



An
Bord
Pleanála

Inspector's Report

ABP-312328-21

Development	Construction of a house, septic tank, treatment system, percolation area and all associated works.
Location	Kilmalaw, Aughrim, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	211866
Applicant	Stephanie Lyons
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Stephanie Lyons
Observer(s)	None
Date of Site Inspection	22 nd June 2022
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Kilmalaw, c. 3 km north-west of Aughrim, Co. Galway. The appeal site is located within a rural area, outside of a settlement. The appeal site is broadly triangular in shape, has a stated area of c. 0.2 ha. and is located on the northern side of the R348, c. 80 metres east of the junction with the L-3401.
- 1.2. The appeal site is relatively flat and is under grass. Reference is made in the particulars submitted with the appeal to the prior use of the appeal site for the keeping of livestock. A drainage ditch runs along the northern boundary of the appeal site. Site boundaries comprise mature trees/hedgerow to the north and a wire and post fence along the roadside. There is a gated entrance along the southern/roadside boundary of the appeal site. There is a continuous white line on the R348 to the front of the appeal site. The rail line is located to the north of the appeal site.
- 1.3. The site to the immediate east, indicated as the family home of the first party, accommodates a detached bungalow. The adjoining area is rural in character and there are a number of detached, single storey dwellings in the vicinity of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Construction of a single storey, three-bedroom, detached dwelling:
 - stated floor area c. 118 sqm.
 - ridge height c. 4 metres.
 - material finishes to the proposed house have not been specified.
 - positioned 12 metres from the public road.
 - The installation of a packaged waste water treatment system and a polishing filter.
 - The proposal utilises an existing access, which it is also proposed to widen.

- The particulars submitted also indicate works to third party lands, specifically the setting back of a roadside boundary to facilitate sightlines. These works are not located within the red/blue line of the application site.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission on the 1st December 2021 for 3 no. reasons which can be summarised as follows;

1. Having regard to the poor drainage characteristics of the site, where the water level was observed approximately at ground level in test holes and evidence of both high water table and poor percolation characteristics, it is considered that the site cannot be drained satisfactorily nor adequately dispose of treated effluent in accordance with the EPA Code of Practice- Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10). The proposed development would materially contravene Objective WW5 of the Galway County Development Plan 2015-2021, would seriously endanger the health and safety of persons occupying the structure, would be prejudicial to public health, would pose an unacceptable risk to receiving waters, therefore having the potential to adversely affect the integrity and conservation objectives of protected European sites for flora and fauna, and would be contrary to the proper planning and sustainable development of the area.
2. The Planning Authority is not satisfied that it is feasible to provide a water supply connection at this location based on the submissions received with the application, and in the absence of any correspondence from the trustees of the local group water scheme, to which connection is proposed. The proposal would pose an unacceptable risk to the public health of persons occupying the dwelling house and would be contrary to Objective WS 12 of the Galway County Development Plan.
3. The proposed vehicular access is located off the R348, where the maximum speed limit of 80kph applies, where visibility is restricted due to horizontal alignment issues, where traffic is fast moving and where a continuous white line

exists. The Planning Authority is not satisfied that adequate egressing sight distance and forward sight visibility exists for vehicles turning right into the site due to the boundary on the opposite side of road. The proposed development would be contrary to DM Standard 20 and DM Standard 41 of the County Development Plan 2015-2021, and would endanger public safety by reason of traffic hazard.

I note that Reason No. 1 included in the Notification of Decision to Refuse Permission issued by the Planning Authority makes reference to material contravention of the Galway County Development Plan 2015-2021. The Galway County Development Plan 2022-2028 came into effect on the 20th June 2022 and is now the relevant development plan. As such, I do not therefore consider that the Board is bound by the provision of Section 37 (2) (b) of the Planning and Development Act 2000 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (dated 1st December 2021) includes the following comments;

- The Planning Authority is not satisfied that wastewater can be satisfactorily treated and disposed of on the site.
- No details of consent to connect to the group water scheme have been submitted.
- Visibility is restricted at this point on the regional road due to horizontal alignment issues.
- The design of the house is satisfactory.

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

None received.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

Appeal Site

21/744 – Permission REFUSED for a house and waste water treatment system. Reasons for refusal concerned public health considerations arising from the unsuitability of the site to treat effluent and traffic safety concerns due to the inability to achieve required sightlines.

20/1125 - Permission REFUSED for a house and waste water treatment system. Reasons for refusal concerned traffic safety arising from the inability to achieve required sightlines.

5.0 Policy Context

5.1.1. National Planning Framework (NPF) – Project Ireland 2040 (2018)

National Policy Objective 15 states -

‘Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.’

National Policy Objective 19 states -

‘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.

5.1.2. Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) 2009

The EPA CoP 2009 was revised in March 2021. The 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date. I note that the planning application was lodged with Galway County Council on the 7th October 2021 and the site assessment was carried out in August 2020. Based on the forgoing, the EPA CoP 2009 is considered to be the relevant CoP for the purpose of this appeal.

5.1.3. Ministerial Guidance

Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

The appeal site is located within an area identified as a 'Structurally Weak Area' (Rural Housing Zone 3) (see Map 4.1, Galway County Development Plan 2022 - 2028). The Guidelines state that these areas exhibit characteristics such as persistent and significant population decline as well as a weaker economic structure based on indices of income, employment and economic growth. The Guidelines provide that the key development plan objective in these areas should refer to the need to accommodate any demand for permanent residential development as it arises subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.

5.2. Development Plan

5.2.1. 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 20th June 2022 and is now the relevant development plan.

5.2.2. The appeal site is not subject to any specific land-use zoning under the Galway County Development Plan 2022-2028.

5.2.3. In terms of Landscape Character Type, the appeal site is located within the 'North Galway Complex Landscape' (see Appendix 4 of CDP). Regarding landscape sensitivity, the appeal site is located within a Class 1 'Low Sensitivity Landscape'. The appeal site is not affected by any protected views (see Map 08, Appendix 4) or scenic routes (see Map 09, Appendix 4).

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

- Objective RH 3: Rural Housing Zone 3 (Structurally Weak Areas)
- Objective RH 16: Direct Access onto Restricted Regional Roads
- DM Standard 26: Access to National and Other Restricted Roads for Residential Developments
- DM Standard 28: Sight Distances Required for Access onto National, Regional, Local and Private Roads

5.3. Natural Heritage Designations

- Ballinasloe Eker pNHA (Site Code 001779) – c.1.3 km east.
- Crit Island West NHA (Site Code 000254) – c. 1.6 km north.
- Kilure Bog NHA (Site Code 991283) – c. 3 km north-east.
- River Suck Callows SPA (Site Code 004097) – c. 6.4 km east.
- Suck River Callows NHA (Site Code 000222) – c. 6.4 km east.

5.4. 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;

- The measurement from the ground to water is 350 mm (measured on the 7th December 2021). The effluent treatment proposal takes account of the water table and a raised percolation bed, including a sand polishing filter, is to be installed to allow for a clear 1.2 metres above the winter water table.
- The site is not close to being flooded.
- The proposed dwelling will be positioned level with the adjoining dwelling, 0.5 metres above existing ground levels.
- Part of the proposal will be to drain the land to a drain at the rear. This would reduce the water table and further enhance the treatment of effluent.
- A letter of consent from Cloonigney Group Water Scheme Ltd has been included with the appeal.
- The existing field gate has been in situ for 40 years.
- Galway County Council have set back the boundary to the east of the gate, with the first party's parents allowing Galway County Council to take land from the site frontage to make it safer. A fence to the west of the first party's parent's house was also set back by Galway County Council. The removal of a splay wall has been agreed with a neighbouring property. These measures improve road safety.

- Sightlines to the east and west are a minimum of 120 metres. Forward sight distance for a vehicle entering the proposed site through the existing gate is 134 metres. The stopping distance for a vehicle travelling at 80kmph in wet conditions is 81 metres, well within the available distances measured on the site.
- No report was received from the Transportation Section which would suggest that no sightline measurements were taken.
- PA. Ref. 19/932 is considered relevant and relates to a development on the R348.
- The applicant meets the requirements of the current Development Plan. The Development Plan seeks to encourage people to live and work in weaker areas. The applicant has lived at this location all her life. The proposal will allow the applicant care for her parents. Water supply is available and the proposal complies with the EPA Guidelines.

6.2. Planning Authority Response

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the appeal, and having inspected the site, and having regard to the relevant national and local policy and guidance, I consider the main issues in relation to this appeal are as follows:

- Rural Housing Policy
- Design/Siting & Impact on Visual Amenity
- Refusal Reason 1 (Waste Water)
- Refusal Reason 2 (Water Supply)
- Refusal Reason 3 (Access)
- Other Issues

- Appropriate Assessment

7.2. Rural Housing Policy

- 7.2.1. The appeal site is located within an area identified as a 'Structurally Weak Area'. National Policy Objective 19 of the NPF provides that in such areas, the provision of single housing in the countryside is 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. This is reflected in Objective RH3 of the Galway County Development Plan 2022 – 2028, where proposals for dwellings in such locations are considered subject to normal planning and environmental criteria. I consider the design and siting of the proposed dwelling to be acceptable. The proposed development is not urban generated and as such I do not consider that the proposal would negatively affect the viability of smaller towns and rural settlements. On this basis, I consider that the proposed development accords with the provisions of the Galway County Development Plan 2022-2028 in relation to rural housing, specifically Objective RH3.
- 7.2.2. Should the Board be minded to grant permission for the proposed development, I do not consider that there is a requirement to attach an occupancy condition as the appeal site is located within a part of the County where the provision of single housing is based on siting and design considerations, and not the requirement to demonstrate that they have an economic or social need to reside at such a location.

7.3. Design/Siting & Impact on Visual Amenity

- 7.3.1. The appeal site is located in the North Galway Complex Landscape Character Area, which is considered to have a 'low' landscape sensitivity. The appeal site is not affected by any protected views. The appeal site is flat, partially screened by trees and hedgerow and is not overtly visible within the adjoining landscape. The proposed dwelling comprises a single storey dwelling of modest scale. I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area.

7.4. Refusal Reason 1 (Waste Water)

- 7.4.1. The Site Characterisation Report submitted with the application identifies that the subject site is located in an area with a Locally Important Aquifer where the bedrock vulnerability is 'high to low'. A Ground Protection Response of R2¹ is noted by the applicant. Based on Table B.2 of the CoP, I note that a Ground Protection Response of R1 relates to Locally Important Aquifers where the bedrock vulnerability is high to low and as such it appears that the applicant has upgraded the Ground Protection Response. Based on the Ground Protection Response of R2¹, I note the suitability of the site for a treatment system (subject to normal good practice). Where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Section 6 are met and that the likelihood of microbial pollution is minimised. The applicants' Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 7.4.2. The trail hole depth referenced in the Site Characterisation Report was 2 metres. No bedrock was encountered in the trail hole. Water was observed in the trail hole at a depth of 1.2 metres. The soil conditions found in the trail hole are described as comprising silty sand and sandy silt/clay. Percolation test holes were dug and pre-soaked. A T value of 24.78 and a P value of 22.22 were recorded. Based on the EPA CoP 2009 (Table 6.3) the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.4.3. The Site Characterisation Report submitted with the application concludes that the site is suitable for treatment of waste water, it is proposed to install a packaged waste water treatment system and a raised polishing filter with a minimum of 1.2 metres of unsaturated soil beneath the base of the percolation trench. The percolation pipes are to be located 800 mm above ground, to ensure the minimum separation distance to groundwater. A section of the raised polishing filter has been submitted with the appeal.
- 7.4.4. During my site inspection I observed a high level of water in the trail hole. I estimate the level of water in the trail hole to be c. 200 mm from ground level. Within the appeal site I observed that the ground was soft underfoot, while the weather was dry. These characteristics are indicative of a high water table and poor soil permeability. I further note that the appeal site is indicated as having low permeability on the website of Geological Survey Ireland.

7.4.5. Table 6.1 of the CoP 2009 sets out required minimum separation distances between septic tanks, packaged systems, percolation areas and polishing filters. Table 6.1 requires a minimum separation distance of 10 metres between these elements and open drains. Based on the site layout plan, it appears that the percolation area would be located less than 10 metres from the drainage ditch which runs along the northern boundary of the site. Based on the information submitted the proposal would therefore not comply with the required minimum separation distances set out in the EPA CoP.

7.4.6. Noting the conditions which I observed on the appeal site, which are indicative of a high water table and low permeability, and the information contained in the Site Characterisation Form, I am not satisfied that appeal site can cater for an on-site waste water treatment system without detriment to ground water, or that the proposed development would comply with the EPA CoP.

7.5. Refusal Reason 2 (Water Supply)

7.5.1. The second reason for refusal cited by the Planning Authority refers to the feasibility of connecting to the local group water scheme, given the absence of detail submitted with the planning application. A letter of consent from Cloonigney Group Water Scheme Ltd has been included with the appeal. I consider that the first party has adequately demonstrated that a water supply can be facilitated to serve the proposed development.

7.6. Refusal Reason 3 (Access)

7.6.1. The third reason for refusal cited by the Planning Authority concerns the adequacy of the adequacy of sightlines. The first party contends that sightlines of 120 metres are achievable in both directions from a set-back of 2.4. metres at the site entrance. The posted speed limit at the location of the appeal site is 80 kmph. I note that DM Standard 28 (Table 15.3) of the Galway County Development Plan 2022 – 2028 requires sightlines of 160 metres for national regional and local roads with a design speed of 85 kmph. Based on the site layout plan submitted with the appeal, I note that the maximum achievable sightline to the west is 120 metres and the maximum achievable sightline to the east is c. 45 metres, with the boundary of a third party property obstructing visibility. Visibility to the west is restricted by the horizontal alignment of

the road. The particulars submitted with appeal indicate works to third party lands to the east, specifically the setting back of a roadside boundary to facilitate sightlines. These works are not located within the red/blue line of the application. Whilst a letter of consent from the adjoining landowner has been submitted in respect of these works, I note that should permission be granted, these works would not come within the scope of a permission and could not be conditioned. Based on the information submitted, I do not consider that the required sightlines are achievable. Having regard to the forgoing, I consider that the proposal would give rise to a potential traffic hazard.

7.6.2. Access to serve the proposed development is onto the R348 (Derrydonnel to Athenry), which is designated as a restricted regional road under the Galway County Development Plan 2022 – 2028 (see Table 6.3 and Table 15.2). This is a new issue and was not raised by the Planning Authority or by the first party. Specific regional roads are designated as ‘restricted’ in order to maintain their efficiency and functionality, and to minimise risks to road safety as a result of additional stopping and turning movements. This is achieved through restricting the number of new accesses, and the intensification of existing accesses onto such roads. Policy Objective RH 16 and DM Standard 26 require that proposed vehicular accesses onto restricted regional roads are justified, limited to members of the family on the family lands, and that consideration is given to the use of an existing access, including the upgrading/relocation of an existing access, with access onto a minor road being the preferred option. The proposal entails the use of an existing access which serves a field and as such I consider that the proposal would represent an intensification in the use of this entrance. In light of the requirements of Policy Objective RH 16 and DM Standard 26, I am of the view that consideration of the shared use of the vehicular entrance serving the family home of the first party is required. I note that the proposal has not considered the shared use of this entrance. Having regard to the forgoing, I do not consider that the proposal complies with Policy Objective RH 16 and DM Standard 26 of the Galway County Development Plan 2022 – 2028. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal, it may not be considered necessary to pursue the matter further.

7.7. Other Issues

- 7.7.1. DM Standard 29 of the Galway County Development Plan 2022 – 2028 requires dwellings fronting regional roads to be set back 25 metres for the carriage edge of the road. This requirement was reflected in DM Standard 21 of the previous Development Plan. Given the relationship of proposed dwelling to the adjoining property to the east the setback provided was considered acceptable to the Planning Authority. I agree with the Planning Authority in relation to this issue and I also note the nature of the appeal site, with a limited capacity to set the proposed dwelling back on the site. As such, I consider that the proposal is acceptable in the context of DM Standard 29 of the Galway County Development Plan 2022 – 2028.

7.8. Appropriate Assessment

- 7.8.1. Having regard to the nature and limited scale of the proposed development 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.

8.0 Recommendation

- 8.1. Having regard to the above it is recommended that planning permission be refused for the proposed development based on the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the level of water in the trail hole which is indicative of a high water table and low permeability, to the characteristics of the subject site and the contents of the Site Assessment, on the basis of the information available in the planning application and the appeal submission, the Board is not satisfied that the site is capable of treating foul effluent arising from the dwelling in accordance with the standards set out in the Code of Practice for Wastewater Treatment and Disposal Systems serving Single Houses (Environmental Protection Agency 2009)

and considers that the method of foul water disposal will render the treatment of the effluent unacceptable and could increase the risk of serious water pollution. Accordingly, the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

2. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a restricted regional road, at a point where sightlines are restricted in both directions.

Ian Campbell
Planning Inspector

16th September 2022