



An  
Bord  
Pleanála

## Inspector's Report

**ABP-310699-21**

### Development

Retention planning permission for the laying of subsurface piping for the purpose of agricultural irrigation, bored well and associated water pump, 2 x 6,500 litre water holding tanks and revised agricultural entrance arrangement and planning permission for connection to the ESB network in lieu of on-site generator, erection of surface mounted ESB metering box and all associated site works.

### Location

Rosshill Road, Roscam, Galway.

### Planning Authority

Galway City Council

### Planning Authority Reg. Ref.

20/225

### Applicant(s)

Brian Dilleen

### Type of Application

Permission

### Planning Authority Decision

Refuse permission

### Type of Appeal

First Party v Refusal

**Appellant(s)**

Brian Dilleen

**Observer(s)**

Dr. James McCarthy

Dr. Martin J. Fahy

An Taisce – Galway Association

**Date of Site Inspection**

27<sup>th</sup> January 2022.

**Inspector**

Fergal Ó Bric

## 1.0 Site Location and Description

- 1.1. The appeal site comprises two relatively flat agricultural fields adjacent to the coastline of Galway Bay, within the townland of Roscam, to the east of Galway City. The site is accessed by a narrow local road and the surrounding area is characterised by one-off rural dwellings on generous plot sizes.
- 1.2. There is a timber gated agricultural access into the site. The boundary treatment around the site comprises stone walls, trees and hedging. There are established existing dwellings located further south and north of the appeal site and open rolling fields to the west towards the coastline.

## 2.0 Development/Proposed Development

- 2.1. The development comprises/would comprise the following:
- 2.2. The development pertains to the retention of subsurface piping for the purpose of agricultural irrigation, a bored well and associated water pump, 2 x 6,500 litre water holding tanks and a revised agricultural entrance arrangement. Permission is also sought for a connection to the ESB network in lieu of an on-site generator, the erection of a surface mounted ESB metering box and all associated site works. The appeal site is stated to comprise an area of 3.68 hectares in two agricultural fields. The eastern field is that nearest the public road and where the majority of the development works for retention are located and the western field is that which adjoins the coastline onto Galway Bay.
- 2.3. A number of reports were submitted by the applicant in support of his development. These include an Appropriate Assessment (AA) screening report, an Environmental Impact Assessment (EIA) screening report and a Borehole Impact Assessment Report (BIAR).
- 2.4. Further information was submitted by the applicant in relation to the following matters: The submission of an Archaeological Heritage Impact Assessment (AHIA) in relation to the works to be retained and those proposed; Clarification as to the planning status of the seed beds on the lands; Clarity as to the requirements for electricity pylons on site to serve the development; To outline if the regionally

important aquifer down gradient of the site would be impacted by the development; Outline the necessity for the private water supply on the site, given there is a public water mains supply available in the area.

- 2.5. A letter of consent was submitted from Mary-Harriet Madden, who has consented to the making of the planning application and to the carrying out of water infrastructure works on the lands.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Planning permission was refused for one reason as follows:

1-The proposed development, would if permitted, facilitate the use of the site for the provision of the 60 no. 15 metre, 50 cm high seed beds which have been deemed by the Planning Authority not to be exempted development. Therefore, a grant of permission for the proposed development would facilitate the unauthorised development and usage on the site, contrary to the proper planning and sustainable development of the area.

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

##### **3.2.1. Planning Reports**

###### Initial Planning Report:

The initial report prepared by the Executive Planner noted the following:

- The planning history on the land holding is noted as including a recent refusal by the Board, albeit that development related to the construction of a rural dwelling.
- There is a G-Agriculture and High Amenity zoning objective that pertains to the site as per the Galway City Council Development Plan 2017-23.
- Water connection proposals are considered acceptable.
- Not considered the proposal would increase the risk to groundwater.
- Not considered that the seascape views and those of the Roscarn Round Tower and adjacent ecclesiastical remains would be adversely impacted upon.

- Notes that the site is well screened with boundary walls and foliage.

She recommended a grant of planning permission subject to conditions.

#### Subsequent Planning Report:

The Senior Executive Planner recommended that further information be sought as set out within Section 2.3 above and subsequently recommended a refusal of planning permission as set out in Section 3.1 above.

### **3.2.2. Other Technical Reports**

Heritage Officer – Raised concerns regarding the potential adverse impact on the adjacent archaeological and built heritage given the proximity of the development to a Protected Structure and an ecclesiastical enclosure. He recommended that development on the site be restricted to grazing.

### **3.3. Prescribed Bodies**

- 3.3.1. An Taisce: Highlighted a number of issues in relation to impact upon adjacent European sites and that no bat or archaeological surveys were conducted by the applicant.

### **3.4. Third Party Observations**

- 3.4.1. Six observations were received by the Planning Authority. The issues raised in the observations are similar to those raised within the grounds of appeal/observations, as set out in Section 6 of this report.

## **4.0 Planning History**

### **4.1.1. On site:**

I can find no record of a planning history pertaining to the appeal site.

### **4.1.2. On overall land holding:**

There are three recent decisions on the land holding, immediately west of the appeal site, each relating to the development of a dwelling house. These are detailed below.

An Bord Pleanála Reference number 304592-19 (19/89) – In 2020 the Board refused planning permission to Mary-Harriet Madden – Construction of a House – for one reason:

- 1 On the basis of the information provided with the application and appeal and having regard to the deficiencies in the submitted Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (004031), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting approval/permission.

An Bord Pleanála Reference number 301417-18 (18/44) – In 2018 the Board refused planning permission to Mary-Harriet Madden – House – for one reason:

- 1 The site is located within an area identified as a Regionally Important Aquifer-Karstified area and is located circa 300 metres from a Karst Spring and 200 metres from the edge of the Galway Bay Complex Special Area of Conservation (site code 00268) and the Inner Galway Bay Special Protection Area (site code 004031). It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in an area which is considered to be a highly sensitive groundwater environment. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development, would, therefore, be prejudicial to public health.

An Bord Pleanála Reference number 301019-18 (17/295) - In 2018 the Board refused planning permission to Mary-Harriet Madden – Construction of a House – for one reason

1. The site is located within an area identified as a Regionally Important Aquifer-Karstified and is located circa 300 metres from a Karst Spring and 200 metres from the edge of the Galway Bay Complex Special Area of Conservation (site

code 00268) and the Inner Galway Bay Special Protection Area (site code 004031). It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in an area which is considered to be a highly sensitive groundwater environment. The Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the effluent from the development can be satisfactorily treated or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development, would, therefore, be prejudicial to public health.

#### 4.1.3. Planning Enforcement:

Two warning letters have been issued by Galway City Council under reference numbers UD19/013 and UD20/009 relating to unauthorised works being conducted on the lands.

#### 4.1.4. Section 5 referral:

Under reference number P/DC3/4/20, Dr Martin Fahy asked the Planning Authority if the planting of 1,000 trees as a wind break, provision of a liner, deposit of clay and compost and installation of 60 seed beds and the drilling of bored wells for non-domestic purposes is exempted development. The Planning Authority deemed the works to constitute development, that is not exempted development by virtue of their location within the administrative boundary of a city and therefore, would require planning permission.

## 5.0 Policy Context

### 5.1. Galway City Development Plan 2017-2023

The site is located on lands zoned G-Agriculture and high amenity, where the objective is “To provide for the development of agriculture and protect areas of visual importance and/or areas of high amenity under the City Development Plan”.

Agricultural uses are compatible with and contribute to the zoning objective.

Section 4.6.2 sets out that G zoned lands are lands that in addition to agricultural uses have an important landscape and aesthetic value, which distinguishes them from less visually sensitive A zoned agricultural lands.

The policy of the Council for agricultural zones is to facilitate the continued use of these lands for agricultural purposes subject to the protection of designated ecological sites, environmental considerations and to control non-agricultural development.

#### Protected Views

Section 4.5.3 Views of Special Amenity Value and Interest include the view below as a “panoramic protected view”

V 9- Views towards the sea at Roscam.

Policy 4.5.3. Requires the protection of views and prospects of special amenity value and interest from inappropriate development and requires planting schemes to be limited so as they do not have a detrimental impact on any views.

#### Archaeology

The site is proximate to recorded Monuments GA094-072002- Ecclesiastical enclosure, GA094-072004- Round Tower and GA094-072001- Church and graveyard GA094-072012/13,

Policy 8.5- Archaeological Heritage requires the protection of archaeological sites/ remains, requires surveying, recording or excavation during development and where a proposal has the potential to impact on archaeological heritage, shall include an archaeological assessment.

## 5.2. Natural Heritage Designations



5.2.1. The site is located approximately 260 metres from the Galway Bay Complex SAC (site code 00268) and approximately 110 metres from the Inner Galway SPA (site code 004031).

5.2.2. The site is located approximately 350 metres east of the Galway Bay Complex pNHA.

### 5.3. **Environmental Impact Assessment (EIA) Screening**

Under the thresholds for development proposals as set out under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations, 2001 (as amended), and whether or not the need for a mandatory Environmental Impact Assessment (EIA) arises. The development which pertains to horticultural irrigation infrastructure is not within a class of development that is considered to give rise to a requirement for mandatory EIA, for the purpose of obtaining planning consent. I conclude that, based on its nature, scale, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required. This determination has been made with due consideration to the provisos of Schedule 7 of the Planning and Development Act 2000 (as amended).

## 6.0 **The Appeal**

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

6.1.1. A first party appeal has been submitted by HRA Planning Consultants on behalf of the applicant, Mr Brian Dilleen.

6.1.2. The Grounds of Appeal are as follows:

Principle of Development:

- The applicant sets out that the existing use on site satisfies the definition of agriculture as set out within Section 2 of the Planning and Development Act (PDA) 2000 (as amended) and exempted development as set out within Section 4 (1) (a) of the PDA 2000, (as amended).
- The current use of the land is not therefore, unauthorised development, and is exempted development.

- No commercial use of the land is proposed, and neither is there any other non-agricultural activity provided for on site.
- The development with its associated agricultural use is consistent with the G-agricultural and high amenity land use zoning objective that pertains to the lands.
- Section 4.6.2 of the City Development Plan sets out that the policy for G zoned lands.
- The existing agricultural and horticultural use on the site remains unchanged as a result of the proposed development.
- No change of use or intensification of use arises as a result of the development.

Environmental Impact:

- The applicant carried out an AA screening which concluded that no adverse impacts would arise upon any of the adjacent European sites.
- An Environmental Impact Assessment (EIA) screening was conducted by the applicant. It concluded that there would be no adverse impact upon the hydrological or groundwater regime in the area.
- A Borehole Impact Assessment (BIA) was also completed by the applicant, and it concluded that “the regionally important aquifer will not be affected by the irrigation system to be retained”.

## 6.2. Observer Responses

- 6.2.1. A response to the first party appeal has been submitted by three observers: 1. Dr. Martin J. Fahy, Rosshill Road, Roscam, Galway, 2. James McCarthy, 298 Vallee de Vautruchot, 37210 Noizay, France and 3. An Taisce, Galway Association. The issues raised within the observations can be summarised as follows:

Development Plan designations:

- The V9 panoramic view pertains to the appeal site and lands towards the sea at Roscam with the Round Tower, Abbey and Galway Bay in the background.
- The lands are located within an area of European, National and local ecological importance as per Policy 4.2 within the Development Plan where the objective is

“To improve the ecological coherence of the Natura 2000 network in accordance with Article 10 of the Habitats Directive”.

- Section 4.2 of the Development Plan also seeks to “ensure that plans and projects with the potential to have a significant impact on European sites (SAC’s or SPA’s) whether directly, indirectly or in combination with other plans or projects are subject to Appropriate Assessment under Article 6 of the Habitats Directive”.
- The Roscarn area is designated network of local biodiversity (Table 4.3. Page 65 of City Development Plan).
- The lands are within an area designated Green Network as per Fig 1, page 60-62 of City Development Plan.

#### Appropriate Assessment

- The appeal site is proximate to and within the zone of influence of The Galway Bay Complex SAC, and the Inner Galway Bay SPA.
- The appeal site is located inside the precautionary areas of 11 EU protected sites.
- Application must fully comply with the Habitats Directive and relevant CJEU case law.
- Section 4(4) of the PDA 2000 (as amended) sets out that “Development shall not be exempted development if an Environmental Impact Assessment or an Appropriate Assessment of the development is required”.
- European Court of Justice (ECJ) in the Waddenzee case reference number C127/02, set out that a significant effect is likely unless it can be established, on the basis of objective information, that the proposed project will not have a significant effect on an SAC or SPA.
- The Board must adopt a precautionary approach and the need to carry out an AA in the case where there is doubt.

- Section 34 (12) of the PDA, precludes a Local Authority from considering an application to retain unauthorised development, in circumstances where the development has been carried out in breach of the Habitats Directive.
- In line with the precautionary principle, an AA is required in this instance, given the appeal site is located within the zone of influence of two European sites. Having regard to the conservation objectives pertaining to the two sites, the location within a highly sensitive ground water environment, proximity to Roscarn Karst spring which flows into the Galway Bay Complex SAC and given that a Stage 2 NIS was submitted in relation to previous development proposals pertaining to the overall land holding
- The scope of the screening must cover the totality of the works "envisaged at the time the unauthorised development commenced".
- The likely indirect effects of the nature and extent of the unauthorised works carried out require the submission of a Stage 2 AA.
- The AA screening should have been extended to include the 60 seed beds, the trees planted, and the first borehole sunk to the east of the site.
- The 40 metre deep borehole to the north-west of the appeal site is on the pathway of the Roscarn spring which flows outwards to the Galway Bay Complex SAC and strongly indicates the presence of a subsurface hydrological pathway to the European site.
- The lands are also used for foraging by curlews, a qualifying interest of the Galway Bay SPA.
- The area of the seed beds has removed a portion of the lands previously available for foraging by wild birds, thus acting as an ecological corridor for the Inner Galway Bay SPA and this has not been assessed as part of the AA screening.
- No bird surveys have been carried out, even though there is evidence of the Lesser Horseshow Bat in the area, as per the Galway Ring Road EIAR.
- Under Board reference number 310797, for a Strategic Housing Development at Rosshill, Galway, the bird survey identified the presence of Peregrine Falcon,

Black headed Gulls, Herring Gulls, Kestrel, Curlew and Grey Herons in the area and use of the area for roosting, hunting and feeding grounds in association with the Inner Galway Bay SPA.

- The Board previously determined under Board reference number 304592, that it was precluded from granting planning permission for development on the western part of the overall land holding, due to the absence of a winter bird survey and the potential adverse impact of excavation works on the groundwater.
- The applicant has included a reverse valve on the bored well as a mitigation measure to prevent reverse flow. This would prevent pathway connectivity to the aquifer and to the Galway Bay Complex SAC. Mitigation measures are not permissible at screening stage and would be contrary to the provisions of the Habitats Directive.
- Need for NPWS to review and assess the application which it has not, given the likelihood of a significant development impact given the close proximity of the application site to two EU protected sites.
- A full assessment of habitats and biodiversity on site, including field work and measurements should be conducted.
- Based on the information submitted within the AA screening report, one cannot be confident beyond all reasonable scientific doubt that the proposed development will not have a significant adverse impact on EU protected sites.

#### Water Supply

- The lands are located on a fractured, karst bedrock, which is characterised by its permeability.
- Water entering the ground will permeate through fissures and cracks down to the groundwater beneath.
- The appeal site overlies a regionally important aquifer with a highly sensitive groundwater environment due to the karstic geological formation.
- To the west of the lands are two springs, and any fertilisers/nutrients on site will find their way into the groundwater and out into Galway Bay and the European sites.

- The project is likely to have a significant adverse impact on the SAC and SPA, therefore an NIS is required, and the development is not exempt from planning.
- The lands are located down gradient from the Roscam Karst spring in proximity to potential sources of contamination (septic tanks) given the hydrogeology of the area.
- The planning documentation submitted fails to identify the second borehole within the lands.
- The first borehole that was sunk to the east of the site but now abandoned has not been closed in accordance with EPA guidance.
- Clear evidence of groundwater from the Roscam karst spring flowing into Galway Bay Complex SAC can be seen during low tides.
- No water quality analysis has been submitted by the applicant.
- The houses in the area are all served by septic tanks, which would result in some foul effluent leakage to groundwater which is used to irrigate the horticultural development on site.

#### Built and Archaeological Heritage

- The Roscam area is rich in archaeological heritage, potentially the first settlement site in Galway city and in close proximity to a Protected Structure and recorded monuments.
- No archaeological studies have been carried out, only a desktop study has been submitted, speculating that nothing of archaeological interest exists a few inches beneath the soil.
- Contrary to Policy 8.2 of the Galway City Development Plan 2017-2023, which relates to Built Heritage and requires the Galway City Council (GCC) to ensure new development enhances the character or setting of a protected structure.
- Some probability that these lands were once part of the original ancient monastic grounds. Sufficient studies need to be carried out before any planning approval is given.

- Development results in a loss of green space and adversely impacts on the Galway City Coastal Green Belt.
- The development will restrict the possibility of future access to the monastic site.
- The development will limit the ability to restore the adjacent national monument.
- The National Monuments Service (NMS) wrote to the applicant in May 2020 to request the removal of trees from within an area of ecclesiastical remains, national monument GA094-072 Roscam Round Tower and Church.
- The AHiA fails to reference a recent archaeological survey conducted in the area, which suggests that a pre-Christian bronze-age settlement existed in the area, believed to be Galway's first settlement.
- The conclusion within the AHiA that "whether or not the excavation required initially to carry out the works may have disturbed undiscovered archaeological material is unknown" contradicts the findings of the AHiA that "the result of the assessment indicated low to moderate archaeological potential at the site of development....and that no additional archaeological investigation is required".
- Roscam/Rosshill townlands act as a buffer between urban and rural Co. Galway.

#### Other Issues:

- Unauthorised development continues to be an issue on site, the appeal is a delaying tactic being deployed by the applicant to avoid the return of the lands for grazing purposes.
- Unauthorised intensive agricultural activity is the basis of this appeal.
- Unauthorised works are continuing on the site, in contravention of a stop development order in place from Galway City Council.
- The issue of unauthorised development on the site has been highlighted on many occasions to the Planning Authority, including relating to the planting of trees.
- The necessity for the additional electrical infrastructure has not been justified, given there are no plans for any large scale development in the area.
- A multiple broad assessment, including field work and measurement of all environmental issues should be conducted in relation to the development.

- Impacts on the local receiving environment must be assessed in their totality by the Board.
- The works on site could not be described as regenerative agriculture, however they would constitute intensive agriculture.
- The development on site, including that of a liner membrane and importation of multiple tonnes of compost, soil and woodchip and operations relating to the development constitute works, as defined in Section 3 of the PDA 2000 (as amended).
- The planting of 1,000 trees and the 60 seed beds are not included within the development description as they would trigger the requirement to submit a Stage 2 NIS, given the proximity to two European sites, Galway Bay Complex SAC and Inner Galway Bay SPA, and thus trigger the requirement for an application to apply for leave to apply for substitute consent as required under the provisions of the PDA.
- The lands were rezoned in 2017, despite the negative AA and NIS prepared by RPS Consultants and contrary to the recommendation of the Chief Executive of Galway City Council.
- Two warning letters issued on the lands under UD19/013 and UD20/009 were issued by GCC.
- The operation of depositing large amounts of material on the ground constitutes works.
- The deposit of a geomembrane liner, raising the level of the field and changing its profile with a new layer of topsoil/compost is works. The planting of approximately 1,000 trees is also works. The question is, are the works exempt from planning?
- Under Article 6(3) of the Planning & Development Regulations (PDR) 2001 (as amended), initial afforestation is not exempt if in a city or town location. The current development is within the Galway City boundary administrative area and therefore, de-exempts initial afforestation.
- The development would not constitute re-contouring of lands but the raising up of lands.



- The development does not relate to infilling, as there is/was no hollow or depression within the lands to fill.
- The afforestation onsite is not exempted development as it does not relate to thinning or felling of trees and also interferes with Panoramic View V9 which de-exempts the afforestation.
- An Taisce were consulted in relation to previous applications (17/295 and 18/44) but have not been consulted in relation to this development.
- Request that the Board uphold the planning decision made by GCC.

### 6.3. **Planning Authority Response**

No comments in relation to the appeal were received from the Planning Authority.

## 7.0 **Assessment**

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of development
- Water Supply/Surface Water
- Visual Impact/Landscape Impact
- Archaeology
- Appropriate Assessment

### 7.2. **Principle of Development**

7.2.1. The site is zoned G-Agriculture and High Amenity where the objective is “To provide for low-density residential development which will ensure the protection of existing residential amenity”.

7.2.2. Section 2 of the PDA 2000 (as amended) defines agriculture as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock. meadow land, osier land, market gardens and nursery grounds and agricultural shall eb construed accordingly.

- 7.2.3. Section 3 of the PDA 2000 (as amended) defines development as "the carrying out or any works on, in, over or under land or the making of any material change in the use of any structure or other land".
- 7.2.4. Section 4(1) (a) of the P & D Act 2000 (as amended) sets out that the following shall be exempted development for the purposes of this Act-development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used".
- 7.2.5. It is clear from the wording of the development description within the public notices, the applicant is seeking to retain the subsurface piping, a bore well and associated water pump and water holding tanks for the purpose of agricultural irrigation, to serve the existing horticultural development that is on site, although the horticultural element is not specifically mentioned within the development description.
- 7.2.6. The Planning Authority in its decision and reason for refusal clearly stated that the development would facilitate the use of the site for the provision of 60 by 15 metre long seed beds which the Planning Authority deemed not to be exempted development (under reference number P10/314/2020) and therefore, any grant of permission for the water infrastructure on site would facilitate the unauthorised use of the site.
- 7.2.7. I would concur with the Planning Authority that the water infrastructure would facilitate the horticultural development on site, whether or not it is authorised or unauthorised, or would require a planning permission, is a matter that will be addressed as part of this assessment.

### **7.3. Water Supply/Surface water**

#### Water Supply:

- 7.3.1. The development provides for a connection to the public water mains system and retention permission for a bore well and associated water pump, two water storage tanks with a storage capacity of 6.500 litres, subsurface piping connecting the water storage tanks to the seed bed area for irrigation purposes. The applicant stated that the private on site water supply would act as a back-up water supply in times of water shortages and when the pressure within the public water mains is not sufficient to serve the agricultural development on site.

- 7.3.2. GSI Groundwater maps show that the site lies over a groundwater Aquifer Category of 'Regionally Important' (Rk), where the groundwater vulnerability is classified as 'Extreme'.
- 7.3.3. No karst features were specifically recorded within the appeal site; however, a spring is noted on GSI mapping, located approximately 300 metres north of the site.
- 7.3.4. A Borehole Impact Assessment Report was submitted as part of the planning documentation (Appendix 2 of AA Screening Report) and stated that there is adequate capacity within the aquifer to cater for the development, in terms of aquifer recharge. It also sets out that there would be no adverse impact upon water quality, groundwater dependent habitats or species associated with any of the European sites. However, it is not clear on what evidential assumptions/criteria that these assertions are made. It is not clear from the documentation submitted if the borehole has been sealed, or indeed the second borehole on the site (not referenced within the planning documentation) has been sealed either. Therefore, I consider that there is potential for contaminants to enter the bore wells and adversely impact upon the aquifer which indirectly is linked to the Galway Bay Complex SAC and the Inner Galway Bay SPA, given their proximity to the appeal site boundary.
- 7.3.5. It is also unclear if consideration has been given to the potential cumulative impact on the local groundwater system arising from the nitrate and phosphorous levels generated from the wastewater treatment plants of neighbouring domestic dwellings. The BIA report makes no reference to the cumulative impact from existing neighbouring developments in the area on groundwater quality.
- 7.3.6. A second bore hole was drilled on site but abandoned, however, this is not referenced within the planning documentation submitted by the applicant. It is not stated within the planning documentation if the bore well(s) has/have been sealed and therefore, there is potential for contaminants to enter the private water supply and into the aquifer (which is extremely vulnerable to development). The aquifer is connected into the adjacent European sites in the form of the Inner Galway Bay SPA and the Galway Bay Complex SAC. These are matters that will be addressed in greater detail within Section 7.7 of this assessment
- 7.3.7. I note the previous reasons for refusal relating to development on the overall land holding whereby the Board was not satisfied that effluent from the development

could be satisfactorily treated or disposed of on site, without adversely impacting upon the local groundwater system, notwithstanding the proposed use of a proprietary wastewater treatment system. Given the site's location is within an area identified as a Regionally Important Aquifer-Karstified, and to its location 300 metres down gradient of a Karst Spring and 260 metres from the edge of the Galway Bay Complex SAC (site code 00268) and 110 metres from the Inner Galway Bay SPA (site code 004031, the potential for development to adversely impact upon the European sites remains relevant and valid.

7.3.8. Notwithstanding the fact that no wastewater treatment system is proposed in this instance, there remains the potential for adverse impacts to arise from the bore wells, sunk to a depth of approximately 40 metres, which could act as a pathway for contaminants to the aquifer which in turn is connected to the adjacent European sites. In line with the precautionary principle, I am not satisfied that the applicant has addressed these issues in sufficient detail within the planning documentation to allay the concerns with regard to potential adverse impact upon the local vulnerable groundwater system and adjacent European sites.

7.3.9. Surface Water: The applicant sets out within the planning application form that the surface water discharges to groundwater. Given the potential for contaminants, on site from the importation of soils, woodchip, compost and potential for the use of chemical fertilisers, there is potential for adverse impacts to arise as a result of the development and to adversely impact upon the local groundwater system.

#### 7.4. **Visual/landscape impact**

7.4.1. The southern part of the appeal site is located within a Panoramic Protected view, V9: Views towards the sea at Roscam. The grounds of appeal are concerned the development has an adverse visual impact on the surrounding area and would adversely impact on the protected view.

7.4.2. Having regard to the modest scale of the development and the boundary treatment along the perimeter of the appeal site, relative to the protected view, I do not consider the development has an adverse impact on the protected view along the road towards the sea, identified as V9 in the City Development Plan.

#### 7.5. **Archaeology**

- 7.5.1. The observers set out that the location of the development has, and would have, an adverse impact on the archaeological remains in the area and more particularly the impact upon the round tower, church ruins and graveyard south of the appeal site.
- 7.5.2. As noted above, there were previous proposals on the land holding for the development of a domestic dwelling. Under Board reference numbers ABP-301019-18 and 301417-18, impacts on the ecclesiastical enclosure associated with the Round Tower, Church and Graveyard (monuments GA094-072001, GA094-072002, GA094-072003 and GAO09-72004) were considered to be acceptable, subject to conditions.
- 7.5.3. I note the comments of the City Council Heritage Officer who has expressed concerns with the proximity of the development to the national monument at the ecclesiastical enclosure in Roscarn. He has recommended that the lands remain clear of development. He noted that soils have been disturbed in the absence of archaeological intervention and that grazing is the only purpose which should be conducted on these lands, and that any development involving soil disturbance should be discouraged in this area.
- 7.5.4. An Archaeological Heritage impact Assessment (AHiA) was submitted as part of the further information response. The archaeologist states that she conducted both desk top and on-site investigations. The AHiA states that there are no archaeological remains within the appeal site as per the RMP register. The nearest archaeological remains are those of a graveyard and church ruins which are located approximately 200 metres south of the appeal site boundary and the archaeological enclosure associated with the archaeological remains does not extend to the appeal site boundary. The Archaeologist stated that archaeological testing had been previously carried out on the lands and found no evidence of archaeological remains on site. She states that the works completed may have already disturbed archaeological remains. She concludes that the development does not, and will not, adversely impact upon the archaeological remains in this area.
- 7.5.5. I note the correspondence between the National Monuments Service (NMS) and the applicant in May 2020, included as part of the observers' appeal submission, which states that "ground disturbance taken place at, and in relation to a recorded monument GA094-072 -Ecclesiastical Remains, parts of which (Church and Round

Tower) are National Monument No. 46 in the ownership of the Minister". The recorded monument is illustrated on an Ordnance Survey map and marked with a black outline with the number 72. The black line encompasses the western field of the appeal site; however, it does not encompass the works which are subject of the current appeal, in terms of the bore well, sub-surface pipework, water pump and water tanks.

- 7.5.6. It is regrettable that no site-specific archaeological investigations were conducted prior to the ground disturbance works within the appeal site. Previous archaeological investigations on the lands related to the western part of the land holding, where a dwelling house was proposed.
- 7.5.7. In conclusion, from examination of the of the National Monuments records, it is apparent that the Roscarn area is rich in archaeological heritage and that the works have the potential to have impacted upon archaeological remains. On balance, and in light of the archaeological investigations completed on site, having regard to the conclusions of the previous archaeological investigations on the land holding, and from the NMS correspondence, I would be satisfied that the works, existing and proposed, would not adversely impact upon the archaeological heritage within this area and therefore, would accord with Section 8.5 of the City Development Plan regarding archaeological heritage.

## 7.6. **Other Issues**

- 7.6.1. In respect of the horticultural activities on site, I note that the submissions on file state that the land is in fact owned by a company. The applicant is stated as being 'part-owner' of the site and the other part owner of the site is the applicant named in previous applications on the land holding. A letter of consent to the making of the planning application and carrying out the works has been submitted from the other part owner of the lands, which is considered acceptable.
- 7.6.2. In terms of the site access, I note the site would access onto a local road which has a road width of approximately 4.5 metres. I note the applicant is proposing a revised entrance location and entrance width of approximately 4 metres. The entrance gate is flush with the roadside boundary wall and no set back or entrance splay is provided. Therefore, sightlines are restricted when exiting the site. If the development pertains to a commercial horticultural development (which the

observer's reference) with deliveries from large commercial vehicles, then sightlines would need to be improved so as to not result in the creation of a traffic hazard. However, if the site is to be used for agricultural purposes, the level of traffic generated would be low, and therefore, the issue of sightlines would not be so significant as to warrant a refusal of planning permission.

- 7.6.3. I note that there are other infrastructural works on site, including the 60 seed beds and a second bore well to the east of the site. However, they are not part of the development that is being assessed in this instance, and therefore, would be a matter for the Planning Enforcement Section of Galway City Council to address.

## **7.7. Appropriate Assessment Screening**

- 7.7.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, Section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 7.7.2. This section of the report considers the likely significant effects of the proposal on European sites with each of the potential significant effects assessed in respect of each of the Natura 2000 sites considered to be at risk and the significance of same. I have had regard to the submitted Appropriate Assessment Screening Report, prepared by McCarthy Keville O'Sullivan, Planning and Environmental Consultants (dated 02/09/2020) and make reference to same below.
- 7.7.3. Section 2.2 of the Screening Report sets out Characteristics of the Existing Environment and describes the habitats and fauna on the site. In relation Habitats, it is stated that the site of the proposed works comprises of a field of Improved Agricultural Grassland (GA1). The field is surrounded by a stone wall categorised as Stone Walls and Other Stone Work (BL1), Treeline (WL2) and Hedgerow (WL1). The NIS notes that there are no watercourses within or adjacent to the proposed development site, and that none of the habitats within or adjacent to the works area correspond to those listed in Annex 1 of the EU Habitats Directive.
- 7.7.4. In relation to fauna, it is stated within the screening report that no evidence of Annex II protected species associated with Galway Bay Complex SAC were recorded within or adjacent to the site boundary. I note that no dedicated bird survey was undertaken. Incidental records of Blackbird, Blue Tit, Wren and Skylark were made

during the site walkover. No species as listed as a Special Conservation Interest were recorded during the site visit, breeding or significant foraging habitat for these species were not recorded on site either.

### **The Project and Its Characteristics**

- 7.7.5. See the detailed description of the proposed development in section 2.0 above.

### **The European Sites Likely to be Affected**

#### **Stage I Screening**

- 7.7.6. Table 3.1 of the screening report lists all European Sites within 15km of the proposed development and assesses which are within the 'Likely Zone of Impact'. There are 12 no. sites in total listed as being within 15km of the proposed site.
- 7.7.7. In determining a zone of influence, I had had regard to the scale and nature of the project and to the EPA Appropriate Assessment Mapping Tool<sup>1</sup>. I consider that the only SAC that would be within the zone of influence would be the Galway Bay Complex SAC, which is approximately 260 metres to the south-east of the appeal site. The next nearest SAC is the Lough Corrib SAC, a distance of approximately 4.6 kilometres from the site. The only SPA within the zone of influence are the Inner Galway Bay SPA (004031) which are a distance of approximately 110 metres south of the appeal site. The next nearest SPA is and the Cregganna Marsh SPA (004142), a distance of approximately 3.8 km from the site.
- 7.7.8. I consider then that the zone of influence of the project comprises the two nearest Natura 2000 sites noted above, namely the Galway Bay Complex SAC and the Inner Galway Bay SPA. Other sites are not hydrologically connected to the appeal site or are such a distance from the proposed development site, that there would not be any significant adverse effects on them as a result of habitat loss and/or fragmentation, impacts to habitat structure, disturbance to species of conservation concern, mortality to species, noise pollution, emissions to air and emissions to water.
- 7.7.9. The two sites and their Qualifying Interests/Species of Conservation Interest are listed below:

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<sup>1</sup> [www.epa.ie](http://www.epa.ie) accessed 15/01/2019



Table 1:

European Site	Qualifying Interests	Distance from Appeal Site	Potential Connections (source-pathway-receptor)	Further Consideration in Screening
Galway Bay Complex SAC 000268	<p>Qualifying Interests:</p> <p>Mudflats and sandflats not covered by seawater at low tide.</p> <p>Coastal lagoons.</p> <p>Large shallow inlets and bays.</p> <p>Reefs.</p> <p>Perennial vegetation of stony banks.</p> <p>Vegetated sea cliffs of the Atlantic and Baltic coasts.</p> <p>Salicornia and other annuals colonising mud and sand.</p> <p>Atlantic salt meadows.</p> <p>Mediterranean salt meadows.</p> <p>Turloughs.</p> <p>Formations on heaths or</p>	260 metres south-east of the appeal site.	Yes. Requires further assessment due to there being potential hydrological connectivity between the appeal site and the SAC via groundwater. Works have potential to cause deterioration in water quality during site operation and to potentially adversely impact on habitats/species, either alone or in combination, due to pollution or sedimentation arising from the operational phase of the development, via the on-site bore well (s) and the underlying aquifer which is classified as being of extreme vulnerability	Yes.

	<p>calcareous grasslands.</p> <p>Semi-natural dry grasslands and scrubland facies on calcareous substrates.</p> <p>Calcareous fens with <i>Cladium mariscus</i> and species of the <i>Caricion davallianae</i>.</p> <p>Alkaline fens.</p> <p>Limestone pavements.</p> <p>Otter</p> <p>Harbour Seal</p>			
<p>Inner Galway Bay SPA 004031</p>	<p>Black-throated Diver (<i>Gavia arctica</i>) [A002]</p> <p>Great Northern Diver</p> <p>Cormorant.</p> <p>Grey Heron.</p> <p>Light-bellied Brent Goose.</p> <p>Wigeon.</p> <p>Teal.</p> <p>Red-breasted Merganser.</p>	<p>Approximately 110 metres south of the appeal site.</p>	<p>Yes. Requires further assessment due to there being potential hydrological connectivity between the appeal site and the SPA via groundwater Works have potential to cause deterioration in water quality during site operation and to potentially adversely impact on habitats and bird species, either alone or in combination, due to pollution or sedimentation arising from the</p>	<p>Yes.</p>

	Ringed Plover. Golden Plover. Lapwing. Dunlin. Bar-tailed Godwit. Curlew. Redshank. Turnstone. Black-headed Gull. Common Gull. Sandwich Tern. Common Tern. Wetland and Waterbirds.		operational phase of the development, via the on-site bore well (s) and the underlying aquifer which is classified as being of extreme vulnerability	
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I do not consider that any other European Sites fall within the zone of influence of the project, based on a combination of factors including the intervening distances, the lack of suitable habitat for qualifying interests, and the lack of hydrological or other connections. No reliance on avoidance measures or any form of mitigation is required in reaching this conclusion.

### Identification of Likely Significant Effects

7.7.10. Given the location, nature and scale of the proposed project, it is apparent that a number of qualifying interests have the potential to be impacted upon within the following European sites:

- Galway Bay Complex SAC (Site Code: 000268)
- Inner Galway Bay SPA (Site Code: 004031).

7.7.11. In relation to Galway Bay Complex SAC (000268), I note that this is approximately 260 metres from the site at the closest point. The Conservation Objectives relating to the site are to maintain the favourable conservation condition of the Habitats and Species associated with the site. Given the location of the site in a limestone karst area, there is increased potential for a pathway by way of groundwater which could have a potential significant adverse effect on the 'Calcareous fens with *Cladium mariscus* and species of the *Caricion davallianae*' and 'Alkaline fens' habitats. Information on the NPWS website states that maintenance of groundwater, surface water flows and water table levels within natural ranges is essential for this wetland habitat. A target for both habitats is to ensure appropriate water quality to support the natural structure and functioning of the habitat. While surface water provides another potential pathway to the site, given the greenfield nature of the site where surface water would percolate to ground, given the short distance to the nearest boundary of the SAC (approximately 260 metres), there is indirect potential for surface water from the site, percolating to groundwater during site operations, to adversely impact upon the SAC, having regard to its conservation objectives.

7.7.12. In relation to Inner Galway Bay SPA (004031), I note that this is approximately 110 metres south of the site, at the closest point. Given the location of the site in a limestone karst area, there is increased potential for a pathway by way of groundwater which could have a potential significant adverse effect on the qualifying interests, mainly bird species. The conservation objectives for this site are to maintain the favourable conservation condition of the bird species and habitat associated with the site. I note that no bird survey has been conducted and therefore, any potential adverse impact upon the Qualifying interests of the Inner Galway Bay SPA has not been duly considered. The development site is within sufficient proximity (110 metres to the nearest boundary) to the SPA, in my view, to result in potential likely significant adverse effects on the SPA, in view of the site's conservation objectives as it relates to bird species, having regard to potential habitat/foraging loss and/or fragmentation, impacts to habitat structure, disturbance to bird species of conservation concern and mortality to species.

7.7.13. Having regard to the above, I therefore consider that significant adverse effects on the Galway Bay Complex SAC (000268) and the Inner Galway Bay SPA (004031)

cannot be ruled out, having regard to the sites' conservation objectives, and a Stage 2 Appropriate Assessment is required.

- 7.7.14. I note that the previous proposals for development on the land holding included the submission of a Stage 2, Natura Impact Statement as part of the planning documentation. I note that under Board reference number 304592-19, the Board refused planning permission on the following grounds. On the basis of the information provided with the appeal and having regard to the deficiencies in the submitted AA screening report, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of the Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (000431), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting approval/permission.
- 7.7.15. In conclusion, I would concur with the findings of the Board in that instance, given the proximity of the development to the two European sites, the Inner Galway Bay SPA and the Galway Bay Complex SAC, and given the location of the site within a karstic area and down gradient of a spring and the high vulnerability and characteristics of the underlying aquifer, that the applicant has not demonstrated beyond reasonable doubt, that the development, and more specifically the bore well which acts as a direct pathway to the aquifer, would not adversely impact upon the conservation objectives and qualifying interests of the two European sites. I consider that the Board could not be satisfied that the submission of a Natura Impact Statement is not warranted.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is reasonable doubt as to the absence of adverse effects.

## **8.0 Recommendation**

I recommend that planning permission be refused.

## **9.0 Reasons and Considerations**

1- On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the

proposed development individually, or in combination with other plans or projects, would not result in adverse effects on the integrity of the Galway Bay Complex SAC (000268) and Inner Galway Bay SPA (000431), in view of the sites' conservation objectives. In such circumstances the Board is precluded from granting planning permission.

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Fergal Ó Bric  
Planning Inspectorate

15th August 2022