



An  
Bord  
Pleanála

## Inspector's Report ABP 309652-21

---

<b>Development</b>	Demolition of fire damaged dwelling, construction of a new dwelling on same foundations, and a new site entrance off R354, retention of a garage and store shed.
<b>Location</b>	Rooaunmore, Loughgeorge, County Galway.
<b>Planning Authority</b>	Galway County Council.
<b>P. A. Reg. Ref.</b>	20/373
<b>Applicant</b>	Michael Stokes
<b>Type of Application</b>	Permission and Permission for Retention.
<b>Decision</b>	Grant Permission and Permission for Retention
<b>Type of Appeal</b>	First Party X Condition No 3.
<b>Appellant</b>	Michael Stokes
<b>Date of Site Inspection</b>	11th May, 2021
<b>Inspector</b>	Jane Dennehy

## Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
3.1. Decision .....	3
3.2. Planning Authority Reports .....	4
4.0 Planning History.....	4
5.0 Policy Context.....	4
5.1. Development Plan.....	4
6.0 The Appeal .....	6
6.1. Grounds of Appeal .....	6
6.2. Planning Authority Response .....	7
7.0 Assessment.....	7
8.0 Recommendation.....	8
9.0 Reasons and Considerations.....	9

## 1.0 Site Location and Description

- 1.1. The application site has a stated area of 0.027 hectares and is located to the rear of a bungalow on the north side of the R354 at the east end of a row of road frontage dwellings approximately 3km north-east of Claregalway on the N83 (former N17). There is a fire damaged house on the site along with a detached garage and a shed. Drystone walling is located along the frontage onto the R354. At the rear there are detached houses facing onto a minor road. At the rear of the site there is an entrance and a private lane leading to the minor road to the north side.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for permission and for permission for retention comprising:

Permission for: Demolition of fire damaged dwelling which has a stated floor area of 208.6 square metres, construction of a new dwelling with a similar gross floor area of 208.86 square metres on same foundations.

A new site entrance onto the R354.

Permission for retention of a garage which has a stated area of 63.55 square metres and store shed which has a stated area of 116 square metres.

According to the application the shed is used for the storage of boats.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 27th February, 2021, the planning authority decided to grant permission subject to conditions.

Condition No 3 is an occupancy condition (seven years)

Condition No 10 contains requirements for upgrading of the wastewater treatment system on the site and maintained in accordance with the Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (Current edition) (EPA)

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

- 3.2.1. The planning authority, on the recommendation of the planning officer, issued requests for additional information and clarification of additional information requests regarding the existing fire damaged dwelling, having regard to CDP policies RHO 1 RHO 6 and RHO 7 for replacement dwellings, the existing and proposed new entrance onto the R354 having regard to CDP policy objective DM standard 18, nature of storage use in the shed and, the existing septic tank system and receipt of responses decided to grant permission.
- 3.2.2. In the final supplementary submission in response to the clarification of information request, the applicant indicated agreement to omission of the proposed entrance onto the R354 and use of the entrance via the rear boundary along the lane to the road to the north as the only entrance to the site.
- 3.2.3. In the final supplementary submission it is also confirmed, with a structural survey report also being submitted, the existing building's foundations are likely to be suitable whereas the blockwork has been compromised.

### **4.0 Planning History**

According to the planning officer report, there have been two prior grants of permission for development on the site: - Under P. A. Reg. Ref. 95/1092 Permission was granted for a dwelling house and septic tank to P. J. McKeon.

Under P. A. Reg. Ref. 99/2289 Permission was granted for a dwelling house and septic tank to T. Rafferty and Brian Gray. It is understood from the planning officer report that an entrance was approved under this grant of permission.

### **5.0 Policy Context**

#### **5.1. Development Plan**

- 5.1.1. The operative development plan is the Galway County Development Plan, 2015-2021.

- 5.1.2. Objective T16 provides for protection of the capacity and safety of the national and regional strategic road network with development not being permitted if direct access or intensification of use of accesses onto these routes outside the 60 kph limit.
- 5.1.3. DM Standard 18 provides for policy objectives according to which residential development along national roads will be restricted outside the 50-60kmh speed zones in accordance with the DoECLG *Spatial Planning and National Road Guidelines 2012*. However, the standard also provides for consideration of access to new dwelling development from National and other Restricted Roads if access off local roads the preferred option, is not feasible. Consideration will be given to the need of farm families to live on the family landholding, on a limited basis where it has been demonstrated a functional need to live at the location. Combined use of an existing access is the preferred option but for a new access to considered. It must be demonstrated to be technically unsuitable.
- 5.1.4. Rural Housing Policy Objective, RHO1 (Rural Housing Zone 1) precludes consideration of urban generated housing outside settlements except for persons who satisfy specific criteria regarding connections with the area and the rural economy.
- 5.1.5. According to Rural Housing Objective RHO 6 – (Replacement Dwelling): *It is an objective of the Council that the refurbishment of existing habitable dwelling houses would be encouraged, as a more sustainable option than the demolition and construction of a new dwelling house, unless a conclusive case for demolition based on technical evidence is made for the Planning Authority's consideration on a case-by-case basis. It will be a requirement that any new dwelling house be designed in accordance with Galway County Council's Design Guidelines for Rural Housing in the countryside. Applicants, who require the demolition of an existing dwelling house shall be accommodated without the requirement to establish a Housing Need or proof of residence and will not be subject to an enurement clause*
- 5.1.6. According to Rural Housing Objective RHO 7 – (Renovation of Existing Derelict Dwelling/Semi Ruinous Dwelling) *it is an objective of the Council that proposals to renovate, restore or modify existing derelict or semiderelict dwellings in the County are generally dealt with on their merits on a case by case basis, having regard to the relevant policies and objectives of this plan, the specific location and the condition of*

*the structure and the scale of any works required to upgrade the structure to modern standards. The derelict/semi ruinous dwelling must be structurally sound, have the capacity to be renovated and/ or extended and have the majority of its original features/walls in place. A structural report will be required to illustrate that the structure can be brought back into habitable use, without compromising the original character of the dwelling. Where the total demolition of the existing dwelling is proposed an Enurement Clause for seven years duration will apply.*

## **5.2. Spatial Planning and National Roads: - Guidelines for Planning Authorities, DOECLG, 2012. (The Guidelines)**

- 5.2.1. Avoidance of creation of additional entrances onto or adjoining national routes where the maximum speed limit exceeds 60 kph is provided for in the Guidelines for incorporation into County Development Plans in order to protect the free flow and operational capacity of national strategic route and provide for public safety.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. An appeal against Condition No 3 attached to the decision of the planning authority was lodged on behalf of the applicant by Grealish Glynn on 10<sup>th</sup> March, 2021.

According to the appeal, the condition should not have been attached because:

- There was no requirement on the applicant to prove housing in need in the first instance.
- As the proposal is for reconstruction of a fire damaged house, an enurement clause should not be attached. The condition's inclusion is an infringement of property rights. An enurement condition was not attached to the grants of permission for similar developments. An example is the grant of permission under P. A. Reg. Ref 19 /1930 for replacement of a fire damaged dwelling which had been burnt down and was not habitable. There was no requirement for structural reports to be prepared. The enurement requirement sets undesirable precedent with undesirable insurance consequences.

- There is no specific policy regarding fire damaged dwellings. Policies applying to replacement of substandard dwellings cannot be applied.

## 6.2. Planning Authority Response

6.2.1. There is no submission from the planning authority on file.

## 7.0 Assessment

7.1. The appeal is solely against the attachment of Condition No 3 to the decision to grant permission which is an occupancy condition in which the restrictions are to be applied for a period of seven years from the date of occupation of the house and the applicant is required to enter into a legal agreement, in accordance with Section 47 of the Planning and Development Act, 2000.

7.2. On review of the application *de novo* it is considered that all the other the issues which arose at application stage in connection with the proposed entrances arrangements, the existing shed and garage structures and their uses and, drainage arrangements have all been satisfactorily resolved and it is also noted that the dwelling design and form which is similar to the previously permitted development is acceptable for the site location.

7.3. It is considered reasonable therefore that the appeal be considered and determined in accordance with the provisions of section 139 of the Planning and Development Act, 2000 as amended and that *de novo* consideration, that is, as if the application was lodged with the Board in the first instance is unwarranted in this instance.

7.4. It is noted from the information available that different parties obtained the original grants of permission under P. A. 95/1092 and 99/2289. Presumably, the applicant acquired the property at a later date.

7.5. The omission in entirety of an entrance onto the R356 as confirmed in the clarification of further information submission overcomes any concerns or issues arising in connection with compliance with DM Standard 18 and Objective RHO1 of the CDP and the applicant's circumstances.

7.6. The applicant proposes demolition of the partially constructed dwelling and re-use of the foundations for the new build, unless issues arise at construction stage, the

structural engineer's survey report the preparation of which it is stated was based on visual inspections. It is therefore understood that all above ground works are to be demolished and replaced with new build and on this basis, it is considered reasonable to assume that the proposal is as described in the notices, as to "demolition" and "replacement".

7.7. With regard to consideration as to whether the Policy Objective RHO 7 would be applicable instead of Policy Objective RHO 6, it is of note that the dwelling on the site is part constructed, with block walling being in place and is far from complete. If the statement in the structural survey report that the block walling "*is compromised*", further to the fire damage is accepted it can be assumed that the walling is structurally unsound. It would therefore not be appropriate to assume that the existing structure has capacity to be "*renovated .... and have the majority of its original features/walls in place*" as provided for under Objective RHO7. It is therefore considered that the proposed development is within the scope of Policy Objective RHO6 and that the requirement for attachment of a condition for establishment of housing need or an enurement clause.

#### 7.8. **Environmental Impact Assessment – Screening.**

7.8.1. Having regard to the minor nature of the proposed development and its location in a serviced inner suburban area, removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

#### 7.9. **Appropriate Assessment.**

7.9.1. Having regard to the scale and nature of the proposed development and to the serviced inner suburban location, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 8.0 **Recommendation**

8.1. IN view of the foregoing, it is recommended that the planning authority be directed to remove Condition No 3.



## 9.0 Reasons and Considerations

Having regard to the nature and extent of the existing structure for the dwelling on the site, and to the access arrangements which are to be confined to an entrance of a minor road it is considered that the proposed development which entails substantive demolition and replacement would be subject to the requirements of Policy Objective RHO 6 of the CDP according to which applicants who require the demolition of an existing dwelling hose shall be accommodated without the requirement to establish a Housing Need or proof of residence and will not be subject to an enurement clause. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

**Jane Dennehy**

Senior Planning Inspector  
8<sup>th</sup> July, 2021.