



An
Bord
Pleanála

Inspector's Report

ABP-314196-22

Development	Retention and completion of house, wastewater treatment and percolation systems and associated services substantially completed under PA. Ref. 01/3640, and alterations to previously approved house.
Location	Skehanagh, Peterswell, County Galway
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	22642
Applicant	Padraic Dempsey
Type of Application	Retention & Permission
Planning Authority Decision	Refuse Retention & Permission
Type of Appeal	First Party
Appellant	Padraic Dempsey
Observer(s)	None
Date of Site Inspection	8 th March 2023

Inspector

Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Skehanagh, c. 7km north-east of Gort, Co. Galway. The appeal site, located on the western side of the L-8533, is situated within a rural area outside of a settlement. The appeal site has a stated area of 0.38 ha, is broadly rectangular in shape, relatively flat and accommodates a partially constructed two storey detached house. The outer walls of the house have been constructed. The roof of the house has not been constructed.
- 1.2. There is extensive ribbon development in the vicinity. 5 no. houses are located to the south of the appeal site and 1 no. house is situated further north. The houses in the vicinity are predominantly large detached two storey houses.

2.0 Proposed Development

- 2.1. The development description contained in the public notices refers to the proposed development as comprising '*the retention and completion of the dwelling, waste water treatment and percolation systems and associated services, which has substantial works completed under PA. Ref. 01/3640, and alterations to previously approved elevations, internal floor arrangements and roof detail*'. Having reviewed the public notices and details submitted with the planning application, and having regard to the development which is evident on the site, and the planning history of same, I consider that that the proposed development comprises;

- Retention permission for the dwelling as constructed;
- Permission to complete the dwelling;
- Permission for alterations¹ to the dwelling previously permitted under PA. Ref. 01/3640, including (i) an increase in height; (ii) the provision of an additional floor/level of accommodation; (iii) the omission of a side annex; (iv) a single storey rear extension; (v) alterations to fenestration; (vi) portico style porch; and (vii) the provision of a front and rear dormer, and;

¹ The elevational drawings submitted use a blue hatched line to indicate the extent of the 'existing dwelling'. This appears to be an error as the blue hatched line in fact depicts the extent of the proposal, specifically the proposed height increase and footprint of the house, with a red line indicating the extent of the permitted structure.

- Permission for a waste water treatment system.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission on the 13th July 2022 for 2 no. reasons which can be summarised as follows;

1. Having regard to its scale, form and design, the proposed development would result in a built form which would not integrate effectively at this rural location, and would contravene materially Policy Objective RH9 (design guidelines) and DM Standards 4 (house extensions) and 8 (site selection and design) of the Galway County Development Plan 2022 - 2028.
2. Based on the information received, and having regard to the location of the application site overlying a Regionally Important Aquifer - Karstified (conduit) classified as having 'Extreme (Rock near surface or karst) vulnerability, in conjunction with the potential for cumulative effects arising from the high concentration of septic tank and treatment systems in the immediate vicinity of the site, the Planning Authority is not satisfied that wastewater can be satisfactorily treated and disposed of on site. If permitted, the proposed development would materially contravene Policy Objective WR1, Policy Objective WW6 and DM Standard 38 of the Galway County Development Plan 2022-2028, would be prejudicial to public health, pose an unacceptable risk to water quality, and have the potential to have a likely significant effect on the conservation objectives of nearby protected European sites for flora and fauna.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- As the house is substantially complete the applicant is exempt from an enurement clause.

- The capacity of the permitted system was not specified in the parent permission, however it is reasonable to conclude that it is a 6PE system serving a 4 bedroom house. The proposed development entails a 6 no. bedroom house with a 8 PE equivalent. In the absence of information that the permitted treatment system would accommodate the additional loading from the proposed development, and having regard to the aquifer type (i.e. Regionally Important Aquifer - Karstified (conduit) with extreme vulnerability, the Planning Authority have reservations concerning the disposal of effluent.
- Concern expressed regarding potential for effluent to enter ground water and impact European sites.
- Up-to-date confirmation from Peterswell Group Water Scheme is required.
- It is unclear whether the permitted surface water drainage arrangement on the site would cater for the proposed development.
- Having regard to the increased scale of the proposal, the Planning Authority is not satisfied that the proposal would assimilate into the receiving environment, or that it would integrate with the adjoining built environment, without adverse impacts on adjoining residential amenity.

The report of the Planning Officer recommends a refusal of permission consistent with the Notification of Decision which issued.

3.2.2. Other Technical Reports

None received.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

None received.

4.0 Planning History

Appeal Site

PA. Ref 13/169² – Permission GRANTED for completion of house and waste water treatment system, substantially completed under PA. Ref. 01/3640.

This permission was not implemented and has expired.

PA. Ref. 01/2565 – Permission REFUSED for house and septic tank/treatment system.

Reason for refusal referred to impact on route reserved for N18 Oranmore to Gort.

PA. Ref. 01/3640 - Permission GRANTED for a house, septic tank, treatment system and garage.

Condition no. 9 required the replacement of a projecting porch with an enclosed porch.

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 Galway County Development Plan 2022-2028 is the relevant development plan. 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 Pressure (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 RH8: Substantially Completed Single Dwelling

² The applicant in this application contended that as the structure on the site was constructed prior to the expiration of the parent permission, retention permission was not being sought as the structure has the benefit of permission. I note however that under the current application/appeal no such contention is made and as the applicant has sought retention permission for the structure I do not consider that this matter requires further consideration by the Board.

Policy Objective RH9: Design Guidelines

5.2.4. In terms of Landscape Character Type, the appeal site is located within the 'Central Galway Landscape' (see Appendix 4 of CDP), which has a 'low' landscape sensitivity. 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**

- Carrowbaun, Newhall and Ballylee Turloughs SAC (Site Code: 002293), c. 1 km south.
- Ballinduff Turlough SAC (Site Code 002295), c. 1.3 km west.
- Peterswell Turlough SAC (Site Code 000318) – c. 1.6 km east.
- Peterswell Turlough pNHA (Site Code 000318) – c. 1.6 km east.

5.4. **EIA Screening**

Having regard to the limited nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

This is a first-party appeal against the decision to refuse retention permission and permission. The grounds for appeal may be summarised as follows;

- The proposed development does not constitute a change to the previously permitted built form. Neighbouring properties are of a similar built form.
- The waste water treatment system has been approved under PA. Ref. 01/3640. The appellant is amenable to upgrading the system if required.

6.2. **Planning Authority Response**

None received.

6.3. **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:

- Rural Housing Policy
- Impact on Visual Amenity
- Waste water
- Appropriate Assessment

7.2. **Rural Housing Policy**

7.2.1. Policy RH8 of the Galway County Development Plan 2022-2028 provides that in circumstances where permission for a house in a rural area has lapsed and the dwelling has been substantially completed (with reference to external walls and the roof), applicants will not be required to establish a rural housing need if it were not a condition of the previously granted planning permission. The house on the appeal site is substantially complete in my opinion and the house permitted under PA. Ref. 01/3640 was not subject to an occupancy/enurement clause. As such there is no requirement for the applicant to demonstrate compliance with the rural house policy of the Galway County Development Plan 2022-2028. Furthermore, should the Board be minded to grant the proposed development, I do not consider that there is a requirement to attach an occupancy condition.

7.3. **Impact on Visual Amenity**

7.3.1. The first reason for refusal relates to the proposed alterations to the design of the partially completed house on the site. The Planning Authority considered that the proposed alterations to the dwelling would result in an imposing structure which would

not assimilate into the landscape and which would detract from the visual amenities of the area.

7.3.2. The house permitted on the appeal site had a stated floor area of c. 220 sqm, a ridge height of c. 8.4 metres and generally reflected the design, scale and proportions of the adjoining dwellings in the vicinity of the site. The proposal entails alterations to the design of the house permitted under PA. Ref. 01/3640, including an increase in the ridge height of the house from c. 8.4 metres to c. 9.4 metres, the provision of an additional floor/level of accommodation, a single storey rear extension, the omission of side annex, alterations to fenestration, roof lights to the side roof slopes, a projecting portico style porch, and the provision of a front and rear dormer. The revised house has a stated floor area of c. 284 sqm.

7.3.3. In my opinion, the increased height of the house and the proposed dormer structures to the front and rear roof slopes gives the appearance of a three storey house. Furthermore, the portico porch, projecting side bay features and the pattern of fenestration also serves to increase the perceived scale of the house, and results in the house having a more embellished appearance. I agree with the Planning Authority that the design of the proposed dwelling would be incongruous in the landscape, and in my opinion the dwelling proposed negatively affect the visual amenities of the area.

7.3.4. I note that the Planning Authorities first reason for refusal states that the proposed development would contravene materially Policy Objective RH9 and DM Standards 4 and 8 of the Galway County Development Plan 2022-2028. These policies refer to a general approach to design in rural areas, the design of house extensions and site selection of design issues and are not, in my view, sufficiently specific so as to justify the use of the term materially contravene in terms of normal planning practice. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act.

7.4. **Waste Water**

7.4.1. The development permitted under PA. Ref. 01/3640 included the provision of a water treatment system and a percolation area, specifically a septic tank and a Bord na Mona 'Puraflo' treatment unit with a mounded percolation area. Based on the information

submitted with the planning application and appeal it appears that this treatment system was not constructed and the current proposal entails the installation of the treatment system which was previously permitted under PA. Ref. 01/3640. The current planning application/appeal is not accompanied by a site characterisation form or details demonstrating compliance with the current EPA CoP 2021.

7.4.2. In my opinion, there are serious deficiencies in the information submitted as it relates to the treatment of effluent on the appeal site. The proposed house will comprise 6 no. bedrooms, equating to a 8 PE design, whereas the house permitted under PA. Ref. 01/3640 had 4 no. bedrooms, however no detail in relation to the PE design of the system permitted under PA. Ref. 01/3640 was provided³. I am not therefore satisfied based on the information submitted with the planning application and appeal that the previously permitted treatment system, the design of which is proposed to serve the current development, would be adequate to cater for the increased number of bedrooms in the house.

7.4.3. From reviewing the GSI website I note that the appeal site is located in an area with a Regionally Important Aquifer – Karstified (conduit), Bedrock vulnerability is not specified however noting the karst nature of the area I consider vulnerability to be at its maximum, and therefore ‘extreme’. The GSI website also states that in this area rock is at or near the surface. I note that flow rates in karst limestone areas are very high, with limited scope for attenuation. There is no foul sewer network located in this area and all of the adjacent dwellings would appear to be served by septic tanks or wastewater treatment systems. Whilst it is likely that separation distances comply the EPA Code of Practice 2021 for individual wastewater treatment systems given the generous plot sizes in the area, the issue of proliferation of individual treatment systems is of concern. Given the existence of approximately 6 no. existing dwellings on individual treatment systems/septic tanks within a c. 200 metre distance of the appeal site, and noting the fast draining nature of the soil on the site, as indicated by the percolation test results submitted under PA. Ref. 01/3640 (where a T value of 9

³ From reviewing the planning history associated with the appeal site I note that under PA. Ref. 13/169 site testing was carried out to the EPA CoP 2009 and a 12PE packaged waste water treatment system and polishing filter proposed, however based on the information contained in the current application/appeal the system proposed is that previously permitted under PA. Ref. 01/3640.

was recorded), the proposed development would in my opinion be prejudicial to public health.

7.4.4. In summation, I am not satisfied that the proposed system, as permitted under PA. Ref. 01/3640 would be adequately sized to cater for the house proposed under the current application/appeal, that the required depth of unsaturated subsoil to treat effluent on the site in accordance with the current EPA CoP would be provided, and consequently that the treatment of effluent on the site can be catered for without a risk to groundwater. Whilst I note that the appellant intimates that he is amenable to upgrading the treatment system, having regard to the proliferation of treatment systems and septic tanks in an area, where the soil is fast draining and where the groundwater is extremely vulnerable, I do not consider that an upgraded system would overcome this wider fundamental issue.

7.4.5. I note that the Planning Authorities second reason for refusal states that the proposed development would materially contravene DM Standard 38, Policy Objective WR1 and Policy Objective WW6 of the Galway County Development Plan 2022-2028. These policies refer to a general approach to waste water treatment and the protection of water resources and are not, in my view, sufficiently specific so as to justify the use of the term materially contravene in terms of normal planning practice. The Board should not, therefore, consider itself constrained by Section 37(2) of the Planning and Development Act.

7.5. **Appropriate Assessment**

7.5.1. The second refusal reason cited by the Planning Authority includes that the proposed development has the potential to have a likely significant effect on the conservation objectives of European sites given characteristics of the appeal site, specifically its location within an area identified as a Regionally Important Aquifer - Karstified (conduit) with extreme groundwater vulnerability, and in light of ambiguity in relation to the ability of the permitted treatment system to cater for the additional loading which arises as a consequence of the additional bedrooms in the house.

7.5.2. The closest European site is located c. 1km from the appeal site. I note that there are no direct hydrological pathways between the appeal site and any European sites. Whilst groundwater could provide an indirect connection between the appeal site and the European sites identified at paragraph 5.3, having regard to the nature and limited scale of the proposed development, the intervening distances between the appeal site and European sites, and the dilution effect which would occur prior to any potentially polluted effluent within groundwater reaching a European site, it is considered 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 and as such it is considered that no Appropriate Assessment issues arise.

8.0 Recommendation

8.1. Having regard to the above it is recommended that retention and permission be refused for the proposed development based on the following reasons and considerations.

9.0 Reasons and Considerations

1. It has not been adequately demonstrated that the waste water treatment system proposed to serve the house would be adequately sized to cater for the proposed house on the site, or that the required depth of unsaturated subsoil to treat effluent on the site in accordance with the current EPA CoP would be provided. Furthermore, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks and/or individual wastewater treatment systems in the area, and having regard to the percolation test results which are indicative of a fast draining soils, the Board is not satisfied that the site is capable of treating foul effluent arising from the dwelling and considers that the method of foul water disposal will render the treatment of the effluent unacceptable and could increase the risk of serious water pollution. Accordingly, the proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the design, height and massing of the proposed dwelling, it is considered that the proposed development would seriously injure visual amenities of

the area and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Ian Campbell
Planning Inspector

25th April 2023