



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313864-22

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<b>Development</b>	House, garage, effluent treatment system, percolation area and all associated works. Gross floor space of proposed works: House: 245.6 sqm, Garage: 60 sqm.
<b>Location</b>	Curry Oughter, Cummer, Tuam, Co. Galway.
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	212113
<b>Applicant(s)</b>	Tom Howley.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	30 <sup>th</sup> September 2022.
<b>Inspector</b>	Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.25ha and is located in the townland of Curry Oughter, west of Corofin in County Galway. The site is greenfield in nature and consists primarily of improved grassland, forming part of a larger field. There is a copse of trees at the south-east corner, adjacent to the roadside boundary.
- 1.2. The site is situated on the north side of the L2123. There are a large number of houses along the L2123 and elsewhere on the local road network in the area, including evidence of ribbon development. The pattern of housing in the area is mixed and includes detached houses intermingled with low-density housing developments. The site is adjoined by a detached bungalow to the west.

## 2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the construction of a house, garage, effluent treatment system and percolation area, together with associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refused permission on 26<sup>th</sup> May 2022 for 1 No. reason as follows: -

The site is located in a rural area within the Galway Transportation Planning Study Area (GTPS), which is subject to strong urban influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005. Furthermore, Objective RHO 1 of 2015-2021 Galway County Development Plan sets out qualifying criteria for those with a genuine rural generated housing need seeking to construct a house with the GTPS area. In this instance, having regard to the existing habitable property within the applicant's ownership, as demonstrated by the submitted documentary evidence, it is considered that the proposed development is not justified and the applicant therefore does not satisfy the housing need criteria set

out in the Galway County Development Plan or Sustainable Rural Housing Guidelines for a house at this location. The proposed development would therefore exacerbate and contribute to the pattern of haphazard, one-off urban generated housing in the vicinity of the site, contrary to the provisions of the Guidelines, would lead to demands for the uneconomic provision of further public services and community facilities in the area, would interfere with the rural character of the site and would seriously injure the amenities of this rural area. Accordingly, to grant the proposed development would contravene materially an objective contained in the County Development Plan, would be contrary to ministerial guidelines issued to the planning authorities under Section 28 of the Planning and Development Act 2000, as amended, and the proper planning and sustainable development of the area.

### 3.2. **Planning Authority Reports**

- 3.2.1. Planning Reports dated 17<sup>th</sup> January 2022 and 24<sup>th</sup> May 2022 have been provided. The first report states that the site is located inside the GTPS area, where a housing need must be demonstrated. Concerns are expressed regarding the applicant's housing need argument, based on the information provided. Regarding the proposed design, the report states that a proposed 2-storey central projection should be omitted and replaced by a single storey porch feature. AI is recommended, to address the identified concerns.
- 3.2.2. The second report followed receipt of the AI response. It summarises and responds to the individual AI response items and recommends that permission be refused for 1 No. reason, which is consistent with the Planning Authority's decision.
- 3.2.3. Other Technical Reports
- An **MD Engineer** report dated 8<sup>th</sup> December 2021 has been provided, which recommends conditions regarding surface water drainage.

### 3.3. **Prescribed Bodies**

- 3.3.1. None

### 3.4. **Third Party Observations**

3.4.1. The Planning Authority report indicates that no submissions were received.

### 4.0 **Planning History**

4.1.1. I did not encounter any recent planning records pertaining to the site.

### 5.0 **Policy Context**

#### 5.1. **Galway County Development Plan 2022-2028**

5.1.1. The new County Development Plan 2022-2028 was adopted following submission of the application and took effect on 20<sup>th</sup> June 2022.

5.1.2. The site is in a rural, unzoned part of County Galway. Map 4.1 contains the Rural Area Types, from which it can be seen that the site is in the Galway County Transport & Planning Study (GCTPS) area.

5.1.3. The following policies are relevant to the appeal: -

**RC2:** To manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Rural Housing Policy Objectives as outlined in Section 4.6.3.

**RH2:** It is policy objective to facilitate rural housing in this rural area under strong urban pressure subject to the following criteria: 1 (a) Those applicants with long standing demonstrable economic and/or social Rural Links or Need to the area through existing and immediate family ties seeking to develop their first home on the existing family farm holding. Consideration shall be given to special circumstances where a landowner has no immediate family and wishes to accommodate a niece or nephew on family lands. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1 (b) Those applicants who have no family lands, or access to family lands, but who wish to build their first home within the community in which they have long standing

demonstrable economic and or social Rural links\* or Need and where they have spent a substantial, continuous part of their lives i.e. have grown up in the area, schooled in the area or have spent a substantial, continuous part of their lives in the area and have immediate family connections in the area e.g. son or daughter of longstanding residents of the area. Having established a Substantiated Rural Housing Need\*, such persons making an application on a site within an 8km radius of their original family home will be accommodated, subject to normal development management.

To have lived in the area for a continuous seven years or more is to be recognised as a substantial, continuous part of life and also as the minimum period required to be deemed longstanding residents of the area.

Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR

1 (c) Those applicants who can satisfy to the Planning Authority that they are functionally dependent in relation to demonstrable economic need on the immediate rural areas in which they are seeking to develop a single house as their principal family Residence in the countryside. Documentary evidence shall be submitted to the Planning Authority to justify the proposed development and will be assessed on a case by case basis.

OR 1

(d) Those applicants who lived for substantial periods of their lives in the rural area, then moved away and who now wish to return and build their first house as their permanent residence, in this local area. Documentary evidence shall be submitted to the Planning Authority to illustrate their links to the area in order to justify the proposed development and it will be assessed on a case by case basis.

OR

1 (e) Where applicants can supply, legal witness or land registry or folio details that demonstrate that the lands on which they are seeking to build their first home, as their permanent residence, in the area have been in family ownership for a period of 20 years or more, their eligibility will be considered. Where this has been established

to the satisfaction of the Planning Authority, additional intrinsic links will not have to be demonstrated.

OR

1 (f) In cases where all sites on the family lands are in a designated area, family members will be considered subject to the requirements of the Habitat's Directive and normal planning considerations

OR

1 (g) Rural families who have long standing ties with the area but who now find themselves subsumed into Rural Villages. They have no possibility of finding a site within the particular Rural Villages. Rural Villages dwellers who satisfy the requirements for Rural Housing Need as outlined in RH2 will not be considered as Urban Generated and will have their Housing Need upheld.

2. An Enurement condition shall apply for a period of 7 years, after the date that the house is first occupied by the person or persons to whom the enurement clause applies. Definitions applied above:

**RH9:** It is a policy objective of the Planning Authority to have regard to Galway County Council's Design Guidelines for the Single Rural House with specific reference to the following:

a) It is the policy objective to encourage new dwelling house design that respects the character, pattern and tradition of existing places, materials and built forms and that fit appropriately into the landscape;

b) It is the policy objective to promote sustainable approaches to dwelling house design and encouraging proposals to be energy efficient in their design and layout;

c) It is the policy objective to require the appropriate landscaping and screen planting of proposed developments by using predominately indigenous/local species and groupings.

## 5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

*‘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’.*

### **5.3. Sustainable Rural Housing Guidelines for Planning Authorities**

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in an ‘area under strong urban influence’. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For areas under strong urban influence, the Guidelines outline that the development plan should *‘on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.’*
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to ‘Persons who are an intrinsic part of the rural community’ and ‘Persons working full-time or part-time in rural areas. Of relevance to this appeal, ‘Persons who are an intrinsic part of the rural community’ are identified as having *“spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would*

*include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes.”*

#### **5.4. Natural Heritage Designations**

- 5.4.1. The subject site is not located within or adjacent to any designated European site, the closest such site being Lough Corrib SAC (Site Code 000297) which is c.700m east.

#### **5.5. EIA Screening**

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
- 5.5.3. The subject development comprises the construction of a house with sewerage treatment system and associated site works, on a site of 0.25ha. It falls well below the applicable threshold for mandatory EIA.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, which does not require specialist construction methods, it is considered that there is no real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- The applicant has owned the site for 20 years and wishes to farm his land.



- The housing need proposed is that the applicant's son would move home and live and work in the area where he was born. The housing need is appropriate in the context of the housing crisis.
- Permission was previously granted to the applicant on this site but the permission was not enacted due to work commitments.

## 6.2. **Planning Authority Response**

6.2.1. None received.

## 6.3. **Observations**

6.3.1. None.

## 6.4. **Prescribed Bodies**

6.4.1. The Department of Housing, Local Government and Heritage (DAU) made a submission on 3<sup>rd</sup> August 2022, advising that the Board should satisfy itself that the development would not have a significant effect on nearby European sites and that wastewater treatment would not have significant effects on groundwater.

6.4.2. The appeal was also circulated to The Heritage Council and An Taisce but no responding submissions were received.

## 7.0 **Assessment**

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- House design and residential amenity,
- Access,
- Drainage,
- Appropriate assessment.

## 7.2. **Compliance with the Rural Housing Strategy**

- 7.2.1. The site is located in the townland of Curry Oughter, west of Corofin village and approx. 13km south of Tuam. It is in an area designated by the development plan as the 'Galway County Transport & Planning Study (GCTPS) area' and an area under strong urban pressure. Development Plan policy RH2 is the applicable rural housing policy for this area and it requires applicants to comply with specified criteria, relating to longstanding and/or family connections to the area or an economic need to live in the area.
- 7.2.2. National Policy Objective (NPO) 19 of the National Planning Framework is also pertinent to the appeal and it states that in areas under urban influence the provision of single housing in the countryside should be facilitated based on the core consideration of demonstrable economic or social need to live in the 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.
- 7.2.3. A supplementary rural housing form was provided as part of the application, within which the applicant indicates that they currently live in Claremorris, Co. Mayo and that they wish to live on the site and work land in their ownership in the local area. It is also indicated that the applicant wishes to live closer to family in Galway and closer to health services that are provided in Galway City.
- 7.2.4. The thrust of policy RH2 and indeed NPO19 of the NPF is that rural housing applicants must have a functional connection to the rural area and a demonstrable economic or social need to live in the area. From the information provided, I do not consider the applicant has demonstrated any current and ongoing functional connection to the area and thus has not demonstrated compliance with the aforementioned policies.
- 7.2.5. With reference to the site's location within the GCTPS, I note that Section 4.6 of the Development Plan states that there is greater pressure for rural housing in this area and that the number of individual houses granted permission in the area between 2015 and 2021 is c.29% higher than in other parts of the county. This is consistent with my observations on my site visit, where I noted that there is pressure for rural housing in the surrounding area. In my view, the development of further housing in this rural area, without adequate justification, serves to undermine the role of nearby

urban centres such as Tuam, which have important roles in the delivery of the development plan Core Strategy.

- 7.2.6. In conclusion, I consider that no functional connection to the rural area and no demonstrable economic or social need to live in the rural area have been demonstrated. To permit the development would therefore contravene local and national policy in relation to rural housing and I consider permission should be refused on this basis.

### **7.3. House Design and Residential Amenity**

- 7.3.1. The proposed house is a traditional two-storey with pitched roof design, with single storey projecting elements to the side and rear. It has a stated gross floor area of 246sqm. The proposed design was amended as part of the AI submission, whereby a proposed two-storey projecting element on the front elevation was revised and reduced, to a single storey porch projection.

- 7.3.2. I am satisfied that the revised house design proposed at the AI stage would not detract from the visual amenities of the area. The overall size and internal layout of the house are also acceptable, in my view.

### **7.4. Foul Drainage**

- 7.4.1. The DAU made a submission on the appeal, advising the Board to satisfy itself that wastewater treatment would not have significant effects on groundwater.

- 7.4.2. The development includes the provision of an effluent treatment system and percolation area. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'Regionally Important', with a vulnerability classification of 'Extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R2<sup>2</sup>' response category i.e., acceptable subject to normal good practice and additional system/site conditions.

- 7.4.3. The Report indicates that a trial hole with a depth of 2.2m recorded 400mm of topsoil rich in vegetation, 700mm of soil/sand with gravel and 1100mm of cobbles, broke limestone, clay and gravels. The water table and bedrock are stated to have not been encountered. In relation to the percolation characteristics of the soil, a sub-surface percolation test (T-test) result of 23.42min/25mm was returned. A separate

report on the proposed effluent treatment system has been provided, which outlines that a Tricel Novo secondary treatment system is proposed. This WWTP is stated to be suitable for sites with a T value of between 21-40.

- 7.4.4. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

## 7.5. **Appropriate Assessment**

### Appropriate Assessment Screening

#### *Compliance with Article 6(3) of the Habitats Directive*

- 7.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

#### *Background on the Application*

- 7.5.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

#### *Screening for Appropriate Assessment- Test of likely significant effects*

- 7.5.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).

- 7.5.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

#### *Brief description of the development*

- 7.5.5. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a house, garage, effluent treatment system and percolation area, together with associated site works, on a site with a stated area of

0.25ha. Foul drainage is proposed to drain to an on-site septic treatment system and surface water is proposed to drain to a soakpit within the site.

European Sites

7.5.6. The site is not located within or adjacent to any European site, with the closest such sites being Lough Corrib, which is c.700m east. There are other European sites within a 15km search zone (the closest such is Lough Corrib SPA which is c.11km west) but I am satisfied, given the small-scale nature of the development that there is no real likelihood of significant effects occurring other than for sites in the immediate vicinity of the subject site.

7.5.7. There are no open watercourses or drains within or bounding the subject site.

7.5.8. A summary of Lough Corrib SAC is outlined in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)
Lough Corrib SAC (Site Code 000297)	<ul style="list-style-type: none"> <li>• Oligotrophic waters containing very few minerals of sandy plains</li> <li>• Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea</li> <li>• Hard oligo-mesotrophic waters with benthic vegetation of Chara spp.</li> <li>• Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation</li> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates</li> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils</li> <li>• Active raised bogs</li> <li>• Degraded raised bogs still capable of natural regeneration</li> <li>• Depressions on peat substrates of the Rhynchosporion</li> <li>• Calcareous fens with Cladium mariscus and species of the Caricion davallianae</li> <li>• Petrifying springs with tufa formation</li> <li>• Alkaline fens</li> <li>• Limestone pavements</li> </ul>	c.700m east

	<ul style="list-style-type: none"> <li>• Old sessile oak woods with Ilex and Blechnum in the British Isles</li> <li>• Bog woodland</li> <li>• Freshwater Pearl Mussel</li> <li>• White-clawed Crayfish</li> <li>• Sea Lamprey</li> <li>• Brook Lamprey</li> <li>• Salmon</li> <li>• Lesser Horseshoe Bat</li> <li>• Otter</li> <li>• Slender Naiad</li> <li>• Slender Green Feather-moss</li> </ul>	
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### Evaluation of Potential Significant Effects

7.5.9. As I have stated, there are no open watercourses or drains within or bounding the subject site. There is therefore no direct hydrological connection to the European site.

7.5.10. Construction activity may give rise to run-off from the site containing suspended solids but the site is adequately set away from the European site to ensure there is no real likelihood of any suspended solid content entering it. The presence of intervening landform will provide a buffer for any overland water flows.

7.5.11. For the operational phase, foul water is proposed to be treated within an individual WWTP, before discharging to groundwater. A site characterisation report has been provided with the application, which confirms that the site is suitable for installation of a septic tank system. Where site-specific testing has shown the site to be suitable for the treatment of foul waste via a septic tank system and given the separation distance between the site and the European sites, I am satisfied that the potential for likely significant effects on qualifying interests within the SAC and SPA can be excluded.

### *Screening Determination*

7.5.12. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site No. 000297, or any other

European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.5.13. This determination is based on the following: -

- The separation distance between the subject site and the European site and the absence of a direct hydrological connection between the sites.

## 8.0 Recommendation

8.1. I recommend that permission be refused for the following reasons and considerations set out hereunder.

## 9.0 Reasons and Considerations

Having regard to:

- The location of the site within the Galway County Transport & Planning Study Area, an area identified as being under strong urban pressure by the Galway County Development Plan 2022-2028,
- The provisions of the Galway County Development Plan 2022-2028, policy objective RH2 of which states that in the Galway County Transport & Planning Study area, rural housing proposals will be facilitated in accordance with the criteria laid down within the aforementioned policy RH2 and subject to compliance with normal planning and environmental criteria,
- National Policy Objective 19 of the National Planning Framework which, for rural areas under urban influence seeks to facilitate rural housing proposals based on the core consideration of demonstrable economic or social need to live in the 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, and
- The documentation on file provided as part of the application and appeal

The Board considers that, in the absence of a demonstrated housing need at this location, the proposed development would result in a haphazard and unsustainable form of development, would contribute to the encroachment of random rural

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

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Barry O'Donnell  
Planning Inspector

24<sup>th</sup> October 2022.