



An
Bord
Pleanála

Inspector's Report

ABP-312800-22

Development	Construction of house, garage, treatment system and percolation area.
Location	Laghtonora, Cuddoo, Ballinasloe, Co. Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	212170
Applicant	John Langan
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant(s)	Patrick & Mary Sheridan
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 on the southern side of a local access road (L3177) in the townland of Laghtonora, c. 11 km north-east of Athenry, Co. Galway. The appeal site is located within a rural area, outside of a settlement.
- 1.2. The appeal site is broadly triangular in shape, relatively flat, and has a stated area of 0.4382 ha. The appeal site is under grass and the boundaries of the appeal site consist of hedgerow. A gated field entrance is located to the north-west of the site. A drainage ditch runs along the eastern and southern boundary of the appeal site.
- 1.3. There are a number of detached bungalows in the vicinity of the appeal site. There is a bungalow to the immediate north of the appeal site, on the opposite side of the L3177. There are also a number of forest plantations in the area, including to the north-east of the appeal site.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Construction of a four-bedroom, detached, single storey dwelling:
 - stated floor area c. 226 sqm.
 - ridge height 5.8 metres.
 - positioned centrally on the site, and c. 20 metres from the roadside boundary.
 - material finishes to the proposed house have not been specified.
 - Construction of a detached garage:
 - stated floor area c.51 sqm.
 - ridge height c. 5 metres.
 - positioned to the rear of the proposed dwelling.
 - material finishes to the proposed garage have not been specified.
 - The installation of a packaged secondary waste water treatment system and a soil polishing filter.

- Boundary treatments to comprise a 1.2 metre high stone wall and a post and wire fence along the roadside boundary, a post and wire fence along the eastern boundary and hedgerow along the southern site boundary.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission on the 24th January 2022, subject to 14 no. conditions. Condition No. 2 was an occupancy condition.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- The applicant has intrinsic links to the area, the applicant's family home is located within 8km of the subject site and the applicant is farming the land, as such the applicant is considered to comply with National Policy Objective 19 of the NPF, overcoming the previous reason for refusal under ABP-308747-20.
- Effluent disposal proposals are within the parameters of the EPA CoP.
- Sightlines of 70 metres are achievable.
- The design of the proposed house and garage are considered acceptable.

The report of the Planning Officer recommends a grant 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**

One observation was received by the Planning Authority. The following is a summary of the main issues raised in the third-party observation:

- Impact on residential amenity arising from overlooking.
- Proposed dwelling is out of character with adjoining area.
- Increased pressure on the local road network.
- Concern in relation to flooding on the site.
- Applicant's compliance with rural housing policy and how the applicant has overcome previous refusal reason is queried.

4.0 **Planning History**

Appeal Site:

PA. Ref. 20/861 & ABP Ref. 308747-20 – Permission REFUSED for a house and waste water treatment system.

Reason for refusal concerns non-compliance with NPO 19 of the National Planning Framework.

PA. Ref. 19/434 & ABP Ref. 305409-19 - Permission REFUSED for a house and waste water treatment system.

Reason for refusal concerns non-compliance with NPO 19 of the National Planning Framework.

PA. Ref. 06.2196 – Permission GRANTED for a house and waste water treatment system. This permission was granted an extension of duration for a period of 5 no. years under PA. Ref. 11/634.

5.0 **Policy Context**

5.1. **National Policy**

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

National Policy Objective 19 states -

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.

5.1.2. **Code of Practice Domestic Wastewater Treatment Systems (p.e. ≤ 10) 2021**

The Code of Practice (CoP) sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

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 4.2. 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 appeal site is located within the Galway County Transportation and Planning Study Area (GCTPS). The appeal site is located within an area identified as a 'Rural Area Under Strong Urban Influence (Rural Housing Zone 2 GCTPS) (see Map 4.2. Galway County Development Plan 2022 – 2028).

5.2.3. 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)

DM Standard 28 – Sightline distances required for access onto National, Regional, Local and Private Roads

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

5.3 Natural Heritage Designations

- Lough Corrib SAC (Site Code 000297) – c. 400 metres east.
- Lough Tee Bog NHA (Site Code 000307) – c. 200 metres east.
- Tiaquin Bog pNHA (Site Code 001709) – c. 1.4 km west.
- Monivea Bog SAC (Site Code 002352) – c. 2.5 km south-west.
- Monivea Bog pNHA (Site Code 000311) – c. 2.5 km south-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 third party appeal against the decision to grant permission. The grounds for appeal can be summarised as follows;

- The proposed development would result in overlooking, and a loss of privacy for the residents of the adjacent property.

- The proposed dwelling is significantly larger than neighbouring dwellings, would comprise much of the site, and would be out of character with the adjoining area.
- The proposed development would give rise to traffic congestion in the area, and would increase the risk of accidents. Tiaquin Cross cannot safely cater for two cars meeting a tractor. Local services have been depleted and as a result there is increased traffic using the road to and from Tiaquin Cross.
- The third party is not aware of the economic or social need of the first party to reside at this location.
- There has been flooding in recent years adjacent to the appeal site.

6.2 Applicant Response

The first party have submitted a response to the third party appeal. The issues raised can be summarised as follows;

- The proposed dwelling is in a similar location to the dwelling which was permitted under PA. Ref. 06/2196, and the height of the dwelling permitted under PA. Ref. 06/2196, at 8.4 metres, would have affected the third party to a greater degree compared to the current proposal. No observation was lodged to PA. Ref. 06/2196.
- Numerous dwellings have been permitted in the area with floor areas greater than 200 sqm.
- The proposed development does not overlook the third party's property. The proposed dwelling is c. 40 metres from the third party's property and as such will not affect views or light. Views over the forest will not be possible in the future as it is due to be felled.
- The proposed vehicular access is adjacent to the third party's side entrance, and not their main entrance. The front boundary of the appeal site will be set back to provide an additional 3 metres within which two cars can enter both sites.

- The capacity of the local road network and sightlines were deemed adequate to cater for the proposed development by Galway County Council.
- The alleged use of the third party's property for Airbnb is raised in the context of concerns which the third party raise over noise and traffic concerns arising from the proposed development.
- Details of an economic and social need to reside in the rural area are appended to the submission.
- In 2019, after heavy rain, water remained outside the third party's dwelling but did not enter the application site.

6.3 **Planning Authority Response**

None received.

6.4 **Observations**

None.

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
- Flooding
- Appropriate Assessment

7.2 Rural Housing Policy

- 7.2.1 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 specific 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, or that they are functionally dependant on the rural area in relation to demonstrable economic need.
- 7.2.2 The primary justification made by the first party for the dwelling at this location is on the basis of his engagement in farming, and also long standing family connection to the area. It is also intimated in the documentation submitted that by residing in the rural area, the first party would be able to support his parents, who have health issues. The first party states that alternative accommodation in Athenry has been explored but is outside his budget. The first party currently lives in rented accommodation in Athenry, 13 km from the appeal site, and prior to this resided in Co. Kerry, between 2017 and 2020.
- 7.2.3 The first party has submitted supporting documentation, including correspondence from primary and secondary school, and a baptismal certificate, which I consider demonstrates his intrinsic links to the area. The first party’s family home is indicated as being located c. 450 west of the appeal site.
- 7.2.4 Regarding non-farming employment, the first party currently works 2 days per week with a company based in Galway, c. 20 km from the appeal site, with his role entailing traveling within the wider region providing building maintenance services.
- 7.2.5 In relation to the involvement of the first party in farming, I note that the family farm was transferred to the first party in 2018, and it is stated that the first party is taking over farming duties from his father. The central justification put forward by the first party for a dwelling at this location is that he is required to tend to the farm 7 days a week, that he needs to tend to animals when they are calving/lambing multiple times

during the night and that should he be unable to tend to the animals in a timely fashion the loss of animals would ensue, and that residing in any other location would be detrimental to his ability to carry out his farming responsibilities in an effective and safe manner. Based on the work patterns of the first party's father, it is assumed that the first party will work between 70 and 80 hours per week on the farm, whilst working 20 hours per week in his non-farming role, and that he will derive 78% of his income from farming, and therefore that he has an economic and social need to live in the area.

7.2.6 I have reviewed the documentation submitted by the first party relating to his involvement in farming, which includes, a farm insurance policy; correspondence from the Department of Agriculture, Food and the Marine, which includes reference to a joint herd number; an educational certificate in agriculture dated 2017; an invoice made out to the first party for the bailing of silage, and a receipt for the provision of 'farm services'. I note that the first party has not provided information in relation to the number of animals in the herd, nor has any correspondence been submitted to demonstrate the scale of farming which the first party is engaged in. For example, no details of annual accounts, farm payments, veterinary documentation, information in relation to the sale of animals etc. has been submitted. The only information attesting to the level of involvement in farming consists of a self-authored statement referring to the hours which the first party works on the farm, and the percentage of overall income derived from farming. In summation, based on the information submitted, and notwithstanding that a number of plots of land have been transferred from the first party's father to the first party, I consider that the first party has only demonstrated a limited involvement in farming.

7.2.7 Compliance with the rural settlement strategy requires consideration of not just local but also national policy provisions that deal specifically with this matter. Whilst provision is made under Policy Objective RH2 of the Galway County Development Plan 2012-2028 for applicants to be considered for a dwelling where they have spent a substantial, continuous part of their lives and have immediate family connections in the area, which I am satisfied that the first party has, I am not satisfied based on the information submitted that the first party is functionally dependent on the rural area, or that a rural-based generated housing need has been demonstrated in a manner that is consistent with higher level provisions. 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. While I accept that the applicant has intrinsic links with this 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 he meets the criteria of demonstrable economic or social need to live in a rural area set out in the NPF or a rural generated housing need that meets the test set by the Sustainable Rural Housing Guidelines.

7.3 Design/Siting & Impact on Visual & Residential Amenity

- 7.3.1 The appeal site is located within the 'North Galway Complex Landscape', which is a 'Low Sensitivity Landscape', and is not affected by any protected views or scenic routes. The appeal site is not elevated or prominent within the wider landscape. The proposed dwelling comprises a single storey dwelling. I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area. I note that the design of the dwelling proposed is the same as that which was proposed under PA. Ref. 20/861 & ABP Ref. 308747-20, and broadly similar to that proposed under PA. Ref. 19/434 & ABP Ref. 305409-19, and while both applications were refused permission, I note that in both cases the design of the proposed dwelling was considered acceptable to the Board.
- 7.3.2 The third party raises concerns in relation to the impact of the proposed dwelling on the residential amenity of their property, which is located directly opposite the appeal site. Having regard to the single storey nature of the proposal, with a maximum ridge height of 5.8 metres, and to the separation distance between the proposed dwelling

and the adjacent property to the north, at c. 40 metres, I do not consider that the proposed development would result in any significant negative impacts on the residential amenities of adjoining property in terms of overlooking.

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 Locally Important Aquifer where the bedrock vulnerability is 'Extreme'. A ground protection response to R21 is noted. Accordingly, I note the suitability of the site for a treatment system subject to normal good practice. Where domestic water supplies are located nearby, particular attention should be given to the depth of subsoil over bedrock such that the minimum depths required in Chapter 6 are met and that the likelihood of microbial pollution is minimised. The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 7.4.2 The trial hole depth referenced in the Site Characterisation Report was 2.15 metres. The water table was encountered in the trial hole at a depth of 1.75 metres. Bedrock was not encountered in the trial hole. The soil conditions found in the trial hole are described as comprising topsoil, loam gley, and stone/shale. Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 12.11 and P value/surface value of 15.25 were recorded. Based on the EPA CoP 2021 (Table 6.4) the site is suitable for a secondary treatment system and a soil polishing filter. I was unable to inspect the trial hole as the trial hole was infilled at the time of my site inspection.
- 7.4.3 The Site Characterisation Report submitted with the application concludes that the site is suitable for treatment of waste water. I am satisfied that the proposal complies with the required separation distances set out in Table 6.2 of the CoP 2021. It is proposed to install a secondary treatment system and a soil polishing filter. Based on the information submitted, I consider that the site is suitable for the treatment system proposed.

7.5 Access

- 7.5.1 The posted speed limit at the location of the proposed vehicular entrance onto the L3177 is 80 kmph. The site layout plan indicates a sightline of 80 metres to the west and 95 metres to the east. DM Standard 28 of the Galway County Development Plan 2022 – 2028 requires sightlines of 160 metres for roads with a design speed of 85 kmph. Noting the narrow width and horizontal alignment of the L3177 at the location of the appeal site, I consider it likely that vehicles travel at a speed less than the posted speed limit, and having inspected the appeal site, I am satisfied that the proposed entrance is acceptable in terms of traffic safety.
- 7.5.2 The third party raises concerns in relation to the adequacy of the local road network to cater for the proposal, and to traffic safety issues which would arise as a result of the proposed vehicular access directly opposite the third party's entrance. Having regard to the nature of the proposed development, that being a single dwelling, I do not have any concerns in relation to the carrying capacity of the local road network to cater for the proposal. Similarly, noting the nature of the proposal, I do not consider that the proposed vehicular entrance at the location proposed would give rise to any vehicular conflicts with the adjacent property.

7.6 Flooding

- 7.6.1 The Planning Authority have identified that the appeal site is partially within a pluvial flood risk area and a Flood Risk Assessment (FRA) was submitted with the planning application. The FRA submitted notes that a freeboard of 1.4 metres is provided between the finished floor level of the proposed dwelling and the highest predicted flood level (i.e. 9.6 metres) on the site and concludes that flooding of the proposed dwelling is not anticipated. Having regard to the FRA submitted and to the freeboard provided against pluvial flooding, I consider that the proposed development is acceptable in terms of flood risk.

7.7 Appropriate Assessment

- 7.7.1. The first party has submitted an Appropriate Assessment Screening report with the planning application prepared by Aidan M. Doyle (Engineer). The applicant's Stage 1

Appropriate Assessment Screening report concluded that *‘following the implementation of preventive measures, the proposed works, by themselves, do not have the potential to result in any direct or indirect effect on any European Site. As a result, they cannot contribute to any potential cumulative effect on any European Designated Site. No potential for the proposed works to result in direct or indirect effects on any European Site was identified’*. The Appropriate Assessment Screening report also refers to a number of measures to prevent pollution, fugitive emissions and disturbance. I do not consider these measures to constitute mitigation measures in the context of Appropriate Assessment as they do not serve to reduce or eliminate effects on European sites, noting the lack of connectivity between the appeal site and Lough Corrib SAC, or any other European site. In carrying out my Appropriate Assessment Screening of the proposed development, I have not had regard to, or relied on, any measures designed or intended to avoid or reduce any harmful effects of the project on a European site.

7.7.2. The closest European site to the appeal site is Lough Corrib SAC (Site Code: 000297), located c. 400 metres east of the appeal site. Having regard to;

- The nature of the proposed development;
- The separation distance between the appeal site and Lough Corrib SAC; and,
- The absence of any direct hydrological or other pathway between the appeal site and Lough Corrib SAC, and any other European sites;

I consider that the project individually or in combination with other plans or projects would not be likely to have significant effects on Lough Corrib SAC in view of the site’s Conservation Objectives, or on any other European sites, and Appropriate Assessment is therefore not required.

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 reason.

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 strong 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. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, 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.

Ian Campbell
Planning Inspector

14th October 2022