



An
Bord
Pleanála

Inspector's Report

ABP-312500-22

Development	House with waste water treatment system and associated site works.
Location	Monard, Turloughmore, Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	212020
Applicant	Debra Prendergast
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant	Debra Prendergast
Observer(s)	None
Date of Site Inspection	3 rd August 2022
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Monard in Co. Galway. The appeal site is located within a rural area, outside of a settlement.
- 1.2. The appeal site has a stated area of 0.31 ha. and is located on the southern side of a local access road (L-71182). The appeal site is relatively flat and is bound to the west by an access road which connects a farm complex to the L-71182. The appeal site is under grass and is used for the keeping of horses. The boundaries of the appeal site are formed by a stone wall and hedgerow and trees. There is an agricultural entrance along the western boundary of the appeal site.
- 1.3. The adjoining area is rural in character and there are a number of detached dwellings in the vicinity of the appeal site. A dormer dwelling occupies the site to the immediate south of the appeal site. A number of agricultural sheds are located adjacent to the appeal site.
- 1.4. The adjoining lands to the south, east and west are indicated as being within the applicant's ownership/control, as depicted by the blue line boundary.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Construction of a storey and a half, three-bedroom, detached dwelling:
 - stated floor area c. 156 sqm.
 - ridge height c. 7 metres.
 - positioned centrally on the site.
 - material finishes to the proposed house have not been specified.
 - The installation of a packaged waste water treatment system and a polishing filter.
 - Whilst not specified in the development description contained in the public notices, a vehicular entrance is proposed. The proposed vehicular entrance is located c. 4 metres north of the existing agricultural entrance, which it appears

is to be closed. A post and rail fence is proposed along the side/western site boundary.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission on the 16th December 2021 for 2 no. reasons which can be summarised as follows;

1. The applicant has not demonstrated a 'substantiated rural housing need' or 'rural links. The proposed development would contravene materially Objective RHO1 of the Galway County Development Plan 2015-2021, would set an undesirable precedent for similar future development in the area, and would be contrary to the proper planning and sustainable development of the area.
2. Based on the details submitted and the absence of specification details for the wastewater infrastructure to be employed, the Planning Authority is not satisfied that the disposal of effluent can be guaranteed in accordance with the EPA Code of Practice Standards and accordingly. The proposal would seriously endanger the health and safety of persons occupying the structure, would pose an unacceptable risk to surface waters contrary to EU Groundwater Directive (80/86/EEC), and therefore, would be contrary to the proper planning and sustainable development of the area.

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 15th December 2021) includes the following comments;

- Notwithstanding the submission of support letters, there is insufficient evidence verifying that the applicant has long established intrinsic links to this particular rural locality during her formative years.
- No details of the waste water treatment unit have been provided.
- The design of the house is satisfactory.
- The alignment of the L-71182 is satisfactory to cater for the proposal.

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

1 no. observation was received by the Planning Authority. The observation consists of a petition in support of the proposed development.

4.0 Planning History

None.

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 29th October 2021 and the site assessment was carried out in September 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 'Rural Area Under Strong Urban Influence (Rural Housing Zone 2 GCTPS) (see Map 4.1, Galway County Development Plan 2022 - 2028). The Guidelines state that these areas exhibit

characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

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

- Policy Objective RH2: Rural Housing Zone 2 (Rural Area Under Strong Urban Pressure-GCTPS-Outside Rural Metropolitan Area Zone 1)

5.2.3. In terms of Landscape Character Type, the appeal site is located within the 'Central 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. There is a Recorded Monument to the north-east of the appeal site (Ref. GA09529 refers).

5.3. Natural Heritage Designations

- Lough Corrib SAC (Site Code 00297) – c. 2.2 km west.

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 first party has lived most of her life (more than 20 years) on the farm and therefore meets the rural links requirement.
- The first party is functionally dependant on the rural area through her farming activities.
- The Sustainable Rural Housing Guidelines for Planning Authorities 2005, makes provision for people who are part of the rural community, including in areas under strong urban influence. The first party is part of the rural community given her farming activities, high level of community involvement and noting the support received from neighbours. The Planning Authority have not taken sufficient account of the Rural Housing Guidelines and have applied a very rigid approach to development control. The proposal is in keeping with the principles and objectives of the Development Plan.
- The circumstances of the first party are unique and would not create a precedent. Regarding the second reason for refusal, it is incumbent on the Planning Authority to seek further information in such circumstances. The site assessment was detailed, a tertiary treatment system is proposed and details of the system are available on request. If the Planning Authority have a specific requirement in terms of effluent treatment the first party should be afforded an opportunity to address this.
- Supporting documentation submitted with the appeal includes correspondence from a doctor in respect of the health circumstances of Mr. Peter Fox, whom it is stated the first party cares for, correspondence attesting to the role of the first

party in organising community events, and a petition submitted in support of the proposal.

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 & Residential Amenity
- Waste water
- Access
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. The appeal site is identified in the Galway County Development Plan 2022 – 2028 (see Map 4.2) as being within Zone 2 - Galway County Transport & Planning Study (GCTPS), which corresponds an 'Area Under Strong Urban Influence'. In accordance with National Policy Objective 19 of the National Planning Framework (NPF) the provision of single housing in such cases is based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria.

7.2.2. Policy Objective RH2 of the Galway County Development Plan 2012-2028 (which applies to rural areas under strong urban pressure – GCTPS – outside rural metropolitan area zone 1) sets out specified circumstances where applicants may be considered eligible for a dwelling in a rural area. Depending upon which criteria of

Objective RH2 an application for a dwelling is being made, applicants are required to demonstrate their 'Rural Links' and/or 'Substantiated Rural Housing Need' to the area.

7.2.3. The first party states she is employed in Boston Scientific, where she works evening shifts, and that she works during the day on a stud farm owned by Mr. Peter Fox, having done so for the past 23 years. The first party describes her role on the farm as helping with the farm and assisting Mr. Fox with personal matters. The documentation submitted also refers to the first party as a carer/assistant to Mr. Fox, and it is stated that she currently resides with him. In the appeal submission the first party states that she has lived most of her life on the farm. Having reviewed the information submitted with the planning application and the appeal I note that the first party has not submitted any verifiable documentation in relation to the duration of her residence in the rural area. I therefore do not consider that that the first party has demonstrated that she has 'rural links' to the area as set out under Objective RH2 of the Galway County Development Plan 2022 - 2028. I note that to be considered as having a 'substantiated rural housing need' under Objective RH2 an applicant must first have 'rural links' to the area. Given that the first party has not demonstrated that she has rural links to the area I do not consider that a substantiated rural housing need has been established.

7.2.4. I note that Mr. Fox is not related to the first party and the farm is not in the ownership of the first party's family. I do not consider therefore that the first party could be considered on the basis of Objective RH 2 (1) (a) or (b) of the Galway County Development Plan 2022 – 2028, which require the proposed dwelling to be located on the family farm, and the applicant to have immediate family connections to the area. Objective RH 2 (1) (c) of the Galway County Development Plan 2022 – 2028 provides for situations where applicants are functionally dependant on the rural area. The first party contends that she is functionally dependent on the rural area/farm however I note that this has not been substantiated. For example no evidence has been furnished to indicate that the first party derives an income from her involvement in farming. The documentation submitted with the planning application and the appeal also lacks detail in relation to the involvement of the first party in the farm. As such, I do not consider that the first party has satisfactorily demonstrated that she is functionally dependant on the rural area by having a demonstratable economic need to reside in the rural area.

7.2.5. Documentation submitted with the planning application and the appeal attest the involvement of the first party in the local community through fund raising events, however I do not consider that this would justify permitting a dwelling within a rural area. I have also considered the information submitted in relation the health of Mr. Fox, whom the first party acts as carer/assistant for and I similarly do not consider that this would justify permitting a dwelling on the adjacent site within a rural area.

7.2.6. As stated above, the appeal site is located within an area under strong urban influence, within easy reach of urban settlements, in particular Galway City. I also note the proliferation of single dwellings in this rural locality, which is reflective of the significant pressure this rural area is under. The National Planning Framework provides that careful planning is required to manage the demand for rural housing in accessible countryside around cities and towns. The assessment of rural links and the facilitation of rural housing is addressed in the context of a case by case analysis of each individual site and the carrying capacity of the area. I am not satisfied based on the documentation submitted with the application and the appeal, that that the first party has clearly demonstrated a genuine socio and/or economic housing need that would necessitate a dwelling at this rural location. Having regard to the forgoing, I consider that the first party has not demonstrated that she meets the criteria of demonstrable economic or social need to live in a rural area set out in the NPF, a rural generated housing need that meets the test set by the Sustainable Rural Housing Guidelines, or rural links and/or substantiated rural housing need as required by the Galway County Development Plan 2022-2028.

7.3. **Design/Siting & Impact on Visual & Residential Amenity**

7.3.1. The proposed dwelling comprises a storey and a half dwelling. I consider the design of the proposed dwelling to be sympathetic to the character of the area. 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. **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 Regionally Important Aquifer (Karstified Conduit) where the bedrock vulnerability is Extreme. The Site Characterisation Report

indicates a ground protection response of R2(2). Accordingly, I note the suitability of the site for a treatment system (subject to normal good practice and the following condition, that there is a minimum thickness of 2 metres unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system, or a secondary treatment system as described in Sections 8 and 9 is installed, with a minimum thickness of 0.3 metres unsaturated soil/subsoil with P/T- values from 3 to 75 (in addition to the polishing filter which should be a minimum depth of 0.9 m), beneath the invert of the polishing filter (i.e. 1.2 m in total for a soil polishing filter). The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area, but further on in the report refers to the Carheenlea GWS protection area.

7.4.2. The trail hole depth referenced in the Site Characterisation Report was 3 metres. It is stated that no bedrock or water was encountered in the trail hole. The soil conditions found in the trail hole are described as comprising silt/clay and silt/clay/ravel/loam. Section 3.2, Trail Hole Evaluation, notes that the colour of the soil would normally indicate compact soil, however the subsoils are uncompact with a gravel nature, and reasonable percolation is therefore expected. A T value of 27.14 and P value of 34.69 were recorded. It is unclear why a P Test was undertaken. Based on the EPA CoP 2009 (Table 6.3) the site is suitable for 'a secondary treatment system with a polishing filter at ground surface or overground. The Site Characterisation Report submitted with the application concludes that the site is suitable for the treatment of waste water. Concerns are raised in the Site Characterisation Report to the number of wells in the area and a tertiary treatment system with a polishing filter is proposed. The proposal complies with Table 6.1 of the CoP 2009 in relation to minimum separation distances.

7.4.3. Whilst I note that the trail hole was dry when inspected by the Planning Authority, during my site inspection, which was undertaken during dry conditions, I observed a high level of water in the trail hole. This characteristic is indicative of a high water table and/or poor soil permeability. Noting the conditions which I observed on the appeal site and the information contained in the Site Characterisation Form, I am not satisfied that the 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. Access

7.5.1. A new vehicular access is proposed along the western boundary of the appeal site. The site layout plan indicates a sightline of 40 metres to the north, towards the junction with the L-71182. No sightline has been indicated to the south of the proposed vehicular entrance. Given the characteristics of the road at this location I consider sightlines at the proposed vehicular entrance to be acceptable.

7.6 **Appropriate Assessment**

7.6.1. 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. The site of the proposed development is located within an "Area Under Strong Urban Influence" as set out in the "Sustainable Rural Housing Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April 2005. Furthermore, the subject site is located in an area that is designated under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to 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. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, to the provisions of the current Galway County Development Plan 2022 - 2018, would contribute to the encroachment of random rural

development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the level of water in the trail hole, which is indicative of a high water table and/or low permeability, and to 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.

Ian Campbell
Planning Inspector

20th September 2022