



An
Bord
Pleanála

Inspector's Report ABP-311096-21.

Development	Retention of single storey timber-framed Chalet with connection to existing site services.
Location	The Chalet, Allaphreaghaun Tld., Furbo, Co. Galway.
Planning Authority	Galway County Council.
Planning Authority Reg. Ref.	21/875.
Applicant(s)	Eamonn Murray.
Type of Application	Retention Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party
Appellant(s)	Eamonn Murray.
Observer(s)	Mr. Colm O'Riordain.
Date of Site Inspection	20/10/2021.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The development is situated in a rural location at Furbo, 5km east of Spiddal Village and approximately 500 metres west of Furbogh Beach on the northern side of the R336. The site is directly accessed off the regional road and abuts a junction to the west where a minor road meets the R336.
- 1.2. The site is accessed via an entrance directly off the R336 and is bounded by a mature hedgerow and treeline. The lands slope up in a northerly direction and bounds the wood to the north-east. The driveway is finished with loose stone and is bounded by a rough dry-stone wall. A small metal shed is located to the east of the entrance and the drive hugs the western and northern boundaries of the site.
- 1.3. The site has a stated area of 0.1036 hectares and the chalet, the subject of this retention application, has a stated floor area of 39.4m². The structure is single storey in height and finished with a metal roof and timber cladded walls. The existing septic tank system is located within the garden area of the site, and to the south and south-west of the chalet building. The site is screened from the surrounding area due to the dense hedging and treeline along all boundaries and is largely out of sight from the public roads.

2.0 Proposed Development

- 2.1. Permission is sought, as per the public notices, for the retention of a single storey timber-framed Chalet with connection to existing site services, all at The Chalet, Allaphreaghun Tld., Furbo, Co. Galway.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form
 - Cover Letter
 - Certificate of Registration of domestic WWT System dated 17/09/2012
 - Engineers Report confirming the Septic Tank & Percolation Area is in accordance with EPA Code of Practice.
 - Eco Drop de-sludge report for septic tank dated 01/07/2020.

- 2.3. The cover letter submitted with the application states out the that the applicant is looking to regularise the planning status of the unauthorised development and sets out the history of the site. It is noted that the refurbishment of the chalet was the subject of recent court proceedings in which the building works were determined to be unauthorised. The applicant has been given a stay of execution of the enforcement order so that he may regularise the relevant planning issues. It is submitted that the applicant genuinely considered the refurbishment works to be exempted development.
- 2.4. The Board will note that following the submission of the application, the applicant submitted unsolicited further information on two separate occasions. The first unsolicited further information submission was on the 24th June 2021 and included a substantial document prepared by the applicant seeking to explain the circumstances surrounding the refurbishment. The document sets out 5 headings as follows:

- The status of the Chalet
- The refurbishment
- The applicable planning policies and objectives of the Galway Co. Co. Development Plans, 2009 to 2021 which encourage refurbishment.
- Alterations made during the refurbishment
- Works to the existing domestic WWTS.

The first unsolicited further information submitted includes a number of enclosures.

- 2.5. The second unsolicited further information submission was on the 8th July 2021 and relates to the proximity of the pNHA. It is submitted that no part of the site encroaches into the pNHA land. As the development has been *insitu* since pre-1964, it is submitted that it poses no negative impact on the pNHA habitats, species or water quality.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for 5 reasons relating to the following:

1. Non-compliance with the requirements of Objective RHO1 and therefore contrary to the rural housing provisions.
2. In the absence of an EclA and Bat Survey, the likely significant effects on the Furbogh Wood pNHA would result in an unacceptable degradation of the protected site, contrary to policies and objectives of the CDP.
3. Location of the unauthorised development in a Class 3 landscape, it is considered that the development would not fit appropriately or integrate effectively into the rural location and would contravene objectives of the CDP, would detract from the visual amenity of the area, would militate against the preservation of the rural environment and would accordingly be contrary to the proper planning and sustainable development of the area.
4. Having regard to the lacunae in respect of the extent of care and maintenance carried out to the onsite WWTP and in the absence of any specification for same, the PA is not satisfied that the safe disposal of effluent can be guaranteed.
5. Retention should have been sought for the vehicular entrance. A grant of permission would facilitate the consolidation and intensification of unauthorised development, contrary to DM Standard 18(b) and would be prejudicial to road safety.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report and Flood Risk Assessment.

The Planning Report concludes that proposed development is not acceptable and would be contrary to the provisions of the CDP as they relate to rural housing, access onto restricted regional roads, visual impacts and potential impacts on the ecology associated with Furbogh Wood pNHA. The report also raises concerns in terms of the lack of information relating to the in situ WWTS as to when it was installed, the spec of the system and the extent of care and maintenance carried out. The Planning Officer recommends that permission be refused for the proposed development, for 5 reasons, and this Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

3.2.2. **Other Technical Reports**

None.

3.2.3. **Prescribed Bodies**

TII: The report advises no observations.

Dept. of TCAGS&M: The report from the DAU notes that part of the development land is located within Furbogh Woods pNHA (Site Code: 1267. Furbogh Woods is one of only a few Atlantic woodlands which occur directly adjacent to the coast. The occurrence of Oakwood on mineral soil is not a common feature of West Galway and the foliose lichen and rare grass are species of interest for the proposed designated area. Eight species of bat have been recorded within and boarding Furbogh Woods, including Lesser Horseshoe Bat, an Annex II species.

The report notes that the Department has concerns regarding the footprint of the development within the pNHA boundary and that prior to granting retention, Galway County Council must be satisfied that the unauthorised development does not pose any significant impacts on Furbogh Woods pNHA habitats, species and on water quality.

3.2.4. **Third Party Submissions**

There are 3 no. third party submissions in relation to this application. The Board will note that all seek to support the retention application and advise as follows:

- The chalet has been present on the site since approximately 1960.

- The property was used as a holiday home for the applicants family.
- The refurbishment works carried out has extended the life of this longstanding property, has enhanced the look of the building and consequently enhanced the local neighbourhood.

It is requested that favourable consideration be given.

4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

ABP-305218-19 (PA ref: ED19/45): The current applicant sought a Section 5 Declaration of exemption for the refurbishment works carried out the chalet and maintenance works to a wastewater treatment system. The Planning Authority determined that the works were not exempted development. Following this decision, the applicant sought a decision on the referral from the Board who determined that works carried out to maintain and improve a chalet and a septic tank/wastewater treatment system, at the site are development and are not exempted development.

PA ref: 18/1340: Permission refused to the current applicant for the partial dismantling of existing single-storey timber-frame chalet (39.4 sqm.), construction of a new first floor extension (39.4 sqm.) and balcony, and relocation of existing site entrance gate and associated site works. Gross floor space of proposed works, 78.8sqm. The 5 reasons for refusal related to WWTP matters, rural housing policy, road and traffic issues, visual impact and matters relating to impacts on the pNHA.

ABP-302930-18 (PA ref: ED18/49): The current applicant sought a Section 5 Declaration of exemption for the refurbishment works carried out the chalet. The Planning Authority determined that the works were not exempted development. Following this decision, the applicant sought a decision on the referral from the Board who determined that the refurbishment of a timber house and associated infrastructure at the site is development and is not exempted development and that works to the entrance of these premises are development and are exempted development.

PA ref: ED16/236: The current applicant sought a Section 5 Declaration of exemption for the refurbishment works carried out the chalet.

5.0 Policy and Context

5.1. Development Plan

5.1.1. The Galway County Development Plan 2015 – 2021, is the relevant policy document relating to the subject site. The site lies outside the development boundaries of any town or settlement. The site lies within Rural Area under Strong Urban Pressure (GTPS) where Objective RHO 1 Rural Housing Zone (Rural Area Under Strong Urban Pressure – GTPS) is considered relevant. The site is also located within a Class 3 landscape which has a high sensitivity rating.

5.1.2. In addition to the above, the following sections of the Plan are considered relevant:

- Objective RHO 9 – Design Guidelines.
- Policy LCM 1 – Preservation of Landscape Character
- Objective LCM 1 – Landscape Sensitivity Classification
- Objective LCM 2 – Landscape Sensitivity Rating
- DM Standard 5 – Rural Housing
- DM Standard 6 – Assimilation of Development into Landscape.

5.2. Natural Heritage Designations

5.2.1. The site is not located within any designated site. The closest Natura 2000 sites are the Connemara Bog Complex SAC (Site Code: 002034) and the Connemara Bog Complex SPA (Site Code: 004181) which area located approximately 4.5km and 6.6km respectively, to the north-west of the site. In addition, the Galway Bay Complex SAC (Site Code: 000268) and the Inner Galway Bay SPA (Site Code: 004031) which are located approximately 6.7km to the east of the site.

5.3. EIA Screening

5.3.1. The subject appeal does not relate to a class of development which requires mandatory EIA.

- 5.3.2. Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) sets out the class of developments which provide that mandatory EIA is required. The proposed development is not of a scale or nature which would trigger the need for a statutory EIAR. It is therefore considered that the development does not fall within any cited class of development in the P&D Regulations and does not require mandatory EIA. The Board will note the proximity of the Furbogh Wood pNHA which lies immediately adjacent to the subject site.
- 5.3.3. In accordance with section 172(1)(b) of the Planning and Development Act 2000 (as amended), EIA is required for applications for developments that are of a class specified in Part 1 or 2 of Schedule 5 of the 2001 Regulations but are sub-threshold where the Board determines that the proposed development is likely to have a significant effect on the environment. For all sub-threshold developments listed in Schedule 5 Part 2, where no EIAR is submitted or EIA determination requested, a screening determination is required to be undertaken by the competent authority unless, on preliminary examination it can be concluded that there is no real likelihood of significant effects on the environment.
- 5.3.4. Having regard to:
- (a) the nature and scale of the development, and
 - (b) the location of the development outside of any sensitive location specified in article 109(4)(a)(v)(III) of the Planning and Development Regulations 2001 (as amended),

It is concluded that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental 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

This is a first party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The grounds of appeal are summarised as follows:

- The first party notes that the application arises from the decision of the District Court at Galway Court House, where the applicant was charged with failure to comply with a planning enforcement notice. The Judge held with the County Council and reserved imposing penalties and finalising of orders pending the making of an application to regularise the situation.
- The applicant submits that at all times, the findings of the District Justice were never accepted and are being appealed to the Circuit Court, and will be brought further if necessary, including Judicial Review. The appeal submits that should the Board consider it prudent to delay making a decision on the appeal until the legal issues have been determined, the appellant is amenable to this.
- The appeal submits that the schedule of reasons given for the refusal are totally without foundation and therefore, not applicable, totally unreasonable and clearly not in compliance with Planning Statutes and Guidelines as they fail to take into account all relevant facts and appear to rely on assumed facts which were subsequently proved to be fallacious.
- The submission argues a number of points in the Planners Report and it is submitted:
 - The development does not amount to a new build on a green field site as the Chalet has been in existence pre-1964 and was never missing from the site.
 - The entrance was not illegally created or abandoned or widened, and the Board have accepted this.
 - The Galway County Development Plan supports the re-use of existing housing stock.
 - The development works to refurbish did not materially affect the original authorised development and are in character with the original Chalet on the site.
 - The WWTS is functioning properly along EPA recommended guidelines.

- The main issues relate to the windows and door alterations of the southern elevation. The development in its entirety should not be treated as unauthorised development.
- Other policies and objectives of the CDP relating to pre-1963 houses should have been applied to the subject application.
- The Chalet does not lie within the pNHA.
- The works to replace the timber cladding did not amount to demolition of the original building and the material used in the refurbishment is considered appropriate.
- There is no visual impact arising from the refurbishment works.
- A new septic tank was installed in 2013 and there have been two engineers reports submitted advising that works to the system in 2017 were 'care and maintenance' while the second report advises that the system was functioning properly and maintained in accordance with EPA code of practice.

The appeal includes a number of enclosures.

6.2. **Planning Authority Response**

None.

6.3. **Prescribed Bodies**

The DAU submitted a report to ABP advising that the subject site is not within a designated area for nature conservation, but is adjacent to Furbogh Woods, pNHA (Site Code: 1267). Prior to granting permission for retention, the Board must be satisfied that the development does not pose a significant negative impact on Furbogh Woods habitats, species and on water quality.

6.4. **Observations**

One observation from Mr. Colm O'Riordain has been received in respect of the subject appeal. The observation seeks to support the appeal and confirms that there

has been no alteration to the entrance to the site over the past many years. The refurbishment works were carried out in a methodical fashion to ensure that all planning laws were adhered to, and the Chalet has never been missing from the site.

6.5. First Party Response to DAUs submission

The First-Party submitted a response to the DAUs report to ABP. The submission indicates that a report from Environmental Services Specialists was commissioned to address the statement regarding the development for retention not posing a significant negative impact on Furbogh Woods habitats, species and on water quality.

It is submitted that the site does not lie within, rather adjacent to the pNHA and as the designation is not a European Site, the habitats directive does not apply to this site and appropriate assessment (NIS) is not required. In addition, it is noted that as the fall of the land is to the south, any liquids arising from the percolation area will flow away from the pNHA and therefore cannot impact the pNHA.

It is hoped that this satisfies the Board that the works carried out pose no significant negative impact.

7.0 Assessment

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Introduction
2. Reasons for Refusal
3. Other Issues
4. Appropriate Assessment

7.1. Introduction:

- 7.1.1. The subject site is located within the rural area on unzoned land within an area identified as being under Strong Urban Pressure in the Galway County Development Plan 2015-2021, due to its proximate location to Galway City. There is a presumption against development in such areas save for in instances where it can be demonstrated that an applicant complies with the Planning Authority's policies relating to the rural area.
- 7.1.2. Permission is sought for the retention of a single storey timber-framed Chalet with connection to existing site services, all at The Chalet, Allaphreaghun Tld., Furbo, Co. Galway. The Board will note that the site has been the subject of a number of Section 5 declarations as well as enforcement proceedings by Galway County Council, which resulted in the appellant being charged with failure to comply with a planning enforcement notice. The applicant submits that at all times, the findings of the District Justice were never accepted and are being appealed to the Circuit Court.
- 7.1.3. The Board will further note that there has been a chalet on this site since 1960.

7.2. Reasons for Refusal

I note that the PA has recommended refusal of planning permission for 5 stated reasons relating to the following issues:

1. Non-compliance with the requirements of Objective RHO1 and therefore contrary to the rural housing provisions.

- 7.2.1. The Planning Authority considers that the applicant does not comply with the requirements of Objective RHO 1 or DM Standard 18b of the County Development Plan and in this regard, the development is considered contrary to the rural housing provisions of the Plan. In response, the appellant notes that there has been a chalet on the subject site pre-1963 and has been in consistent use over the past 60 years. As such, it is submitted that the provisions of Objective RHO 1 should not be applied as the subject application does not provide for a new house.
- 7.2.2. I note the findings of the Board in their determination of the previous Section 5 Declarations sought by the appellant with regard to the refurbishment works to the

original chalet. In determining the questions posed, ABP-302930-18 and ABP-305218-19, on both occasions, the Board concluded that:

(a) the original chalet situated on this site was a “house” and a “habitable house” within the meaning of section 2 of the Planning and Development Act, 2000, as amended, and, on the basis of the documentation submitted as part of the referral, was in existence prior to the appointed day of 1st October 1964, and was, therefore, established.

In this regard, I would agree with the appellant that the provisions of Objective RHO 1, as it relates to the building of a new house are not necessarily applicable.

7.2.3. In addition to the above, I note that the Board concluded that the works for the maintenance and improvement of the chalet involved the substantial removal of the original chalet and its replacement by the structure the subject of the current appeal. While I would agree that the works carried out as described would not come within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended, I am satisfied that an application for the retention of the structure is acceptable. In the context of all of the information available to me, I am generally satisfied that the principle of the chalet on the site is acceptable given the long history of the site being occupied by such a structure.

7.2.4. As such, I do not consider that the Planning Authority's reason for refusal no 1 should stand.

2. In the absence of an EclA and Bat Survey, the likely significant effects on the Furbogh Wood pNHA would result in an unacceptable degradation of the protected site, contrary to policies and objectives of the CDP.

7.2.5. The Board will note that the PAs reason for refusal no. 2 indicates that the subject site is located within the Furbogh Wood NHA and in the absence of an EclA and bat survey, a grant of retention permission would have a significant adverse effect on the integrity of the NHA. In response, I note that the DAU has indicated that the subject site does not in fact lie within the Furbogh Wood, rather adjacent to same. I also note that the wood is not an NHA, rather a proposed Natural Heritage Area. While I acknowledge the first-party submission that the Habitats Directive does not apply and an appropriate assessment is not required, I would note that pNHAs are subject

to limited protection in recognition of the ecological value of such sites. I propose to deal with AA matters further below in Section 8.0 of this report.

7.2.6. I note that the Planning Report, while raising concerns in terms of the lack of an EclA and bat survey, gave no indication as to the biodiversity or other wildlife for which Furbogh Wood has been proposed to be designated for. I acknowledge in this regard, the submission from the DAU and in an effort to address the concerns raised, I consulted the NPWS website where no information was available. Furbogh Woods is a proposed Natural Heritage Area (Site Code: 001267) as it is one of only a few Atlantic woodlands which occur directly adjacent to the coast. The occurrence of Oakwood on mineral soil is not a common feature in West Galway. In addition, the foliose lichen *Lobaria scrobicularia* and rare grass *Millium effusum* are species of interest for the proposed designated area. Eight species of bat have also been recorded within and bordering the woods including the Lesser Horseshoe Bat *Rhinolophus hipposideros*, an Annex II listed species.

7.2.7. Having regard to the history of the site, and the acceptance that there has been a chalet on this site since the 1960s, together with the works the subject of this retention application which were carried out in 2012/2013, I find it difficult to conclude that a grant of permission would give rise to any significant impacts on any bat species, or other wildlife, using the adjacent Furbogh Woods. The scale of the building the subject of this retention has not altered through the refurbishment works, save for the reduction in fenestration on the southern elevation, and I note that there is no significant lighting outside of the building itself. I would accept that any additional lighting may impact on bats and as such, any grant of retention permission should include a condition which specifically excludes any additional outdoor lighting other than that identified by the applicant, ie. the 'short-on' sensor light on the door. I also note that the existing, natural site boundaries are to be retained. I am therefore satisfied that the proposed development is acceptable.

7.2.8. As such, I do not consider that the Planning Authority's reason for refusal no 2 should stand.

3. Location of the unauthorised development in a Class 3 landscape, it is considered that the development would not fit appropriately or integrate effectively into the rural location and would contravene objectives of the CDP,

would detract from the visual amenity of the area, would militate against the preservation of the rural environment and would accordingly be contrary to the proper planning and sustainable development of the area.

- 7.2.9. The PA considers that the development the subject of this retention application would interfere with the character of the landscape. In this regard, I note that there has been a chalet type building on the subject site for over 60 years. Having regard to the Boards previous consideration of the refurbishment works which have been carried out to the structure, it has been determined that the changes are material in terms of the original structure on the site. I note that the floor area has not changed and it would appear that the layout of the building or the height of the structure has not been altered by the works carried out, but I do acknowledge the changes to the southern elevation and roof profile. However, I do not consider the changes so significant in terms of visual impact, to warrant a refusal of planning permission.
- 7.2.10. The Board will also note that the existing boundaries of the site comprise high hedges. These appear to have been in place and maintained for at least 11 years – I note the images from 2010 include the boundaries. As such, the structure the subject of this retention appeal is not visible from the public road. In terms of the requirements of Objective RHO 9 – Design Guidelines, I am satisfied that can be deemed acceptable and I do not consider that the chalet, being located on the landward side of the public road, interferes with any views or affects the character of the Class 3 landscape.
- 7.2.11. As such, I am satisfied that the PAs reason for refusal no. 3 can be set aside.
4. Having regard to the lacunae in respect of the extent of care and maintenance carried out to the onsite WWTP and in the absence of any specification for same, the PA is not satisfied that the safe disposal of effluent can be guaranteed.
- 7.2.12. The Board will note that the appellant does not consider that the maintenance works carried out to the septic system serving the chalet required planning permission as they were mandated by law. In terms of the above, I would refer the Board to its determination in relation to the S5 request in relation to the said works where it was concluded that:

(e) the development involving the maintenance/improvement of a septic tank and wastewater treatment system, if the subject of an advisory notice under Section 70(H)(5) of the Water Services Act 2002, as amended, would be exempted development under Class 41(g) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, but as no evidence of the service of such notice has been supplied as part of this referral, the development in question is not exempted development.

I also note that the report of the previous Inspector noted that as the 'septic tank report does not provide a date of the survey and is an assessment of the existing tank, there is no way of knowing if the system was changed / upgraded etc in 2012 when the problems occurred'. As such, it is clear, that permission was required for the works to the septic tank system.

- 7.2.13. In terms of the works carried out, the Board will now note that the applicant has indicated that a new septic tank and new percolation area pipework was installed in 2013 and there have been two engineers' reports submitted advising that works to the system in 2017 were 'care and maintenance' while the second report advises that the system was functioning properly and maintained in accordance with EPA code of practice on the 27th April 2020.
- 7.2.14. The appellant submits that he had a legal obligation to deal with ponding on the site for health and safety reasons which would have taken place irrespective of Chalet refurbishment works. He replaced the old block-built tank with a precast concrete tank in the same location. The works included the adding of suitable soil to a maximum of 3 feet onto the existing percolation area and a new piping system was introduced. It is further noted that the Chalet was in continuous occupation during this period.
- 7.2.15. In terms of the information now submitted with the application, I would agree that there has been some confusion and lack of clarity regarding the works carried out to the septic tank and percolation area in the past. However, as it appears that the entire system was replaced – a new septic tank and new percolation pipe work installed – irrespective of the applicants' opinion, such works require the benefit of planning permission.

7.2.16. With regard to the retention sought for these works and acknowledging that the applicant has not submitted a site characterisation report or details of *P or *T tests carried out at the site, I would accept that the original septic system was likely to be in need of upgrading given the length of time it was likely to have been installed. In addition, I acknowledge that the existing system has been certified to be functioning properly in accordance with the EPA Code of Practice, by a chartered building engineer. As the works the subject of this element of the appeal are all underground, I consider it reasonable to accept the certification by the suitably qualified persons, of its appropriate installation and functioning.

7.2.17. As such, I do not consider that the Planning Authority's reason for refusal no 4 should stand.

5. Retention should have been sought for the vehicular entrance. A grant of permission would facilitate the consolidation and intensification of unauthorised development, contrary to DM Standard 18(b) and would be prejudicial to road safety.

7.2.18. In relation to the fifth reason for refusal, the Board will note that in its previous S5 determination, it was concluded that:

(f) The works to the entrance would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and are exempted development. On the basis of the documentation submitted with the referral, the Board is satisfied that the works in question have not resulted in the material widening of this means of access to the public road, and accordingly the restrictions on exemption set out in Article 9 (1)(a)(ii) of the Planning and Development Regulations 2001, as amended, do not apply in this instance.

7.2.19. In terms of the above, I am satisfied that the vehicular entrance to the site has not been deemed unauthorised. Having regard to the information submitted, together with my site inspection, I am satisfied that no changes have been made to the entrance to the site since the above determination. As such, I would concur with the appellant that the PAs reason for refusal no. 5 is unnecessary.

7.3. Other Issues

7.3.1. Development Contribution

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

8.0 Appropriate Assessment

8.1. Introduction

- 8.1.1. While the applicant submits that no AA is required, the EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.
- 8.1.2. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. While I accept that the site does not lie within a designated site, given that there are a number of Natura 2000 sites within 15km of the site, and as such, screening for AA is required.
- 8.1.3. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.
- 8.1.4. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:
- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).

- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

8.2. Consultations

- 8.2.1. With regard to consultations, the Board will note that no concerns were raised with or by the Planning Authority with regard to AA *per se*. The PA recommended refusing the retention application on the basis that the applicant did not submit an EclA or bat survey, given the proximity of the site to the Furbogh Wood pNHA.
- 8.2.2. In addition, the DAU has requested that the Board satisfy itself that the retention does not pose a significant negative effect on the woods habitats, species and water quality.

8.3. Screening for Appropriate Assessment

- 8.3.1. The applicant did not prepare an Appropriate Assessment Screening Report as part of the subject application. The site is not located within any designated site. The closest Natura 2000 sites are the Connemara Bog Complex SAC (Site Code: 002034) and the Connemara Bog Complex SPA (Site Code: 004181) which area located approximately 4.5km and 6.6km respectively, to the north-west of the site. In addition, the Galway Bay Complex SAC (Site Code: 000268) and the Inner Galway Bay SPA (Site Code: 004031) which are located approximately 6.7km to the east of the site.
- 8.3.2. In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site. I am satisfied that there are no Natura 2000 sites located within the zone of significant impact influence because the ecology of the species and / or the habitat in question is neither structurally nor functionally linked to the proposal site. There is no potential impact pathway connecting the designated sites to the development site and while I acknowledge the potential presence of bat species within the adjacent pNHA, I note that no bat species are identified as a QI for the identified Natura 2000 sites. Therefore, I conclude that no significant impacts on the identified sites is reasonably foreseeable.

8.4. Potential Significant Effects

8.4.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 4.5km from the boundary of any designated site. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site comprises a residential site of long standing. No qualifying species or habitats of interest, for which the designated sites are so designated, occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the construction works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 sites have been designated.

In terms of the potential presence of bat species associated with the adjacent pNHA, the Board will note that I have addressed this matter above. I conclude that subject to the inclusion of a condition which restricts the provision of any additional external lighting on the site, the likely impacts to the bat species in the area are minimal.

- **Water Quality:** The proposed development relates to the retention of a chalet which has been refurbished having been present on the site since the 1960s. Part of the retention application includes the upgrading of the previous WWTP and percolation area on the site. The Board will also note that I have dealt with this matter above.

Having regard to the information available to me on the submitted file, together with the certification of the existing WWTP system which upgraded

the previous system on the site in 2013, I conclude that the Board can be satisfied that the system is operating in accordance with the requirements of the EPA Code of Practice for such units. Therefore, I am satisfied that the proposed development is acceptable and that if permitted, is unlikely to impact on the overall water quality of any Natura 2000 site in proximity to the site.

I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Galway Bay Complex SAC (Site Code: 000268) and the Inner Galway Bay SPA (Site Code: 004031), or any other Natura 2000 sites in the wider vicinity, can be excluded given the distance to the sites, the nature and scale of the development and the lack of a hydrological connection.

8.5. In Combination / Cumulative Effects

- 8.5.1. Given the nature of the proposed development, being the retention of a chalet, I consider that any potential for in-combination effects on water quality in Galway Bay can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in Galway Bay via rivers and other surface water features are also subject to AA.

8.6. Conclusion on Stage 1 Screening:

- 8.6.1. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

9.0 Recommendation

I recommend that planning permission be granted for the proposed development for the following stated reason and subject to the following stated conditions.

10.0 Reasons and Considerations

Having regard to the relevant provisions of the Galway County Development Plan, 2015-2021, to the established pattern and character of development in the vicinity of and on the subject site, to the planning history associated with the subject site and to the information submitted with the planning application and appeal, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of properties in the area, would be acceptable in terms of pedestrian and traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and further unsolicited information submitted to the Planning Authority on the 24th June 2021 and 08th July 2021, and to An Bord Pleanála on the 11th October 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. Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Class 1 or Class 3 of Schedule 2, Part 1 of those Regulations shall take place within the curtilage of the

house shall be erected on the site/within the garden area, without a prior grant of planning permission. This requirement extends to external lighting beyond that identified by the applicant, ie. the 'short-on' sensor light on the door.

Reason: In the interest of the amenities, to ensure the protection of the natural heritage on and adjacent to the site and in the interests of the proper planning and development of the area.

3. The effluent treatment and disposal system shall be maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of "Wastewater Treatment Manual: Treatment Systems for Single Houses, (p.e. less than or equal to 10)", published by the EPA in 2010. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of clarity and public health.

4. 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.

A. Considine

Planning Inspector

18th December 2021