



An
Bord
Pleanála

Inspector's Report

ABP-315962-23

Development	Construction of house, garage, waste water treatment system and ancillary site facilities.
Location	Gardenblake, Peterswell, Gort, County Galway.
Planning Authority	Galway County Council
Planning Authority Reg. Ref.	22843
Applicant	Sean Fahey
Type of Application	Outline Permission
Planning Authority Decision	Refuse Outline Permission
Type of Appeal	First Party v Refusal
Appellant	Sean Fahey
Observer(s)	None
Date of Site Inspection	8 th June 2023
Inspector	Ian Campbell

1.0 Site Location and Description

- 1.1. The appeal site has a stated area of 0.3036 Ha. and is located on the eastern side of a local access road (L-8576) in the townland of Gardenblake, Peterswell, Co. Galway. The appeal site is located in a rural area outside of a settlement, c. 6 km north-east of Gort.
- 1.2. The appeal site, which is in agricultural use, is broadly triangular in shape and is relatively flat. A gated entrance is located along the western boundary of the appeal site. A detached bungalow is located to the south of the appeal site. A dwelling in ruinous condition is located to the west of the appeal site, directly opposite the field entrance.

2.0 Proposed Development

- 2.1. The proposed development consists of a single storey house, a garage and a waste water treatment system. The application is for outline permission and no floor plans or elevations have been submitted of the proposal.

3.0 Planning Authority Decision

3.1. Further Information

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

3.1.1. Further Information was requested as follows:

- Item 1 - submit completed Rural Housing Need form; land registry documentation and folio maps relating to the application site, the applicant's family home, and the applicant's family landholding; OS map indicating location of applicant's family home relative to the application site; applicant's Birth

Certificate; correspondence from schools etc. to demonstrate longstanding local residency; and any other information in support of the application.

- Item 2 - submit yield results for well and chemical and bacteriological analysis and test results for any water treatment that may be necessary.
- Item 3 - submit details of sightlines.
- Item 4 - submit details of boundary treatments and landscaping.

3.1.2. Further Information submitted on 17/11/2022:

- Completed Rural Housing Need form.
- Land Registry and folio details.
- Applicant's Birth Certificate.
- Letter from applicant.
- Letter from local group water scheme.
- Site layout drawing indicating sightlines.
- Details of proposed boundary treatments and landscaping.

3.1.3. Clarification of Further Information was requested as follows:

- Item 1 - submit land registry documentation and folio maps relating to the applicant's family home, OS map indicating location of applicant's family home relative to the application site; correspondence from schools etc. to demonstrate longstanding local residency; and any other information in support of the application.

3.1.4. Clarification of Further Information submitted on 12/01/2023:

- School records (St. Colemans Vocational School, Gort).
- Diagnostic report for applicant's son.
- Land Registry and folio details of the applicant's family home in Gort.
- Map indicating the applicant's family home relative to the application site.

3.2. Decision

The Planning Authority issued a Notification of Decision to REFUSE outline permission on the 3rd February 2023 for 1 no. reason which can be summarised as follows;

The proposed development is located in an Area Under Strong Urban Influence and is within the Galway County Transport Planning Strategy area. The applicant has not satisfactorily demonstrated compliance with the requirements of Policy Objective RH 2. The proposed development is contrary to the rural housing provisions of the Galway County Development Plan 2022-2028, and would contravene materially Policy Objective RH 2 of the Galway County Development Plan 2022-2028.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The report of the Planning Officer includes the following comments.

- The applicant has not demonstrated that he has resided in this rural area for a substantial, continuous period.
- No demonstratable economic links to the area have been provided. The applicant is from Gort town and has not demonstrated intrinsic links to this rural area.

3.3.2. Other Technical Reports

None received.

3.4. Prescribed Bodies

None received.

3.5. Third Party Observations

None received.

4.0 Planning History

None.

5.0 Policy Context

5.1.1. National Planning Framework (NPF) – Project Ireland 2040 (2018)

National Policy Objective 19 states -

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.

5.1.2. 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.

5.1.3. Ministerial Guidance

Sustainable Rural Housing, Guidelines for Planning Authorities (2005)

The appeal site is located within an area identified as a 'Rural Area Under Strong Urban Pressure' (Rural Housing Zone 2 GCTPS, see Map 4.1 and 4.2 Galway County Development Plan 2022 - 2028). The Guidelines state that these areas exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

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 4.1 and 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:

Policy Objective RH2: Rural Housing Zone 2 (Rural Area Under Strong Urban Pressure-GCTPS-Outside Rural Metropolitan Area Zone 1)

DM Standard 28 – Sightline 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 the 'Central Galway Complex 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

- Lough Coy SAC (Site Code: 002117) – c. 1.3 km west.
- Slieve Aughty Mountain SPA (Site Code: 004168) – c 1.7 km east.

5.4. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, 2001, as amended, 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 by Sean Fahey against the decision to refuse outline permission. The grounds for appeal may be summarised as follows;

- Objective RH2 makes provision for a landowner who has no immediate family and wishes to accommodate a niece or nephew on family lands. The appellant contends that this criterion applies to him as his uncle is single and lives alone on the family farm. The appellant states that his uncle, who is 69 and suffers ill health, wishes to accommodate him on the family farm and that he has been helping his uncle out on and off for the last 20 years, and also helping out on the farm every week. In addition to assisting his uncle on the farm the appellant also brings him to medical appointments, collects his prescription, brings him to the supermarket and helps him around the house. Living close to his uncle would have safety and security benefits for his uncle.
- The appellant's grandmother was born on the farm and the appellant has family ties to the area going back over 100 years. The original house on the farm is a ruin now.
- The appellant's father stayed at the family farm and worked on the farm during the summer when he was young.
- The appellant states that he lived close by when he was born (between 1974 and 1979), before moving to Gort.
- The appellant states that he has a special needs child who requires a purpose-built home and also needs to be in nature and with animals. The appellant's current home is not fit for purpose and a report from the HSE states this to be the case.
- The appellant refers to a permission which his uncle was granted under PA. Ref. 98/1722 in the same field.
- The appellant refers to the Law Society's Law Reform Committee report 'Discriminatory Planning Conditions: The Case for Reform'.

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/Refusal Reason 1
- Waste Water
- Other Issues
- Appropriate Assessment

7.2. Rural Housing Policy/Refusal Reason 1

7.2.1. The appeal site is identified in the Galway County Development Plan 2022 – 2028 (see Map 4.2) as being within Zone 2 - Galway County Transport & Planning Study (GCTPS), which corresponds an 'Area Under Strong Urban Influence'.

7.2.2. Policy Objective RH 2 applies to Rural Housing Zone 2 (Rural Area Under Strong Urban Pressure GCTPS-Outside Rural Metropolitan Area Zone 1) and sets out specified circumstances where applicants may be considered eligible for a dwelling in a rural area. Policy Objective RH2 1 (a) is the relevant criterion in this instance and provides;

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.

- 7.2.3. The appellant contends that provision is made in Policy Objective RH2 where a landowner has no immediate family and wishes to accommodate a niece or nephew on family lands. Having reviewed Policy Objective RH2 1 (a) I consider that in the first instance an applicant seeking a house in the rural area on the basis of Policy Objective RH2 1 (a) is required to have a 'long standing demonstrable economic and/or social Rural Links¹ or Need to the area', and that the proposal is for permission to build the applicant's first home. I consider these criteria to be perquisites (in the context of applicants seeking permission on the basis of being the niece or nephew of a landowner with no immediate family) as it would otherwise mean a more stringent eligibility criteria for applicants with immediate family ties seeking to build a house on the existing family farm holding, which in my opinion would be illogical.
- 7.2.4. The appellant resides in the urban area of Gort (9.7 km from the appeal site), last resided in the area in the vicinity of the appeal site in 1979 and as such I do not consider that the appellant has 'rural links' to the area. Additionally, as the appellant currently resides in Gort the proposal would not be a first home, as stipulated under Policy Objective RH2 1 (a).
- 7.2.5. Should the Board not concur with this position and consider that applicants seeking a house on the basis of being a niece or nephew of a landowner with no immediate family may be considered without first demonstrating rural links and that the house will be their first home, I note that with the exception of a letter of consent from the landowner (stated as being the appellant's uncle) no documentation has been submitted to demonstrate the relationship of the appellant to the landowner, or to demonstrate that the landowner (stated as the appellant's uncle) has no immediate family. Furthermore, based on the information submitted I do not consider that special

¹ Rural Links are defined in the Development Plan as a person who has strong demonstrable economic or social links to the rural area and wishes to build a dwelling generally within an 8km radius of where the applicant has lived for a substantial continuous part of their life, and 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.

circumstances or a justification have been demonstrated as required under Policy Objective RH2 1 (a), or that a need to reside at this rural location which is in an area under strong urban influence/pressure within easy reach of urban settlements, has been demonstrated. I therefore do not consider that the appellant has demonstrated compliance with the Galway County Development Plan 2022 – 2028 in relation to proposals for single housing in the rural area.

- 7.2.6. The appellant also refers to the need for a house in the rural area on the basis of the health circumstances of his son. I have reviewed the policy objectives contained in Chapter 4 (Rural Living and Development) of the Galway County Development Plan 2022-2028 and I note that there is no provision for applicants seeking permission for a house in the rural area on this basis.

7.3. **Waste Water**

- 7.3.1. The Site Characterisation Report submitted with the application identifies that the subject site is located in an area with a 'Locally Important Aquifer' where the bedrock vulnerability is 'Moderate'. A ground protection response to R1 is noted. Accordingly, I note the suitability of the site for a treatment system (subject to normal good practice). The applicant's Site Characterisation Report identifies that there is no Groundwater Protection Scheme in the area.
- 7.3.2. The trial hole depth referenced in the Site Characterisation Report was 2 metres. Neither the water table nor bedrock were encountered in the trial hole. The soil conditions found in the trial hole are described as comprising silt/clay with pebbles. Percolation test holes were dug and pre-soaked. A T value/sub-surface value of 25.61 was recorded. A P/sub-surface test was also carried out and a value of 35.03 recorded. I was unable to inspect the trial hole at the time of my site inspection.
- 7.3.3. Based on the EPA CoP 2021 (Table 6.4) the site is suitable for a secondary treatment system and a soil polishing filter, or a tertiary treatment system and infiltration area. Table 6.3 of the EPA CoP 2021 requires a minimum depth of unsaturated permeable subsoil of 0.9 metres below the base of the polishing filter following secondary treatment systems and infiltration areas following tertiary systems. No sectional drawings indicating compliance with this requirement has been submitted. The Site

Characterisation Report submitted with the application concludes that the site should be suitable for treatment of waste water.

- 7.3.4. From reviewing the documentation submitted with the planning application/appeal I note that whilst the percolation area has been indicated the location of waste water treatment system/unit has not. Table 6.2 of the EPA Code of Practice sets out minimum separation distances which must be met. These distances relate to the entire domestic waste water treatment system and not just the infiltration/treatment area. It is therefore not possible to determine whether the proposal complies with the required separation distances set out in Table 6.2 of the CoP 2021. The appellant has therefore not demonstrated that the proposed development would comply with the EPA Code of Practice 2021 and I am not satisfied that the site is suitable for the treatment of effluent without a threat to groundwater. I recommend that permission is refused on this basis. This is a new issue and the Board may wish to seek the views of the parties. However, having regard to the other substantive reason for refusal set out above, it may not be considered necessary to pursue the matter.

7.4. **Other Issues**

- 7.4.1. Access - a vehicular access is proposed onto the L-8576. The posted speed limit at the location of the appeal site is 80 kmph however having regard to the alignment and narrow nature 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 35 metres for local roads with a design speed of 30 kmph and I consider this to be a more appropriate sightline requirement. Based on the site layout plan submitted with the appeal, I note maximum achievable sightlines of 70 metres to the north and south. Based on the information submitted, I consider sightlines to be acceptable.

7.5. **Appropriate Assessment**

- 7.5.1. 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 outline permission is refused based on the following reasons and considerations.

9.0 Reasons and Considerations

1. The site of the proposed development is located within an 'Area Under Strong Urban Pressure' in the Galway County Development Plan 2022. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has demonstrated that he comes within the scope of the housing need criteria as set out in Policy Objective RH2 of the Galway County Development Plan 2022-208. The proposed development would, therefore, be contrary to the Galway County Development Plan 2022-2028. The proposed development would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the information submitted with the planning application/appeal, specifically ambiguity in relation to the location of components of the proposed waste water treatment system, it is unclear whether the proposed development complies with the Code of Practice Domestic Wastewater Treatment Systems (p.e. ≤ 10) 2021 (EPA), in particular the requirements set out in Table 6.2. The Board is therefore not satisfied that the site is capable of treating foul effluent arising from the dwelling. Accordingly, the proposed development would be prejudicial to public health 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

17th October 2023