



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311873-21

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<b>Development</b>	Retention of house and garage on revised boundaries and construction of new house.
<b>Location</b>	Kinvarra Townland, Co. Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	211506
<b>Applicant</b>	Annette O'Shea
<b>Type of Application</b>	Permission & Retention
<b>Planning Authority Decision</b>	Refuse Permission & Refuse Retention
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Annette O'Shea
<b>Observer</b>	None
<b>Date of Site Inspection</b>	25 <sup>th</sup> May 2022
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located on the eastern side of a private access road, known as Nally's Lane, approximately 0.5 km west of the centre of Kinvara. Nally's Lane, a cul-de-sac, serves 3 no. dwellings and joins with the N67 north of the appeal site.
- 1.2. The appeal site is broadly rectangular in shape with a dog leg portion along the south of the appeal site. The appeal site is relatively flat and accommodates a detached dwelling and a detached garage. 2 no. vehicular accesses serve the appeal site.
- 1.3. There is a residential development (Cnoc na Dealg) under construction to the rear/east of the appeal site. Semi-detached dwellings, which are part of Cnoc na Dealg, adjoin the appeal site to the immediate north. These dwellings are situated c. 1 metre lower compared to the level of the appeal site and are orientated with their rear gardens facing towards Nally's Lane. The lands to the immediate south of the appeal site are undeveloped.

## 2.0 Proposed Development

- 2.1. The proposed development comprises;
  - Retention permission of a dwelling and garage on revised site boundaries, previously granted under PA. Ref. 20/1407. (The existing dwelling and garage are located on 'Site 1'), and;
  - Permission for a new serviced dwelling (located on 'Site 2'), specifically,
    - a detached, four-bedroom, dormer style dwelling;
    - stated floor area c. 162 sqm.
    - maximum ridge height c. 7.7 metres.
    - material finishes to the dwelling have not been specified but appear to comprise render for the external walls and tile/slate for the roof.
    - separation distances indicated as c. 1.5 metres to the southern boundary and c. 2 metres to the northern boundary. The proposed dwelling generally aligns with the row of dwellings to the north and the dwelling to the south. A rear garden depth of 11 metres is indicated.

No elaboration has been provided as to how the boundary of the site differs compared to that as permitted under PA. Ref. 20/1407.

PA. Ref. 20/1407 regularised the site boundaries, to reflect an area to the east of the site which was previously included under the PA. Ref. 02/4575 (i.e. the 'parent' permission) but which was subsequently sold and was included as part of the development of Cnoc na Dealg (ABP Ref. 306867-20 refers).

In respect in the current proposal, it appears that the retention element relates to the subdivision of the site into 'Site 1' and 'Site 2'.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The Planning Authority issued a Notification of Decision to Refuse Permission on the 12<sup>th</sup> October 2021 for 4 no. reasons which can be summarised as follows;

1. The proposed development would negatively impact the free flow of traffic on the N67 due to the volume of traffic generated by the development and the narrow carriageway width of the access road. Furthermore, the site entrance onto the access road is unsatisfactory due to insufficient sightlines. The development would endanger public safety by reason of traffic hazard.
2. The Planning Authority is not satisfied that the subject site can be satisfactorily served by the public sewer in terms of capacity and access arrangements. The proposed development would be prejudicial to public health and may have the potential to adversely affect the integrity of the Galway Bay Complex SAC and Inner Galway Bay SPA.
3. The proposed development would materially contravene Condition 4 (i) of PA. Ref. 20/1407 in terms of the access.
4. In the absence of a flood risk assessment, the Planning Authority is not satisfied that the site will not be subject of flooding and as such the proposed development would be contrary to Objective FL1 of the Galway County Development Plan 2015-2021.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the Planning Officer (dated 12<sup>th</sup> October 2021) includes the following comments;

- The subject site is located within an identified flood risk area. The flood risk assessment submitted under PA. Ref. 20/1407, which was for the retention of a dwelling on the site, concluded that the site would not be subject to flooding. However, as the current application is for a new dwelling, a site specific flood risk assessment is required.
- PA. Ref. 20/1407 permitted a connection from the existing dwelling to the public sewer located at Site 2. This sewer connection runs from the rear of the existing dwelling house to the public sewer serving the housing development (which is under construction). Under the current proposal, it is proposed to connect the new residential unit on Site 2 into this sewer running along the rear of Site 1 and Site 2. While both sites are within the control of the applicant, should Site 2 be sold to a third party this presents issues in relation to the sewer connection serving site 1, in terms of maintenance/ repair. Irish Water will only likely take in charge the sewer that is in the road network of the housing development under construction. The applicant should acquire a way leave to show that there will be access provided to the sewer along both sites. The way leave should also include the connection to the manhole located on private property, immediately north of the site. It is further noted that the applicant has not supplied a feasibility letter from Irish Water with regard to servicing the additional residential unit proposed.
- Two vehicular entrances currently serve the subject site. Under PA. Ref. 20/1407, a condition was attached to ensure the closing up of the northern vehicular access, as this was the vehicular access originally permitted on site. The public notices of the current application do not reference the retention of the northern access, therefore, it is considered that the proposed development would materially contravene condition 4 (i) of PA. Ref. 20/1407.

- The design and visual impact of the proposed development is considered acceptable.
- There are outstanding flood risk issues and issues in relation to connecting to the public sewer and as such likely significant effects on European sites cannot be ruled out.

The report of the Planning Officer recommends a refusal of permission consistent with the Notification of Decision which issued.

### 3.2.2. Other Technical Reports

Roads and Transport Section (dated 7<sup>th</sup> October 2021) – notes the following;

- The proposed development would negatively impact on the free flow of traffic on the N67 due to the volume of traffic generated by the proposed development and the narrow nature of Nally's Lane.
- The proposed site entrance onto Nally's Lane is unsatisfactory due to insufficient sightlines.

Water Services Section (dated 6<sup>th</sup> October 2021) – notes the following;

- Potential issue in relation to the sewer passing through a private site before reaching the public sewer. The issue already exists as the sewer connects to a manhole in the north-east corner of the site. A way leave would allow for access to be provided to the sewer in the neighbouring property.

### 3.3. Prescribed Bodies

TII (Transport Infrastructure Ireland) – no specific comment.

### 3.4. Third Party Observations

None received.

## 4.0 Planning History

Appeal Site

**PA Ref. 20/1407** – Retention permission GRANTED for a house and garage on revised site boundaries previously granted under PA Ref. 97/3216 and PA. Ref. 02/4575 with new connection to public sewer.

**PA. Ref. 02/4575** – Permission GRANTED for a house and septic tank.

**PA. Ref. 97/3216** – Outline permission GRANTED for 2 no. houses and 2 no. septic tanks.

From inspecting Galway County Council's on-line planning register I note that there is no record of an application for permission consequent to this grant of outline permission having been made.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The proposed development was considered by the Planning Authority under the Galway County Development Plan 2015-2021 however the Galway County Development Plan 2022-2028 came into effect on the 20<sup>th</sup> June 2022 and is now the relevant development plan.

5.1.2 The appeal site is zoned 'Existing Residential' under the Galway County Development Plan 2022-2028.

5.1.3. There is a Recorded Monument (Country House) to the west of the appeal site (Ref. GA113-143 refers).

5.1.4 The appeal site is indicated as being within an Urban Environs Landscape, which have a low sensitivity to change. The appeal site is not affected by any protected views (see Map 08, Appendix 4) or scenic routes (see Map 09, Appendix 4).

5.1.5 The provisions of the Galway County Development Plan 2022 - 2028 relevant to this assessment are as follows:

- DM Standard 28: Sight Distances Required for Access onto National, Regional, Local and Private Roads
- DM Standard 30: Developments on Private Roads

## 5.2. Natural Heritage Designations

- Inner Galway Bay SPA (Site Code 004031), c. 360 metres north-east
- Galway Bay Complex SAC (Site Code 000268), c. 360 metres north-east
- Galway Bay Complex pNHA (Site Code 000268), c. 360 metres north-east

## 5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for 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 to refuse permission. The grounds for appeal can be summarised as follows;

- There is a new wastewater treatment plant in Kinvara. Leaving sites undeveloped is unsustainable.
- There is a strong demand for housing in Kinvara.
- Traffic generated by the proposal will be minor and would not endanger public safety. The junction between Nally's Lane and the N67 was altered on foot of PA. Ref. 20/1407. Sightlines at this junction are sufficient for the applicable 50 kmph speed limit. This junction is outside the applicant's control. There have been no accidents at this junction.
- The applicant sold lands to the rear of the appeal site (ABP Ref. 306867-20 relates). As part of this sale, the applicant was granted access to the sewer for her existing dwelling and also to facilitate a second connection (i.e. to cater for the dwelling proposed under the current application). The conditions of the sale (see para. 8 and 9) and a Memorandum of Understanding are enclosed with this appeal.

- Non-compliance with Condition 4 (i) of PA. Ref. 20/1407 would not be an issue if permission for the proposed development is granted.
- A flood study was undertaken as part of PA. Ref. 20/1407 which proved that the site was not at risk of flooding. This study remains relevant for the current proposal. The lands to the rear of the appeal site which were the subject of ABP Ref. 306867-20 are at a lower level.

## 6.2. **Planning Authority Response**

None received.

## 6.3. **Observations**

None received.

## 7.0 **Assessment**

7.1. I consider the main issues in the assessment of this appeal are as follows:

- Impact on Residential and Visual Amenity
- Refusal Reason 1
- Refusal Reason 2
- Refusal Reason 3
- Refusal Reason 4
- Appropriate Assessment.

## 7.2. **Impact on Residential and Visual Amenity**

7.2.1. The first part of the proposed development entails the retention of the existing dwelling and garage on the site, with reference to revised site boundaries of a previously permitted development, that being PA. Ref. 20/1407. I do not consider that this element of the proposed development gives rise to any significant impacts on the residential amenity of adjoining property or the visual amenity of the area.



7.2.2. The second part of the proposed development comprises the construction of a detached dormer style dwelling in the side garden of the dwelling on the appeal site. Having regard to the scale, design and relationship of the proposed dwelling to adjoining site boundaries, I do not consider that the proposed development would result in any significant overlooking, overbearance or overshadowing of adjoining property and as such would not result in any significant negative impacts on the residential amenity of adjoining properties. The proposed dwelling, in terms of its design and material finishes is of a high quality and I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area.

### **7.3 Refusal Reason 1**

7.3.1. The first reason for refusal concerns the impact of the proposed development on the free flow of traffic on the N67 due to the volume of traffic generated by the development and having regard to the narrow carriageway width of the access road. The Planning Authority also refer to the adequacy of sightlines at the entrance onto the access road.

7.3.2. Regarding impacts on the N67, I note that Nally's Lane is minimally trafficked, serving only 3 no. dwellings. I do not consider that the proposed development, which is for a single dwelling, would result in a significant increase in traffic volumes using Nally's Lane. From reviewing the planning history associated with the appeal site, I note that outline permission was previously permitted for 2 no. dwellings (PA. Ref. 97/3216 refers). Whilst no subsequent application was however made for permission consequent to this grant of outline permission, the current proposal does not entail any greater increase in the number of dwellings compared to what has previously been permitted, albeit in the context of an outline permission.

7.3.3. Nally's Lane is narrow, with minimal room for vehicles to pull in, and no footpaths. In this regard I agree with the Planning Authority that Nally's Lane is substandard. However, given the limited number of houses on Nally's Lane, its lightly trafficked and constrained nature, it is a low speed environment and I do not consider that the proposed development for an additional dwelling would create a traffic hazard, either on Nally's Lane or at the junction between Nally's Lane and the N67. Regarding the impact of the proposed development on the free flow of traffic on the N67, this could occur when a vehicle on the N67 is waiting for a vehicle to exit Nally's Lane. However,

given the limited number of houses on Nally's Lane I do not consider that this would result in any significant impact on traffic flows on the N67.

7.3.4. I note that under PA. Ref. 02/4575 works to improve sightlines at the junction between Nally's Lane and the N63 were required (Condition No. 3 (b) refers). This was also a requirement under PA. Ref. 20/1407 (Condition No. 4 (iii) refers). Documentation submitted with PA. Ref. 20/1407 refers to these works as having been undertaken. Having inspected the appeal site and the junction between Nally's Lane and the N63, I consider visibility at this junction to be acceptable.

7.3.5. Nally's Lane is a private road within the settlement boundary of Kinvarra and as such a speed limit of 50 kmph would apply. The corresponding sightline requirement for a 50 kmph road, as set out in Table 4.2 of DMURS, is 45 metres. DM Standard 28 of the Galway County Development Plan 2022 – 2028 requires sightlines of 70 metres. However I consider that DMURS is the applicable policy in respect of sightline standards in this instance having regard to the advice contained in Circular PL17/2013. Given the narrow nature of Nally's Lane, its limited length, and the number of dwellings along the lane, traffic using the lane is likely to travel at speeds lower than 50 kmph. The site layout drawing submitted by the first party indicates a sightline of 70 metres to the north from the proposed vehicular entrance. No sightline is indicated to the south. There is a sharp bend in Nally's Lane c. 70 metres south of the appeal site, and a dip in the road at the bend, which significantly reduces the speed of vehicles approaching the appeal site from the south. Based on the site layout plan submitted, sightlines of 45 metres are achievable in a both a northerly and southerly direction and as such I consider sightlines at the proposed vehicular entrance to be acceptable.

## 7.4 Refusal Reason 2

7.4.1. The second refusal reason refers to the foul sewer arrangement for the proposed and existing dwelling. Reference is made in the reason for refusal to both capacity and access however I note that neither the report of the Planning Officer or the Water Services Engineer makes reference to capacity constraints in the foul sewer network. Additionally, I note that the Galway County Development Plan 2022 – 2028 (Table 7.10) refers to the waste water treatment plant in Kinvara as having adequate capacity. As such I am satisfied to focus on the access arrangement for the foul sewer.

7.4.2. The dwelling on the appeal site as permitted under PA Ref. 02/4575 was served by a septic tank. Under PA. Ref. 20/1407 the dwelling was to be connected to the public sewer. The particulars associated with PA. Ref. 20/1407 indicate a foul sewer pipe within the rear garden of the dwelling connecting to the public sewer network at a location to the north-east of the site. The particulars submitted with the planning application note that the existing dwelling on the appeal site is currently connected to the public sewer network. Under the current proposal, the new dwelling will connect into the same pipe, connecting to the public sewer network at the same location in Cnoc na Dealg.

7.4.3. In relation to access, the Planning Authority have raised concerns in relation to the proposal to have a foul sewer pipe located in the rear gardens of separate properties. The Planning Authority raise particular concerns in relation to a situation whereby the site of the existing dwelling and the proposed dwelling come under separate ownership and the potential for issues to arise in relation to the carrying out of maintenance and repairs of the foul sewer pipe. At present, the site of the existing dwelling and the proposed new dwelling are within the ownership/control of the first party. The first party state in their appeal submission that they sold the lands to the rear of the appeal site and that as part of this sale were granted access to the sewer for both the existing dwelling and also for a second connection (i.e. to cater for the dwelling proposed under the current application). Having regard to the details of this agreement submitted with this appeal, I am satisfied that both properties can connect into the public sewer within Cnoc na Dealg. In relation to access issues within the curtilage of private properties, in the absence of a separate foul sewer connection for both properties, a way leave agreement between any potential future parties would ensure that maintenance and repair of the foul sewer can be achieved. I consider such issues to be civil matters between parties should the proposed dwelling be sold and I do not consider it appropriate to attached a planning condition requiring a way leave agreement to cater for this situation. On the basis of the information submitted I consider that the first party has adequately demonstrated that both the existing dwelling and the proposed dwelling can connect into the public foul sewer.

7.4.4. In the context of access to the foul sewer pipe being constrained by virtue of the sites being in separate ownership, the second refusal reason states that the proposed development may have the potential to adversely affect the integrity of the Galway Bay

Complex SAC and the Inner Galway Bay SPA. As addressed at paragraph 7.4.3, the first party has demonstrated that both the existing dwelling and the proposed dwelling can connect into the public sewer within Cnoc na Dealg. Additionally, in the absence of identified capacity constraints in the foul sewer system I do not consider that the proposed development would adversely affect Galway Bay Complex SAC and the Inner Galway Bay SPA.

## **7.5 Refusal Reason 3**

7.5.1. The dwelling permitted under PA. Ref. 02/4575 was served by a single vehicular entrance to the south-west corner of the site. An additional vehicular entrance was subsequently constructed to the north-west of the site, Under Condition 4 (i) of PA. Ref. 20/1407 the Planning Authority stipulated that the entrance to the north-west be removed and replaced with a stone wall. The Planning Authority note that the drawings submitted with the current proposal indicate both entrances but the development description contained in the public notices do not refer to retention permission being sought for this second entrance. In the third refusal reason, the Planning Authority state that the proposed development would materially contravene Condition 4 (i) of PA. Ref. 20/1407. I note that the proposed dwelling is to be served by the vehicular entrance to the north-west of the appeal site and as such should permission for the proposed new dwelling be granted this issue would no longer be relevant.

## **7.6 Refusal Reason 4**

7.6.1. The fourth reason for refusal relates to flood risk. The report of the Planning Officer notes that the subject site is located within an identified flood risk area.

7.6.2. From reviewing Floodmaps.ie I note that there is no flooding indicated within or adjacent to the appeal site. Similarly, the Strategic Flood Risk Assessment undertaken as part of the Galway County Development Plan 2022-2028 does not indicate any flooding on, or adjacent to the appeal site. Recurring flooding is however indicated close to the harbour, c. 0.5 km from the appeal site.

7.6.3. A flood risk assessment (FRA) was submitted under PA. Ref. 20/1407, which was for the retention of the dwelling on the appeal site. This FRA concluded that the site would not be subject to flooding. The Planning Authority considers that as the current

proposal includes the provision of a new dwelling, a site specific flood risk assessment is required.

7.6.4. I have reviewed the FRA undertaken for PA. Ref. 20/1407, which was for the same site. I note that the finished floor level of the existing dwelling on the appeal site and the proposed dwelling are the same (i.e. 15.6 metres). Pluvial flooding from a low lying area c. 140 metres to the south of the site was considered to be the relevant flooding mechanism affecting the appeal site. However, the FRA concluded that the lowest point within the appeal site is c. 9 metres higher than the pluvial flood level (taking account of climate change), thereby providing a generous freeboard. The FRA noted that as stormwater run-off from the appeal site discharges to a soakaway and there are no natural flow paths on the appeal site, flooding elsewhere would not occur as a result.

7.6.5. Having regard to the FRA submitted for the existing dwelling on the appeal site under PA. Ref. 20/1407, the similarities between the existing dwelling on the appeal site and the proposed dwelling, the recent nature of the FRA and the contents and conclusions the FRA submitted, I consider that the proposed development is acceptable in terms of flood risk and that it accords with the Planning System and Flood Risk Management Guidelines 2009.

## **7.7 Appropriate Assessment**

7.7.1. Having regard to the nature and limited scale of the proposed development, the developed nature of the landscape between the site and European sites and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

7.7.2. I note that the Planning Authority have raised concerns in relation to flood risk and access to the foul sewer network, and have noted that as such likely significant effects on European sites could not be ruled out. I consider that these issues have been adequately addressed (at paragraphs 7.4 and 7.6).

## 8.0 Recommendation

- 8.1. Having regard to the above it is recommended that permission and retention is granted based on the following reasons and considerations and subject to the attached conditions.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Galway County Development Plan 2022-2028, to the prevailing pattern and character of existing development in the vicinity and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be prejudicial to public health and is acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The development shall be carried out and retained in accordance with the plans and particulars lodged with the application, 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 detailed requirements of the planning authority for such works and services.

	<b>Reason:</b> In the interest of public health.
3.	<p>Prior to commencement of development, the developer shall enter into water and waste water connection agreement(s) with Irish Water.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p><b>Reason:</b> In the interests of visual and residential amenity.</p>
5.	<p>The external finishes of the new dwelling shall comprise slate/tile of blue/black colour for the roof and neutral coloured render for the external walls, unless otherwise agreed in writing with the Planning Authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 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.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<p>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</p>

	<p>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.</p> <p><b>Reason:</b> 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</p>
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Ian Campbell  
Planning Inspector

17<sup>th</sup> August 2022