



Development	The retention of a dwelling house and effluent treatment system.		
Location	Tonabrocky, Ragoon, Co Galway.		
Planning Authority Ref.	221226.		
Applicant(s)	Tony Flaherty.		
Type of Application	Permission.	PA Decision	Refuse Permission.
Type of Appeal	First Party	Appellant	Tony Flaherty.
Observer(s)	Martin and Eithna Murtagh Kieran Carr		
Date of Site Inspection	18 September 2023	Inspector	Stephen Rhys Thomas

1.0 Introduction

1. Site Location/ and Description.

The site is located along the L-1323 local road, north west of Galway City, at a scattered settlement known as Tonabrocky. The local road is very narrow and undulates along its length. The area is characterised by small fields and a large number of detached dwellings on large sites, some under construction. There are

also large agricultural sheds and an equestrian centre in the vicinity. The subject site is a small plot of 0.075 Hectares with boundaries made up of mature trees and stone walls. The structure on site takes the form of a single storey dwelling of 73 sqm with a pitched roof and rendered walls. The structure is unfinished and unconnected to water services. The roadside boundary comprises a dilapidated stone wall and the entrance to the site is taken from a laneway to other property.

2. Proposed development.

The retention of a dwelling house (73 sqm) and effluent treatment system, on a site of 0.075 Hectares.

3. PA's Decision:

The planning authority refused permission for seven reasons that can be summarised as follows:

1. Given the site configuration and high landscape sensitivity of the area, the development does not assimilate well with its surroundings, and materially contravenes policy objectives LCM 2, LCM 3 and DM Standard 46. Such a haphazard development would materially contravene policy objective RH 9 and DM Standard 8.
2. Rural links are not satisfied, policy objective RH 1 is not met.
3. The site, that includes an area of road, at 0.075ha is not sufficient to adequately and safely dispose of domestic effluent, would not meet the requirements of the EPA Code of Practice and would be contrary to Policy Objective WW 6 and DM Standard 38. The development would be prejudicial to public health and risk to surface water.
4. The development would result in an excessive concentration of residential development served by individual domestic wastewater treatment systems. The development would be prejudicial to public health.
5. Sightlines have not been shown on a layout drawing, safe access to the site has not been demonstrated in accordance with DM Standard 28 and the proposed development would represent a traffic hazard.
6. The siting and design of the development would be visually intrusive on the High Landscape Sensitivity of the area, would injure amenities, devalue

property and set an undesirable precedent. Residential amenity would be impacted upon because the existing dwelling is in front of other houses and would be out of character with existing development. This would all materially contravene Policy Objective RH 9 and DM Standard 29d.

7. .Due to the lack of information that concerns water supply to the dwelling, the development would pose a public health risk and would materially contravene Policy Objective WS 4.

Planning Report 1 states that the site is located in a rural High Landscape Sensitivity area, outside any settlement, inside the MASP and GCTPS Area, and outside the urban fringe of any town, and where rural housing need is required to be established by the applicant. The rural status of the applicant is therefore a material consideration and no details have been submitted in this regard. In terms of design/visual impact, building line, surface water and landscaping, the development meets none of the requirements as set out in the development plan. Permission refused.

Observations: two observations received raise issues to do with disposal of domestic waste water, proximity to the road and impact upon residential amenity.

Technical Reports: none.

4. Planning History.

Subject site - None

5.1. Local Planning Policy

Galway County Development Plan 2022 -2028

The Galway County Development Plan 2022 -2028 was adopted by the PA on 9th May 2022. It has regard to national and regional policies in respect of rural housing, chapter 1 and section 4.6 of the plan refer.

Relevant policies and objectives include:

- Policy Objective RC 2 Rural Housing in the Countryside - 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.

- Policy Objective RH 1 - Rural Housing Zone 1(Rural Metropolitan Area)
 - Policy Objective RH 7 - Renovation of Existing Derelict Dwelling
 - Policy Objective RH 9 – Design Guidelines
 - Policy Objective LCM 2 - Landscape Sensitivity Classification
 - Policy Objective LCM 3 – Landscape Sensitivity Ratings
 - Policy Objective WS 4 - Requirement to Liaise with Irish Water – Water Supply
 - Policy Objective WW 6 – Private Wastewater Treatment Plants
 - DM Standard 8 – Site Selection and Design
 - DM Standard 11 – Landscaping
 - DM Standard 28 - Sight Distances Required for Access onto National, Regional, Local and Private Roads
 - DM Standard 29d - Building Lines, Local Roads (15 metre set back)
 - DM Standard 38 - Effluent Treatment Plants
 - DM Standard 46 - Compliance with Landscape Sensitivity Designations
- Appendix 5: Design guidelines for the single rural house

5.2 Natural Heritage Designations

- The closest designated European Site is the Lough Corrib SPA and Lough Corrib SAC.

6. The Appeal

6.1 First Party Appeal.

- There has been a dwelling at this location for more than 100 years. A septic tank has served the dwelling since before the 1963 Planning Act. The dwelling has an Eircode H91 RKK1, an electricity connection and mains water. The extension is less than 40 sqm and could be exempted if not unauthorised. The unauthorised dwelling was built on the footprint of the original house and fits into the landscape that is not protected. The original house was here first and the other houses have clustered around it.
- The site is located in the Rural Metropolitan Area but is a brown field site and Policy Objective RH 7 should apply, for reference PA 21/1872.

- The septic tank has been on site since before 1963, it is certified by an Engineer. The EPA Code of Practice states that existing septic tanks can be treated differently, and variances can apply.
- As for the concentration of septic tanks in the area, ours was here first and it is the others that have caused the over concentration and density.
- The vehicular entrance is shared with the house to the rear, PA 17/507 and PA 14/77 refer. Given the nature of the local road, the 85th percentile should be applied and a 70 metre sightline is sufficient.
- The replacement dwelling is built on the same footprint as before, the issue is that permission was not sought prior to construction. Issues of residential amenity impacts to other dwellings are not relevant as this house existed first.
- The water supply was connected by the Council in 1991/92.

The grounds of appeal are supported by appendices, of relevance: excerpts from the EPA Code of Practice, 1999 and 2002 aerial photograph showing the dwelling and entrance, Galway County Council correspondence dated 5th November 1991 regarding water connection, water charge demand, Septic Tank and Percolation area Certification of Inspection and compliance dated 4th March 2023, electricity bill August 2018, photographs showing screening and a letter from a neighbour confirming that the structure was lived in for many years.

6.2 P.A. Response

- None.

6.3 Observations

The observations refer to the items set out in the reasons for refusal and refute all of the grounds of appeal. Other noteworthy issues include the following. The enforcement and legal history of the site is set out. The structure on the site was never lived in but used as a shed for bicycle repairs. A mobile home moved on to the site and in 2015/16 the structure was demolished and construction began. The applicant's rural links are questioned and so too is the historical evidence for occupation of the structure. Land ownership boundary is not correctly stated.

Photographs are submitted that show the construction of the extension and lack of privacy that results.

7. EIA - 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 PDR's, 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.

8. AA Screening - The subject site is located 1.7km from the Lough Corrib SPA and Lough Corrib SAC and 3.1km from the Galway Bay Complex SAC. Having regard to the scale and nature of the proposed rural house development and to the location removed from any European Sites no Appropriate Assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 **Assessment**

2.1. **Introduction**

2.1.1. The main issues in this appeal are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. The issues can be dealt with under the following heading:

- Principle
- Public Health
- Traffic Hazard
- Landscape
- Residential Amenity

2.2. **Principle**

- 2.2.1. The appeal site is situated in the rural area of County Galway and the development plan classifies it as being within the Metropolitan Area Strategic Plan (MASP). This means that certain rules apply in relation to planning applications for rural housing. The planning authority have applied the principles of Policy Objective RH 1, its restrictions in relation to areas under strong urban influence and consequently refused permission on this basis, reason 2 refers. The applicant understands that Policy Objective RH 1 should not apply as this is a brownfield site within the MASP and Policy Objective RH 7 the renovation of an existing derelict dwelling is relevant, and references PA 21/1872.
- 2.2.2. The issue at stake in relation to the principle for development at this site revolves around whether it should be considered as a completely new application for a house in the countryside or as the renovation of a derelict rural dwelling.
- 2.2.3. Policy Objective RH 1 facilitates rural housing in the Rural Metropolitan Area subject to the applicant meeting a rural housing need and demonstrating local links to the area. The planning authority are satisfied that this application should be considered on the basis of RH 1 and refused permission because the applicant did not demonstrate a rural housing need or local links. The applicant disagrees and sets out the evidence that a dwelling of some description has always been on this site and that their actions to renovate and extend the dwelling are in accordance with RH 7. Observers disagree with this premise and state that the structures on site were only ever used as a workshop and no one resided within its walls.
- 2.2.4. The applicant reaches back over a 100 years to explain the nature of the habitation on site to support their argument that RH 7 should be applied in this instance. I have examined historical mapping available to me (OS mapping 25 inch and 6 inch surveys) and I can agree that the nucleated settlement pattern of Tonabrocky is characterised by a collection of small buildings. It is of course difficult to confirm whether these are dwellings or not, but the historic pattern of development is common to many areas around Galway. On the balance of probability, whatever structure occupied the site, was probably inhabited and well before the observations set out by neighbouring property owners. Given the information provided by the applicant and the comments made by observers I am satisfied that a structure of some form or other occupied the site and most likely it was at some time a dwelling, Policy Objective RH 7 could apply in this instance.

- 2.2.5. I now turn to the condition, design and appearance of the dwelling currently on site. The dwelling on site appears entirely modern without any reference to a former structure that may have occupied the lands. The drawings submitted with the planning application do not detail any original parts of the former building modified by extension. Policy Objective RH 7 seeks to facilitate the renovation, restoration or modification of an existing derelict or semi-derelict dwelling. It is apparent to me from my observations of the site and the drawings submitted with the application that this is a new dwelling that does not utilise or incorporate any of the former structure that the applicant talks about. I am not satisfied therefore that RH 7 cannot be relied upon in this instance.
- 2.2.6. That being the case, the development is for a new rural dwelling and local need or links are required to be demonstrated. The applicant has not provided any information to demonstrate compliance with RH 1 and so permission should be refused on that basis.

2.3. **Public Health**

- 2.3.1. Wastewater disposal – The planning authority refused permission on the basis that the site is not large enough to safely dispose of domestic effluent and would lead to an excessive concentration of domestic treatment plants, all of this would be contrary to Policy Objective WW 6 and DM Standard 38 of the development plan. Observers are also concerned that the site cannot accommodate a domestic wastewater treatment system. The applicant points out that a septic tank has occupied the site since before 1963 and it has been certified by an engineer Seamus Walsh BE MIEI. The engineer confirms that the tank and percolation area are operating effectively and have been de-sludged and well maintained, in accordance with EPA Code of Practice, appendix 11 of the grounds of appeal refers.
- 2.3.2. The site is small, at 0.075 Hectares and this presents challenges. The planning authority have referenced WW 6 in their reason for refusal which requires that private wastewater treatment plants be operated in compliance with Environmental Protection Agency (EPA) Code of Practice for Domestic Waste Water Treatment System 2021 (Population Equivalent ≤ 10). The applicant has submitted documentation accredited by an indemnified Engineer, that states the onsite treatment system is operating satisfactorily and in accordance with the EPA Code of

Practice. On this matter, the Code of Practice (CoP) sets out certain standards in relation to installation of Domestic Waste Water Treatment Systems (DWWTS) and section 7 refers to septic tanks and associated percolation areas, as found on the appeal site. The applicant highlights that the Code of Practice allows for adaptation where sites would not meet up to date standards, sections 1.3 and 2.2 of the CoP refer.

- 2.3.3. The applicant has submitted information that confirms that the existing system is operating to an acceptable level, this has been signed off by a competent person. The planning authority have not submitted any contrary information in this regard. No upgrades are proposed to the existing system, and so arguably the requirements, variances or otherwise, of the CoP are not applicable in this instance.
- 2.3.4. The site is small, and I observed that some wastewater pipes remain unconnected, from dwelling to treatment system. The dwelling it is proposed to retain is also small, at 73 sqm, with two bedrooms and a single toilet. This is an unusual development and it relies on a DWWTS that purportedly predates planning laws, being pre 1963. However, the applicant states that the current system operates within limits and an engineer has signed off and confirmed that the system is acceptable. I have no reason to suspect that this isn't the case and that public health is not at risk at this location.
- 2.3.5. Concentration of individual domestic wastewater treatment systems – The planning authority have concerns that the proposed development would lead to an excessive concentration of residential development served by individual domestic wastewater treatment systems. The applicant considers that their development and treatment system were in situ well before other houses developed in the area and it is them that pose the risk to public health.
- 2.3.6. The area is dominated by existing housing, some are older houses that have been renovated or just well maintained, others are newer bungalow type development. In addition, another dwelling is currently under construction across the road. Ground conditions in the area are generally poor and a stream is located just over a hundred metres to the east. It is a fair assessment by the applicant to state that development has grown up around the area and that their property and treatment system predates this growth. However, this is a simplistic conclusion to arrive at. Yes, development

has grown in this area but such growth has relied on detailed site characterisation and assessment for treatment systems in line with whatever standards were required at the time of consent. In that respect, assessments on the suitability of individual sites would have taken into account other septic tank and percolation areas in the vicinity. The applicant seeks to retain the renovation and extension of an existing dwelling but I have reservations that this is the actual case. From my observations of the dwelling on site and the examination of the drawings submitted, I am not satisfied that the structure it is proposed to retain has any relationship with what was on the site previously. I am satisfied that this development should be considered to be a new addition to the area and the concentration of treatment systems is a concern for public health.

- 2.3.7. Water Supply – The planning authority are concerned that public health will be affected because the site is not connected to a public water supply. The applicant points that the site was connected to the public water supply by the Council in 1991/92, appendix 10 of the grounds of appeal refers.
- 2.3.8. The documentation submitted at appendix 10 refers to a correspondence from the Council outlining how to obtain a water connection and the fees for same. Appendix 10 also includes a Water Charge Demand for 1993 and separate payment forms. It appears to me that a water connection was pursued for this site, and in all likelihood a connection was made as demand for payments have issued, albeit for a short period in the early 1990s. Without evidence to the contrary, I am satisfied that the site has a connection to the public water supply and public health is not at risk and Policy Objective WS 4 is not contravened.
- 2.3.9. Public Health Conclusion – The applicant has provided details to demonstrate that the current treatment system on site operates within standards, has been de-sludged and well maintained, this may be the case. However, it is proposed to connect a new dwelling to an existing treatment system and the suitability of the existing system has not been assessed. Even though the current treatment system on site may operate within standards, I am not satisfied that there is enough information on file to demonstrate it can safely treat waste if permitted.

2.4. **Traffic Hazard**

- 2.4.1. The planning authority have serious concerns that the site cannot provide safe access and egress. The fifth reason for refusal highlights that sightlines have not been shown on a layout drawing, safe access to the site has not been demonstrated in accordance with DM Standard 28 and the proposed development would represent a traffic hazard. Observers are also concerned about the traffic hazard that will be posed by the development. The applicant explains that the vehicular entrance is shared with the house to the rear, PA 17/507 and PA 14/77 refer. With reference to DM Standard 28, given the nature of the local road, the 85th percentile should be applied and a 70 metre sightline is sufficient, appendix 12 refers.
- 2.4.2. The site has limited road frontage, approximately 30 metres once the entrance laneway to other property is removed. The site layout submitted with the application does not detail any vehicular entrance to the site or the availability of on site car parking, the drawing is limited in the information it presents. There is no information on file that concerns the availability of shared access with other property, planning application numbers are referenced but no detail has been submitted. From my observations of the site, the current entrance is taken at a right angle from a laneway and parallel with the road. I am uncertain if there is a requirement for a right of way over the laneway as this information has not been submitted either.
- 2.4.3. The rural road that passes to the front of the site is narrow and undulates significantly and this limits forward visibility. There are numerous entrances along its length and traffic speeds are unreasonably fast given the limitations of this minor road. I have concerns that the development could well pose a traffic hazard. There is limited information on file to dispel these concerns, a site layout (appendix 12 of the grounds of appeal) has been provided that shows sightlines. However, due to the limited site frontage, the applicant has little control over any obstructions to the left or right. For all of these reasons permission should be refused on the basis that the proposed development represents a traffic hazard.

2.5. **Landscape**

- 2.5.1. As defined in the County Development Plan, the site is located in an upland and bog landscape with a high sensitivity rating. The planning authority are concerned that the siting and design of the dwelling would adversely impact the visual amenities of the area and would be contrary to Policy Objectives RH 9, LCM 2 and LCM 3 and

not in accordance with DM Standard 8 and 46. The applicant disagrees and suggests that existing mature planting and trees provide adequate cover for what is a small dwelling. Observers are also concerned that landscape and visual amenities will be adversely affected.

2.5.2. The first reason for refusal highlights a wide range of policy objectives and development management standards that will be contravened by the development if permitted. Reason six also refers to siting and design guidance. All of these policy objectives and development management standards are set out in section 5.1 of my report above. On balance it would be appropriate to bring all these tests to bear if the site were a conventional rural house application, it is not. In addition, though the landscape has a high sensitivity, there are no protected views and the observable landscape for the which the area is noted at this location is obscured. There are already a large number of dwellings in the immediate area and the bog and upland scenery of the wider area is not easily seen from this location. The dwelling is almost complete and its impact upon the landscape can be easily observed. The site is surrounded on three sides by mature trees and low boundary walls and the dwelling can only be detected at close range. The dwelling is located close to the road, a set back of 15 metres is not maintained, however, the reason for this is the renovation assertion by the applicant rather than a new build, a fundamental point I disagree with. The design of the dwelling is not so objectional that it results in an eyesore, so it complies with the rural house design guidelines of the development plan. Finally, the house is small in scale and so its impact on the landscape at this location such as it is, is limited.

2.5.3. I am not satisfied the landscape sensitivity of the area is adversely impacted by the development it is proposed to retain. However, the means by which the development has come to be is unacceptable. I have already discussed in detail in earlier sections of my report that this is not a project that complies with RH 7 Renovation of Existing Derelict Dwelling.

2.6. Residential Amenity

2.6.1. The planning authority raise siting and design issues that lead to an erosion of residential amenities for neighbouring property, Policy Objective RH 9 and DM Standard 29(d) are compromised and permission refused. The applicant disagrees

and states that the design of their dwelling conforms with the rural design guidelines in the development plan and no residential amenities are affected.

- 2.6.2. I have already discussed at length that the dwelling on site is not the result of a renovation or extension of an existing derelict dwelling because none of the previous structure on site has been incorporated. If it were the case that RH 7 had been complied with then there would be some argument for retaining the structure, at its current location and design. From my observations on site, the subject appeal dwelling is located to the front of sheds and an extended two storey dwelling. Over 25 metres separates neighbouring dwellings and I do not anticipate any adverse overlooking from the single storey dwelling it is proposed to retain. Likewise, given the single storey and diminutive scale of the dwelling proposed to retain, I do not anticipate any impacts from overbearing appearance or overshadowing and loss of sunlight/daylight. Neighbouring property may consider a dwelling at this location to be a nuisance, but in terms of residential amenity as it is set out in the development plan, I am satisfied that this is not the case.

2.7. **Other Matters**

- 2.7.1. The applicant has submitted material to demonstrate that the site has been occupied over time, including: an electricity bill from August 2018, photographs and a letter from a neighbour confirming that the structure was lived in for many years. Whilst this may be the case, the appeal before the Board refers to the retention of the dwelling and wastewater treatment system now on the site. Previous matters to do with occupation or otherwise are simply matters that have led to this application for retention now before the Board.

3.0 **Recommendation**

- 3.1. I recommend that planning permission should be refused for the reasons and considerations as set out below.

4.0 **Reasons & Considerations**

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements

the development would generate on a road at a point where sightlines are restricted in both directions. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the location of the site within the Metropolitan Area Strategic Plan (MASP) in an area where housing is restricted to persons demonstrating local need in accordance with Policy Objective RH 1 Rural Housing Zone 1 (Rural Metropolitan Area) of the Galway County Development Plan 2022-2028, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, 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.
3. It is considered that, taken in conjunction with existing development in the vicinity, the proposed development would result in an excessive concentration of development served by septic tanks in the area. The proposed development, would, therefore, be prejudicial to public health.

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.

Stephen Rhys Thomas
Senior Planning Inspector
23 October 2023