



An
Bord
Pleanála

Inspector's Report

ABP-310040-21

Development	Construction of house, garage and a treatment plant system with relocation of relevant front boundaries walls to obtain required sight lines.
Location	Kilrogther, Castlegar, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	21118
Applicant(s)	Brian Glynn
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Michael & Christina Forde
Observer(s)	None
Date of Site Inspection	9 th December 2021
Inspector	Mary Crowley

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1.0 Site Location and Description

1.1. The appeal site with a stated area of 0.24ha is located in Kilrogther, to the north of Galway City, to the south west of Claregalway which is on the N84 and it has frontage onto the northern side of a minor county road (L-6207). There are road frontage dwellings on either side of the site of the proposed development. The immediate area is characterised by a proliferation of single dwelling houses and ribbon development. A set of photographs of the site and its environs taken during the course of my site inspection is attached. These serve to describe the site and location in further detail.

2.0 Proposed Development

2.1. Permission is sought for the construction of a fully serviced dwelling house (159 sqm), garage (60 sqm) and a treatment plant system. Permission is also sought to relocate relevant front boundaries walls so that the required sight lines can be obtained.

2.2. In support of demonstrating intrinsic links to the area and housing need the applicant submitted the following:

- A completed Galway County Council Housing Need form
- Long version of the applicant's birth certificate
- Land Registry and folio details of family lands and the family home
- Letter from the local primary school
- Letter of consent from landowner (father) consenting to the removal of roadside boundary and to carry out works to provide adequate sight lines

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Galway County Council issued a notification of decision to grant permission subject to 12 no generally standard conditions. Conditions of note are as follows:

- **Condition No 2** – House shall be restricted to use by the applicant, applicants family, heirs, executors and administrators or persons involved in agricultural or related activities, returning emigrants or those with an essential housing need in

this rural area, unless otherwise agreed by the Planning Authority for a person of 7 years. The applicant / developer shall enter into a legal agreement under the provisions of Section 47 of the Planning and Development act 2000 (as amended).

3.2. **Planning Authority Reports**

3.2.1. Planning Reports

- The **Case Planner** stated that *it is clear from the documentation submitted that the applicant has intrinsic links to this area and is proposing to build beside his family home*. The Planning Authority has no objection to the proposed development as it is considered that it is in accordance with the proper planning and sustainable development of the area. The notification of decision to grant 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. There is one observation recorded on the planning file from Michael & Christina Forde. The issues raised may be summarised as follows:

- The applicant's family has a family home and two other houses in the area (99/393, 99/756 and 05/899 refers). Two of these houses have been let for the last 10 years.
- The applicant does not have a housing need and does not have any family of his own.
- The lower section of the field of the planning application is applied for has been known to flood after heavy rainfall.
- Other families who have land in the area are finding it very difficult to get planning for their own family members.

4.0 Planning History

4.1.1. There is no evidence of any previous planning application or appeal at this site. There was a previous appeal for a similar development on lands to the north east of the appeal site that may be summarised as follows:

ABP 301453 (Reg Ref 18/80) – Galway County Council refused permission to erect a dwelling, garage and all associated services for 4 no reasons; (1) inadequate sightlines, (2) consolidation of unsustainable residential development, (3) failure to demonstrate rural housing need and (4) traffic hazard. The first party appealed the decision to refusal. The Board refused planning permission for 3 no reasons summarised as follows:

- 1) The proposed development would extend and consolidate the demand for existing unsustainable, urban generated residential development on a substandard local road network lacking services and facilities and would lead to demands for the uneconomic provision of such services and facilities and demand for unsustainable transport.
- 2) The applicant does not come within the scope of the housing need criteria, as set out in the Guidelines or the Development Plan, for a house at this location. The proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure.
- 3) Insufficient legal interest to provide for adequate sightlines in each direction along the public road from the proposed entrance. The proposed development would endanger public safety by reason of traffic hazard.

5.0 Policy Context

5.1. National Policy

5.2. National Planning Framework – Project Ireland 2040 (DoHP&LG 2018)

5.2.1. The *National Planning Framework – Project Ireland 2040* (NPF) is a high-level strategic plan for shaping the future growth and development of Ireland to 2040. A

key objective of the Framework is to ensure balanced regional growth, the promotion of compact development and the prevention of urban sprawl. It is a target of the NPF that 40% of all new housing is to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites with the remaining houses to be delivered at the edge of settlements and in rural areas.

5.3. **National Policy Objective 19** refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations. In rural areas elsewhere, it refers to the need to facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

5.4. **Sustainable Rural Housing Development Guidelines 2005**

5.4.1. The *Rural Housing Guidelines* seek to provide for the housing needs of people who are part of the rural community in all rural areas and makes a distinction between 'Urban Generated' and 'Rural Generated' housing need. Chapter 4 of the guidelines relates to rural housing and planning applications and states that in areas under significant urban influence, applicants should outline how their proposals are consistent with the rural settlement policy in the development plan. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply, including 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.4.2. The Guidelines further require that new houses in rural areas be sited and designed in a manner so as to integrate well with their physical surroundings and generally be compatible with water protection, roads, traffic and public safety as well as protecting the conservation of sensitive areas

- 5.4.3. **Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)"** – Environmental Protection Agency, 2009 – Sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

5.5. **Development Plan**

- 5.5.1. The operative plan for the area is the **Galway County Development Plan 2015 – 2021**. The site location is subject to the **Objective RHO 1** which seeks to manage single house development in accordance with Rural Housing Zones 1-4 and which supports sustainable re-use of existing housing stock according to the planning authority's Rural Housing Policy. The site is within an area designated as being **Rural Housing Zone 1** which is an area under "**strong urban pressure**". Criteria for applicants seeking to develop single houses in these areas are set out under Objective RHO 1 as follows:

Objective RHO 1 - Rural Housing Zone 1 (Rural Area Under Strong Urban Pressure-GTPS) - *It is an objective of the Council to facilitate Rural Housing in the open countryside subject to 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.*

OR

1.(b) Those applicants who have no family lands but who wish to build their first home within the community in which they have long standing Rural links and where they have spent a substantial, continuous part of their lives i.e. have grown up in the area, schooled in the area and have immediate family connections in the area e.g. son or daughter of longstanding residents of the area. Consideration shall be given to special circumstances where a landowner has no immediate family and wishes to accommodate a niece or nephew on family lands. Having established a Substantiated Rural Housing Need*, such persons making an application on a site within a 8km radius of their original*

family home will be accommodated, subject to normal development management criteria and provided the site does not encroach into the Urban Fringe of the towns of Gort, Loughrea, Athenry or Tuam. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.*

OR

1.(c) Those applicants who can satisfy to the Planning Authority that they are functionally dependent on the immediate rural areas in which they are seeking to develop a single house as their principal family residence in the countryside. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1.(d) Where applicants can supply land registry or folio details that demonstrate that the lands on which they are seeking to build their first home, as their permanent residence, in the area have been in family ownership for a period of 20 years or more, their eligibility will be considered. Where this has been established to the satisfaction of the Planning Authority, additional intrinsic links will not have to be demonstrated.

OR

1.(e) In cases where all sites on the family lands are in a designated area, family members will be considered subject to the requirements of the Habitat's Directive and normal planning considerations

2.(a) Those applicants who lived for substantial periods of their lives in the rural area, then moved away and who now wish to return and build their first house as their permanent residence, in this local area. Special consideration will be given to one member of the immediate family of emigrants returning to this local area to live near their immediate family. Documentary evidence shall be submitted to the Planning Authority to illustrate their links to the area in order to justify the proposed development and it will be assessed on a case by case basis.

2.(b) To recognise that exceptional health circumstances, supported by relevant documentation from a registered medical practitioner and disability organisation, may require a person to live in a particular environment or close to family support. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

3. 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.

5.5.2. The landscape sensitivity of the appeal site is categorised as **Class 3 Landscape** within a range 1 – 5. The site is also within the **Galway Transportation Planning Area (GTPS)** where housing need is required to be established by the applicant. In this regard the applicant is required to demonstrate compliance with the relevant policies and objectives in the Development Plan with regard to rural housing which include **Objective RHO3** – Rural Housing Zone 3 (Landscape Category 3, 4 & 5) as follows:

- **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.*

**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.*

**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.*

5.6. Other Guidance

- 5.6.1. **Sustainable Rural Housing Guidelines** – Structurally weaker rural areas will exhibit characteristics such as persistent and significant population decline as well as a weaker economic structure based on indices of income, employment and economic growth.

5.7. Natural Heritage Designations

- 5.7.1. The site is not located within a designated Natura 2000 site. The Lough Corrib SAC (Site Code 000297) is located c550m to the east of the appeal site.

5.8. EIA Screening

- 5.8.1. 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 appeal has been prepared and submitted by Michael & Christina Forde and included the original observation to Galway County Council. The original submission together with additional comments may be summarised as follows:

- The applicant's family has a family home and two other houses in the area (99/393, 99/756 and 05/899 refers). Two of these houses have been let for the last 10 years.
- The applicant does not have a housing need and does not have any family of his own.
- The lower section of the field of the planning application is applied for has been know to flood after heavy rainfall.
- Other families who have land in the area are finding it very difficult to get planning for their own family members.
- The Planning Authority should have given more consideration before granting permission in an area where emphasis is put on housing needs.
- Concern also raised whether percolation test was carried out as per regulations.

6.2. Applicant Response

6.2.1. Mark Fahy on behalf of the applicant submitted the following as summarised:

- All the necessary documentation to establish the applicant's intrinsic links to the area were submitted to the Planning Authority. It was accepted that the applicant has intrinsic links to the area and is proposing to build on family-owned lands beside his family.
- Reference to 3 applications (99/393, 99/756 and 05/899) all of which relate to a single site and a single house development in the name of Peter Glynn is of no material significance in the determination of the appeal. The housing arrangements of the applicants sister is not material to the appeal.
- The statement that the applicant has no family of his own, dangerously presupposes that single applicants do not have a legitimate right to make a planning application to satisfy their own individual housing needs.
- Appeal appears to be generated by a perceived grievance pertaining to land acquisition
- The Planning Authority concluded that the site is not within a flood risk area (fluvial, pluvial, coastal or groundwater).

- The applicant has submitted documentation clearly showing that sight lines, effluent treatment, water supply and house design are all adequately provide for in this development
- The Planning Authority having examined all the documentation and plans submitted had no objection to the proposed development and it considered it to be in accordance with the proper planning and sustainable development of the area, subject to 12 no conditions which the applicant is happy to abide by.

6.3. Planning Authority Response

6.3.1. None

6.4. Observations

6.4.1. None

6.5. Further Responses

6.5.1. 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 / Housing Need
- Flooding
- Traffic Safety
- Wastewater Treatment
- Appropriate Assessment
- Other Issues

7.2. Principle / Housing Need

- 7.2.1. The National Planning Framework requires (National Planning Objective 19) that in rural areas under urban influence, planning authorities 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.
- 7.2.2. The appeal site is in an area under strong urban influence in the NSS rural area types map referred to in the Sustainable Rural Housing guidelines and the guidelines describe such areas as close to the immediate environs or close commuting catchment of larger cities and towns, having rising populations, exhibiting evidence of considerable pressure for housing development due to proximity to urban centres or major transport corridors. Having regard to the proximity of the appeal site to Galway City and the pattern of recent housing development in the area I consider that this area is under pressure for one off rural housing unrelated to the agriculture land use in the area.
- 7.2.3. As observed on day of site inspection, the area has been under very strong pressure and demand for one-off housing development to the extent that its rural character has been undermined. The area is primarily characterised by continuous road frontage commuter / urban generated single house development serviced by private effluent treatment and disposal systems. This intensification of one off housing is reflected the location of the appeal site within an area under “strong urban pressure” for which it is the policy of the Planning Authority that applicants are required to demonstrate their Rural Links to the area and are required to submit a Substantiated Rural Housing Need (as defined). Objective RHO 3 - Rural Housing Zone 3 (Landscape Category 3, 4 and 5) refers.
- 7.2.4. Having regard to the information submitted I am satisfied that the applicant has demonstrated satisfactory “rural links” to the area. However, I am concerned that the applicant has not demonstrated a “Substantiated Rural Housing Need” to live at this location. Demonstrating “Rural Links” alone is insufficient. There is no evidence that the applicant, who states that he is a carpenter and works with his father as a handyman around Galway city is dependent on the site location and rural economy for

his livelihood. Although the applicant's family home is directly across the road from the appeal site and the applicant attended a local school, there is no evidence that the applicant's family has connections with or was/is dependent on the rural economy for a livelihood. To this end, it is considered that the application, having regard to the eligibility criteria for an applicant seeking to develop a house in an area under strong urban pressure - GTPS as provided for under Objective RHO 1 would contravene this policy objective. The willingness to accept an "enurement" condition (as provided for under RHO3) is noted but considered irrelevant in that the application is considered unacceptable.

- 7.2.5. It is concluded that the material submitted in support of the application does not meet the criteria of demonstrable economic or social need to live in a rural area set out in the NPF, a rural generated housing need that meets the test sets by the Sustainable Rural Housing Guidelines, or a Substantiated Rural Housing Need to build in their local rural area as required by the Galway County Development Plan 2015 – 2021. Refusal is recommended.

7.3. **Flooding**

- 7.3.1. I note the concerns raised that the lower section of the field is known to flood. I refer to the report of the Case Planner where it states that the site is not within a flood area (fluvial, pluvial, coastal, groundwater). I also refer to the Flood Maps available to view on the OPW website where there is no evidence of flooding at this site. I do not consider that the proposed development would exacerbate the risk of flooding in the area.

7.4. **Traffic Safety**

- 7.4.1. As observed on day of site inspection the site has an existing roadside boundary, which will be opened and upgraded to serve the proposed development. I would note that sightlines in each direction at the prospect entrance are of a reasonable standard and that the proposal would be satisfactory in terms of traffic safety and convenience. In this regard, it is considered that the vehicular movements generated by the proposed development would not have a significant material impact on the current

capacity of the road network in the vicinity of the site or conflict with traffic or pedestrian movements in the immediate area.

7.5. **Wastewater Treatment**

- 7.5.1. It is proposed to construct a new WWTP on site. A Site Characterisation was carried out in January 2020 and the report accompanied the planning application. The assessment shows adequate dept of 2.1m of suitable unsaturated subsoil on site below trench and above bedrock. The development will be served by a public water main. The report recommended that the site was suitable for a packaged wastewater treatment system and polishing filter. Details of the proposed unit and associated soil polishing filter have been submitted. The proposal is within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development and its distance to 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

7.7. **Other Issues**

- 7.7.1. **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.

7.8. **Recommendation**

- 7.9. I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, together with all other issues arising, I

recommended that permission be **REFUSED** for the following reasons and considerations.

8.0 Reasons and Considerations

1. Having regard to

- The location of the site within a rural area under strong urban influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local government 2005,
- National Objective 19 of the National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under influence, 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, having regard to the viability of smaller towns and rural settlements
- the provisions of the Galway County Development Plan 2015 – 2021, which facilitates the provision of housing for applicants that demonstrate both Rural Links and a Substantiated Rural Housing Need as defined in the Development Plan
- the absence of relevant documentation to adequately demonstrate a substantiate rural housing need

the Board could not be satisfied on the basis of the information on the file that the applicant came within the scope of either the economic or social need criteria as set out in the overarching National Guidelines or the definition of a rural Link in accordance with the relevant criteria of the Galway County Development Plan 2015 – 2021.

The proposed development, in the absence of any identified locally based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area

Mary Crowley

Senior Planning Inspector

31st January 2022