



An
Bord
Pleanála

Inspector's Report

ABP-313245-22

Development

Demolition of an existing house & outbuilding; construction of a new dwelling house, sewage treatment system, percolation area and all associated site works and services. Gross floor space of proposed works 127.40 sqm.

Location

Kiltullagh , Co. Galway

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

2260015

Applicant

Galway City Council

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Conor O' Shea, Hubert & Barbara Jennings, Kiltulla & Glenreveagh Residents

Observer(s)

None

Date of Site Inspection

6th September 2022

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located on the northern side of the R339, within a row of detached dwellings. There is a fire damaged dwelling and outbuilding on the appeal site. The appeal site is served by a vehicular entrance onto the R339. There is a grass verge and a footpath to the front of the appeal site.
- 1.2. Galway Airport is located to the south-east of the appeal site. The area is suburban in character. The adjoining sites accommodate a bungalow to the east and a two storey dwelling to the west. The lands to the rear/north are in agricultural use.

2.0 Proposed Development

- 2.1. The proposed development comprises;
 - Demolition of a dwelling and outbuilding (floor area of structures to be demolished stated as 206 sqm).
 - Construction of a single storey, four-bedroom, detached dwelling:
 - stated floor area c. 127 sqm.
 - ridge height c. 5 metres.
 - material finishes to the proposed house comprise nap plaster for the external walls. The roof covering comprises fibre cement slate (blue/black colour).
 - set back c. 20 metres from the road.
 - a proposed shed (steel tech or similar) is indicated in the rear garden (no elevations have been provided of this structure).
 - a 1.8 metre high concrete post and timber panel fence is proposed to the front/south of the appeal site (no elevational drawings submitted).
 - The installation of a tertiary waste water treatment system and an attenuation area.

Whilst not referred to in the development description contained in the public notices, the proposed development also entails;

- relocation of an existing vehicular access.
- infilling of a well.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Grant Permission on the 14th March 2022, subject to 8 no. conditions. These conditions are standard in nature and relate to issues including, finishes, surface water and the submission of a construction and demolition waste management plan.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- Taking account of the existing dwelling on the site, which has been damaged in a fire, Objective RH06 (replacement dwellings) is deemed relevant.
- The photographs submitted demonstrate the requirement for the demolition of the existing structure.
- The replacement dwelling will be similar in scale to the existing dwelling.

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

3 no. observations were received by the Planning Authority. The following is a summary of the main issues raised in the third-party observations:

- The proposal will not be owner occupied and is therefore 'built to let'.
- Incorrect site address and site area provided.
- Proposed boundary walls are not sufficiently high to protect privacy of adjoining property. Removal of hedge will have implications for privacy of adjoining property.
- The demolition of the garage will result in encroachment of neighbouring property, and disturbance. The existing side wall of the garage is also the boundary wall of the property to the east.
- The City Council are operating their housing functions within the Galway County area, circumventing the Part VIII process. The proposal has not been subject to a consultation process with residents/local representatives.
- The orientation of the proposed house is not in keeping with the area. The footprint of the proposed house is not on the footprint of the existing house.
- The position of the new house will be closer to the house to the east. This could create a fire hazard.
- The proposal to relocate the vehicular entrance is unnecessary and will require expensive works to be undertaken to the R339. These works are not mentioned in the application.
- No reference to electricity supply has been made.
- No reference made in development description to the house being fire damaged.
- No application has been made to the Killtulla Water Scheme.
- The location of septic tanks on adjoining lands has not been identified.
- The proposal results in the loss of hedging along the western boundary of the site.

- The site is located in the GTPS and the area is restricted and subject to enurement clauses.
- Construction noise would affect neighbouring property.

4.0 Planning History

Appeal Site

PA. Ref. 07/1659 – Retention permission GRANTED for a house, garage, shed, septic tank.

5.0 Policy Context

5.1. National Policy

5.1.1. 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.

5.2. 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) and the Metropolitan Area Strategic Plan (MASP). The appeal site is located within an area identified as a 'Rural Area Under Strong Urban Influence (Rural Housing Zone 1 GCTPS) (see Map 4.1, Galway County Development Plan 2022 – 2028).

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

- Policy Objective RH6 – Replacement Dwelling
- DM Standard 26 - Access to National and Other Restricted Roads for Residential Developments

5.3 Natural Heritage Designations

- Killtullagh Turlough NHA (Site Code: 000287) – 1 km north.
- Inner Galway Bay SPA (Site Code: 004031) – c. 3 km south.
- Galway Bay Complex SAC (Site Code: 000268) – c. 3 km south.
- Galway Bay Complex pNHA (Site Code: 000268) – c. 3 km south.

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 site characterisation form refers to the incorrect Eircode.
- The site characterisation form was submitted under a previous invalid planning application.
- No reference is made in the development description to the house being fire damaged or to the alterations to the entrance. Account should therefore be

taken of the location of the site within the GTPS and the fact the site is significantly less than 0.2 ha.

- The site is located within the GTPS and local need criteria should have been taken account of. The area is restricted and subject to enurement clauses.
- The location of septic tanks on adjoining lands has not been identified in the application. The proposal adds to the concentration of septic tanks in the area.
- The height of boundary walls is not sufficient to protect privacy.
- The proposed development is traveller specific accommodation.
- The proposal will not be owner occupied and is therefore 'built to let'.
- Incorrect site area provided.
- Incorrect reference made to the dwelling being thatched and to the previous dwelling on the site being two storey.
- Removal of hedge will have implications for privacy of adjoining property.
- The demolition of the garage will result in encroachment of neighbouring property, and disturbance. The existing side wall of the garage is also the boundary wall of the property to the east.
- The City Council are operating their housing functions within the Galway County area, circumventing the Part VIII process. The proposal has not been subject to a consultation process with residents/local representatives.
- The orientation of the proposed house is not in keeping with the area. The footprint of the proposed house is not on the footprint of the existing house.
- The position of the new house will be closer to the house to the east. This could create a fire hazard.
- The proposal to relocate the vehicular entrance is unnecessary and will require expensive works to be undertaken to the R339. These works are not mentioned in the application.
- No reference to electricity supply has been made.
- No application has been made to the Killtulla Water Scheme.

- The proposal results in the loss of hedging along the western boundary of the site.
- The site is located in the GTPS and the area is restricted and subject to enurement clauses.

6.2. Applicant Response

The applicant has submitted a response to the third party appeal, specifically;

- The Planning Authority is statutorily required to have regard to relevant considerations which concern proper planning and sustainable development.
- The applicant concurs with the conclusions of the Planning Authority in their assessment of the proposed development. All relevant planning considerations have been addressed by the Planning Authority.
- The public notices were considered valid by the Planning Authority, in accordance with Part 4 of the Planning and Development Regulations 2001, as amended. Reference is made to *Crodaun Homes v Kildare County Council*, where it was held that the purpose of a site notice is to give adequate notice to those who may be affected by a development to ascertain whether they may have reason to object to a proposed development.
- The proposal is in keeping with the existing building line and accords with the applicable policies of the Galway County Development Plan 2015 – 2021.
- The invalidation of the previous planning application on the appeal site (see PA. Ref. 21/1813) was not as a result of the Site Characterisation Report.
- There is no requirement to indicate the location of septic tanks on neighbouring lands.
- The proposal complies with Objective RH06 of the Galway County Development Plan 2015 – 2021.
- The Planner's report was publicly available.
- The information contained in the Freedom of Information documentation submitted with the appeal does not come under the remit of this appeal.

6.3. **Planning Authority Response**

None received.

6.4. **Observations**

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:

- Principle of Demolition & Development
- Rural Housing Policy
- Design/Siting & Impact on Visual & Residential Amenity
- Waste water
- Access
- Appropriate Assessment
- Issues Arising

7.2. **Principle of Demolition & Development**

7.2.1. The dwelling which is proposed to be demolished is not a Protected Structure, is not located within an Architectural Conservation Area (ACA) and is not a vernacular structure. The existing dwelling on the appeal site has been extensively fire damaged, and is in a ruinous condition with only external walls remaining. Having regard to the forgoing, I consider the demolition of the existing dwelling on the site to be acceptable in principle.

7.2.2. The third party raises the issue of the proposed dwelling being used as traveller specific accommodation. I note that the potential future occupant of the proposed

dwelling is not a material planning consideration and as such this issue is outside the scope of this appeal.

- 7.2.3. The third party contends that Galway City Council have circumvented the Part VIII process by applying for planning permission within another Local Authority area. I note that the provisions of Part VIII of the Planning and Development Regulations 2001, as amended apply where a Local Authority are seeking permission within their own administrative area and as such I consider that Galway City Council are open to applying for planning permission within the administrative area of another Local Authority.

7.3. Rural Housing Policy

- 7.3.1. The appeal site is located within an area identified as a 'Rural Area Under Strong Urban Influence (Rural Housing Zone 1 GCTPS) (see Map 4.1, Galway County Development Plan 2022 – 2028). Objective RH 6 of the Galway County Development Plan 2022 – 2028 concerns replacement dwellings in rural areas and provides that applicants in such cases are not required to establish a housing need and will not be subject to an enurement clause. Having regard to Objective RH 6, I do not consider that the first party is required to demonstrate rural links or a substantiated rural housing need, as set out in Chapter 4 (Rural Living and Development) of the Galway County Development Plan 2022 – 2028. Furthermore, should the Board be minded to grant permission for the proposed development the attachment of an occupancy condition would not be required having regard to the forgoing.

7.4. Design/Siting & Impact on Visual & Residential Amenity

- 7.4.1. The proposed development comprises the demolition of a detached single storey dwelling which has been extensively damage by fire and its replacement with a single storey dwelling. I consider the design of the proposed dwelling to be sympathetic to the character of the area and I do not consider that the proposed dwelling would result in any significant negative impacts on the visual amenity or character of the area. The removal of the existing damaged structure from the appeal site and its replacement with a new dwelling will significantly improve the visual amenity of the area.

7.4.2. The third party raises concern in relation to the potential impacts on the residential amenity of adjoining property arising from the repositioning of the proposed dwelling. The proposed replacement dwelling will be positioned closer to the side/eastern site boundary compared to the existing dwelling. The proposed dwelling will be positioned between c. 1.5 metres and c. 1.8 metres from the eastern site boundary and c. 3.8 metres from the western site boundary. Having regard to the single storey nature of the proposal, with a maximum ridge height of c. 5 metres, and to the separation distances to the site boundaries, 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 overbearance or overshadowing. Additionally, noting the single storey nature of the proposal, its relationship to adjoining site boundaries, and the boundary treatments indicated, I do not consider that the proposal would result in any significant overlooking of adjoining properties.

7.5. Waste Water

7.5.1. The proposal entails the replacement of an existing septic tank with a new on-site waste water treatment system. The first party notes that as the proposal entails the replacement of an existing waste water treatment system Section 1.3 of the CoP applies, specifically that variances to requirements set out in the CoP 2021 may be considered where the Planning Authority are satisfied that the proposed upgrade will protect human health and the environment.

7.5.2. The Site Characterisation Report submitted with the application identifies that the subject site is located in an area with a Regionally Important Aquifer where the bedrock vulnerability is high (I note elsewhere in the particulars submitted the groundwater vulnerability is described as being low). I have consulted the GSI website and I note that the appeal site is located in an area classified as a Regionally Important Aquifer - Karstified (conduit) with high groundwater vulnerability. A ground protection response to R2(1) 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 the likelihood of microbial pollution is minimised). The applicants' Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.

7.5.3. The trail hole depth referenced in the Site Characterisation Report was 3.1 metres. The diagrammatic in Section 3.2 indicates a trail hole depth of 2.1 metres. I note that the evaluation of the trail hole does not provide any information below a depth of 2.1 metres. It appears that reference to a trail hole depth of 3.1 metres is a typographical error and the trail hole was excavated to a depth of 2.1 metres. Bedrock was encountered in the trail hole at 2 metres. The water table was not encountered in the trail hole. The soil conditions found in the trail hole are described as comprising topsoil, clay and silt/clay. Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 19.92 and P value/surface value of 18.06 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. At the time of my site inspection the appeal site was surrounded by fencing and I was unable to observe the trail hole.

7.5.4. The EPA CoP requires a trail hole depth of 3 metres in areas with Regionally Important Aquifers. It appears that the trail hole was excavated to a depth of 2.1 metres. However, noting the proposal to install a tertiary treatment system with an adequate depth of unsaturated subsoil to treat effluent on the site, I am satisfied that the treatment of effluent on the site can be catered for without a risk to groundwater.

7.5.5. 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 packaged tertiary waste water treatment system and an attenuation area. Based on the information submitted, I consider that the site is suitable for the treatment system proposed.

7.6. Access

7.6.1. The existing dwelling is served by a vehicular entrance onto the R339, which is identified as a restricted regional road in the Galway County Development Plan 2022 – 2028. The existing vehicular entrance is being relocated from the south-east of the site to the south-west of the site. As the proposed development does not entail the provision of a new/additional vehicular entrance onto the R339, I do not consider that the restrictions provided under DM Standard 26 of the Galway County Development Plan 2022 – 2028 apply.

7.6.2. The first party has indicated available sightlines of 120 metres in either direction from the relocated vehicular entrance. Having inspected the appeal site I am satisfied that the proposed location of the entrance has no significant impact on the availability of sightlines and is acceptable in terms of traffic safety.

7.7 **Appropriate Assessment**

7.7.1. 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.

7.8 **Issues Arising**

7.8.1 The third-party raise issues in relation to the adequacy of the development description, specifically the omission of reference to the proposed alterations to the vehicular entrance, and inaccuracies in the information submitted, including reference to an incorrect Eircode. In terms of procedural matters, I note that this was deemed acceptable by the Planning Authority and I am satisfied that this did not prevent the concerned parties from making an observation. The above assessment represents my *de novo* consideration of all the planning issues material to the proposed development.

7.8.2. Reference to other errors and omissions are made by the third parties. Having reviewed the documentation submitted with the planning application and the appeal, and having undertaken a site visit, I am satisfied that the information on the file is sufficient to allow for an assessment of the proposed development.

7.8.3. The third party states that the demolition of the garage will result in encroachment of neighbouring property, and that the existing side wall of the garage is also the boundary wall of the neighbouring property. I note that this is a civil issue to be resolved between the applicant and appellant having regard to the provisions of Section 34 (13) of the Planning and Development Act 2000, as amended and is outside the scope of this appeal.

7.8.4. Concerns are expressed by the third party in relation to works which will be required to the front of the appeal site, within the public footpath/road. I note that such works are carried out through a separate consent process, specifically through the

application to the Local Authority for a Road Opening Licence. I consider that such works are outside the scope of this appeal.

7.8.5. Concerns are raised in relation to the potential impact from construction noise on the amenity of neighbouring property. I note that the Planning Authority attached a condition requiring that a Construction and Demolition Management Plan be submitted prior to commencement of development (see Condition No. 8). Should the Board be minded to grant permission for the proposed development I recommend that a similar condition is attached.

7.8.6. The Galway County Development Contribution Scheme 2016 provides that where demolition and rebuilding of a new residential unit is proposed, a pro-rata charge shall be calculated whereby the percentage of floor area of the original habitable house relative to the new development shall be waived. As the proposed replacement dwelling has a floor area less than that of the existing dwelling on the appeal site I do not consider that the proposed development attracts a development contribution. I also note that domestic sheds and garages are exempt from development contributions under the Scheme.

7.8.7. The third party state that no application has been made to join the Killtulla Water Scheme. I note that the planning application form (see Question 20) submitted indicates that the dwelling will be connected to public mains. Additionally, as the proposed development comprises a replacement dwelling which had a water supply connection I do not consider the issue of water supply to be pertinent to this assessment.

8.0 Recommendation

8.1. Having regard to the above it is recommended that permission is granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Galway County Development Plan 2022-2028, to the nature of the proposed development, specifically a replacement dwelling, to the prevailing pattern and character of existing development in the vicinity, it is considered

that, subject to compliance with the conditions set out below, the development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be prejudicial to public health, and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the detailed requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>Prior to commencement of development, the developer shall enter into water connection agreement with Irish Water.</p> <p>Reason: In the interest of public health.</p>
4.	<p>(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the Planning Authority on the 18th January 2022, and in accordance with the requirements of the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (p.e. ≤ 10)" – Environmental Protection Agency, 2021. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p>(b) 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.</p> <p>Reason: In the interest of public health.</p>
5.	<p>The external finishes of the dwelling shall comprise natural slate of blue/black colour for the roof and neutral coloured render for the external walls, unless otherwise agreed in writing with the Planning Authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
6.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of visual and residential amenity.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
8.	<p>Construction and demolition shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the</p>

	<p>development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
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Ian Campbell
Planning Inspector

9th September 2022