



An
Bord
Pleanála

Inspector's Report

ABP-313414-22

Development	Permission for the construction of a serviced dwelling and domestic garage.
Location	Brierfield, Moylough, Ballinasloe, Co Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	2260049.
Applicant(s)	Louise Kilheeney & Killian Moore
Type of Application	Permission
Planning Authority Decision	Grant with conditions
Type of Appeal	Third Party
Appellant(s)	David Donohue & Donna Gilligan
Observer(s)	None
Date of Site Inspection	11 th day of April 2023
Inspector	Fergal Ó Bric

1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.212 hectares is located in a rural area approximately 5.9 Kilometres south-west of the village of Moylough in north-east County Galway. The appeal site is accessed off a local county road with a carriageway width of approximately 4 metres located approximately 1.6 kilometres south-west of the N63, the main route linking Moylough with Galway City. The area is characterised by a network of narrow local roads, one-off rural houses, linear development and agricultural development.
- 1.2. The appeal site constitutes an infill site with a dormer dwelling located immediately west of the appeal site, another gap site immediately east of the appeal site and a further three dwellings on the same side of the road further east of the gap site. There is a two metre wide verge along the site frontage inside of which is a hedgerow, a post and wire fence along the rear (southern) and eastern site boundaries and a wooden fence and laurel hedge along the south-western (side). Levels on the site are consistent with those of the appeal site.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a dormer dwelling house with a floor area of 206 square metres m and a maximum ridge height of 8 metres, a proprietary wastewater treatment system and domestic garage store with a floor area of 60 square metres and a maximum ridge height of 4.4 metres. and all ancillary works. Water supply would involve a connection to the public watermains.
- 2.2. Unsolicited further information was submitted by the applicants to the Planning Authority on the 21st day of March 2022 in relation to the following: Confirmation of the floor area of the dwelling and domestic garage; Details of separation distances from party boundaries; Details of sightlines; The dwelling is of a suitable design and scale and consistent with the pattern of development in the area; The effluent treatment system is designed in accordance with EPA and GCDP standards; Site Suitability report was completed by a suitably qualified professional; A landscaping plan has been submitted. Rear elevation design will maximise use of solar gain. The proposals will be in accordance with the current Building Regulations.

2.3. A letter of consent has been submitted from the land owner. Mr. Philip Cannon, consenting to the making of a planning application on his lands.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Galway County Council issued a notification of decision to grant permission on the 29th day of March 2022, subject to 12 no standard conditions. Conditions of note are summarised as follows:

- Condition 4: Sight distance triangles
- Condition 5: Installation and maintenance of wastewater treatment system.
- Condition 6: Connection agreement with Irish Water.
- Condition 8: Landscaping and boundary treatment.
- Condition 12: Financial contributions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Case Planner was satisfied that the appeal site is located within a structurally weak area as per the provisions of the Galway County Development Plan (GCDP) and that the proposal would be in compliance with the Development Management Criteria as set out within the Development Plan and recommended that permission be granted subject to conditions as set out within Section 3.1.1 above. The notification of decision to grant permission issued by Galway County Council reflects this recommendation.

3.2.2. Other Technical Reports

Area Engineer: No objections, subject to conditions.

3.3. Prescribed Bodies

3.3.1. None

3.4. **Third Party Observations**

3.4.1. The Planning Authority received one observation from David Donohue and Donna Gilligan, who reside in the dormer dwelling immediately south-west of the appeal site. The issues raised in the observation are similar in nature to those raised within the appeal submission and relate to the following:

- Adverse impact upon neighbouring residential amenity.
- Inadequate sightlines.
- Dwelling design not in accordance with Rural Design Guidance.
- Site area too small to dispose of effluent.
- Scale of development proposals
- Sightlines.

4.0 **Planning History**

On site:

4.1.1. Planning reference 06/5137, in 2006 Galway County Council permitted the construction of a serviced rural dwelling, garage/fuel store and wastewater treatment system. No works commenced on foot of that permission.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1. At the time the Planning Authority made its decision on the 29th day of March 2022, the Galway County Development Plan (GDP) 2015-2021 was the operational plan. The GDP has since been superseded by the Galway County Development Plan (GDP) 2022-2028, operational since the 20th day of June 2022.

5.1.2. **Galway County Development Plan, 2022-2028**

Chapter 2-Core Strategy.

Chapter 4: Rural living and Development:

Section 4.6 Rural Housing Strategy in the Open Countryside

Map 4.2 outlines the various zones that exist throughout the County. The appeal site is located within Zone 3, designated as a Structurally Weak Area.

RH 3 Rural Housing Zone 3 (Structurally Weak Areas) It is a policy objective of the Planning Authority to facilitate the development of individual houses in the open countryside in "Structurally Weak Areas" subject to compliance with normal planning and environmental criteria and the Development Management Standards outlined in Chapter 15 and other applicable standards with the exception of those lands contained in Landscape Classifications 2,3 and 4 where policy objective RH4 applies.

Policy Objective RH9-To have regard to the Galway County Council's Design Guidelines for single rural houses.

Policy Objective RH11-Provide for sustainable rural housing in accordance with the EPA Code of Practice: Wastewater Treatment Systems for Single Houses (2009).

Chapter 8: Tourism and Landscape:

Section 8.13.1: Landscape Character of County Galway

The appeal site is located within an area identified as having a Class 1-North Galway Complex Landscape special landscape where the sensitivity to change is designated as being: Low and this landscape is unlikely to be adversely affected by change.

DM Standard 28: Sight Distances Required for Access onto National, Regional, Local and Private Roads

The Design Guidelines for single rural houses has been adopted as Appendix 5 to the Development Plan 2022-2028. are also considered relevant.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. The Lough Corrib SAC (site code 000297) is located approximately 2.5 kilometres south-west of the appeal site. There are no surface water hydrological connections between the appeal site and the European site.

5.2.2. The Killaclogher Bog pNHA (site code 001280) is located approximately 2.8 kilometres south-west of the appeal site. There are no surface water hydrological connections between the appeal site and the pNHA.

5.3. **Environmental Impact Assessment- Screening**

5.3.1. Having regard to the 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 environment 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**

6.1.1. A third-party appeal have been received, from David Donohue and Donna Gilligan, who reside in the neighbouring residential property immediately south-west of the appeal site. The issues raised may be summarised as follows:

Design and Layout:

- The scale, form and type of the dwelling relative to the neighbouring residential properties would be out of character in this rural setting.
- The development by reason of its design would contravene the provisions of the Galway Rural Design Guidelines and policy objective RHO 9 within the current Development Plan.
- The design is typical of that in a suburban area. A bulky deep plan dwelling design is proposed, overcomplicated with unnecessary shapes and forms.
- The site has recently been sub-divided and results in a long and narrow site and represents an overdevelopment of a site.
- The proposed dwelling is located 5.6 metres from the south western (side) boundary, that adjacent to the appellants' property and the patio would be within one metre of that same party boundary.

- The house design previously permitted on the site under planning reference 06/5137.had very little impact on the neighbouring residential property in terms of overlooking or adversely impacting the privacy of the neighbouring property.

Residential Amenity:

- The development would overlook the appellants property and would be contrary to the provisions set out within the Galway County Development Plan.
- The boundary treatment proposed is unclear from the planning documentation submitted.
- If a hedgerow was proposed, it would take many years to grow to a height in order to reduce the visual impact upon neighbouring amenities.

Access and Sightlines:

- Sightlines, particularly in a westerly direction are not compliant with sight distance policy standard within the Development Plan.

Water Services:

- The site is too small to cater for an effluent treatment system.

Other Issues:

- No proposals for renewable energy are included within the planning documentation as recommended within the Rural Design Guidelines.
- Galway County Council failed to issue the notification of decision within a timely manner to the appellants.

6.2. Applicant Response

- 6.2.1. The applicants' response to the appeal, submitted to the Board on the 23rd day of May 2022 has been prepared by Paul Feeney, Consulting Engineers, on behalf of the applicants and may be summarised as follows:

Residential Amenity:

- The minimum requirements in terms of separation distance as set out within the Development Plan is 5 metres and this separation distance is exceeded in this instance.
- The first floor window on the western elevation would serve a bathroom, would be top hung and fitted with opaque glazing.
- The rear facing windows are exactly that, rear facing overlooking the applicants' rear garden space and maximising solar gain.
- It is proposed to maintain and supplement the party boundary with the neighbouring residential property to the south-west.
- The patio is at ground floor level, and it is proposed that natural screening will be provided by the existing hedgerow boundary.
- A landscaping plan for the site was prepared and submitted and additional planting is proposed to supplement existing hedgerow on site.

Design and Layout:

- The floor area of the development is 206 sq. m and not 265 as set out by the appellants.
- The maximum ridge height would be 8 metres and the appellants dwelling has a maximum ridge height of 7.526 metres, the difference is minimal.
- The scale and height of the dwelling is consistent with that of the existing established and permitted dwellings in the area.
- The appeal site is located within a Class 1 landscape, outside of any designated or protected views. The lands are not elevated, and the Planning Officer considered the dwelling to be: Acceptable in scale and design within the context of the site and the permitted and existing residential development in the local area.
- The dwelling will assimilate well into the local landscape as per objective RH9 within the current GCDP 2022.

Wastewater:

- The treatment of domestic effluent is proposed in accordance with RH11 within the Development Plan and in accordance the EPA Code of Practice standards.
- A site specific assessment was conducted which confirms that the requisite effluent disposal standards will be achieved.

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- The issue of sustainability is not considered relevant, however compliance with the Building Regulations requires that all dwellings are constructed to the highest environmental and sustainable standards.
- The proposals are complaint with the Rural Housing Policy set out within the current Galway Development Plan for structurally weak areas.

6.3. **Planning Authority Response**

6.3.1. None received.

7.0 **Assessment**

7.1. I consider the key planning issues relating to the assessment of this appeal can be considered under the following headings.

- Principle of Development
- Design & Layout
- Residential Amenity
- Wastewater
- Access and Sightlines
- Appropriate Assessment.
- Other Issues

7.2. **Principle of Development**

7.2.1. As per the current Galway County Development Plan (GCDP) 2022, Map 4.2, the appeal site is located within a structurally weak area, Zone 3. Therefore, Policy

Objective RH3 is applicable in this instance: Structurally weak Areas. The policy objective is “To facilitate the development of individual houses in the open countryside in "Structurally Weak Areas” subject to compliance with normal planning and environmental criteria and the Development Management Standards outlined in Chapter 15 and other applicable standards. It is apparent from this policy objective, that there is no requirement within structurally weak areas to demonstrate social or economic ties to a particular local rural area in this instance.

- 7.2.2. Accordingly, the current proposals to construct a dwelling are considered acceptable in principle, subject to the normal planning and environmental criteria which will include consideration of design and layout, impact upon neighbouring amenities, wastewater, access and sightlines. The issue of Appropriate Assessment will also be considered.

7.3. **Design & Layout**

- 7.3.1. One of the primary elements of the appellants appeal submission relates to the design and layout of the proposals. The appellants state that the design by reason of its scale and form is not consistent with the provisions of the Galway Rural Design Guide (GRDG) for single houses. The proposed two storey dwelling has a floor area of 206 square metres (sq. m) and a ridge height of 8 metres. I consider the dwelling scale and height to be acceptable and not excessive, given the overall site area of 2,120 metres. The dwelling would be consistent with the pattern of development in the area which comprises a mix of dormer, two storey and single storey dwellings and the floor area is similarly not considered to be inconsistent with the established pattern of development in the area.
- 7.3.2. I refer to the GRDG which provides for two storey dwellings in the Countryside. I note that the site is not elevated, and site levels are consistent with those on the adjoining public road. The building line proposed is consistent with that of the adjoining residential property to the south-west. The fenestration detail within the front elevation provides for a strong vertical emphasis and there is a consistency of approach in this regard. The external finishes are not detailed within the submitted drawings, however, from the elevation plans would comprise a mixture of stone and render/plaster, would be consistent with the provisions of the GRDG. This is a matter that can be addressed by means of an appropriate planning condition.

7.3.3. I would concur with the Planning Officers' view in terms of the appropriateness of the dwelling design, scale and form and I consider the design and layout would comply with the provisions of the RH9 policy objective of the current Galway County Development Plan. The scale and form of the dwelling is considered appropriate and would not be injurious to the pattern of development on the area and would comply with many of the provisions of the current GRDG.

7.4. Residential Amenity

7.4.1. I note the issues raised in relation to overlooking from a side elevation first floor window and from the first floor rear bedroom windows. The applicants refute the issue of overlooking and state that the side elevation (western) elevation first floor window serves a bathroom window and would be a top hung window with opaque glazing fitted. I would concur with the applicants that overlooking from this window feature would not be possible given that the opaque glazing would not allow for overlooking. A condition to this effect regarding the opaque glazing can be included as part of any grant of planning permission.

7.4.2. In relation to the issue of overlooking from the first floor rear elevation windows. I note that the building line of the proposed dwelling is consistent with that of the neighbouring dwelling to the south-west. Given the separation distance of 5.6 metres between the southern gable of the proposed dwelling and the party boundary with the appellants residential property, I am of the opinion that with the retention of the existing party hedgerow boundary and with additional landscaping proposals as included within the applicants' planning documentation, that no adverse overlooking of the neighbouring residential property will arise.

7.4.3. In conclusion, I consider that due to the separation distances involved and the inclusion of an appropriate landscaping condition, that the residential amenity of the neighbouring residential property will not be adversely impacted by reason of overlooking from the proposals.

7.5. Wastewater Treatment

7.5.1. The applicant's Site Characterisation Report identifies that the appeal site overlies a Regionally Important Aquifer where the bedrock vulnerability is classified as

“Extreme”. A Ground Protection Response of R3² is noted by the applicant. Accordingly, I note the suitability of the site for a treatment system (subject to normal good practice) and subject to condition (1) ‘that there is a minimum depth of 2 metres of unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank or (2) ‘a secondary treatment system is installed within a minimum depth of 0.3 metres of unsaturated soil/subsoil with a P/T value from 3-75 (in addition to the polishing filter which should have a minimum depth of 0.9 metres beneath the invert of the polishing filter (i.e. 1.2 metres in total for a soil polishing filter)’. The applicant’s Site Characterisation Report identifies that there is a Groundwater Protection Scheme in the area.

- 7.5.2. The trial hole depth referenced in the Site Characterisation Report (SCR) was dug to a depth of 2.1 metres. It is stated within the SCR that bedrock was not encountered within the trial hole. No water nor bedrock was observed in the trial hole. The soil conditions found in the trial hole were stated as comprising sand/silt clay to a depth of 0.7 metres and gravelly sand/silt clay from 0.7 metres to 2.1 metres. Percolation test holes were dug and pre-soaked. T and P values of 6.9 and 16.8 were recorded. The EPA CoP 2021 (Table 6.4) confirms that the site is suitable for a secondary treatment system discharging to groundwater.
- 7.5.3. The Site Characterisation Report submitted with the application concludes that the site is suitable for treatment of waste water, it is proposed to install a packaged waste water treatment system (8 PE Secondary Waste Water Treatment unit) and polishing filter (90 square metres).
- 7.5.4. In conclusion, I consider that that the wastewater proposals are acceptable and would accord with the RH11 policy objective as set out within the current GCDP and demonstrated compliance with the EPA, Code of Practice, for rural dwellings in the countryside and that all separation distances in accordance with the EPA standards are achievable.

7.6. Access and Sightlines

- 7.6.1. The appellants set out that the applicants had not demonstrated that adequate sight lines were achievable in accordance with the Development Management standard

within the Development Plan by virtue of the restricted visibility due to the limited extent of setback available along the site frontage.

7.6.2. Access to the appeal site is from a local county road, the L-7210, where the 80 kilometre per hour speed control zone applies. I note that the adjoining public roadway is narrow, lightly trafficked, the alignment is straight, and the surface is in good condition. The applicant has submitted details of sightlines, whereby sightlines of 70 metres in both directions from a 2.4 metre set back are illustrated.

7.6.3. The Local Authority planner identified that sightlines are demonstrated in accordance with the Development Plan standards. DM standard 28 of the current Development Plan (2022-28) sets out the following in relation to sightlines “Where substantial works are required in order to facilitate the provision of adequate sight distances, lands within the sight distance triangles shall be within the control of the applicant and shall be subject of a formal agreement with the adjacent landowner which ensures certainty that the applicant is in a position to comply with the relevant condition and/or standard”.

7.6.4. A set back (x sight distance) of 2.4 metres is available at the entrance point which is acceptable and in accordance with current Development Plan standards. I also note that a 70 metre y and z (sight distance) is achievable from the 2.4 metre set back and would accord with the current GCDP standards. I am of the opinion that the development would not generate significant additional vehicular movements on the local road network. Given that the requisite sightlines are achievable and in accordance with best practice road safety/Development Plan standards, I am of the opinion that the development, if permitted, would not result in the creation of a traffic hazard.

7.7. Appropriate Assessment

7.7.1. Having regard to the nature and scale of the development which pertains to the development of a single dwelling, served by a connection to a local Group Water scheme, its distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development with no hydrological pathway to any European site would be likely to have a significant effect either individually, or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommended that permission be granted subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the policies and objectives of the Galway County Development Plan 2022-2028, and particularly RH3 relating to the construction of rural dwellings in structurally weak areas, it is considered that subject to the conditions set out below, the satisfactory design and layout, the scale, massing and siting of the house and the pattern of development within the area, the proposed development would be acceptable. The proposals would not seriously injure the residential amenities of the area and would be acceptable in terms of visual amenity and would not adversely impact upon the adjacent road network capacity or safety or result in the creation of a traffic hazard. The proposed development, would, therefore, 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 on the 2nd day of February 2022 and by the further plans and particulars received by the Planning Authority on the 21st day of March 2022, 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 Details of the materials, colours and textures of all external finishes to the proposed development shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: In the interest of visual amenity.

- 3 A landscaping scheme shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development. The planting shall be carried out within the first planting season following substantial completion of external construction works. The existing hedgerow boundaries shall be retained within the site save for where their removal is required to respect the sight visibility triangle or to enable the construction of the proposed dwelling.

All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of [five] years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], 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 residential and visual amenity.

- 4 Site development and building works shall be carried out only between the hours of 0700 to 1900 hours Mondays to Fridays inclusive, between 0800 and 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

- 5 Drainage requirements, including the disposal and attenuation of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

- 6 Water supply arrangements shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

- 7 The developer shall enter into a water connection agreement with Irish Water/Local Group Water Scheme prior to the commencement of this development.

Reason: In the interest of public health.

- 8 (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the detail submitted to the Planning Authority on the 2nd day of February 2022. and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (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 the commencement of development.

(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 and that the raised percolation area is constructed in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

- 9 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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 Contributions Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the 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 Contributions Scheme made under Section 48 of the Act be applied to the permission.

Fergal Ó Bric

Planning Inspectorate

28th day of April 2023