Kerry to the farm lands.
  - He intends to transfer from his current employer to the Galway office where he will work 3 days a week from Monday to Wednesday. A letter from the applicant's employer is on file detailing his transfer request back to the Galway office has been accepted.
  - Property for sale in the general area is above the applicant's budget.
- A copy of the applicant's birth and baptismal certificate
- A letter from the applicant's primary and secondary schools

Following a request for Further Information (FI) requesting information in relation to an active involvement in agriculture the applicant has submitted the following-

- Agricultural receipts in the applicant's name
- A letter from the family's Farm Advisor with details of a herd number that is in his fathers name but will be changed to the applicant in January 2021

In response to the appeal the applicant has also submitted a further letter detailing-

- the difficulties in acquiring a suitable property in the area.
- the proposal is not random rural development as the applicant has demonstrated a need to live in the area and is required to attend the farm 7 days a week.
- the applicant will only work in Galway City three days a week and the Bord should consider the additional hours that will be required on the farm after the applicant finishes work.
- The applicant will work 24 hours a week in Galway and possibly 50.5 hours a week on the farm, 4 days a week full time. This does not include night inspection and could increase to between 60-70 hours a week.
- The applicant is primarily employed on the farm.
- The proximity of the site is suitably located to the to the farm lands.

Having considered all of the information above I note that the location of the family home and ownership of same do not appear to have been identified/detailed in the application. The applicant's farm landholding, birth certificate and school records suggest the family home is in close proximity to the site but I cannot confirm this for certain and in particular if it is within 8km of the site as per the definition of 'Rural Links' in the Development Plan.

I do however note that the Planning Authority have twice accepted the applicant's 'Rural Links' and the appellant has referred to 'issues' with the applicant's father in

relation to flooding in the area. Based on the information submitted in support of the application the applicant is likely to have 'Rural Links' and would therefore appear to comply with Objective RHO 1 (a) of the Galway County Development Plan.

- 8.2.7. Notwithstanding the above, Policy Objective 19 of the National Planning Framework requires that, in rural areas under urban influence, the core consideration for the provision of a one-off rural house should be based on the demonstratable economic or social need to live in the rural area and should have regard to the viability of smaller towns and rural settlements. In addition, the Sustainable Rural Housing Guidelines, 2005 note that circumstances for which a genuine housing need might apply and include persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas.
- 8.2.8. With regard to an economic and working requirement to live in the area it is noted that the applicant has identified his current place of employment in County Kerry. He details that he intends to relocate to County Galway and a letter from his employer confirming same has been submitted. The applicant details he intends to work three days a week in Galway with the remainder of his working time will be farming. It is noted the letter from the applicant's employer does not confirm this arrangement. The applicant has submitted evidence of a herd number but clearly details that it is not in his name. The applicant has also submitted receipts to support his active involvement in farming.
- 8.2.9. In my opinion the evidence submitted in support of the applicant's economic need and involvement in farming is suggestive rather than conclusive. The applicant has detailed in the rural housing need application form accompanying the application that 60% of his income is derived from non-farming employment and as such I do not consider 40% from farming to be conducive to a person's primary employment in this context. I do not consider the information submitted as part of the application sufficient to demonstrate an economic need to live in this area having regard to the applicant's stated place of employment. Based on the information on file I am not satisfied that the applicant has adequately demonstrated an economic need to build a house in this rural area.
- 8.2.10. With regards to a 'social' and 'intrinsic' need to live in the area, I refer to section 3.23 of the Guidelines. Having considered the examples provided of *'Persons who are an*

*intrinsic part of the rural community*' it is considered that the applicant has not adequately demonstrated that he is a son of a family living in this rural areas, has grown up in this rural area or is seeking to build his first home near his family's place of residence. In this regard, there is no documentary evidence on file proving where the applicant currently lives, has lived in recent years (including the time before he moved to Co. Kerry), and who owns this property. Typically, such documentary evidence would show where the applicant has resided for a number of recent years and the ownership of those properties would demonstrate the applicant's need for his own home.

8.2.11. I note that in the 'Direction' on the previous application on this site the Bord have stated *'the applicant had demonstrated a strong local connection and that on this basis that the Inspector was satisfied that the applicant was in compliance with the provisions of the Galway County Development Plan'*. In this regard, it appears the applicant does comply with the provisions of the Galway County Plan.

8.2.12. However based on the information on this file and in the absence of irrefutable evidence to the contrary, I am not satisfied that the applicant has adequately demonstrated an economic, social or intrinsic need to live in the area in accordance with the NPF or the Rural Housing Guidelines.

### 8.3. **Wastewater**

8.3.1. The applicant submitted a Site Characterisation Report (SCR) to the Planning Authority with the application. Following a request for Further Information the applicant submitted a revised SCR with a trial hole inspected on the 21/09/20. The application proposes a packaged wastewater treatment system with soil polishing filter to accommodate a stated population equivalent of 8 persons.

8.3.2. The SCR identifies the site within a Locally Important aquifer category (Locally Important Aquifer - Bedrock which is Moderately Productive only in Local Zones) with High Vulnerability classification in the GSI Groundwater maps. Having reviewed the GSI groundwater data viewer I note the site is located within a Locally Important Aquifer Category, however the site is located within an Extreme Vulnerability Classification.

- 8.3.3. The SCR indicates that the site falls within the R2(2) response category which is the correct response for Locally Important Aquifers with Extreme Vulnerability and where on-site systems are not generally acceptable subject to specified criteria.
- 8.3.4. The SCR proposes a secondary packaged treatment system with soil polishing filter. The plan and section drawing of the proposal shows at least 1.2m of sandy loam clay with a T value – 21 below the invert level of the polishing filter. This application recommends installation in accordance with the 2009 Code of Practice.
- 8.3.5. The trail hole assessment in the SCR indicates bedrock was not encountered. The water table was encountered at 1.5m with no evidence of higher mottling recorded.
- 8.3.6. A T test value of 12.58 was recorded and is within the acceptable range. A P-test value of 14.64 was also recorded.
- 8.3.7. The proposed tertiary treatment system with soil polishing filter appears to comply with the CoP requirements in relation to separation distances. It is noted that the area of the soil polishing filter has been calculated based on a Population Equivalent (PE) of 8 given a minimum area of 45 sq.m. The plan drawings of the percolation area shows provision of 59.5 sq.m and the proposed site layout plan appears to comply with the EPA Wastewater Treatment Manuals in terms of separation distance.

#### **8.4. Appropriate Assessment (AA)**

- 8.4.1. 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 be refused for the following reason



## 10.0 Reasons and Considerations

1. Having regard to the location of the site within a rural area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and to National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, such as the current case, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the rural area, having regard to the viability of smaller towns and rural settlements, it is considered that the applicant, has not sufficiently demonstrated an economic or social need to live in this rural area having regard to the viability of smaller towns and rural settlements. Therefore, the proposed development does not comply with National Policy Objective 19 and would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and would contravene the provisions of the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Adrian Ormsby  
Planning Inspector

29<sup>th</sup> March 2021