



An
Bord
Pleanála

Inspector's Report ABP 310810-21.

Development	Construction of two, two storey dwelling and associated site works and services.
Location	Curragreen, Coast Road, Galway.
Planning Authority	Galway City Council
P. A. Reg. Ref.	20/287
Applicant	Curragreen Construction Ltd. (Sohail Rahmani).
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Third Party
Appellant	Andrew Burke and Sean Corcoran
Date of Inspection	15 th September, 2021
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The site has a stated area of 4807 square metres and is formed from undeveloped land within a field with frontage onto an access road for the railway track and the Coast Road, (R338) on the east side of Galway City. There is a timber gate at the edge of a railway track crossing (which appears to have been disused) at the northern end of this access road which is narrow in width and covered over in dense vegetation and uneven surface material. The boundaries at this end of the access road have a combination of indigenous hedgerow and drystone walling.
- 1.2. The northern boundary of the site as shown in the application is parallel to the boundary of the railway track and the southern boundary adjoins the northern rear garden boundaries of two residential properties, (the Appellant party properties) with southern boundaries on the frontage of the Coast Road. The access road, between the intersection with the Coast Road to the south and the narrow section at the northern end is hard surfaced, with frontage onto a residential property which has two entrances adjoining the southern boundary of the site and a bungalow with ancillary buildings on its west side.
- 1.3. A permitted development of fourteen houses is under construction on lands to the west of the application site at with revisions to the finished floor levels of five units and to the entrance subsequently being permitted. (P. A. Reg. Ref. 15/319 and 16/201 refer.) The Roscam residential development and part a constructed development is to the west and northwest.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for the construction of two, two storey dwellings with single storey returns and with detached garages on the site which is to be subdivided into plots. The total stated floor area is 716 square metres comprising 358 square metres for each of the two dwellings.
- 2.2. In the further information submission lodged on 25th May, 2021 in response to the additional information request of 12th January 2021 it is explained that separate pumping stations for the dwellings are to be provided from which effluent is to be pumped by rising main to one of four ducts running under the rail line in the

applicant's property and onward by gravity to the public pumping station north side of the railway line. Calculations are provided along with details of consents to access to the public station, confirmation of submission a pre connection enquiry to Irish Water.

The proposed finished floor level is one metres above the ground level within the site according to the application and the density is one dwelling per 2400 square metres. level. One house per 2400 square metres is an constant with the density requirements.

2.3. **Planning Authority Decision**

2.4. **Decision**

By order dated, 18th June, 2021 the planning authority decided to grant permission for the proposed development subject to conditions.

Under Condition No 2 there is a requirement for completion of a connection agreement for the public water and wastewater network with Irish Water.

Under Condition No 3 there is a requirement agreement in writing with the planning authority with regard to final details for the duct to be used for pumping into the gravity sewerage network north of the railway line all works being at the applicant's expense without obstruction of access to ducts in the wayleave.

Under Condition No 9 there is a requirement for the front boundary walling to be in local stone which shall not be plastered.

Under Condition No 10 there is a requirement for hedgerows, trees and stone walls on boundaries to be retained except where necessary for the removal to facilitate the entrance construction.

Under Condition No 13 there is a requirement for a section 48 development contribution of €64,440.

2.5. **Planning Authority Reports**

- 2.5.1. The **Planning Officer**, further to review of the original application indicated, further to the recommendation in the report of the Drainage Section a recommendation for an additional information request, on drainage layout, design pumping stations,

details for connection to the local public network and pre connection agreement details (Irish Water)

- 2.5.2. The report of the **Drainage Division** indicated a recommendation for the additional information regarding drainage arrangements to be requested.
- 2.5.3. A statement from **Irish Water** (by email dated 15th June), indicates confirmation that the details provided in the further information submission are acceptable and availability of a duct to accept discharge from the development, in the local network north of the railway line.

The report of the **Climate Change and Environment Section** indicates recommendations for standard conditions for waste management.

2.6. **Third Party Observations**

- 2.6.1. An observation was lodged by two parties, including the appellant party in which issues as to overlooking, intrusiveness on privacy and amenity of adjoining properties, drainage, adequacy of the road serving the development and as to potential for compromise of options for selection for the Oranmore Galway greenway are raised.

3.0 **Planning History**

- 3.1.1. There is no recent relevant planning history for the application site, grants of Outline permissions for houses with septic tanks and entrances under P. A. Reg. Ref. 94/10 and 99/595 which were not taken up and implemented.

4.0 **Policy Context**

4.1. **Development Plan**

- 4.1.1. The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site location is within an area subject to the zoning objective LDR – Lower Density Residential Development which ensures the protection of existing residential amenity. There are specific development objectives for LDR zoned lands in Section 11.2.8 and for the and a at Curragreen a maximum density of

five houses per hectare and for retention of stone walls and hedgerows is to be supplemented by appropriate landscaping is required, (Fig 11.10 refers.)

- 4.1.2. The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site location is within the “*Established Suburbs*” the provisions for which are set out in section 2.6. There is recognition of potential for additional residential development subject to a suitable and compatible standard, to take into account the proportions, character and amenities of existing development.
- 4.1.3. Section 8.7 provides for reinforcement of the distinctive character of the city by way of a high standard in the built environment through urban design good place making ensuring a high-quality built environment and creation of sustainable neighbourhoods.
- 4.1.4. According to section 11.3.1 (d) direct overlooking or private open space or land with development potential from above a ground level by less than relevant metres minimum for two storey developments, a greater distance than eleven metres may be required, depending on site characteristics.
- 4.1.5. According to section 11.3.1 (g) vehicular entrances should not normally exceed three metres in width and where feasible the maximum extent of boundary wall and hedge should be retained.

5.0 The Appeal

5.1. Grounds of Appeal

An appeal was lodged by Andrew Burke and Sean Corcoran who occupy two residential properties at Curragreen to the south side of the application site on their own behalf on 12th July, 2021. Some photographs and a copy of a section drawing are attached to the submission.

According to the appeal:

- The height of the proposed development is excessive and much higher than surrounding development. Overlooking would occur from the balconies at second floor level which is higher than the roof level of the houses in the adjoining development to the front. The ground floor level would be similar to

the height of the top of a fence between the appellant property and the application site. The roof of the appellant party's property is the same as that height of the balcony proposed. There would be clear lines of view to the appellant properties to the interior of the houses and the gardens from the second-floor level balcony.

- The application does not include details of external finishes which should be available along with a landscaping plan in an application.
- There is no up to date report from Irish Water regarding connection to the pumping station. The response to the further information request therefore was not satisfactory as there is no permission for connection to the pumping station.
- While there are existing foul drainage pipes under the railway tracks. There is heavy duty underground electrical cable installed and marked over ground by the ESB.
- The access road which at present is only serving two houses and a farmyard behind one of these houses, a small bungalow, is too narrow along the section off which the proposed entrance, at the railway gate, is located and it is and is unsuitable. If the road is widened removal of existing old stone walling and hedgerow should be avoided.
- The site is close to the Galway Bay Complex Special Area of Conservation and the Galway Special Protection Area so it is queried as to whether An Taisce or the Heritage Council should have been consulted about the proposed development, as standard practice.

5.2. Applicant Response

5.2.1. A submission was received from James Roche on behalf of the applicant on 5th August, 2021 which has an accompanying copy of a Wayleave Agreement and a statement by O'Donnellan Architects.

- There has been for twenty years, a wayleave (Merlin Park Area Drainage) over the application site lands comprising ten metres wide strip over a length of 40 metres, entitling the local authority to access for laying of pipes and

maintenance and repair works. There is a gravity flow (towards the sea) and a rising mains for pumping effluent to the treatment plant on the north side of the railway line. It would be reasonable to assume that these services can be used by the applicant at no cost. A contribution having been paid under P A. Reg. Ref. 15/219 in connection with a grant of permission for fourteen houses. (Two prior grants of outline permission for dwellings, which preceded the available of the treatment plant expired without being taken up.

- The finished floor levels for the proposed development are similar to those of the ground level which rises towards the railway line from the road level.
- There is no possible interference with the privacy and amenity of the properties to the south which have deep gardens.
- The development contributions are particularly harsh and at a minimum 64 square metres (from the 716 total should be removed as the gardens are 32 square metres each in area. The requirement for individual pumping stations would be higher. The amount should be based on the site having been already serviced. If contributions are to be applied, then €11,000 would be appropriate for each unit instead of €32,000
- The drainage is approved by Irish Water with regard to the requirements for the pre-connection enquiry so all aspects of the application are carefully considered and are reasonable and consistent with the CDP.

5.2.2. According to the accompanying statement by O'Donnellan Architects,

- The proposed development is consistent with section 11.3.1.(d) of the CDP with regard to overlooking from a ground level at eleven metres minimum. The finished floor levels are in keeping with the contours as shown on Drawing 1520-017. The terrain rises four metres, from 9.0 m at road level to 15.0 at the rear of the site. The level is 3.1 metres above the finished floor level of appellant party's properties where there are thirty-four and thirty-two metres in distance between the wall of their dwellings to the rear boundaries of their gardens according to the grants of permission under P.A. Reg. Refs. 02/348 and 02/920 with one of the dwellings being in a 'back to front' design with access to front and rear gardens.

- The design and the layout are modest and high quality with the orientations being similar to that of the two appellant party properties to the south. The external finishes are described in the application submission.
- The access road does appear to be disused and in need of maintenance work at the upper section close to the railway line where it is circa 4.4 metres in width but the first 105 metres of its 125 metres length is well maintained and allows for two cars to pass safely. The width is 5.1 metres increasing opposite the farmhouse to 7.8 metres where there is a setback. The applicant is willing, if required, to widen the upper twenty metres long narrow section of the road by providing a setback for the western boundary and reconstructing the drystone wall in the new position along the frontage for House A.

5.3. **Planning Authority Response**

There is no submission from the planning authority on file.

6.0 **Assessment**

- 6.1. The issues central to the determination of a decision are considered below under the following subheadings.

Drainage and water supply arrangements and connections.

Wayleaves

Adequacy of the northern section of the access road.

Impact on Residential Amenities of adjoining properties to the south

External Finishes

Landscaping

Development Contributions

Other Issues

Environmental Impact Assessment Screening.

Appropriate Assessment Screening.

6.2. Drainage and water supply arrangements and connections.

- 6.2.1. Further to review of the documentation available with the application and appeal including the final report of the Drainage Section, it is considered that the applicant in having submitted the pre connection to Irish Water has provided sufficient information with regard to feasibility of the connections for waste-water services and water supply to enable the proposed development to be considered, with any outstanding issues in this regard being addressed by way of compliance with a standard condition.
- 6.2.2. Similarly, there is satisfactory confirmation as to the capacity of and consent to use of one of four available ducts for connection with the rising main from the development for onward transmission underneath the railway line and onwards by gravity to a pump station and to the treatment plant within the local public network.

6.3. Wayleaves.

- 6.3.1. The documentation provided by the applicant's which has been reviewed by the Drainage Division and information also included in the response to the appeal provides confirmation as to continued availability of satisfactory Wayleaves to the site lands to facilitate the local authority of access for the purposes and maintenance and repair works.

6.4. Adequacy of the northern section of the access road.

- 6.4.1. There is no dispute between the parties this northern section of the access road as far as the disused railway track gate where it terminates in its current condition is substandard and unsuitable due to overgrowth as was observed during the course of the inspection. The applicant's willingness to implement maintenance and upgrade works, is noted and these works could be carried out at the applicant's expense to the satisfaction of the planning authority.
- 6.4.2. The appellant party has pointed out that this would necessitate removal of the drystone walling on the site frontage. In this regard, it is of note that the specific objectives for the site lands, as provided for in section 11.2.8 and Figure 11.10 of the CDP include a requirement that where possible, hedgerows and stone walls shall be retained and supplemented by appropriate planting. Although interventions are

undesirable, the drystone walling could be reinstated at a setback location. The applicant has indicated a willingness to provide for same but it should be noted that drystone walling may require erection by a skilled craftsman.

6.4.3. Unfortunately, a report from the Transportation Planning Division in which the planning authority's views as to the adequacy of the road to serve the two additional dwellings and the entrance arrangements is not available. However, as the road terminates at the disused railway track it is considered that the narrow width at the upper end at circa 4.5 metres subject to alterations to provide for adequate splays at the proposed shared entrance off it can be accepted. To this end, the existing walling should be retained except for removal at the upper end, to facilitate the construction of the entrance. In the event of two vehicles approaching in opposite directions towards the upper section of narrow width there is adequate forward sight to allow for passing outside the narrow section. This view generally concurs with the views of the planning officer and an appropriate condition was attached to the decision to grant permission with regard to the interventions to boundary treatment and clearance and maintenance.

6.4.4. There is no objection to the and additional turning movements and trip generation at the junction with the Coast Road (R338) attributable to the proposed development.

6.5. Impact on Residential Amenities of the adjoining properties to the south.

6.5.1. The proposed development if permitted alters the adjoining environment for the appellant parties by way of the insertion of the development of two houses, if permitted on the site which is zoned for low density residential development. However, on review of the proposed layout and design and accompanying information, the relative site characteristics particularly with regard to the ground levels which rise northwards by approximately four metres to fifteen metres at the northern boundary the finished floor level for the proposed dwellings at 14.00 metres, results in an approximate difference of three metres from the finished floor levels of the adjoining appellant party dwellings to the south. It is reasonable, especially within lands subject to low density residential zoning, for there to be an expectation that separation distances between directly opposing rear elevation windows (and balconies) at second floor level to be greater of the standard twenty-two metres as provided for in the Guidelines and section 11.3.1 (d) of the CDP.

6.5.2. A similar expectation can be applied in the case of the subject proposal for the two storey houses given the variation in ground levels but on the other hand the rear facades are offset rather than not directly opposite those of the appellant party dwellings. The footprints of the proposed dwellings and the appellant party dwellings as estimated from the lodged plans are well in excess of forty metres. The proposed balconies are accessible off bedroom accommodation as opposed to main living accommodation and it is considered that an undue degree of overlooking of the appellant party properties would not occur.

6.6. External Finishes

6.7. Contrary to the assertion in the appeal, it is considered that the application drawings provide sufficient information as to the proposed external finishes and feature for the proposed dwellings and as such a standard condition to this end, which would also address colour selection is appropriate if permission is granted. A nap plaster, and natural slate of concrete roof tiles with toughened glass balustrading are indicated

6.8. Landscaping.

6.9. It is agreed with the appellant party that the application does not include comprehensive details as to proposals for landscaping. In this regard, it is recommended, should permission be granted, for the matter can be addressed by a condition in which the applicant required to submit a landscaping plan and planting schedule for agreement in writing with the planning authority in which the requirements of the CDP with regard to hedgerow retention and supplementary planting and retention of stone walls where possible are provided for.

6.10. Development Contributions.

6.10.1. The applicant in the response to the appeal has sought to appeal the amount payable under condition as opposed to lodging its own appeal further to which the planning authority would be invited to submit is observations and response. As, matters relating to development contribution as provided for in sections 48 and 49 of the Planning and Development Act, 2000 as amended no issue arise as to preclusion of participation by third parties.

6.10.2. It should be borne in mind that the amounts payable as provided for in adopted development contribution schemes are for the benefit of all development within the administrative area to which the scheme is applicable as opposed to being related to

the development subject of the application for permission. However, it may be reasonable that an allowance be made for a deduction from the amount payable, for any sum previously paid, and not refunded) in respect of previously permitted development on the application site. This would necessitate a revision to Condition No 13.

6.10.3. Other Issues.

6.10.4. The appellant's query as to whether An Taisce and the Heritage Council should have been invited to submit its observations given the proximity to the Galway Bay Complex Special Area of Conservation and the Galway Bay Special Protection Area is noted. However, further to appropriate assessment screening, referral is considered unwarranted, given the limited size of the proposed development and availability of connections to public services infrastructure.

6.11. Environmental Impact Assessment Screening.

6.11.1. Having regard to the nature of the proposed development and its location 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.

6.12. Appropriate Assessment Screening.

6.12.1. The Galway Bay Complex Special Area of Conservation and the Galway Special Protection Area are circa 235 metres to the south of the application site which is to the north side of the R338 Coast Road. The project is a proposal for two dwellings on lands zoned for low density development with available connections to the public surface water and foul water drainage system and onward treatment and disposal. Source pathway links and threats during construction and polluted waters at construction or operational stages entering into to the waters within the area of the European sites. However, having regard to the small-scale nature of the proposed development and to the arrangements for surface and foul drainage to available services and the location removed from any European sites, no Appropriate Assessment issues proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.0 Recommendation

- 7.1. It is recommended that the planning authority decision be upheld and that permission be granted based on the following reasons and considerations and subject to the conditions set out below.

8.0 Reasons and Considerations

Having regard to Galway City Development Plan, 2017-2023 according to which the site location is within an area subject to the zoning objective 'Low Density Residential', to the site layout, dwelling footprints, design and form, to the proposed measures for the collection and management of disposal of foul and surface water and, the proposed entrance arrangements, it is considered that, subject to compliance with the conditions set out below the proposed development would not be seriously injurious to the residential amenities of adjoining properties or the visual amenities of the area, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience and, would be in accordance with the proper planning and sustainable development of the area.

9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars lodged on 25th May, 2021 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

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

These requirements include submission for written agreement with the planning authority, full details for labelling of the specific duct for use in pumping discharged waters under the railway track to the gravity sewer and pumping station located on its north side. All works in this regard shall be carried out at the applicant's expense to the satisfaction of the planning authority without obstruction to access to remaining ducts in the existing permanent Wayleave providing for inspection and maintenance works to infrastructure within the site.

Reason: In the interest of public health and clarity.

3. The developer shall enter into water supply and wastewater connection agreements with Irish Water, prior to commencement of development.

Reason: In the interest of public health.

4. Plan, section and elevation drawings for the proposed entrance, to include details of materials shall be submitted and agreed in writing with the planning authority prior to the commencement of development. The existing drystone walling and indigenous hedgerow along the roadside boundary of the site shall be retained except to the extent that its removal is necessary to provide for the entrance.

Reason: In the interest of the natural and visual amenities of the area.

5. The tree and hedgerow survey carried out and a comprehensive landscaping plan shall be prepared by a suitable qualified person which shall be submitted and agreed in writing with the planning authority. It shall include a comprehensive scheme of landscaping and boundary treatment providing for the retention in so far as is possible, save as to provide for the entrance, existing drystone walling and indigenous hedgerows, provision for reassembly of walling and supplementary planting as appropriate, and measures for protection during the construction stage. The agreed

landscaping scheme shall be implemented within the first planting season following completion of construction of the dwellings.

Reason: In the interest of visual and natural amenities of the area and orderly development.

6. Details of the materials, colours and textures of all the external finishes to the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development and which shall include slate or Blue black or dark grey rooftiles and a painted render in a mute finish.

Reason: In the interest of the visual amenities of the area.

7. The garages shall be used for purposes incidental to the residential use of the main dwelling and shall not be sold, sublet or used for commercial purposes without a prior grant of planning permission.

Reason: In the interest of clarity and the residential amenities of the area.

8. Site development and building works shall be carried only out between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 hours to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with, "*Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects*", published by the

Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

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

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

Jane Dennehy
Senior Planning Inspector
2nd December, 2021