



An  
Bord  
Pleanála

## Inspector's Report ABP-309464-21.

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|-------------------------------------|---|
| <b>Development</b>                  | New detached dwelling house with wastewater treatment system. |
| <b>Location</b>                     | Doolegmore, Ballina, County Mayo.                             |
| <b>Planning Authority</b>           | Mayo County Council.  |
| <b>Planning Authority Reg. Ref.</b> | 20613.  |
| <b>Applicants</b>                   | Michael & Kiara Bennet.                                       |
| <b>Type of Application</b>          | Permission.   |
| <b>Planning Authority Decision</b>  | Grant with conditions.  |
| <b>Type of Appeal</b>               | Third Party   |
| <b>Appellant</b>                    | Transport Infrastructure Ireland.                             |
| <b>Observer(s)</b>                  | None.   |
| <b>Date of Site Inspection</b>      | 19 <sup>th</sup> May 2021.                                    |
| <b>Inspector</b>                    | Philip Davis.   |

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## 1.0 Introduction

This appeal is by Transport Infrastructure Ireland against the decision of the planning authority to grant permission for a dwelling in a rural area in north Mayo. The dwelling is connected to the national highway (the N59) network via a lane – TII submit that this will lead to an unacceptable level of extra traffic onto new infrastructure.

## 2.0 Site Location and Description

### 2.1. Doolegmore

Doolegmore townland is located some 24km west of Ballina, a rural area of undulating uplands averaging around 100 metres AOD with sharp ridges and sandy soils characteristic of eskers and fluvioglacial features. The area is characterised by open grazing land, small lakes, some bog and conifer plantation, with a scattering of dwellings along the N59 National Secondary Road, which runs west from Ballina to the coast around Achill. The closest settlement is the village of Crossmolina at the north end of Lough Conn, 13 km to the east. The appeal site is within a small cluster of dwellings along a private lane that seems once to have served a clachan or other small settlement, but now serves one dwelling with two other dwellings facing the road. The N59 at this point is at a curve and dips down, giving relatively good sight lines in either direction.

### 2.2. Appeal site

The appeal site is an irregularly shaped field of pasture with a site area given as 0.22 hectares, part of a larger agricultural landholding (not owned by the applicant). It is west of a dwelling on a local high point – there is a field between this latter dwelling and two dwellings on the main road. The land slopes to the south, away from an adjoining dwelling. It is approximately 200 metres south of the N59 and accessed via an unpaved laneway extending from the main road. The site is bounded by low ditches. There are dwellings on either side of the laneway junction with the N59, and two further dwellings along the laneway.

### **3.0 Proposed Development**

The proposed development is for a single detached dwelling on the site with a floorspace given as 253 m<sup>2</sup>, served by a proprietary wastewater treatment system.

### **4.0 Planning Authority Decision**

#### **4.1. Decision**

The planning authority decided to grant permission subject to 12 no. standard conditions.

#### **4.2. Planning Authority Reports**

##### **4.2.1. Planning Reports**

There are two planning reports on file, the first recommended refusal for 4 no. reasons, three relating to traffic and one to the absence of a stage II AA. The second planners report was subsequent to an unsolicited submission of further information including revised plans, with the following general points:

- It is noted that there is a letter of consent to the application from the landowner on file.
- It is noted that the original application was for a separate driveway to the main road, this was revised in a submission of 13/11/20 (unsolicited additional information) to a connection which uses the applicant's mothers driveway.
- Details of the applicant's vehicular movements are added as part of the application.
- The proposed dwelling is indicated as being in the spirit of the Mayo Rural Design Guidelines.
- The planning authority is satisfied that the proposed development is compliant with the Mayo County Development Plan 2014-2020.
- It is considered that the applicant, in the revised submission, is compliant with section 16.1.2 of the Development Plan, which relates to access to National roads.

- It is noted that the site is 1.2 km from the Bellacorick Bog Complex SAC, but that there 'doesn't appear to be' any direct or indirect hydrological links, so a screening assessment is not required.
- It is considered that the proposed development is in accordance with policy and a grant of permission is recommended.

#### 4.2.2. Other Technical Reports

**Ballina Area Office:** Recommended a refusal (on the basis of the first plans submitted).

Internal correspondence on file indicates that the site is accessed off a section of the 100kph zone, the visibility is 190 metres to the east and 280 metres to the west, which is considered acceptable.

#### 4.3. Prescribed Bodies

**Transport Infrastructure Ireland** wrote to state that the proposed development is considered to be contrary to guidelines on access to public roads.

#### 4.4. Third Party Observations

None on file.

### 5.0 Planning History

There is no record of previous applications or appeals relating to the site.

### 6.0 Policy Context

#### 6.1. Development Plan

The site is in open countryside in an area identified as 'Structurally Weak'. There are no specific designations for the site or adjoining lands.

## 6.2. EIAR

Having regard to the nature of the proposed development and the absence of any sensitive receptors in the immediate vicinity, the development would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded and a screening determination is not required.

## 6.3. Natural Heritage Designations

The Bellacorick Bog Complex, site code 001922 is within 500 metres of the site, to the south-west, east, and north of the lands.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

The decision to grant permission has been appealed by **Transport Infrastructure Ireland**. The key points of the appeal are as follows:

- National policy and guidelines on developments on national roads are outlined and summarised. It is considered that the proposed development would be at variance with official policy to preserve the level of service, safety and carrying capacity of national roads and to protect the public investment in such roads as outlined in the 2012 guidelines.
- It is considered that it is reasonable and essential to exercise caution in the assessment of any development impacting on the safe operation of national roads.
- It is considered that the proposed development is inconsistent with the provisions of Objective RD-01 of the Mayo County Development Plan 2014. The Board attention is particularly drawn to section 16.1.2 of that Plan.
- The need to accommodate and sustain rural communities is acknowledged, but it is highlighted that Mayo County Council has not prepared the necessary evidence base for the agreement of 'exceptional circumstances' for access to the N59.

- In regard to the above, TII notes that amended S.34(2) of the Act states that *‘where specific planning policy requirements of guidelines referred to in subsection (2)(aa) differ from the provisions of the development plan of a planning authority, then those requirements shall, to the extent that they so differ, apply instead of the provisions of the development plan’*.
- It is submitted that the proposed development represents an unacceptable planning precedent for such developments.
- It is noted that the National Planning Framework, page 140, includes the objective for maintaining the strategic capacity and safety of the national roads network.

## 7.2. Applicant Response

The applicant makes the following points in response to the grounds of appeal:

- It is denied that the proposed development represents an additional dwelling – it is stated that it is next to a farmyard within the family holding that includes a former dwelling that is now being replaced.
- It is stated that the proposed development does not represent the addition of a new access to the N59.
- It is argued that the TII has not taken account of the current situation, whereby the applicant commutes from Ballina to work the family farm. It is argued that permitting the dwelling would not result in an increase in traffic using the existing access.
- It is argued that the applicant has demonstrated reasonable exceptional circumstances and as such the proposed development is not contrary to national or development plan policy. It is stated that an alternative would be to bring the former house within the farmyard back to residential use, which would be cost prohibitive.

## 7.3. Planning Authority Response

The planning authority responded making the following points:

- It is not considered that the applicant is connecting directly to the N59, but is accessing via the family home access, it is considered that as the applicant is a family member this will not substantially increase existing traffic movements.
- The planning authority is satisfied that as there will be no significant increase in traffic movements or use of a new access, that the proposed development does not represent a traffic hazard.
- The planning authority does not agree that the proposed development is contrary to the development plan.
- It is considered that the applicant has exceptional circumstances and so the proposed development does not constitute a precedent for other such developments.

#### 7.4. **Observations**

None on file.

### 8.0 **Assessment**

Having inspected the site and reviewed the file documents, I consider that the proposed development can be addressed under the following general headings:

- Development plan policy
- Access and related policy
- Other planning issues
- Appropriate Assessment

#### 8.1. **Development plan policy**

The appeal site is in open countryside without a specific zoning designation. It is in an area considered by the planning authority to be structurally weak under the definitions in the **Sustainable Rural Housing Guidelines**, and the applicant has farming connections. The planning authority considers that the applicant qualifies under exemptions for housing need set out in the Development Plan. I am satisfied



from the information on file that the applicant does have a strong family connection to the landholding and has demonstrated a housing need.

The proposed dwelling is generally not visible from the road and in other respects appears to be the most suitable of the sites within the landholding for an additional dwelling. I note that there appears to be derelict dwellings within the farmyard with the potential for restoration as residential, but from their condition I don't consider this to be a particularly viable option.

The key issue in this appeal is the national policy focus, as set out in the Guidelines on developments along the national road network, i.e., the **Spatial Planning and National Roads Guidelines to Planning Authorities 2012**. This sets out a strong presumption against any development that can be reasonably judged to represent a hazard on the national road network or would otherwise degrade the capacity of the road network. As the TII sets out in their submission, S.34(2) of the Act states that such national guidelines override any local planning policy objectives when there is a conflict.

I would therefore conclude that there is a general policy presumption against the proposed development on the site if it can be reasonably held that it is in breach of the 2012 Guidelines. Otherwise, I would consider that the application should be viewed favourably in the light of the demonstrated family need and the location within a structurally weak area.

## 8.2. Access and related policy

The original application proposed an additional entrance directly onto the main road. The revised submission instead connects to the existing driveway of the applicant's mother's house. TII states that notwithstanding the alterations, the proposed development would still represent an intensification of the use of this access, which would be contrary to policy. The Authority notes that there is provision within the Guidelines for '*exceptional circumstances*' to be applied in situations where there is a demonstrated social or economic need, but that Mayo County Council has not prepared an evidence base to allow such an assessment to take place. In those circumstances, and in the absence of an agreed set of principles or guidelines for assessing 'exceptional circumstances', the proposed development would lead to additional traffic movements and would be directly contrary to national guidelines.

The existing access to be used is on a bend in the main road which provides reasonably good sight lines in both directions. There are a number of individual accesses along the road, which given its relatively narrow alignment and high speeds (100kph zone), is a potential hazard, albeit a legacy of past poor decision making. There is a roadside memorial to one fatal accident at the corner, and indications that a small quarry operated east of the junction.

The applicant makes the argument - which was accepted by the planning authority - that as he works the farm (but does not at present live within the farm), having a dwelling on the site would not in any way increase or change materially the use of the existing access.

It is of course very difficult to make any type of reasonable estimate of the use, or potential use, of a domestic/farm access, as these can vary widely according to family circumstances, the nature of the farm work, seasonal variations, and so on. But I am satisfied from the information available on file that the proposed development, so long as it is kept within the family ownership and occupancy, would not significantly increase traffic along this stretch of road or use of the existing access above what would be normal or reasonable for such an access, except for during the construction process.

While applying strictly the criteria of the 2012 Guidelines is clearly important, and it is unfortunate that the planning authority has not facilitated this by agreeing what constitutes 'exceptional circumstances', instead taking it upon itself to make continuous judgement calls for every application, I am satisfied that that due to the particular circumstances that apply here the proposed development would not result in a material change in the nature or intensity of the use of the entrance. I also conclude that the particular circumstances are unique and so would not represent a precedent for further such developments.

I would therefore conclude that the policy objectives of the 2012 Guidelines do not apply in this case and I would recommend a grant of permission.

I note that the development plan only applies occupancy conditions to dwellings in areas considered to be under strong urban pressure, but in the particular circumstances of this appeal I consider it reasonable to apply such a condition to this dwelling.

### 8.3. Other planning issues

#### Design and layout

The proposed development is modest in scale and generally follows the guidance on the design of rural houses in the development plan. It would not be particularly visible in its location behind existing dwellings and the topography shields it from views from the main road. I do not consider that there would be any significant impact on the local landscape subject to appropriate landscape planting, and I would recommend a condition to this end.

#### Water and drainage:

The appeal site is to be served by a local water supply scheme and a proprietary wastewater system. A site assessment submitted with the application indicates that although it is located over a poor aquifer of high vulnerability (R1 response). No bedrock or groundwater was encountered to 2 metres below ground level, and on visual inspection there was vegetation characteristic of poorly drained lands, with a drainage ditch to one side, but this is not necessarily contrary to the site assessment as it may be a poorly drained upper level over the fluvio-glacial sandy gravels that characterise the area.

#### Cultural heritage

There are no recorded ancient monuments or structures on the NIAH on or in proximity to the proposed dwelling. There are a number of what appear to be 19<sup>th</sup> Century ruins and field patterns in the vicinity, but there are no indications that these warrant an archaeological condition.

#### Development contribution

The proposed development would be subject to a standard S.48 development contribution.

### 8.4. Appropriate Assessment

The planning report states that the nearest SAC is over 1km away, but several parts of the Bellacorick Bog Complex, site code 001922 is within less than 250 metres of the site (the site assessment submitted with the application correctly identifies the proximity of the SPA). The qualifying interests of this SAC are as follows:

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| Natural dystrophic lakes and ponds [3160]                          |
| Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010]     |
| Blanket bogs (* if active bog) [7130]                              |
| Depressions on peat substrates of the <i>Rhynchosporion</i> [7150] |
| Alkaline fens [7230]   |
| <i>Vertigo geyeri</i> (Geyer's Whorl Snail) [1013]                 |
| <i>Saxifraga hirculus</i> (Marsh Saxifrage) [1528]                 |

The conservation objective is generally to maintain the favourable conservation status of these habitats and species, which are generally habitats associated with upland acidic and acidic soils and watercourses.

While the screening was not carried out correctly by the planning authority as they seem to have miscalculated the proximity of the site to the designated SAC, and the groundwater below the site is probably in hydraulic continuity with some of the surface water features of the SAC, having regard to the small scale of the works and the seemingly low water table as identified in the site assessment, I am satisfied that there are no potential pathways for pollution that could impact on the conservation objectives of the qualified interests.

I therefore consider that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 001922 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 9.0 Recommendation

I recommend that the Board uphold the decision of the planning authority to grant permission for the following reasons and considerations set out below, subject to the conditions set out below.

## 10.0 Reasons and Considerations

The proposed development is within a structurally weak area and it is considered that the applicant qualifies under criteria set out in the Mayo County Development Plan 2014-2020 for a rural dwelling. It is considered that having regard to the particular circumstances of the applicant and the nature of the landholding and farm, the proposed development would not materially increase use of the existing access to the N59. It is also considered that given the particular circumstances of the applicant this does not represent a precedent for other such developments in the area. It is therefore concluded that subject to the conditions set out below the proposed development would not be contrary to the policy objectives as set out in the Spatial Planning and National Roads Guidelines to Planning Authorities 2012 or related development plan policies and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

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

**Reason:** In the interest of clarity.

2. The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant

shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

3. Prior to commencement of development, the applicant [developer] shall enter into an agreement with the planning authority, pursuant to section 47 of the Planning and Development Act, 2000, agreeing to sterilise, for a period of seven years, free from any future residential development and any non-agricultural development,

**Reason:** The proposed site is located in a rural area where it is considered necessary to restrict the number of new houses in the area.

4. The external walls shall be finished in neutral colours such as grey or off-white.

**Reason:** In the interest of visual amenity.

5. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

7. A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and 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.

Treated effluent shall be discharged to a raised percolation area which shall be provided 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.

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 and that the raised percolation area is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:
  - (a) the establishment of a hedgerow along all side and rear boundaries of the site, and planting of trees at 1 metres intervals along all boundaries of the site.
  - (b) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.



**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Philip Davis  
Planning Inspector

21<sup>st</sup> May 2021