



An
Bord
Pleanála

Inspector's Report ABP- 312499-22.

Development	Construction of a dwelling, domestic garage, wastewater treatment plant percolation arena associated site works.
Location	Ballagh, Bushypark, Galway
Planning Authority	Galway City Council
P. A. Reg. Ref.	21 82
Applicant	Erwin O'Toole.
Type of Application	Permission
Decision	Grant Permission.
Type of Appeal	Third Party X Grant
Appellant	Martin Hughes
Date of Site Inspection	4 th May, 2022
Inspector	Jane Dennehy

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1.0 Site Location and Description

- 1.1. The application site which has a stated area of 2,800 square metres, is roughly rectangular in shape and is a backland site at the rear of road frontage dwellings on individual plots on the south side of N59 to the north west of Galway city. On the opposite side of the N59 are the grounds and golf course at the Glenlo Hotel and further to the north is Lough Corrib towards which there are views from the site lands and environs.
- 1.2. Access is from east boundary from a lane off the N59 serving an existing property on a plot to the south east of the site. The site and surrounding lands are steeply sloped from the south west to the north east. Pairc na gCapaill along which there are individual houses on large plots is to the south and west is upslope from the site lands. There is some fill and waste material within the site which is under disturbed scrub and the boundaries are defined by existing hedgerows.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for construction of a split-level house with a shallow pitched roof and a parapet height of seven metres and a detached garage to the side. The footprint for the proposed house is shown at approximately fifteen metres from the northern boundary, twenty metres from the south boundary, 1.7 metres from the east boundary and sixteen metres from the west boundary.
- 2.2. The proposed means of drainage for the development is to a private effluent treatment system and percolation area within the site and access is to be off the private driveway between the N59 and the existing property to the south east.
- 2.3. Further to assessment of the original application a request for additional information issued to the applicant in respect of rights of way and access arrangements, possible fill within the site, surface water drainage and the proposed arrangements for foul drainage to the treatment plant and percolation area including a having regard to the standards in the EPA Code of Practice to which a response was lodged on 17th November, 2021.

- 2.4. The further information submission includes revisions to the sight lines and layout, without encroachment on third party property, an undertaking to remove infill from the site lands using a licensed contractor and additional information on arrangements for surface water drainage within the area of the site, ground investigation report for soakaway design to BRE 365 and comprehensive details of arrangements for foul drainage treatment and disposal which include repeated tests and site suitability assessment report, an installation specification with details of maintenance contract and standards and percolation installation recommendations, providing for a soil polishing filter are of 45 square metres, invert of percolation stones at no more than 400 mm below ground level and dimensions of 10 m 4.5 m. having regard to the standards in the EPA Code of Practice.

3.0 Planning Authority Decision

3.1. Decision

By order dated, 13th December, 2021, the planning authority decided to grant permission for the proposed development. In addition to standard requirements conditions include:

- Employment of a licensed contractor to undertake the removal of fill materials from the site under the direction of a qualified engineer and with maintenance of a waste removal log along with compliance with legislation for waste collection and disposal and hazardous waste legalisation. A compliance submission is required. The reason provided is, "In the interests of the proper planning and sustainable development of the area." (Condition No 2.)
- Obscure and top hung pivot glazing only for first floor bathroom windows. The reason provided is in the interests of the privacy and amenity at adjoining properties. (Condition No 3.)
- Boundary walling to be in concrete construction with finishes to be agreed in writing with the planning authority, a maximum height of 1.20 metres forward of the front building line and 1.80 metres at the rear of the front building line. Consent is required (from third parties) for works outside the full control of

applicant. in the interests of residential amenity and proper planning and sustainable development. (Condition No 5.)

- The line and configuration at the entrance to the public road to be agreed in writing with the planning authority. The reason provided is in the interest of traffic and public safety. (Condition No 11)
- Comprehensive details for the effluent treatment system and polishing filter/percolation area in entirety to be in accordance with the details lodged and the provisions of the EPA Code of Practice prior to occupation. A report to be prepared by a qualified assessor as to satisfactory installation to be submitted for written agreement with the planning authority and a maintenance contract and maintenance programme to be entered into and retained. The reason provided is in the interests of public health and proper planning and sustainable development. (Condition No 12.)

3.2. Planning Authority Reports

- 3.2.1. The report of the Transportation Department indicates a recommendation for an additional information request in respect of a construction access arrangements and possibility of a construction access road, details in respect of surface water drainage arrangements due to concerns about runoff onto the public road or third-party property whereas it should be retained with the site and clarification as to potential rights of way extinguishments. Conditions of a standard nature are also recommended if permission is granted.
- 3.2.2. The report of the Engineer and the Waste enforcement officer dated 30th April, 2021 indicates recommendations for additional information in respect of the details for the proposed waste water treatment and percolation area, having regard to various requirements and standards within the EPA Code of Practice. Standard conditions are recommended by the Waste Enforcement Officer.
- 3.2.3. The report of the Environment section on the further information submission indicates satisfaction that the proposed development, having regard to the specialist reports provided, would be in compliance with the EPA Code of Practice for Waste Water Treatment and Disposal Systems (single dwellings of less than ten persons)

It is also stated that it is imperative that the installation is fully monitored, with a contract and certified by the supplier and fully certified by a suitably qualified person to confirm compliance with the EPA Code of Practice.

- 3.2.4. The planning officer further to review of the response to the recommended request for additional information indicated satisfaction with the details provided in the further information submission and with the proposed development and a recommendation for a grant of permission.

3.3. **Third Party Observations**

- 3.3.1. Five parties, including the appellant party lodged submissions in which the issues of concern raised relate to concerns about possible removal of stone walls along boundaries, foul drainage and potential for public health implications, the fill material within the site, rights of way over an agricultural laneway and overlooking of adjoining properties.

4.0 **Planning History**

- 4.1.1. **P. A. Reg. Ref.20/130:** Permission was refused on 16th July, 2020 for construction of a dwelling, domestic garage, wastewater treatment plant percolation arena associated site works based on two reasons as outlined below:

- (1) The proposed development is substandard by reference to the inadequate width of the access roadway and limited visibility from the lane at the junction with the N59. The access arrangements cannot satisfactorily accommodate the additional traffic movements onto and from the N59 in a safe and hazard free manner. The proposed development would therefore endanger public safety by reason of traffic hazard.
- (2) Failure to demonstrate that the site can be serviced by an effluent treatment system. The development would be prejudicial to public health as the site is not serviced and the use of a proprietary treatment system and percolation area would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

- 4.1.2. **P. A. Reg. Ref.06/864/ PL 221768:** Further to appeal, Permission was refused on 16th July, 2020 for construction of a dwelling, domestic garage, wastewater treatment plant percolation arena associated site works based on the same two reasons as those attached to the decision to refuse permission under P. A. Reg. Ref.20/130:
- 4.1.3. The planning officer in his report also records Refusal of Permission for three proposals for outline permission for a house with a septic tank under P. A. Reg. Ref. 92/792, and under 99/488 and for a house with a water treatment plant and percolation area under P. A. Reg. Ref. 00/158.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway City Development Plan, 2017-2023 according to which the site is subject to the zoning objective, LDR: *To provide for Low Density Residential development which will ensure the protection of existing residential amenity.*

For the LDR zoned lands at Ballagh in which the site is located, there is provision for a maximum density of five units per hectare. Retention of hedgerows and stone walls in so far as is possible is required.

Development Management standards are set out in Chapter 11.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An appeal was lodged by Mr Hughes on his own behalf on 17th January, 2022 according to which the proposed dwelling would be immediately at the rear of his dwelling on the adjacent site facing onto the N59. He states that Judy and Bryan Cloherty, Micheal and May Lavett and Gus Kelehan who are neighbouring property owners also with frontage on the N59, have similar objections.

6.1.2. According to the appeal:

- The proposed development would affect the quality of the water supply for Mr Hughes property which is sourced from a well the position of which is ten metres from the boundary wall.
- There is potential for flooding at Mr. Hughes rear yard due to increase in run off from the site. Flooding has occurred at adjoining properties in the past though not Mr. Hughes property.
- There is a larger amount of fill material within the site and the height is much higher than that which is indicated in the engineer's report. Additional material has been brought to the site since 2018 when photographs were taken in 2018 which are provided with the appeal.
- As the ground level in the site is much higher, Mr Hughes property will be overlooked and, during winter months, overshadowed.
- In the 1970s an undertaking was given by the City Council that the land on which the site is located would be sterilised and a condition was attached to the grant of permission for the existing dwelling. A copy of an agreement is included. Condition No 2 attached to the grant permission under P. A. Reg. Ref. 383/90 prohibits a development of a dwelling on the site.
- Nothing has changed since permission was refused under P.A. Reg. Ref. 20/130 for a dwelling due to inadequate width of the access road and limited visibility from the access lane at the junction with the N59. The reason for refusal of permission for endangerment of public safety by reason of traffic hazard is still at issue.

6.1.3. Included in the submission are photographs from the rear gardens of Mr Hughes and Bryan and Judy Cloherty's properties, showing some of the fill material on the site and the variation in ground levels.

6.2. Applicant Response

6.2.1. A submission was lodged with the Board on behalf of the applicant on 15th February, 2022 according to which:

- Any potential for contamination and additional run off from the site has been fully addressed in the significant detailed information provided to the planning authority which demonstrates compliance with relevant Eurocodes, British and Irish standards, BRE and, EPA codes of practice to the satisfaction of the local authority.
- The contention that the fill within the site is in excess of that for which details were provided is refuted. All fill material will be removed in accordance with the requirements of Condition No 2 (b) attached to the planning authority decision with monitoring to be undertaken by a qualified engineer.
- The proposed dwelling is positioned thirty-three metres from the appellant party's dwelling and 15.5 metres from the nearest boundary which are well in excess of minimum distances in the CDP as regards the contentions of overlooking. However, the dwelling would be visible from the rear of the appellant party's property.
- The width of the access road which has been used for over forty to serve an existing dwelling and the visibility splays at the entrance onto the N59 are considered satisfactory by the roads engineer at the Council and it accords with standards in *Design Manual for Urban Roads and Streets*, (DMURs).
- While the remarks about prior refusals of permission, in 1970 and 1990 are noted. The current proposal is deemed satisfactory in all respects by the planning authority.

6.3. Planning Authority Response

6.3.1. There is no submission from the planning authority on file.

7.0 **Assessment**

- 7.1. The issues central to the determination of a decision having regard to the appeal and considered below are:

Possible prior Sterilisation Agreement on application site lands.

Access arrangements.

Construction Management.

Rights of Way.

Foul Drainage.

Surface water drainage.

Dwelling Design.

Overlooking and Overshadowing.

Environmental Impact Assessment

Appropriate Assessment Screening.

7.2. **Possible Prior Sterilisation Agreement on application site lands.**

- 7.2.1. With regard to the contention in the appeal that under prior grants of permission and the 1970s and 1990s that the application site lands were sterilised it is noted that there is no evidence of this claim included with the appeal. Given that the current 'LDR' zoning objective for the application site lands which provides for residential development, (at low density), a legal agreement of the nature referred to in the appeal would be an inappropriate planning consideration. Any further dispute over this issue could be addressed through the legal system.

7.3. **Access Arrangements.**

- 7.3.1. The access for the site is onto and along an existing privately owned driveway between an adjoining property and the junction with the N59 to the north. Further to the visual inspection at the site and review of the further information drawings, it is not fully clear that seventy metres sightline to the edge of the carriageway from a 2.4 metres setback at the driveway entrance is achievable although the planning

authority's transportation department have indicated satisfaction with the proposal. Seventy metres to the centre line of the carriageway may be achievable at up to 2.4 metres setback at the centre of the entrance. It is proposed to use an existing entrance driveway, A new entrance direct to the N59 is not at issue in that shared use the existing driveway serving the adjacent property is proposed. While a second dwelling generates some additional turning movements which is undesirable, favourable consideration of the proposal would be reasonable in this regard. If permission is granted a condition can be included for a compliance submission.

7.4. Construction Management.

- 7.4.1. With regard to construction access routing, construction management including management of surface water run off at construction stage it is advisable that the applicant can be required to submit a construction management plan for agreement with the planning authority prior to commencement of development. Notwithstanding the small-scale nature of the development, and site size such a measure would provide for clarity and reassurance, owing to the presence of fill to be removed and site clearance and preparatory works, access off a National route, (N59) via a private road and the residential use of the surrounding lands.

7.5. Fill materials imported into the site.

- 7.5.1. It was clearly evident at the time of inspection that fill material is present within the site area. This is undisputed although there is uncertainty as to the quantum of material. The condition, (No 2) attached to the planning authority decision stipulating comprehensive and detailed requirements is considered appropriate for resolution of this matter and from a planning and environmental and public health and safety perspective. In addition, as indicated above in para, inclusion of details of arrangements in this regard in a construction management plan in addition provides for clarity.

7.6. Rights of Way.

There are no outstanding unresolved issues with regard to the maintenance of existing agricultural right of way across the access road and the site at the northern boundary to lands to the west side, and it has been confirmed that no interference with boundary walls would be attributable to the proposed development.

7.7. Foul drainage

- 7.7.1. It is noted that it indicated in the supplementary report of the environment section of 29th November 2021 that it is satisfied that it has been demonstrated in the further information submission that the proposed design for the waste water treatment and disposal system is compliant with and can be operated in accordance with the standards within the EPA Code of Practice for Waste water treatment and disposal systems for single dwellings. However, as has been pointed out in the report of the Environment Section, full certification and regular monitoring and maintenance along with contracts are essential. Where such management fails there is pollutant risk. Inclusion of a condition with the requirement of the planning authority in this regard is recommended if permission is granted. There is no evidence to suggest that the system as designed, would lead to risk of contamination of the source of water supply for the adjoining property.

7.8. Surface water drainage

- 7.8.1. The further information submission includes a ground investigation report in which it is demonstrated that surface water from the site has been designed for disposal to soakpits, incorporating attenuation measures, to BRE 365 standards with disposal at predevelopment, greenfield rates. The proposed arrangements are considered satisfactory and appropriate condition with standard requirements can be attached if permission is granted.

7.9. Dwelling Design and site layout.

- 7.9.1. The relatively low-profile, split-level dwelling form, selection of materials and finishes and its contemporary design along with that of the adjoining detached garage which are surrounded by gardens and the access driveway and hardstanding to the front and gardens are considered appropriate having regard to assimilation into the topography and existing development in the environs. A condition for obscure glazing for bathroom windows which are to be top hung pivot opening only included with the planning authority decision to grant permission addresses any outstanding issues as to potential for overlooking of the properties facing on to the N59 to the north. The site size exceeds the minimum of 2000 square metres that would be warranted for consistency with the LDR zoning.

7.9.2. There is no question of undue direct overlooking or overshadowing of adjoining properties due to separation distances having regard to the section and plan drawings although it is noted that site section drawings to include details of contiguous development indicating contours and finished floor levels for existing and proposed development are not available.

7.10. Environmental Impact Assessment Screening

Having regard to the nature of the proposed development and its location in a serviced inner suburban area removed from any sensitive locations or features, there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.11. Appropriate Assessment Screening.

Having regard to the location and to the nature of the proposed development in a serviced inner suburban area in the city, no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

In view of the foregoing, it is recommended that the decision to grant permission be upheld based on the reasons and considerations and conditions which follow.

9.0 Reasons and Considerations

Having regard to the Galway City Development Plan, 2017-2023 according to which the site is within area subject to the zoning objective 'LDR' (Lower Density Residential), the site size and configuration, the proposed layout and proposed dwelling design, access and drainage arrangements and, to existing development in the area it is considered that subject to compliance with the conditions set out below, the proposed development would not be prejudicial to public health, would not be seriously injurious to residential amenities of adjoining properties, would be acceptable in terms of public safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions.

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged on 17th November, 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The dwelling shall be used as a single dwelling only and the detached garage shall be used solely for purposes ancillary to the residential use of the dwelling and shall not be used for commercial purposes or human habitation, sublet, sold separately, otherwise transferred or conveyed, except in combination with the dwelling.

Reason: In the interest of clarity, the amenities of the area and the proper planning and sustainable development of the area.

3. Prior to the commencement of the development, the developer shall submit to, and agree in writing with, the planning authority details of all the materials, textures and colours for the external facades including fenestration. The first-floor bathroom windows shall be top hung pivot only and fitted with obscure glazing.

Reason: In the interest of residential amenities.

4. The boundary wall along the eastern frontage shall be constructed in local stone and may be supplemented by indigenous hedgerow. Boundary walls to the front shall not exceed one metre in height and those to the rear shall not exceed 1.8 metres when measured from the outer side or in indigenous hedgerow

Reason: In the interest of visual amenity and public safety

5. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, to include use of indigenous species and hedgerow planting along the side and rear boundaries details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Any plants which die, are removed or become seriously damaged or diseased, following the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual and rural amenity.

6. The effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on 17th November, 2021 and in accordance with the requirements of “Wastewater Treatment Manual: Treatment Systems for Single Houses, (p.e. less than or equal to 10)”, published by the EPA in 2010. Arrangements in relation to the certification and ongoing monitoring- and maintenance, inclusive of a contract, for the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of clarity and public health.

7. Drainage arrangements, including the design for the proposed soakaway system for collection, attenuation and disposal of surface water in accordance with BRE 365 standards shall be in accordance with the requirements of the planning authority for such works and services. No surface water shall be allowed to discharge onto the public road or adjoining properties.

Reason: In the interest of orderly development and public health.

8. Site development and building works shall be carried between the hours of 08.00 hrs and 19.00hrs, Mondays to Fridays excluding bank holidays, and 08.00 hrs and 14.00 hrs on Saturdays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of residential amenities.

- 9 Prior to the commencement of development the applicant shall submit and agree in writing with the planning authority a construction management plan which shall include:
 - full details for proposed arrangements including a methodology for the proposed excavation and of imported fill material within the site and removal and disposal to a licensed facility by a fully licensed waste contractor prior to the commencement of construction and under the direction of a qualified engineer.
 - Location of the site and materials compound.
 - Location of areas for construction site offices and staff facilities.
 - Site security fencing and hoardings.
 - Timing and routing of construction traffic to and from the construction site and associated parking.

- Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network.
- Mitigation measures for noise, dust and vibration, and monitoring of such levels.
- Containment of all construction-related fuel and oil and,
- Arrangements for storage and removal of construction waste and measures for management of surface water run-off.

Reason: In the interest of orderly development, public amenity and safety

10 Prior to the commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to and agreed in writing with the planning authority. Sample panels shall be displayed on site for inspection by the planning authority.

Reason: In the interest of orderly development and the visual amenities

11. Bathroom windows shall be top hung pivot opening only and fitted with obscure glazing.

Reason: In the interest of residential amenity.

12 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to

An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Jane Dennehy,
Senior Planning Inspector
13th May, 2022.