



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311961-21

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<b>Development</b>	House with wastewater treatment system & polishing filter and associated site development works.
<b>Location</b>	Carrowloughlin , Bunninadden , Co Sligo
<b>Planning Authority</b>	Sligo County Council
<b>Planning Authority Reg. Ref.</b>	21339
<b>Applicant(s)</b>	Niall Curley.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Niamh Gormley.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	22 June 2022.
<b>Inspector</b>	Bríd Maxwell

## **1.0 Site Location and Description**

- 1.1. This appeal relates to a rural site located within the townland of Carrowloughlin circa 2.2km to the southeast of the small village of Bunninadden in south County Sligo. The site lies circa 10km east of Tobercurry and 6km southwest of Ballymote. The appeal site has a stated area of 0.287ha and comprises part of two field patterns. The main body of the site is part of the rear plot of an established dwelling which fronts onto a local road to the southeast. The north-western part of the site, a small triangular plot, provides road frontage onto the local road to the northwest.
- 1.2. There are mature hedgerow and trees within and along the boundaries of the site which provide a great sense of enclosure. Levels on site fall generally to the northwest. The north western end of the site in particular demonstrates signs of vegetation indicative of wet and waterlogged ground conditions and there is a drainage ditch at the north western end of the site. As well as the applicant's parents dwelling to the southeast there is an existing dwelling to the northeast and a dwelling within 35m to the southwest of the site with a sporadic pattern of development in the vicinity. Lands on the opposite side of the local road to the northwest are low lying and wet with numerous open drains along field boundaries.

## **2.0 Proposed Development**

- 2.1. The application involves permission to construct a dwellinghouse, proprietary effluent treatment unit and soil polishing filter on site together with ancillary site works and services. The dwelling is a single storey structure extending to 159 square metres and is proposed to be set back circa 30m from the front roadside boundary.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1 By order dated 26<sup>th</sup> November 2021 Sligo County Council issued notification of its decision to grant permission and 24 conditions were attached which included the following of particular note

Condition 2. Revised plan to be submitted providing for retention of hedgerow on site. New roadside boundary fence to consist of random rubble walls constructed from local stone or clay banks suitably planted with indigenous hedging and shall not exceed 1.2m in height unless otherwise agreed with the planning authority.

Condition 3. Existing roadside boundary to be removed in its entirety and set back at least 5.5m from the centreline of the adjacent public road.

Condition 25. Development Contribution €3180 in accordance with the Sligo County Development Contribution Scheme.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planner's report recommends permission subject to conditions as per subsequent decision.

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

Area Engineer's report indicates no objection subject to standard conditions.

Environment Section report indicates no objection subject to conditions.

## **3.3. Prescribed Bodies**

No submissions

## **3.4. Third Party Observations**

3.4.1 Submission from O Dowd Architectural Services Ltd on behalf of Niamh Gormley, Carrowloughlin, Buninadden objects to the proposed development on a number of grounds as follows:

- No authorisation has been given to make the application in respect of the north-western part of the site (plot B as identified on map attached) which is owned by Ms Gormley. Unauthorised breach in mature clay bank carried out in 2021 is currently

before the civil courts. There is also a *Lis Pendens* (litigation pending) registered against the deeds of the Curley Property.

- Proposed removal of mature boundary ditches of deciduous trees is not in keeping with proper planning and sustainable development.
- Back garden is totally unsuitable for further development.
- Bedrock located at 1m under ground level. Silt and clay soils have poor percolation values. Site is wet and waterlogged during winter months which is typical of underlying clay soils and is unsuitable for the discharge of effluent.
- There are four existing dwellings located near the proposed site all relying on septic tanks. Percolation test rates submitted more likely to be found in soils classified as loamy sand which are not present at this site.
- Proposal will give rise to an excessive residential development at this rural location which does not have the benefit of public services or infrastructure.

#### **4.0 Planning History**

I am not advised of any planning history on the appeal site.

#### **5.0 Policy Context**

##### **5.1. National Planning Framework, Department of Housing Planning and Local Government 2018**

National Policy Objective 19 Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements

## 5.2. Development Plan

5.2.1 The Sligo County Development Plan 2017-200023 refers.

Section 3.0 sets out the Core Strategy. Strategic Settlement Policy - SP-S-4 Strengthen existing rural communities by facilitating sustainable rural settlement in accordance with the National Spatial Strategy and the Sustainable Rural Housing – Guidelines for Planning Authorities (DoEHLG, April 2005)

SPS-7. Integrate transportation and land-use planning in order to reduce the need to travel (especially by car) and reduce GHG emissions, by promoting the consolidation of development in settlements with adequate services and facilities.

The site is within a rural area in need of regeneration Fig 3A County Sligo Core Strategy Map. These areas have a weaker economy and fewer settlements. Historically, they experienced persistent or significant population decline. In these areas, the challenge is to retain population and support the rural economy while seeking to consolidate existing settlements

### Section 5.3 Housing in Rural Areas

In Rural Areas in Need of Regeneration, the Planning Authority will facilitate one-off housing without requiring applicants to demonstrate a housing need. Persons living and working in either rural or urban areas, who seek to build a house, will generally be accommodated in these areas, subject to normal planning considerations.

It is the policy of Sligo County Council to: P-RANR-HOU-1 Accommodate proposals for one-off rural houses in Rural Areas In Need Of Regeneration, subject to normal planning considerations including Habitats Directive Assessment and compliance

with the guidance set out in Section 13.4 Residential development in rural areas (development management standards).

Section 7.4 Landscape Character – Landscape Characterisation Map - The appeal site is designated as being within “normal rural landscape” under the landscape character assessment. Policy P-LCAP-1 Protect the physical landscape, visual and scenic character of County Sligo and seek to preserve the County’s landscape character.

Section 9.3.2 Wastewater Management in Rural Areas

Chapter 13 Development Management Standards

### **5.3. Natural Heritage Designations**

5.3.1 The site is not within a designated area. The nearest such sites include

Flughany Bog SAC (Site Code 000497) 3.4km S

Templehouse and Cloonacheigha Lough SAC (Site Code 000636) 4km NW

Doocastle Turlough SAC (Site Code 00492) 4.8km SW

Cloonakilna Lough SAC (Site Code 001899) 5.8km SW

Bricklieve Mountains and Keiscirran SAC (Site Code 001656) 8km E.

Turloughmore (Sligo) SAC (Site Code 000637) 7.4km NW

River Moy SAC (Site Code 002298) 8.4km SW

### **5.4. EIA Screening**

5.4.1 The proposed development is of a class under Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, namely Class 20. Infrastructure projects, (b)(i) construction of more than 500 dwelling units. However, as the proposed development comprises a single dwellinghouse, it is significantly subthreshold the 500 unit limit provided under that part. I am satisfied that due to the limited nature of the development and nature of the receiving environment and

distance from sites of environmental sensitivity there is no real likelihood of significant effects on the environment arising from the proposed development and Environmental Impact Assessment is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1 The appeal is submitted by O Dowd Architectural Services Ltd on behalf of Niamh Gormley, Carrowloughlin, Bunninadden, Co Sligo. The appeal is accompanied by folio documents and photographs which seek to elucidate the case made. Grounds of appeal are summarised as follows:

- Applicant does not have legal ownership over the entire site. Portion of the site in dispute and the consent to apply for planning permission has not been granted.
- The appellant inherited a house and farm of land on death of her late aunt Margaret Gormley. A grant of probate in the estate was extracted on 5<sup>th</sup> June 2020. While the appellant was finalising land registry application to have herself registered as the owner of the said property she noticed that a small portion of the deceased property was not registered in the deceased name but in fact incorporated as part of the neighbour's folio. (Patrick and Margaret Curley)
- Property Registration Authority details illustrate the lands in dispute as part of the Curley's folio however the narrative of the folio referencing the size of the holding as .455 hectares would more accurately reference the lands excluding the lands in dispute. This reaffirms that a mapping error has arisen at some point in the past.
- Lands in dispute are clearly separated from the Curley's property.
- Following entry onto the lands by Niall Curley in Easter 2021 circuit court proceedings issued in July 2021. There is a *lis pendens* (litigation pending) registered against the deeds of the Curley Property.
- Removal of mature boundary ditch and its deciduous trees located between the land in the ownership of Margaret Curley and Patrick Curley and Niamh Gormley is inappropriate.

- Unauthorised works carried out on the site including excavation and removal of 6m wide section to access the lands and opening onto the public road.
- Back garden site is inappropriate for the development proposed given requirements for wastewater treatment.
- Soil classification of silt / clay and subsoil classification of clay shows that the site is unsuited for onsite wastewater treatment systems due to poor permeability values. Stated percolation rates are more in keeping with unsaturated soils with a classification of sand or loamy sand as opposed to clay. Assessment carried out during dry weather and no information on seasonal variation in water table. Prominent rush growth on site is not acknowledged. Land drains show that the local drainage is to surface water not groundwater.
- Concentration of septic tanks in the vicinity with evidence of effluent draining to surface waters as demonstrated in photographs appended.
- Proposal will give rise to excessive residential development at this rural location.

## 6.2. Applicant Response

6.2.1 The first party did not respond to the grounds of appeal.

## 6.3. Planning Authority Response

6.3.1 The Planning Authority response asserts that no additional information has been submitted as part of the appeal that would alter the Planning Authority's decision on the application. The Planning Authority has complied with legislation and all other matters are civil in nature and not for the planning authority. Proposed development would be suitable at this location and is consistent with the policies and other relevant provision of the current Sligo County Development Plan. The Board is respectfully requested to uphold the decision to grant permission.



## 7.0 Assessment

7.1 Having examined the file, considered the prevailing local and national policies, inspected the site, and assessed the proposal, the planning history, and all submissions, I consider the key issues arising in this appeal can be assessed under the following broad headings

Legal Interest / Ownership issues

Principle of Development – Settlement Policy

Site Suitability - Wastewater treatment

Design and Visual impact and impact on the amenities of the area

Appropriate Assessment

## 7.2 Legal Interest /Ownership issues

7.2.1 The third party appellant has provided information regarding the dispute of ownership with respect to the north western portion of the site. It is submitted that an error in land registry mapping has incorrectly resulted in the inclusion of this plot within the folio of Mr Patrick Curley and Margaret Sweeney (Parents of the First Party). It is noted that the mapped holding does not equate to the 0.4550 hectares as referenced in the narrative of the folio 23005. Whilst the matter of ownership is a civil matter and not strictly a matter to be dealt with in the scope of planning legislation, I note the requirement of 22(2)h of the Planning and Development Regulations 2001 as amended which requires the provision “where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application”.

7.2.2 The anomaly with regard to the folio map and description in the register suggests an error. I note that while the matter was raised by the third party appellants in

submissions to the Planning Authority it was not questioned and as the first party did not respond to the grounds of appeal no explanation or clarification has been provided. In the absence of evidence, it is my view the application has not complied with the provisions of Article 22(2)g. In these circumstances I consider that the Board is precluded from considering a grant of permission in this case.

### **7.3 Principle of Development – Settlement Policy.**

7.3.1 On the question of the principle of development as noted above the site is located within an area designated as a rural area in need of regeneration within the Development Plan Core Strategy where the Planning Authority will facilitate one off housing without the requirement for the applicant to demonstrate a housing need subject to normal planning considerations. On this basis there is no fundamental objection to the proposed development subject to detailed considerations.

### **7.3 Site Suitability – Wastewater Treatment.**

7.3.1 It is proposed to provide a proprietary effluent treatment unit followed by two puraflo modules. Effluent is to flow by gravity to the treatment unit and pumped from the secondary treatment system to two puraflo modules. As regards site suitability for effluent treatment I note the concerns raised within the third party appeal which I consider are legitimate. The site suitability assessment acknowledges that surface water ponding occurs within the north-western part of the site, as also evident by virtue of vegetative indicators on the site. It is noted that the trial hole was excavated to 1m below ground level at which bedrock was encountered. A dark brown topsoil silt clay was encountered in the top layer to 0.3m with a brown clay in the 0.1m to 1.0m horizon. While a T value of 6.5 and P value of 4.69 were recorded the character of the soil and shallow depth to bedrock are a cause of concern. Furthermore the matter of existing concentration of septic tanks gives rise to pollution potential. I note that no information is provided regarding the location of the existing septic tank serving the existing dwelling immediately adjacent to the northeast. I would be concerned on the basis of the site character and number of existing systems in the vicinity that the proposal would give rise to a pollution risk and would be prejudicial to public health.

#### **7..4 Design and Visual Impact and impact on the amenities of the area.**

7.4.1 I note that the site benefits from rich landscaping to site boundaries which would ensure that any development on the site will not be highly visible. The site is not prominent, and the proposed dwelling is a single storey structure in keeping with the predominant pattern of development in the vicinity. On this basis I consider that visual impact does not present as an impediment to development.

7.4.2 As regards traffic I note that the site abuts a straight section of local road and adequate sightlines are readily achievable.

#### **7.5 Appropriate Assessment Screening.**

7.5.1 The proposed development is not located within a European site and does not relate to the management of any European site and direct effects can therefore be ruled out.

7.5.2 Having regard to the nature and scale of the proposed development, impact pathways would be restricted to hydrological pathways. The physical distance from the appeal site to the nearest European sites is such that any impact from the hazard source will be well diminished along the pathways in question by the time it reaches the receptor. Having regard to the nature of the proposed development and/or nature of the receiving environment and/or proximity to the nearest European sites, potential for significant effects, including direct indirect and in-combination effects on the integrity of the European sites in view of their conservation objectives can be ruled out.

### **8.0 Recommendation**

I recommend that the Board Refuse permission for the following reasons:

1. Having regard to the density of houses served by individual wastewater treatment systems in the immediate vicinity and in light of the shallow depth to bedrock, silt clay and clay soil and subsoil texture and classification and visible vegetation indicators on site demonstrative of poor drainage, the Board is not satisfied on the basis of the information submitted in connection with this appeal, that the site can be drained satisfactorily by means of a septic tank, notwithstanding the use of a proprietary wastewater treatment system. It is considered, therefore, that the proposed development would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.
  
2. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has
  - (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or
  - (b) the approval of the person who has such sufficient legal estate or interest.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

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Bríd Maxwell  
Planning Inspector

20 July 2022