



An  
Bord  
Pleanála

## Inspector's Report

**ABP-303818-19**

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<b>Development</b>	Construction of a house, detached domestic garage, new vehicular access, and all associated site works.
<b>Location</b>	Tullyallen, Drogheda, Co. Louth.
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	18609
<b>Applicant(s)</b>	Anthony Gregory & Sabrina Kierans
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Permission
<b>Type of Appeal</b>	Third Party against Condition
<b>Appellant(s)</b>	Argyle Developments Ltd
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> of June 2019
<b>Inspector</b>	Angela Brereton

## 1.0 Site Location and Description

- 1.1. The site is within the settlement of Tullyallen which is to the west of the M1 motorway. It is accessed via the local road network and the road frontage faces The Glen housing estate cul de sac. Burton Hall is another cul de sac on a lower level to the east of the site. Both contain two storey houses.
- 1.2. The site is relatively overgrown and is defined by trees and mature hedging. There are ESB poles that traverse the southern part of the site. There is a river to the south of the site.

## 2.0 Proposed Development

- 2.1. This is to consist of proposed single storey dwellinghouse, detached domestic garage, new vehicular access, new front boundary wall/railings and proposed rainwater harvesting system together with all associated site works.
- 2.2. The application form provides that the area of the site is 0.312ha and of the proposed house is 371.8sq.m.
- 2.3. Documentation submitted with the application includes the following:
  - A letter outlining the applicant's needs for the proposed development.
  - Letter from ESB re: removal of poles
  - Brochure showing selected brick
  - Copy of Land Registry details
  - Copies of water harvesting and filtration system details
  - Drawings including Site Layout Map, Floor Plans and Elevations
  - Copy of Exemption Part V application

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 31<sup>st</sup> of January 2019, Louth County Council granted permission for the proposed development subject to 7no. conditions. These concern design and layout,

development contributions, infrastructure, archaeology, landscaping and construction related issues.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Planner's Report had regard to the locational context of the site, planning history and policy and to the submissions made and the interdepartmental reports. Their assessment included the following:

- The subject site is located within the Level 3 Settlement of Tullyallen.
- The proposed development relates to the construction of a single dwelling on residentially zoned and is considered acceptable in principle.
- Given that the site is located within a Level 3 settlement local need is not required in this instance.
- The size, scale, design and massing of the proposed development is considered to be appropriate to its setting.
- They did not consider that the proposal would have an adverse impact on neighbouring properties.
- They noted that the site would access and egress onto 'The Glen' Housing estate where DMURS are applicable.
- They note that an AA Screening Report had been submitted.
- The site is considered to be located at a considerable height above the watercourse to the rear and is not located in an area of flooding.
- They have no objections to connections to the existing public water and public foul water and note Irish Water comments.

They recommended that Further Information be submitted to include the following:

- Sightlines drawings to show visibility splays and compliance with DMURS.
- Proposed access onto the public road could be moved west to improve/achieve sightlines.

- Details of the retaining wall proposed to be constructed to the south of the site including the drainage associated with the retaining wall and the eventual discharge point.
- Further details on storm water drainage.

#### *Further Information Response*

The Applicants submitted the following:

- Drawings showing the revised sightlines
- Drawings showing retaining wall details
- Details of confirmation of Drainage from Collon Tanks
- Revised Public Notices.

#### *Planner's Response*

The Planner had regard to the F.I submitted and their response included the following:

- They note that sightline drawings have been submitted and that the Infrastructure Section of the Council were consulted and it is stated that adequate visibility has been provided.
- A Report has been submitted providing details of the construction of the retaining wall. They note that the Infrastructure has no objection subject to conditions and consider that details should be submitted regarding finishes.
- They note that the Infrastructure Section has no objection in principle to the details regarding storm water drainage subject to conditions.
- Revised Public Notices have been submitted.
- They note development contributions will be required.
- A Part V Exemption Certificate has been granted in respect to the application site.

They conclude that they have no objection in principle to the provision of a dwelling on the site and that it will not have a significant visual impact nor will it adversely impact on the amenity of any adjoining properties. They provided that the

outstanding matters in relation to visibility splays, the retaining wall and storm water drainage have been addressed to the satisfaction of the PA. They recommended that permission be granted subject to conditions.

### **3.3. Other Technical Reports**

#### Infrastructure Directorate

They request F.I be sought to include sightline drawings and access in accordance with DMURS. They note the proposed access onto the public road could be moved further west to facilitate sightlines. Construction of a retaining wall structure to the south of the site to include an outline of associated drainage and the eventual discharge point. Also storm water calculations.

In response to the F.I they had no objection subject to recommended conditions.

### **3.4. Prescribed Bodies**

#### Irish Water

They have included a Planning Permission Observation Report and the Planner's Report states they have no objection subject to conditions.

#### The Department of Culture, Heritage and the Gaeltacht

They note that the proposed development is within the landscape of the Battle of the Boyne and is located in the vicinity of 'King Williams' Glen'. They recommend a condition regarding pre-development testing.

### **3.5. Third Party Observations**

Argyle Developments Ltd the developer, have examined the planning package in relation to services layout and connections and site entry. They note no way leaves for entry to the existing main services or right of way over existing estate road has been requested by applicants from them. They request that this be taken into account in the determination of the planning application and conditioned accordingly.

A separate submission was made by a local resident concerned about the proposed red brick finish. They also note that there were 2 previous applications on this site

from the last owner and one from the builder of The Glen Estate. They have concerns about a right of way required by the ESB for the underground high powered cables which runs 3-5 m from the boundary wall of adjoining dwellings. Other issues include agreement for grass cutting and note an amount of fill has been deposited on the site which raises the levels on the site.

## 4.0 Planning History

4.1.1. The Planner's Report notes the relevant planning history proximate to the subject site. The following is of note relevant to previous Board decisions:

- Reg.Ref.07/1596 – Permission granted by the Council for the construction of 3no. two storey houses, external footpaths with individual entrance and access to each house and associated site works. This was subject to a Third Party Appeal Ref. PL15.229622 refers and was subsequently granted subject to conditions by the Board.
- Reg.Ref.13/461 – Extension of Duration of the above was refused by the Council.

This decision related to the subject site. Copies of these decisions are included in the History Appendix to this Report.

## 5.0 Policy Context

### 5.1. Louth County Development Plan 2015-2021

Table 2.2 provides the Settlement Hierarchy Based on County Role. This includes Tullyallen as a Level 3 small town with good bus or rail links; c.10km from a large growth town – Drogheda.

Policy SS9 seeks: *To promote and facilitate limited development within Level 3 Settlements that is commensurate with the nature and extent of the existing settlement, to support their role as local service centres and to implement the policies and objectives relative to each settlement as provided for in Appendix 2, Volume 2 (a).*

A Land Use Zoning Map for Tullyallen is included in the Louth CDP and the subject site is zoned residential. Table 2.6 has regard to Residential Zoning in Level 3 Settlements including Tullyallen.

Table 10.1 notes that there is a Public Wastewater Scheme in Tullyallen and Table 10.4 a Private Group Water Scheme.

## **5.2. Design Manual for Urban Roads and Streets 2013**

The DMURS document must be taken into consideration in examining planning applications. Within the DMURS document the application of the principles to existing streets must require a flexible approach. The document calls for a safer more attractive and vibrant street and the creation of a permeable network from a multi-layered process. The process should begin with a site analysis that identifies any constraints the proposal may have on the existing network, including points of access, the street hierarchy in terms of trips generated, access etc.

## **5.3. EIA Screening**

Notwithstanding the proximity of the proposed development to a sensitive location - Boyne Coast and Estuary SAC (site code:002299) and SPA (site code: 001959) the nature and scale of the development for a single house on residentially zoned land would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

Argyle Developments Ltd have submitted a Third Party Appeal against Condition 3(h) of the Council's permission. Their grounds of appeal include the following:

- Their appeal is specifically against Condition no. 3(h) of the Council's permission. However, they also refer to consequential conditions in relation to connection in relation to existing services i.e Water Services and Foul Sewer.

Their appeal is noted further in the context of the Assessment below.

- The address used by the applicants in their planning application was wrong and should be The Glen, Tullyallen, Co. Louth.
- They also ask the Board to have regard to their submission made during the planning process to Louth County Council stating the above.

## 6.2. Applicant Response

The First Party response includes the following:

- They own the entrance referred to and part of the estate road is owned by themselves. They enclose a copy of this certificate.
- The name on the application is the name on the land registry, Tullyallen, they include Folio details.
- They provide details as to why building a bungalow on this particular site is suited to their family and medical needs.
- They provide details relative to a public auction for the land, and note they were the successful bidders.
- They provide details in response to the Third Party Appeal, relevant to access and connection to services.
- In relation to the impasse regarding the estate not being taken in charge, this is a matter for discussion between Argyle Development and Louth County Council.

## 6.3. Planning Authority Response

The Planning Authority of Louth County Council's comments include the following:

- The issues of connection to existing services is a private matter beyond the remit of the Planning Authority.
- The PA is satisfied that the address specified is correct.



## 7.0 Assessment

### 7.1. Appeal against Condition

- 7.1.1. This is a Third Party Appeal against Condition no. 3(h) of the Council's permission. In this case it is noted that there is no First Party Appeal or Observations. Section 139 of the Planning and Development Act 2000 as amended would apply as this relates only to appeals against conditions. Section 139 (c) provides that where: *the Board is satisfied, having regard to the nature of the condition or conditions, that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted.* Therefore, it is considered that taking into account the particulars of this case and the documentation submitted that the application does not need to be considered de novo.

### 7.2. Regard to Condition 3(h)

- 7.2.1. Condition 3(a) –(h) of the Council's conditions relative to the current application is a detailed condition relevant to Infrastructure. It is all encompassing and is taken from the recommended conditions of the Council's Infrastructure Planning Report (dated 22<sup>nd</sup> of January 2019). Condition 3(h) is as follows:

*The applicant/developer shall make all necessary arrangements to apply for and obtain a Road Opening Licence(s) from Louth County Council in respect of all openings in public area and shall pay Road Opening License Fees and road restoration costs. The applicant shall abide by the conditions as set out in the said license(s).*

- 7.2.2. The Third Party Appeal refers specifically to Condition 3(h) and consequential conditions in relation to connections to existing services i.e Water Supply and Foul Sewer. They note that these services situate within the estate and its curtilage have not yet been taken over by the Local Authority Louth County Council and are still in the possession of the developer Argyle Developments Ltd as is the estate road and the entrance which the grantees propose to use. They request that the grantees get the relevant permission to connect to the existing services and have the use of the estate road/entrance from Argyle Developments LTD.

7.2.3. The First Party response provides that as shown on their attached map they have direct access to the main road. Should Argyle Developments not allow them to connect to the services, they will apply to Irish Water to run a pipe directly from the proposed dwelling to the main road. Regarding the estate not being taken in charge, they provide that this is a matter for discussion between Argyle Development and Louth County Council.

7.2.4. It is noted that the Council's response provides that the issues of connection to existing services is a private matter beyond the remit of the Planning Authority.

### 7.3. **Conclusion**

7.3.1. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*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...*"

7.3.2. Therefore, I would consider that this issue is not one for consideration by or within the remit of the Board rather it may be considered as a private legal matter. In the interest of clarity and consistency and in view of the detailed nature of this condition, I would recommend that if the Board decides to permit that Condition no. 3(h) be modified as follows: *The vehicular access, serving the proposed development, shall comply with the requirements of the planning authority for such road works.*

### 7.4. **Regard to Development Address**

7.4.1. The Third Party Argyle Developments Ltd consider that the address used by the applicants in their planning application was wrong and should be The Glen, Tullyallen, Co. Louth. The First Party provides that the name on the application is the name on the land registry, Tullyallen. They submitted Land Registry documents (Folio no.) which provides the site is situate in the Townland of Tullyallen. The

Council's response provides that the Planning Authority is satisfied that the address specified is correct.

- 7.4.2. Having regard to these issues raised I would consider that the Board has no role or remit in determining the address of the property. Rather this is for the appropriate relevant authorities.

## 7.5. **Screening for Appropriate Assessment**

- 7.5.1. The site is located within a 100m of the Boyne Coast and Estuary SAC (site code:002299) and SPA(site code: 001959). Details submitted with the application note that it is proposed to provide a new connection to the public mains and to the public sewer and to have a rainwater harvesting system. A Screening Report has been carried out by the Council. This notes the proximity of the watercourse to the rear of the site. It considers that there will be insignificant impact as the site is to be serviced by the existing public mains. The Planning Authority determined that an AA of the proposed development can be excluded on the basis of objective scientific information and that the proposed development individually or in combination with other plans/projects will not have a significant effect on any Natura 2000 sites.
- 7.5.2. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the aforementioned European Site, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 **Recommendation**

- 8.1. I recommend that Condition 3(h) of the Council's permission be modified as below.

## 9.0 Reasons and Considerations

In the interest of clarity and consistency and of road safety for traffic and pedestrians and cyclists the Board considered that Condition no.3(h) of Louth County Council's permission Registered Reference 18/609 should be modified as follows:

*The vehicular access, serving the proposed development, shall comply with the requirements of the planning authority for such road works.*

Reason: In the interest of Road Safety and to ensure orderly development.

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Angela Brereton  
Planning Inspector

20<sup>th</sup> of June 2019