



An
Bord
Pleanála

Inspector's Report

ABP-312486-22

Development

Renovation of derelict dwelling including addition of roof lights to front and rear, and construction of single storey extension and Renovation and rebuilding of single storey outbuilding. This planning application is accompanied by a Natura Impact Statement.

Location

Ervallagh, Roundstone, Co. Galway

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

21541

Applicant(s)

David and Paula Butler.

Type of Application

Permission.

Planning Authority Decision

Grant Permission with conditions

Type of Appeal

Third Party

Appellant(s)

Martin and Bridget Conneely,
Barry Keohane.

Observer(s)

None.

Date of Site Inspection

5th October 2022.

Inspector

Brid Maxwell

1.0 Site Location and Description

- 1.1. This appeal relates to a site of .404 hectares located within the townland of Ervallagh circa 1.5 km to the southwest of Roundstone village in west Co Galway. The site is accessed via a local road which loops to the south east from the Regional Road R341 which links Roundstone, Gorteen Bay, Dogs Bay and Ballyconneely.
- 1.2. The appeal site is part of a small farmstead of grassland and scrub and is occupied by a modest derelict structure (42sq.m) referred to as Mongan's Cottage. The landscape is undulating with characteristic small field patterns bounded by dry stone walls and rocky outcrops. In the vicinity of the site there are numerous dwellings located on the western side of the road overlooking the scenic setting sea of Ervallagh harbour and pier.
- 1.3. The appeal site is occupied by a derelict cottage with a slate roof, a roofless outbuilding and the remains of a shed. Access is by way of a steep narrow pathway rising from the harbour road. The elevation of the site provides for views to Errisbeg hill and the twelve pins.
- 1.4. The north-eastern portion of the site extends into the designated Cregduff Lough Proposed Natural Heritage Area pNHA (Site Code 001251) while the designated Cregduff Lough SAC occurs within c25m of the site.

2.0 Proposed Development

- 2.1. The proposal as described in public notices is as follows:
 - Renovation of existing derelict dwelling (42sq.m) including addition of new rooflights to front and rear, and construction of new single storey extensions with solar panels on south-facing roof (extension 186sq.m)
 - Renovation and rebuilding of existing single storey outbuilding (25sq.m)
 - Construction of new single storey boat shed (62sqm)
 - Installation of new private wastewater treatment system.
 - All ancillary site works and site services.

2.2 The application is accompanied by a Design and Planning Report by Works Architecture and Design which sets out the evolution of the design and an assessment of the visual impact and photomontages. A Construction and Environment Management Plan and a Natura Impact Statement by Simon Ashe Consultant Ecologist also accompany the application.

3.0 Planning Authority Decision

3.1. Decision

By order dated 13th December 2021 Galway County Council issued notification of the decision to grant permission and 13 conditions were attached which included the following of particular note.

Condition 2. The proposed set down and turning platform shall be provided on site as per submitted plan date stamped 24 November 2021 before work commences in the development. A photographic survey of the completed works shall be submitted for written agreement.

Condition 4. Sight distance triangles shall be maintained and kept free from vegetation. Overhead lines and poles to be set back in line with the new fence at the developer's expense prior to commencement of development.

Condition 9. Any in situ dry stone walls, hedgerow and or trees bounding the site shall be retained except for the provision of the site entrance/sight distance triangle.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Initial Planner's report sought additional information regarding access and provision for turning area, parking of vehicles not to transverse west of the 11.5m contour line on the site. The applicant was advised to consult with the Council's roads engineer on the matter. A structural report to verify the capacity of the cottage to be rehabilitated was sought in line with Objective RHO7 of the County Development Plan. Additional monitoring of the excavated percolation area for a further period of 4

months was also recommended to enable drainage characteristics of the site in the high watertable to be assessed.

The second planner's report recommends permission subject to conditions as per subsequent decision.

3.2.2. Other Technical Reports

None.

3.3. **Prescribed Bodies**

No submissions

3.4. **Third Party Observations**

3.4.1 Submission by Avanti Architects on behalf of Martin and Bridget Conneely, Ervallagh Roundstone Co Galway, who are residents and landowners adjoining to the north and owners of 50% of the pathway to the site which forms part of the redline boundary. Grounds of objection are summarised as follows:

- Concerns arise particularly with regard to access and egress. Note that the pathway is a pedestrian route with no established vehicular use. No consent has been granted with regard to inclusion within the site boundary. Alternative access is available.
- Significant slope of the path (in excess of 15 degrees - 1:3.7 slope) and presence of several rock outcrops render this unsuitable.
- Proposals with regard to access unclear.
- Proposal will result in loss of character.
- Concerns regarding level difference, loss of hedging and negative impact on established residential amenity.

3.4.2 Submission by Stephen Dowds, Planning Consultant on behalf of Barry Keohane, Ervallah, Roundstone neighbouring resident to the south. Grounds of objection as follows:

- Concern regarding compliance with housing policy.
- Adjoining SAC and NHA Cregduff Lough.
- Backland elevated exposed development resulting in negative impact on established residential amenity.
- Consent of owners of the access has not been demonstrated. Site boundary unclear.
- Proposed extension far exceeds existing dwelling.
- No consent to removal of boundary wall of the wall to the south of the entrance.
- Access issues.
- Proposal would constitute overdevelopment of an elevated site in a category 3 landscape and would be contrary to the objectives of the development plan.

4.0 Planning History

No planning history on the appeal site.

5.0 Policy Context

5.1. Development Plan

5.1.1 While the decision of the planning authority was made under the previous plan the Galway County Development Plan 2022-2028 now refers. The plan was adopted on 9th May 2022 and came into effect on 20th June 2022.

In terms of rural area type the site is located within a structurally weak area.

As set out in Rural Housing Policy Map 4.2 the site is within zone 4 – Landscape Sensitivity Category 2-4.

Policy Objective RC2 Rural Housing in the Countryside is “*To manage the development of rural housing in the open countryside by requiring applicants to*

demonstrate compliance with the Rural Housing Policy Objectives as outlined in Section 4.6.3

In Chapter 8. Tourism and Landscape I note

Landscape Sensitivity Map 8.2 shows the site within Category 3 Special landscape with a High Sensitivity to Change.

Policy Objectives Landscape Conservation and Management

LCM1 Preservation of Landscape Character

“Preserve and enhance the character of the landscape where, and to the extent that, in the opinion of the Planning Authority, the proper planning and sustainable development of the area requires it, including the preservation and enhancement, where possible of views and prospects and the amenities of places and features of natural beauty or interest.”

RH4 Rural Housing Zone 4 (Landscape Classification 2, 3 and 4)

“ Those applicants seeking to construct individual houses in the open countryside in areas located in Landscape Classification 2,3 and 4 are required to demonstrate their demonstrable economic or social Rural Links or Need as per RH 2, i.e.*

1(a) Those applicants with long standing demonstrable economic and/or social Rural Links or Need to the area through existing and immediate family ties seeking to develop their first home on the existing family farm holding. Consideration shall be given to special circumstances where a landowner has no immediate family and wishes to accommodate a niece or nephew on family lands. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.*

OR

1(b) Those applicants who have no family lands, or access to family lands, but who wish to build their first home within the community in which they have long standing demonstrable economic and or social Rural links or Need and where they have spent a substantial, continuous part of their lives i.e. have grown up in the area,*

schooled in the area or have spent a substantial, continuous part of their lives in the area and have immediate family connections in the area e.g. son or daughter of longstanding residents of the area.

Having established a Substantiated Rural Housing Need, such persons making an application on a site within an 8km radius of their original family home will be accommodated, subject to normal development management.*

To have lived in the area for a continuous seven years or more is to be recognised as a substantial, continuous part of life and also as the minimum period required to be deemed longstanding residents of the area.

Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

Or

1(c) Those applicants who can satisfy to the Planning Authority that they are functionally dependent in relation to demonstrable economic need on the immediate rural areas in which they are seeking to develop a single house as their principal family Residence in the countryside. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1(d) Those applicants who lived for substantial periods of their lives in the rural area, then moved away and who now wish to return and build their first house as their permanent residence, in this local area. Documentary evidence shall be submitted to the Planning Authority to illustrate their links to the area in order to justify the proposed development and it will be assessed on a case by case basis.

OR

1(e) Where applicants can supply land registry or folio details that demonstrate that the lands on which they are seeking to build their first home, as their permanent residence, in the area have been in family ownership for a period of 20 years or more, their eligibility will be considered. Where this has been established to the satisfaction of the Planning Authority, additional intrinsic links/need will not have to be demonstrated.

OR

1(f) In cases where all sites on the family lands are in a designated area, family members will be considered subject to the requirements of the Habitat's Directive and normal planning considerations

In addition, an Applicant may be required to submit a visual impact assessment of their development, where the proposal is in an area identified as "Focal Points/Views" in the Landscape Character Assessment of the County or in Class 3 and Class 4 designated landscape areas. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis. An Enurement condition shall apply for a period of 7 years, after the date that the house is first occupied by the person or persons to whom the enurement clause applies."

RH 7 Renovation of Existing Derelict Dwelling

"It is a policy objective of the Planning Authority that proposals to renovate, restore or modify existing derelict or semi-derelict dwellings in the County are generally dealt with on their merits on a case by case basis, having regard to the relevant policy objectives of this plan, the specific location and the condition of the structure and the scale of any works required to upgrade the structure to modern standards. The derelict/semi derelict dwelling must be structurally sound and have the capacity to be renovated or extended and have the majority of its original features in place. A structural report will be required to illustrate that the structure can be brought back into habitable use, without compromising the original character of the dwelling. Where the total demolition of the existing dwelling is proposed an Enurement Clause for seven years duration will apply."

Development Management Standards are set out at chapter 15.

At 15.3.4 Other residential development (Rural and Urban) DM Standard 4: House Extensions (Urban and Rural).

"Proposed extensions shall:

- *In general, be subordinate to the existing dwelling in its size, unless in exceptional cases, a larger extension compliments the existing dwelling in its design and massing;*
- *reflect the window proportions, detailing and finishes, texture, materials and colour unless a high quality contemporary and innovatively designed extension is proposed;*
- *not have an adverse impact on the amenities of adjoining properties through undue overlooking, undue overshadowing and/or an over dominant visual impact; and*
- *carefully consider site coverage to avoid unacceptable loss of private open space.”*

5.2. **Natural Heritage Designations**

5.3. The northern portion of the site extends into the designated Cregduff Lough Proposed Natural Heritage Area pNHA (Site Code 001251) while the designated Cregduff Lough SAC occurs within c25m of the site.

5.4. **EIA Screening**

Having regard to the nature of the development comprising a single dwellinghouse together with a new proprietary wastewater treatment system it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for an environmental impact assessment can, therefore, be excluded by way of preliminary examination.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 There are two third party appeals as set out in submissions by the following

- Avanti Architects on behalf of Martin and Bridget Conneely, Ervallah, Roundstone, Co Galway. (Owners of house and lands to the north / east of the site, lands to the north west and joint owners of the pathway access to the site.
- Brendan McGrath and Associates on behalf of Barry Keohane, Ervallah Roundstone Co Galway, owner so the house and lands immediately to the south.

6.1.2 Grounds of appeal raise common issues which I have summarised as follows:

- Safe access and egress to the proposed development cannot be achieved without significant negative impact on established residential amenity. No established vehicular access along the pathway which is a pedestrian path. Alternative established vehicular access to the site from the landholding.
- In response to the request for additional information it is proposed to lower the path by up to 1m. No consideration of impact on appellant's property. Parking of cars will require the construction of a retaining wall.
- Levels outlined in diagrammatic section conflict with the contours on the site layout plan. Contour levels for areas outside the site boundaries appear to be generic and not representative of actual contour lines.
- No consideration of impact on root protection zones of existing trees.
- Application does not demonstrate compliance with road junction visibility and dwell space in accordance with Development Plan standards. DM Standard 20. Question safety of access for emergency services and construction traffic.
- Proposal is unacceptable in principle having regard to national and local policy in respect of rural housing. Galway County Council failed to consider the proposal relation to Objective RHO2. (Local need)
- Proposal gives insufficient regard to conservation of biodiversity. Proximity to Cregduff SAC and wastewater treatment system within the proposed Natural Heritage Area.

- No reasonable interpretation of objective RH07 regarding renovation of a derelict dwelling could include a proposal of this scale. Proposal is more than 5 times the size of the extant structure.
- Response to the request for additional information incomplete. Inconsistency of information between original submission and response include
 - Contradictions between traffic management proposals and Construction and Environmental Management Plan.
 - Impact of traffic management plan on natura impact statement.
 - Feasibility of ready mix concrete access - concerns regarding environmental safety.
 - Boat shed omitted in further information layout plan.
- Application is not viable as access road does not have the consent of the owners.
- Backland development resulting in adverse impact on residential amenity.
- Boat shed would not be able to function as there is no vehicular access.

6.2. Applicant Response

6.2.1 The response by Doyle Kent Planning Partnership on behalf of the first party and accompanied by a report by Enda O Malley Consulting Engineers and a revised biodiversity map by Simon Ashe Environmental Consultant is summarised as follows:

- Proposal complies with the rural housing guidelines in relation to the conservation of disused dwellings and the applicants have demonstrated that the existing access can accommodate development without creating a traffic safety issue.
- The application provides for renovation of the existing buildings with additional structures clustering to continue the pattern by building on the history of previous structures on the site. Clachan of buildings remnant of traditional settlements in this upland area.

- Applicants are seeking to create a family residence suitable to modern living while contributing to the preservation of a unique historic farm settlement.
- Proposal is in compliance with Objective RH07 and material demonstrating long standing intrinsic rural links to this area are not necessary.
- Laneway is partly within the ownership of the estate of the previous owner with letter of consent to make the application and part owned by the appellants Marin and Bridget Conneely and there is a right of way by others to access farmland. There is no restriction registered in respect of the lands therefore cars can be parked on the laneway as long as access is not affected.
- Initial proposal provided for a nominal scale of work to the laneway involving clearing of soil and grass and repair where necessary to use the gradient of the existing access route. Following request for additional information.
- There are no significant trees along the path of the access road that would warrant root protection.
- Drainage pipes will be laid along the access to prevent surface water discharge onto the public road.
- As an alternative to the granted proposal and to address the concerns raised by the third parties the original access can be used without adjusting existing road gradient. With a light upgrade using locally sourced stone materials the laneway can accommodate vehicles both during and after construction with parking area to the front of the boat shed.
- Boat shed omitted in further information drawing to show construction traffic access.
- It is submitted that the applicant can carry out the refurbishment and extension of the dwelling on the site without any reference with other parties to traverse the laneway.
- Mitigation measures included with the planning application provide for silt fencing around the development site. NIS concludes that as the site and

works are outside the boundary of any European site there is no potential for direct effects on the qualifying interests of the site with mitigation in place.

- Proposed NHA will not be adversely impact the proposal.
- The nearest residential property is c 30m from the nearest point of the new extension separated by hedgerows and dry stone walls. The gable end of the nearest corner the living room extension is 1500mm from the boundary and set back at an angle to 2400mm. There will be no loss of hedgerow on the appellants side of the boundary and no interference with dry stone wall boundary.
- CGI images submitted with the design report show how the proposed buildings are low lying and sit well within the landscape.
- All works will be carried out with small plant machinery and with due care to neighbouring properties.
- It is submitted that it would be more beneficial to allow vehicles to continue past the 11.5m contour line providing parking adjacent to the boat shed.

6.3. Planning Authority Response

The Planning Authority did not respond to the grounds of appeal.

6.4. Further Responses

6.4.1 The response by Brendan McGrath and Associates on behalf of Barry Keohane in response to the first party response to the appeal is summarised as follows:

- Submission on behalf of the applicant is informative in that it clarifies that the intended use of the development as a holiday home or second home. A correct application of the Rural Housing Guidelines would be to support reinstatement conservation or replacement of existing ruins dwellings in the Roundstone settlement.
- Cottage to be renovated is only a small part of the proposed dwelling, A more accurate description of the proposal would be single storey dwelling with a

new floor area of 228 sq.m incorporating a renovated currently derelict cottage with a floor area of 42m².

- No letter of consent provided on planning file. Submission refers to a previous owner which would not meet the basic requirement for the making of a planning application.
- Indent where private parking area is now proposed is commonage used for temporary storage of materials in transit. Consent is not given for this use. No demonstration of sufficient interest in either the freehold land or the commonage which together form the site to make the application.
- Refute assertion that the access is used by plant and machinery.
- Unusual to position a wastewater treatment plant in an NHA in which the qualifying interest are a marsh habitat and marsh flora. No evidence to support the assertion that there will be no adverse impact on the NHA.

7.0 **Assessment**

7.1. I consider that the principal planning issues for assessment in this appeal are the development in the context of Development Plan provisions, the configuration design and scale of the proposal, access and servicing of the proposed development and impact on biodiversity and appropriate assessment. The question of the applicant's legal interest also needs to be addressed.

7.2. **Legal Interest**

7.2.1 On the question of legal interest, I note that both third party appeals question the applicant's legal entitlement with respect to the proposed development. It is asserted that the proposed access to the site is solely a pedestrian route and is part owned by the appellant Mr Martin Conneely who does not consent to the proposal. A letter submitted with the appeal by Mr Conneely accompanied by the folio documentation, asserts that no right to access the appeal property exists over this laneway. The third party appellants further state that the revised parking arrangement in response to the

Council's further information request is on commonage and therefore the legal ability to carry out these works is questioned.

7.2.2 The letter of consent submitted with the original application is from Christopher Walsh Solicitor acting for Mr Patrick King, the personal representative of the deceased owner of Mongan's Cottage, and gives consent to submit a planning application in respect of the site. No folio or land registry maps are provided. I note that whilst the matter of legal interest was a central issue in third party submissions to the planning authority, the matter was not raised in the Council's request for additional information. The first party in response to the appeal contends that the applicant will be in a position to carry out the development without any interference with any other parties rights to traverse the laneway, however no additional documentation is provided to support this assertion.

7.2.3 I note that issues relating to title to land are addressed at 5.13 of the Development Management Guidelines for Planning Authorities June 2007, where the following is advised:

"Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.

The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information

which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”

7.2.4 I consider that in light of the various third party submissions doubts have been raised as to the sufficiency of the legal interest. I consider that the submissions of the first party in response to the appeal do not adequately address the matter and therefore significant doubt remains in my view. The applicant’s ability to carry out the development as proposed has not been established.

7.3 Principle of Development in the context of Development Plan Policy, Configuration, scale and design of the proposal

7.3.1 As outlined at Section 5.0 Policy Context above, the current Galway County Development Plan 2022-2028 was adopted since the decision of the Planning Authority and came into effect on 20th June 2022.

7.3.2 I note that the third party appellants raises the question of housing need and note the lack of apparent links to this rural area in reference to National Policy Objective 19 of the National Planning Framework and policy RH02 of the previous Galway County Development Plan. Policy RH2 and policy RH4 of the current County Development Plan now refer whereby applicants seeking to construct an individual house in the open countryside in areas located in landscape classification 2,3 and 4 are required to demonstrate their demonstrable economic or social rural links or need.

7.3.3 The Planning Authority considered the application on the basis of Policy RH07 – now RH7 in the current County Development Plan providing for renovation of existing derelict dwellings as follows:

RH7 Renovation of existing Derelict dwelling

It is a policy objective of the Planning Authority that proposals to renovate, restore or modify existing derelict or semi-derelict dwellings in the County are generally dealt with on their merits on a case by case basis, having regard to the relevant policy objectives of this plan, the specific location and the condition of the structure and the scale of any works required to upgrade the structure to modern standards. The derelict/semi derelict dwelling must be structurally sound and have the capacity to be renovated or extended and have the majority of its original features in place. A structural report will be required to illustrate that the structure can be brought back into habitable use, without compromising the original character of the dwelling. Where the total demolition of the existing dwelling is proposed an Enurement Clause for seven years duration will apply.

7.3.4 It is apparent from site inspection that the existing structure on the site was a former dwelling, though apparently not inhabited for some time. While the structure is derelict its walls and roof are substantially intact though the structural report submitted in the response to the request for additional information outlines that the roof structure is in poor order. It is reasonable in my view based on the nature of the proposal to consider that the principle of development would be subject to the provisions of Objective RH7. The provisions of the objective, do not reference the need to demonstrate rural generated housing need. It is reasonable therefore to determine that the Development Plan provisions as they relate to rural generated housing need and urban generated housing RH2 and RH4 do not apply automatically to this application and therefore it should be assessed as a “renovation (and extension) of an existing derelict dwelling” on its merit.

7.3.5 In considering the detail of the proposal, I note that as outlined in the third party submissions, the application involves a substantial extension to the extant property. The existing structure is 42sq.m and it is proposed to extend this by 186sq.m. This is in addition to renovation of the outbuilding 25sq.m and construction of a new boat shed 51sq.m. I note that the development management standards for house extensions, rural and urban, are set out at 14.2.4 of the Galway County

Development Plan 2022-2028. This requires that extensions shall in general be subordinate to the existing dwelling in its size unless in exceptional cases, a larger extension compliments the existing dwelling in its design and massing. The proposed house extension which creates two new pitched roofed extensions clustered with the existing dwelling cannot in my view be classified to be subordinate to the existing dwelling. Given the scale of the proposed extension I consider that the third party appellant raises a valid argument as to whether the proposal can be deemed to constitute an extension of the existing dwelling or the attachment of an entirely new (three bedroomed) house to the original structure, whereby the requirement to comply with Policy RH2 and RH4 would be triggered.

7.3.6 The site is located within a coastal category 3 special landscape area which has a high sensitivity to change. Policy LCM1 seeks to preserve and enhance the character of the landscape. This landscape clearly has a limited carrying capacity in terms of rural housing, I consider that the proposal does not comply with the stated policies of the development plan and in my view the proposal would set an undesirable precedent for similar such development, and it would therefore be contrary to the proper planning and development of the area.

7.3.7 On the issue of impact on established residential amenity, I have noted third party concerns with regard to proposals for upgrade of the access road, loss of landscaping and scale and extent of the proposal given the elevated backland nature of the site. I consider that a more appropriate and sensitive renovation and extension could be achieved with the focus on curtailing impact on established landscape features.

7.4 Access and Servicing.

7.4.1 On the issue of vehicular access, the question of entitlement with regard to access has been addressed at 7.2 above. I have noted the third party submissions which assert that the proposed access is for pedestrian use only and that an alternative and more suitable vehicular access is available within the landholding to serve the dwelling. The first party did not address this issue in any detail.

7.4.2 I note that the in the response to the request for additional information and concerns raised by the Planning Authority the proposals with regard to vehicular access were revised to avoid the progression of cars beyond the 11.5m contour line. The third parties raise concerns with respect to the adequacy of the access for construction and emergency access and note the questionable feasibility of a boat shed without vehicular access. The issue of impact on character of the access and structural impacts arising from grading and levelling works is also raised. I consider that these are valid concerns and the review of alternative access options should be explored.

7.4.3 On the issue of effluent treatment I note that there is no existing wastewater system on the site. Regarding the suitability of the site for effluent treatment I note the details of the site suitability assessment which outlined that in the trial hole excavated on 16/10/2020 to 1m at which point bedrock was encountered. Water table was recorded at 0.95m. A P value of 10 was recorded. In response to the Council's request for additional information trial hole monitoring carried out over the period June - October noted variation in height of water in trial hole ranging from 80mm to 310mm. The proposal is to install a Tricel Novo wastewater treatment plant followed by a pumped soil polishing filter.

7.4.4 I have a number of concerns regarding the site suitability for effluent treatment noting the scale and potential occupancy of the proposed development, the vulnerability of the site given shallow depth to bedrock and seasonal variation in water table and topography of the site and proximity to sensitive environmental features, lake to northwest which is not included within the site suitability assessment. I also note concerns with regard to the location of the proposed system within the proposed Cregduff Lough Natural Heritage Area. The potential for negative impact on Cregduff Lough SAC below is addressed in the appropriate assessment section as follows.

7.5 Appropriate Assessment

7.5.1 On the issue of appropriate assessment the application is accompanied by a Natura Impact Statement by Simon Ashe Consultant Ecologist. Section 2 of the NIS includes a screening for appropriate assessment. The document provides a description of the proposed development, identifies European Sites within a possible zone of influence of the development, identifies potential pathways and impacts, and assesses the significance of potential impacts. At the screening stage, the applicant determined that, without incorporation of mitigation measures *significant impacts upon the Cregduff Lough SAC (Site Code 001251) cannot be ruled out.*

Having reviewed the NIS, I am satisfied that the information allows for an examination and identification of any potential significant effects of the development, alone or in combination with other plans and projects, on European sites.

7.5.2 Description of Development

The applicant provides a description of the project in Section 2.3 of the AA Screening Report. In summary, the proposal comprises the renovation and extension of the existing derelict dwelling into a 4 bedroom house with an effluent treatment system and polishing filter, parking area and ancillary works.

7.5.3 European Sites

The development site is located within circa 25m of the Cregduff Lough SAC. A number of other European sites occur within 15km of the site within a possible zone of influence including:

Connemara Bog Complex SAC

Dogs Bay SAC

Rosroe Bog SAC

Murvey Machair SAC

Kilkieran Bay and Islands SAC

Lough Nageeron SAC

Slyne Head Peninsula SAC

The Twelve Bens / Garraun Complex SAC

Maaumturk Mounts SAC

Slynehead to Ardmore Point Islands SPA

Connemara Bog Complex SPA

Inisbofin Orney Island and Turbot Island SPA

High Island, Inishark and Davillaun SPA

Section 2.5 of the applicant's screening provides details of the Special Conservation Interests, Qualifying Interest and Conservation Objectives of the European sites.

7.5.4 Identification of Likely Effects

The site of the proposed development comprises a derelict dwelling site. The proposed development is not connected with or necessary for the conservation management of any Natura 2000 site. The site of the proposed development is not located in a European site. None of the habitats within the site boundary correspond to habitats listed on Annex I of the EU Habitats Directive or Qualifying Interests of Cregduff Lough SAC. The site of the proposed development does not have habitat to support the Special Conservation Interests of any Special Protection Area.

The range of activities arising from the construction and operation of the proposed development that would possibly have any potential effects on European sites would relate to pollution of surface water due to household sewage and wastewaters including during construction activities.

As regards In-combination Effects there are no known development projects or plans with which significant in-combination effects would arise.

7.5.5 Mitigation Measures

No measures designed or intended to avoid or reduce any harmful effects of the proposed development on a European site have been relied upon in this screening exercise.

7.5.6 Screening Determination

The proposed development has been considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that there is no likelihood of significant effects to thirteen sites within the zone of influence. The potential for significant effects to European Site, the Cregduff Lough SAC, cannot be excluded due to surface and groundwater connectivity to this SAC. As the project individually or in combination with other plans or projects would be likely to give rise to significant effects on the Cregduff Lough SAC in view of its Conservation Objectives, Appropriate Assessment is therefore required.

This determination is based on the following:

- The nature and extent of the proposed development, with emphasis placed on surface water discharges,
- The proximity to European sites, and
- The known pathways between the site and the European site.

7.5.7 The Natura Impact Statement

Appropriate Assessment

The applicant's Stage 2 Natura Impact Statement by Simon Ashe, Consultant Ecologist dated 15th January 2021 sets out an assessment of potential adverse effects on the Cregduff Lough SAC QI Slender Naid (*Najas flexilis*) and sets out mitigation measures to address potential adverse effects arising from diffuse pollution to surface waters due to household sewage or wastewaters including during construction activities. The conclusion of the NIS was as follows:

“Post implementation of avoidance and preventative measures, the identified pathways by which effects on European Sites could potentially occur are robustly blocked. Based on the above it can be concluded in view of best scientific knowledge, on the basis of objective information that the proposed development will not adversely affect the integrity of any European Site.”

I note the considerations of the local authority Planner, outlined in the initial planning report, which was that taking account of mitigation measures significant adverse impacts on the Natura 2000 networks can be ruled out.

7.5.8 Appropriate Assessment of Implications of the Proposed Development

This assessment considers aspects of the proposal which could result in significant effects. Mitigation measures designed to avoid or reduce any adverse effects are considered and assessed. The assessment has had due regard to the applicant's submitted AA Screening, the Natura Impact Statement, and the reports received by the planning authority and the Board.

The following guidance is adhered to in the assessment:

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

EC (2002) Assessment of plans and projects significantly affecting Natura 2002 sites. Methodological guidance on the provisions of Articles 6(3) and 6(4) of the Habitats Directive 92/43/EC.

EC (2018) Managing Natura 2000 sites.

European Site – The Cregduff Lough SAC is subject to Appropriate Assessment.
Relevant Aspects of the Proposed Development

The main aspects of the proposed development that could adversely affect the conservation objectives of the European site are potential pollution from hydrocarbons, disposal of wastewater, wet cement and silt laden run off.

Pathways for significant effects on the Integrity of the qualifying habitats are identified in relation to Slender Naiad. The Screening report screens out potential impact on QI Transition Mires and quaking bogs.

Potentially Significant Cumulative Effects

There are no known development projects or plans with which significant in-combination effects would arise.

Mitigation

The submitted NIS details the range of mitigation measures intended to be employed as part of the proposed development. These include

Provision of drip trays, refuelling containment, ready mixed supply of wet concrete, carefully planned concrete pour and measures to contain cement contaminated water.

Measures to avoid silt laden run off by way of controls during earthworks and construction phase. Silt bags, silt fences filter fabrics and collection sumps temporary sumps and attenuation ponds.

Wastewater treatment system to be designed in accordance with EPA Code of practice.

Much of what is being proposed constitutes best practice construction and operation methodologies.

Integrity Test

I have noted above the proposed mitigation measures aimed to ensure that significant effects would not result for the qualifying features of the Cregduff Lough SAC.

Following my appropriate assessment of the proposed development and with due regard to consideration of the proposed mitigation measures, I consider that further detail is required with regard to features to avoid pollution of surface and groundwater during habitation. I have outlined at 7.4.4 above a number of concerns regarding the site suitability for effluent treatment noting the potential occupancy of the proposed development, the vulnerability of the site given shallow depth to bedrock, seasonal variation in water table and the topography of the site. Diffuse pollution to surface waters due to household sewage and waste waters is an identified threat to the Slender Naiad species therefore the development has the potential, in the absence of best practice to result in pollution to surface waters.

7.5.8 Appropriate Assessment Conclusion

The proposed development has been considered in light of the assessment requirements of the Planning and Development Act 2000 as amended.

Having carried out screening for appropriate assessment of the project, it was concluded that it may have a significant effect on the Cregduff Lough SAC. Consequently, an appropriate assessment was required of the implications of the project on the qualifying features of this sites in light of its conservation objectives.

Having regard to the concerns with regard to the suitability of the site for wastewater treatment there remains a doubt with regard to the potential for adverse effects on the Cregduff Lough SAC. Diffuse pollution to surface waters due to household sewage and waste waters is an identified threat to the Slender Naiad species. On the basis of the information provided with the application and appeal the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Cregduff lough SAC in view of the site's conservation objectives, In such circumstances the Board is precluded from granting permission. I note that this is a new issue in terms of the appeal.

8 Recommendation

I have read the submissions on the file, visited the site and had due regard to the development plan and all other matters arising. I recommend that the decision of the planning authority is overturned and permission is refused for the following reasons.

Reasons and Considerations

1. It is an objective of the Galway County Development Plan 2022-2028 LCM1 to preserve and enhance the character of the landscape where, and to the extent that, in the opinion of the planning authority the proper planning and sustainable development of the area requires it, including the preservation and enhancement, where possible of views and prospects and the amenities of places and features of natural beauty or interest. Policy Objectives RH2 and RH4 of The Galway County

Development Plan 2022-2028, in line with National Policy Objective 19 of the National Planning Framework seek to prevent inappropriate new dwellinghouses unless there is an acknowledged local rural generated housing need. It is considered that the proposed development, by reason of its location and sensitivity in a scenic category 3 special coastal landscape and by reason of its scale, extent and design would represent an inappropriate development of the site. The proposed development by reason of its scale and design would not be in accordance with the Development Management Standards and criteria for residential extensions as set out at 15.2.4 of the Galway County Development Plan 2022-2028 and would not be classified as the refurbishment of a derelict dwelling in accordance with Policy RH7. The proposed development would contravene materially established objectives set out in the development plan and would therefore be contrary to the proper planning and sustainable development of the area.

2. On the basis of the information provided with the application and appeal the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Cregduff lough SAC in view of the site's conservation objectives. In such circumstances the Board is precluded from granting permission.

Bríd Maxwell
Planning Inspector
10th November 2022