



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306790-20

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<b>Development</b>	Two storey house and waste water treatment system with percolation area.
<b>Location</b>	Killygarry, Cavan, Co Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19208
<b>Applicant(s)</b>	Shane and Mary Fitzpatrick.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant.
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Transport Infrastructure Ireland.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	29 <sup>th</sup> May 2020.
<b>Inspector</b>	Deirdre MacGabhann

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. National and Regional Policy .....	6
5.2. Development Plan.....	6
5.3. Natural Heritage Designations .....	6
5.4. EIA Screening .....	7
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	9
6.3. Planning Authority Response .....	9
6.4. Observations/Further Responses.....	9
7.0 Assessment.....	10
8.0 Appropriate Assessment.....	13
9.0 Recommendation.....	13
10.0 Reasons and Considerations .....	13

## 1.0 Site Location and Description

- 1.1. The appeal site is situated c.2km east of Cavan Town, in the townland of Killygarry, in the 100kph speed limit zone. It lies to the north of the N2 and is accessed via an existing lane from the national road which serves a single storey dwelling. The appeal site lies to the north of this dwelling, approximately 280m north of the N2. To the south west of the appeal site is St. Bridget's Church and graveyard. The original National School to the east of the Church has been converted to a residential property. The appeal site comprises part of a larger agricultural field that lies to the north of a small farm yard.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way of significant further information on (9<sup>th</sup> October 2019) and clarification of further information (20<sup>th</sup> January 2020), comprises the erection of a part two storey, part single storey dwelling house with attached carport and domestic garage. An effluent treatment system is proposed to the north east of the dwelling. Water supply is by deep bored well to the south east of the dwelling. Surface water will be disposed of via a soakaway to the north west of the dwelling. Existing vegetation will be retained on two sides of the site and timber fencing erected along the western and part of the southern boundary. The planning application includes a Traffic Impact Assessment and correspondence from the applicant stating that he (and his family) is living in the dwelling to the south of the appeal site, on the family landholding on a temporary basis with the dwelling remaining as the applicant's father's family home.
- 2.2. Clarification of further information, received on the 20<sup>th</sup> January 2020, presents information on alternative sites on the land holding which are considered to be less appropriate than the proposed site. It is also stated that the farm holding avails of only one point of access to the N3 via the established laneway.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 6<sup>th</sup> February 2020, the planning authority decided to grant permission for the development subject to 7 no. standard conditions, including development charge, occupancy, sewerage, retention of trees and landscaping and use of domestic garage.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- 23<sup>rd</sup> July 2019 – Refers to the location of the development in an area under ‘Strong Urban Influence’, in commuting distance of Cavan, Navan and the Greater Dublin area, relevant policies of the County Development Plan and submissions/technical reports made (TII and Environment). The report recommends further information on (i) traffic – applicant to submit Traffic Impact Assessment which would quantify the number of traffic movements associated with the development, (ii) Rural Housing Need given that the applicants are residing on the landholding (status of existing cottage and future intentions with regard to the dwelling), (iii) site suitability assessment at an alternative location on the site (to demonstrate 0.9m unsaturated subsoil) , (iv) revised site layout plan showing location of proposed relocated wastewater treatment system, and (v) location of well to serve the dwelling on revised site layout plan.
- 18<sup>th</sup> November 2019 – Refers to the further information submitted states that having regard to the scale and nature of the development, the existing entrance and limited turning movements, ‘exceptional circumstances’ exist in accordance with Cavan County Development Plan 2014-2020 and section 2.6 of the Department’s guidelines on Spatial Planning and National Roads (section 2.6(3) ‘*the nature of proposed development and the volume of traffic to be generated by it*’). The report accepts that the existing cottage on the landholding could not be renovated or redeveloped as it is not in the

ownership of the applicant. The report recommends granting permission for the development subject to conditions.

- 18<sup>th</sup> November 2019 – The planning authority sought clarification of further information i.e. whether alternative siting or access arrangements were available having regard to the location of the development accessed off the N3 and the location of existing properties on the landholding.
- 5<sup>th</sup> January 2020 – This report refers to the clarification of further information which addressed alternative locations for the dwelling within the landholding and other options for access to the site. It recommends granting permission for the development subject to conditions on the grounds that exceptional circumstances exist for the development (section 2.6 DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities, January 2012).

#### 3.2.2. Other Technical Reports

- Environment (1<sup>st</sup> July 2019) – Satisfactory T and P tests, but insufficient depth of unsaturated subsoil (0.7m compared to required 0.9m). Recommends applicant undertakes a site assessment at a different location on the site and identifies the location of the well to serve the dwelling. Subsequent report (14<sup>th</sup> October 2019), recommends approval subject to conditions.

#### 3.3. Prescribed Bodies

- TII (26<sup>th</sup> June 2020) – Development at variance with national policy on the control of development affecting national roads by intensification of existing direct access to a national road. Subsequent submission (30<sup>th</sup> October 2019) reiterates matters raised in their previous submission.

#### 3.4. Third Party Observations

- None.

#### 4.0 Planning History

- None.

## 5.0 Policy Context

### 5.1. National and Regional Policy

- National Planning Framework 2040 (National Strategic Outcome 2 and 6).
- Spatial Planning and National Roads, Guidelines for Planning Authorities (DoECLG, 2012)(Chapter 2 and Sections 2.5. and 2.6).
- Regional Spatial and Economic Strategy 2020-2032. Northern and Western Regional Assembly (section 6.3 and policy RPO 6.5).

### 5.2. Development Plan

- 5.2.1. The appeal site falls within an area under Strong Urban Influence of the current Cavan County Development Plan 2014-2020. Policy RHP1 of the plan states that rural generated housing need will be accommodated in the locality in which they arise and where the applicant satisfies the development plan's definition of needs and otherwise satisfies good planning practice, for example, in term of design, siting etc. Applicants are required to submit evidence of their rural generated housing need at the particular location they are seeking permission (Policy RHO5). In areas under strong urban influence the plan states that development shall be restricted to landowners and their immediate family members only (Policy RHO6) and that such development will be subject to an occupancy condition (Policy RHO7). Section 4.1.5 of the Plan deals with national roads and Policy PIO36 seeks to restrict accesses onto national roads along sections of road where the speed limit exceeds 60kph and to restrict the intensification of any existing accesses in such locations, except in exceptional circumstances as defined by section 2.6 of the government's guidelines on Spatial Planning and National Roads.

### 5.3. Natural Heritage Designations

- 5.3.1. The appeal site lies c.4km to the south east of the nearest national site of natural heritage interest, Drumkeen House Woodland proposed Natural Heritage Area (site code 000980) and c.6km to the south east of the nearest European site, Lough Oughter Special Protection Area (site code 004049) and Lough Oughter and associated Loughs Special Area of Conservation (also a pNHA) (site code 000007).

## 5.4. EIA Screening

- 5.4.1. The proposed development is of a type that constitutes an EIA project (involving construction works). However, it is a single dwelling with associated infrastructure and fall far short of the threshold for environmental impact assessment set out in Part 2 of the Schedule 5 of the Planning and Development Regulations 2001, as amended (Class 10 Infrastructure projects, construction of dwelling units). Further, the development is not situated on a sensitive site, will not use significant natural resources or give rise to significant environmental emissions. There is therefore no real likelihood of significant effects on the environment arising from the proposed development and the need for environmental impact assessment can be excluded at preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The appeal is made by Transport Infrastructure Ireland. Grounds of appeal are:
- **Location.** Development relies on the use of an existing direct access to the strategic N3, national primary road where the 100km speed limit applies.
  - **N3 Context.** The N3 is an important national road providing access to the north west identified as part of National Strategic Outcomes 2 and 6 (enhanced regional accessibility and high quality international connectivity) of the National Planning Framework 2040. The Regional and Economic Spatial Strategy for the Eastern Midland Region recognises the N/M3 as one of the strategic connections to the northern and western region and states that the capacity of the national road network should be maintained and protected (section 5.6).
  - **National Road Policy.** The development has the potential to compromise the safety and efficiency of the heavily trafficked N3 national road network at a location where the 100kph speed limit applies and is at variance with the provisions of official policy (Spatial Planning and National Road Guidelines for Planning Authorities, DoECLG, 2012). The provision of a new additional house, regardless of housing circumstance of the applicant, will inevitably

bring about additional vehicular movements resulting in the intensification of access onto and off the N3 (section 2.5 of the guidelines). No exceptional circumstances under section 2.6 of the guidelines exist. The development would be at variance with policy to preserve the level of service, safety, carrying capacity of national roads and public investment in them and would establish an undesirable precedent for similar development.

- **Local Development Plan Policy.** The strategic importance of the N3 is recognised in section 4.1.4 of Cavan County Development Plan. The development which would generate an increase and intensification of turning movements onto and off the N3 and would contravene Objective PIO22 of the Plan. The Plan does not include agreed exceptions to the control of development accessing national roads (in accordance with provisions of the DoECLG guidelines). If granted permission the development would result in an intensification of access to the N3 at a location where there is an existing concentration of dwellings accessing the national road and would endanger public safety by virtue of the additional traffic that would be generated (and turning movements) and endanger the free flow of traffic. The development would therefore contravene Objective PIO36 of the County Development Plan.
- **Road safety considerations.** Official policy identifies that the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks to road users. Restricting direct access and intensification of use of direct access to high speed national roads can contribute to a reduction in collisions and fatalities (see section 3 of submission). This strategy is supported in section 4.1.10 of the County Development Plan.
- **Planning precedence.** Acknowledge that the applicants have outlined a case to support their application. However, consider that no exceptional reasons have been outlined to justify a significant departure from official national road policy and road safety considerations which a grant of permission would represent.



- **Protecting public investment.** The development would conflict with the objectives of the National Planning Framework and National Development Plan 2018 – 2027 to safeguard the strategic function of the national roads network and the investment in the transport network.

## 6.2. Applicant Response

- 27<sup>th</sup> May 2020 – The applicant responds to the appeal and the matters raised by TII. The main argument is that the development will not give rise to the intensification of use of the existing access to the site or therefore the issues of concern raised by TII. It is stated that the applicant lives in the existing dwelling with his uncle, the house is small and not suitable for extension. The applicant's have been residing in the property for 5 years on a temporary basis and will continue to do so until they find alternative accommodation. On completion the house will continue to be used as a place of residence by the applicant's family. All of the parties who currently reside in the existing house use the existing entrance and the nature and extent of use will remain the same post development.

## 6.3. Planning Authority Response

- 20<sup>th</sup> March 2020 – Considers that the development is acceptable having regard to amongst other things, section 2.6 of the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities, 'Exceptional Circumstances' and access to the development via the existing entrance which has been in existence for over 100 years (as evidenced on OS maps).

## 6.4. Observations/Further Responses

- None.

## 7.0 Assessment

- 7.1. Having regard to the information on file and my inspection of the appeal site I consider that the key issue for this appeal is access to the site and compliance with planning policy guidelines in respect of national roads and road safety requirements.
- 7.2. The National Planning Framework, under National Strategic Outcome 2, seeks to enhance regional accessibility in the country by measures which include maintaining the strategic capacity and safety of the national roads network and improving accessibility to the north west and the upgrading of sections of the N3/M3 national primary route. National Strategic Outcome 6 seeks to improve land transport connections to airports and ports.
- 7.3. Section 6.3 of the RSES for the Northern and Western Region deals with transport investment priorities. Policies for the road network include to manage and enhance the capacity and safety of the region's land transport networks to give effect to National Strategic Outcome No. 2 and maintain the strategic capacity and safety of national roads.
- 7.4. Chapter 2 of the government's guidelines on Spatial Planning and National Roads deals with development planning. Section 2.5 deals with development plan policy on access to national roads and states for land adjoining national roads to which speed limits greater than 60kph apply, *'the policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads...This provision applies to all categories of development, including individual houses in rural areas, regardless of housing circumstances of the applicant'*.
- 7.5. Section 2.6 considers exceptional circumstances and states that notwithstanding Section 2.5, planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted with and taken on board the advice of the NRA (now TII) and having followed the approach set out in the guidelines for developments of national and regional strategic importance and lightly trafficked sections of national secondary routes.

- 7.6. Policies of the Cavan County Development Plan reflect the national and regional policy guidelines and in Policy PIO22 see to *'restrict accesses onto National Roads along sections of road where the speed limit exceeds 60km per hour and to restrict the intensification of any existing accesses in such locations, except in exceptional circumstances, as defined by Section 2.6 of the DECLG 'Spatial Planning and National Roads Guidelines,' in line with DECLG policy and as supported by the NRA'*.
- 7.7. The appeal site lies on a stretch of the N3 where the 100kph speed limit applies outside of Cavan town. Sightlines at the access to the site area in excess of 215m in each direction and comply with TII standards for accesses onto national roads. The site is not in a location which is identified in the County Development Plan as an area where exceptional circumstances apply.
- 7.8. Access to the site is proposed from the existing laneway. I would accept that this has been in existence for over 100 years (OSi mapping) and serves an existing dwelling on the landholding, which the applicant is currently residing in.
- 7.9. It is stated in the application documentation (response to request for further information) that the existing dwelling is the original family home (grandparents of applicant) and was occupied continually until 2016 by a family member. Whilst it is currently used by the applicant on a temporary basis, it is stated that the dwelling is not suitable for extension or available to the applicant on a long term basis as it is used and will continue to be used by visiting members of the family who do not have a permanent residence in the Cavan area.
- 7.10. In the applicant's Traffic Impact Assessment and response to the appeal, it is stated that the development will not result in the an intensification of the access to the site as all parties who currently reside in the existing house use the entrance and the nature and extent of use will remain the same post development.
- 7.11. It is evident from the applicant's submissions that, if permission is granted for the proposed development, the existing dwelling on the landholding will remain in use by visiting members of the family. In effect, therefore, the consequence of the development will be the creation of two residential units on the land holding i.e. one serving the applicant and that other the family members who continue to use the existing dwelling. It is stated that use of the dwelling by visiting family members

would be infrequent and this may be so. However, if permission is granted for the proposed development the principle of two dwellings on the site would have been established and this would bring with it the risk of future intensification of use of the existing dwelling, in conjunction with the proposed dwelling and use of the access to the site, turning movements on a fast stretch of the public road and inevitably an increase in the risk of accident. In this respect, I note that there have been two accidents in the period 2005-2016 in the vicinity of the site, one in the immediate vicinity of the site access and another c.300m to the east of it (see applicant's TIA).

- 7.12. In response to the appeal it is stated that the applicant would accept a condition to the effect that the existing residence cannot be let or sub-let and would be retained in the same landholding. It is also stated that the applicant would be willing to close an existing agricultural access onto the N3 which lies to the west of the proposed entrance to the appeal site (see page 4 of submission to the Board dated 27<sup>th</sup> May 2020), which would remove slow moving agricultural machinery from directly accessing the landholding from the N3 and go some way towards meeting TII and the RSA's objectives to reduce the number of accesses off national roads.
- 7.13. Whilst I would accept that these conditions would limit the use of the property to some extent and agricultural movements onto/off the N3, I do not consider that they could adequately prevent an increase in the intensity of the use of the existing dwelling in the short term (e.g. by visiting family members) or in the longer term. I would be disinclined to accept therefore that planning conditions could adequately preclude future intensification of the use of the existing dwelling or traffic movements associated with it.
- 7.14. In their consideration of the planning application and response to the appeal, the planning authority refer to the 'exceptional circumstances' set out in section 2.6 of the government's guidelines on Spatial Planning and National Roads. However, my understanding of these guidelines is that exceptional circumstances arise in respect of developments of national and regional importance to the State and/or lightly trafficked sections of national secondary roads, and subject to prior consultation with TII. I do not consider that either of these circumstances apply to the proposed development and I would not consider that section 2.6(1)(1) should be read independently of section 2.6(1).

7.15. Notwithstanding this, for the reasons stated above I do not consider that exceptional circumstances exist which override the national and regional policy framework for development alongside national roads.

## **8.0 Appropriate Assessment**

8.1. Having regard to modest scale and form of the proposed development and its location, which is >6km from a European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **9.0 Recommendation**

9.1. I recommend that permission for the development be refused.

## **10.0 Reasons and Considerations**

It is considered that the proposed development, which would result in the intensification of use of an access onto the National Primary Road N3 at a point where a speed limit of 100 km/h applies, would endanger public safety by reason of traffic hazard and the additional and conflicting traffic movements generated by the development would interfere with the safety and free flow of traffic on the public road.

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Deirdre MacGabhann  
Planning Inspector

1<sup>st</sup> July 2020