



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314255-22

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<b>Development</b>	Retention of house on revised site boundaries to that permitted under PA. Ref. 54082, relocation of entrance and upgrade of treatment system
<b>Location</b>	Leagh North, Co. Galway
<b>Planning Authority</b>	Galway County Council
<b>Planning Authority Reg. Ref.</b>	212015
<b>Applicant</b>	P. Hehir
<b>Type of Application</b>	Retention & Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Niall Kilkelly
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> March 2023
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Leagh North, on the western side of the L-85861, c. 5km south-west of Kinvara. The appeal site is located in a rural area, outside of a settlement.
- 1.2. The appeal site has a stated area of 0.177 ha. and accommodates a detached bungalow. There is a gated field entrance to the south-east of the appeal site. This entrance is indicated within the red line boundary of the appeal site but provides access to agricultural lands located further south, these agricultural lands are located outside the boundary of the appeal site. There are a number of detached houses in the vicinity of the appeal site.

## 2.0 Proposed Development

- 2.1. The development description contained in the public notices refers to the proposed development as comprising '*retention of dwelling house on revised site boundaries to that permitted under PA. Ref. 54082, relocation of existing entrance and upgrade of treatment system*'. 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 revised site boundaries (compared to the site boundaries as indicated under PA. Ref. 54082) ;
- Permission for relocation of vehicular entrance;
- Permission for upgraded waste water treatment system.

## 3.0 Planning Authority Decision

### 3.1. Request for Further Information

Prior to the decision of the Planning Authority to GRANT permission for the proposed development, the Planning Authority requested Further Information.

### 3.1.1. Further Information was requested on the 21<sup>st</sup> December 2021 as follows:

- Item 1 – identify route of Curranrue Group Water Scheme, indicate connection route from house to same, and submit a letter from Curranrue Group Water Scheme confirming offer to domestic water supply.

### 3.1.2. Further Information submitted on the 9<sup>th</sup> June 2022 as follows:

- Item 1 – map submitted indicating route of Curranrue Group Water Scheme, connection route between the house and same, and correspondence from Curranrue Group Water Scheme confirming offer of connection.

## 3.2. Decision

The Planning Authority issued a Notification of Decision to GRANT retention permission<sup>1</sup> on the 7<sup>th</sup> July 2022 subject to 8 no. conditions.

**C3** – requires site to be served by single/proposed new entrance, and removal of existing entrance.

**C5** – requires decommissioning of existing septic tank on the site.

## 3.3. Planning Authority Reports

### 3.3.1. Planning Reports

The first report of the Planning Officer generally reflects the issues raised in the request for further information, confirms the acceptability of the proposed development in principle and states that no assessment of housing need is required.

The second report of the Planning Officer notes that the further information submitted is considered acceptable, and that the proposed development would not seriously injure the amenities of the area.

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

### 3.3.2. Other Technical Reports

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<sup>1</sup> The Notification of Decision of the Planning Authority refers to a grant of 'permission', whereas the proposed development, as per the development description contained in the public notices and the planning application form, comprises retention and permission.

None received.

### 3.4. Prescribed Bodies

None received.

### 3.5. Third Party Observations

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

- The part of the subject site where the new access is proposed is owned by the observer (Mr. Niall Kilkelly). This area provides an agricultural gate, track and access to an agricultural shed and lands.
- The applicant has been using a portion of land owned by Mr. Niall Kilkelly to the rear/south of the existing dwelling house.
- Connection to the Curranrue Group Water Scheme requires a watermain to be located on lands owned by Mr. Niall Kilkelly.

## 4.0 Planning History

### Appeal Site:

**PA. Ref. 21/81** – Retention permission REFUSED for house and septic tank on revised site boundaries to that previously permitted under PA. Ref. 54082, and relocation of existing entrance<sup>2</sup>.

Reason for refusal related to the lack of water supply.

**PA. Ref. 54082** – Permission GRANTED for bungalow and septic tank.

## 5.0 Policy Context

### 5.1.1. Code of Practice Domestic Wastewater Treatment Systems (p.e. ≤ 10)2021

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<sup>2</sup> An observation was submitted in relation to PA. Ref. 21/81 from Mr. Niall Kilkelly raising the issue of the applicant's title over part of the site, including the agricultural entrance to the south-east of the site. Under Item 4 of the request for Further Information, the applicant was requested to confirm the extent of her ownership of the site. Land Registry documentation was subsequently submitted by the applicant which indicated this agricultural entrance within the applicant's ownership.

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 20<sup>th</sup> June 2022 and is now 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 applies. Rural Housing Zone 4 also applies on foot of the landscape sensitivity of the site - see Map 4.2. Galway County Development Plan 2022 – 2028).

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

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

5.2.3. In terms of Landscape Character Type, the appeal site is located within a 'Coastal Landscape' and a Karsk Landscape (see Appendix 4 of CDP), with landscape sensitivities of 'special' and 'high' respectively. 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

- Galway Bay Complex pNHA (Site Code: 000268), c. 300 metres north.
- Galway Bay Complex SAC (Site Code: 000268), c. 300 metres north.
- Inner Galway Bay SPA (Site Code: 004031), c. 350 metres north.
- East Burren Complex pNHA (Site Code 001926), c. 740 metres west.
- East Burren Complex SAC (Site Code 001926), c. 740 metres west.

#### **5.4. EIA Screening**

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, (as amended) and therefore is not subject to EIA requirements.

### **6.0 The Appeal**

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

This is a third-party appeal against the decision to grant permission for the proposed development. The grounds for appeal may be summarised as follows;

- The area of land at the proposed entrance is owned by the third party (Mr. Niall Kilkelly) and is the subject of a legal dispute between the first and third party. This dispute is affecting the ability of the third party to conduct farming.
- In 2009 a roadway was constructed and the gate moved within the disputed area of land.

Appeal documentation submitted includes a copy of the initial observation which was submitted to the Planning Authority. Additionally, correspondence from the third parties solicitor has been furnished relating to an application to have the disputed land registered and to have a right of way registered over the land.

#### **6.2. Applicant Response**

The applicant/first party has submitted a response in respect of the third party appeal submission. The submission states that there are no planning grounds to the appeal and that the appeal should be dismissed on the grounds that it is vexatious and frivolous. Correspondence from the first parties solicitor has also be submitted and states that the third party has no rights to the property and that his application to register part of the site was rejected by Land Registry on the 16<sup>th</sup> February 2022.

#### **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:

- Title
- Rural Housing Policy
- Access
- Waste water
- Other Issues
- Appropriate Assessment

#### 7.2. **Title**

7.2.1. A central issue raised by the third party in this appeal is the extent of the applicant's ownership/title over the appeal site. The third party appellant (Mr. Niall Kilkelly) contends that he owns of part of the appeal site, specifically the area of land at the proposed entrance to the site<sup>3</sup>. The third party has submitted a map from the Property Registration Authority purporting that the area of land at the proposed entrance is owned by him. In the documentation submitted with planning application, the applicant states that they are the full owner of this part of the site and that the agricultural access was constructed without their consent. The applicant has submitted a Folio map indicating the extent of their ownership of the site, which I note includes the contested area at the location of the proposed entrance. Based on the information on the file, I consider that the applicant has demonstrated a sufficient legal interest in the

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<sup>3</sup> Reference is also made in the appeal documentation to a disputed area of land located to the rear/south of the house however I note that this area is not located within the red line boundary of the appeal site and as such has no bearing on this appeal.

application site to enable the making of a planning application. Paragraph 5.13 of the Development Management Guidelines (2007), published by the then Department of Environment, Heritage and Local Government provides relevant guidance in respect of issues relating to the title of land, specifically that *'the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, these are ultimately matters for resolution in the Courts'*. I further note that in accordance with Section 34(13) of the Planning and Development Act, 2000, as amended, a person is not entitled solely by reason of a permission to carry out any development.

### **7.3. Rural Housing Policy**

- 7.3.1. The appeal site is located within an area identified as a 'Rural Area Under Strong Urban Pressure' (Rural Housing Zone 2 and 4). In such areas applicants seeking permission for a house are required to demonstrate economic and/or social links/need. The house permitted under PA. Ref. 54082 was constructed and the permission did not include an occupancy/enurement clause. In addition, the proposal entails the repositioning of the house on the site with reference to the site boundaries, as distinct from retention permission of a house which did not have the benefit of a permission. In my opinion, having regard to the forgoing, there is no requirement for the applicant to demonstrate compliance with the rural house policy of the Galway County Development Plan 2022-2028 and should the Board be minded to grant the proposed development, I do not consider that there is a requirement to attach an occupancy condition.

### **7.4. Access**

- 7.4.1. The proposed development includes the provision of a new vehicular entrance at a location south-east of the house on the appeal site. The posted speed limit at the location of the appeal site is 80 kmph however having regard to the alignment of the road I consider that vehicles using the road would likely travel at a lower speed. I note that DM Standard 28 (Table 15.3) of the Galway County Development Plan 2022 – 2028 requires sightlines of 70 metres for local roads with a design speed of 50 kmph and I consider this to be a more appropriate sightline requirement. The applicant has indicated sightlines of 70 metres to the north and 73 metres to the south of the



proposed vehicular entrance from a setback of c. 2.4 metres from the road edge. Based on the information submitted, I therefore consider sightlines to be acceptable. Furthermore, I note that the proposed relocated vehicular entrance would represent an improvement when compared to the existing vehicular entrance, both in terms of sightlines and positioning, with visibility at the existing entrance essentially nil to the south and a danger of collisions when cars are exiting the appeal site evident. Should the Board be minded to grant the proposed development I recommend that a condition is attached stipulating that the existing entrance is blocked up within 6 months of the new entrance being commissioned.

## 7.5. Waste Water

- 7.5.1. The Site Characterisation Report submitted with the application identifies that the appeal site is located in an area with a Regionally Important Aquifer where the bedrock vulnerability is extreme. A ground protection response of R2<sup>2</sup> is noted. Accordingly, I note the suitability of the site for a treatment system subject to normal good practice and subject to the additional conditions<sup>4</sup>. The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 7.5.2. The trial hole depth referenced in the Site Characterisation Report was 1.7 metres. Neither bedrock nor the water table were encountered in the trial hole. The soil conditions found in the trial hole are described as comprising clay loam and silt/clay, with abundant gravel, cobbles and boulders. Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 14.53 was recorded. A P value/surface value of 11.47 was recorded. Based on the EPA CoP 2021 (Table 6.4) the site is suitable for a secondary treatment system and a soil polishing filter. The trial hole was not open at the time of my site inspection.
- 7.5.3. The Site Characterisation Report submitted with the application concludes that the site is suitable for the treatment of waste water. I am satisfied that the proposal complies

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<sup>4</sup> That there is a minimum thickness of 2 metres of unsaturated soil/subsoil beneath the invert of the percolation trench of a septic tank system,

or

that a secondary treatment system is installed, with a minimum thickness of 0.3 metres of unsaturated soil/subsoil with percolation values from 3 to 75 (in addition to the polishing filter, which should be 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).

with the required separation distances set out in Table 6.2 of the CoP 2021. It is proposed to install a packaged waste water treatment system and a soil polishing filter. Based on the information submitted, I consider that the site is suitable for the treatment system proposed.

- 7.5.4. The EPA CoP requires a trail hole depth of 3 metres in areas with Regionally Important Aquifers whereas the trail hole was excavated to a depth of 1.7 metres. However, noting the proposal to install a treatment system and a soil polishing filter 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 proposed development comprises the upgrading of the existing treatment system/septic tank on the site, should the Board be minded to grant the proposed development I recommend that a condition be attached in relation to the decommissioning of the existing treatment system/septic tank.

## 7.6. **Other Issues**

### 7.6.1. Changes to site boundaries

From reviewing the site plan submitted with PA. Ref. 54082 I note that the permitted house was centrally positioned on the site whereas the house as constructed is positioned further south. The proposed development comprises retention permission of the house with reference to revised site boundaries. I do not consider that the position of the house as constructed results in any negative impacts on the amenity of the area or the amenity of adjoining property.

### 7.6.2. Development Contribution

I have reviewed the Galway County Council Development Contribution Scheme 2016 and having regard to the absence of reference in the Scheme to the specific elements for which permission and retention permission are being sought under the current application/appeal, I do not consider that the proposed development attracts a development contribution.

## 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.

## 8.0 Recommendation

- 8.1. Having regard to the above it is recommended that retention permission and 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 and to the nature of the proposed development, it is considered that, subject to compliance with the conditions set out below, the development would not seriously injure the 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 retained/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><b>Reason:</b> In the interest of clarity.</p>
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2.	<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 28<sup>th</sup> October 2021, 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 this grant of permission, 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><b>Reason:</b> In the interest of public health.</p>
3.	<p>Prior to commencement of development, the developer shall agree in writing with the Planning Authority, details for the decommissioning/removal of existing septic tank from the site.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The existing vehicular entrance shall be blocked up within 6 months of the new entrance being commissioned. The existing entrance shall be replaced by a boundary wall matching the height and finish of the existing boundary.</p> <p><b>Reason:</b> In the interests of traffic safety.</p>

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.

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Ian Campbell  
Planning Inspector

12<sup>th</sup> May 2023