



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307271-20

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<b>Development</b>	Construction of a house, garage and effluent treatment system
<b>Location</b>	Ballyduff, Tullamore, Co Offaly
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	19/467
<b>Applicant</b>	Greg Dooley
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party v Grant of Permission
<b>Appellant</b>	Joseph O'Brien
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30.06.2020
<b>Inspector</b>	Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The site is located on the R420/Clara Road immediately north west of Tullamore in central Co. Offaly.
- 1.2. The site is an infill, overgrown greenfield site with three houses adjacent to the south and one house adjacent to the north. The site is on the western side of the regional road which is very wide and straight at this location where a 100kph speed limit applies. There is a relatively wide verge to the front of the site with an unmaintained wire fence and existing agricultural vehicular access centrally on the boundary. There is a timber fence along the northern boundary with the adjacent single-storey detached house and a block wall along the southern boundary with the adjacent two-storey detached house. There is a post and barbed wire fence along the north western and western boundaries. There is a line of substantial mature leylandii trees along the south western boundary but there is no significant physical boundary in this area. A couple of these trees appear to have recently fallen and are in the western area of the site. The wider area to the north west, west and south west is agricultural land.
- 1.3. The site has a stated area of 0.222 hectares.

## 2.0 Proposed Development

- 2.1. The application is for permission for a house, garage, effluent treatment system and percolation area.
- 2.2. The proposed house has a stated floor area of 255sqm with an indicated height of 5.775 metres. The proposed garage has a stated floor area of 60sqm and an indicated height of 5 metres.
- 2.3. Further information was submitted in relation to a slightly revised red line site boundary, landscaping and boundary treatments. The application was re-advertised as significant further information because of the alteration of the site boundary.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to grant permission subject to 13 no. conditions including external finishes, the vehicular entrance/roadside boundary, effluent treatment, surface water, construction practices, Irish Water connection, landscaping, use of the garage and development contributions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The first Planning Report prepared by the Executive Planner recommended a refusal of permission because (i) the development would materially contravene a development objective in the Tullamore Town and Environs Development Plan for the zoning of the land for commercial purposes, (ii) it is an objective of that Plan to facilitate the expansion of business uses into the area in which the site is located and (iii) the precedent which a grant of permission would set would adversely affect the use of a regional road by traffic. Notwithstanding, a direction was issued by the A/Senior Executive Planner seeking further information.

The Planning Report prepared on foot of the further information response concludes that, having regard to the semi-rural nature of the site, referral reports and the pattern of existing development in the area, the proposed development would not seriously injure the amenities of the area or property in the vicinity.

#### 3.2.2. Other Technical Reports

**Road Design** – Comments made in relation to surface water.

**Environment Water Services** – No objection subject to conditions relating to water supply, effluent treatment, surface water, waste management and environmental nuisance.

**Area Engineer** – A condition relating to surface water is recommended.

### 3.3. **Prescribed Bodies**

**Irish Water** – No objection. Observations made.

### 3.4. **Third Party Observations**

3.4.1. A submission was received from Joseph O'Brien, Ballyduff, Tullamore, whose property is adjacent to the south of the site. The issues raised can be summarised as follows:

- The red line site boundary appears to be inconsistent with the folio map for the adjacent property to the south.
- There is no description of the finishing treatment to the proposed southern boundary. In a conversation between Mr. O'Brien and the applicant's father the removal of the leylandii trees was requested as part of the works. Mr. O'Brien has no objection should the trees be considered a hazard. Clarity on the southern boundary demarcation and a description of the elements proposed is requested.

## 4.0 **Planning History**

4.1.1. None relevant.

## 5.0 **Policy Context**

### 5.1. **Tullamore Town and Environs Development Plan 2010-2016 (Extended to 2020)**

5.1.1. The site is located within the 'Environs Area' as outlined on Map 1.2 (Tullamore Town and Environs Boundaries). On the 'Land Use Zoning Map' the site is zoned 'Commercial'. The zoning objective for commercial areas is set out under Section 15.3.2 (Commercial) as follows.

'Commercial areas generally contain one or more of a wide variety of uses that include business uses, offices, a hotel, public houses and some retailing.

Uses that are particularly appropriate to these areas include wholesale, business service uses, the sale of motor vehicles and limited forms of retailing that involve the sale of bulky goods unsuitable to be carried away by pedestrians. It is important to prevent the expansion or introduction of uses that would be more appropriate elsewhere (e.g. in town centre or neighbourhood centres or in industrial areas). This would allow uses that are compatible with or reinforce, the commercial function of the area as a whole to be fostered.

Future proposals, particularly those involving retail uses, will need to be assessed in relation to a number of considerations including the Councils' retail strategy and their impact on the vibrancy and vitality of Tullamore town centre and also all of the other main neighbour centres. By their nature, proposals for these areas may involve large-scale buildings and require a high degree of accessibility and parking space for car users and delivery vehicles.'

5.1.2. Residential development is open for consideration under the Plan. Uses open for consideration may be permitted where the Local Authorities are satisfied that it is in compliance with the zoning objective, other relevant policies and objectives, standards and requirements as set out in the Tullamore Town and Environs Development Plan, and by other government bodies/sections, and will not conflict with the permitted, existing or adjoining land uses, in accordance with the proper planning and sustainable development of the area.

5.1.3. Chapter 5 (Masterplans) of the Plan sets out four areas where masterplans have been prepared. One masterplan area is designated 'Tullamore Northern Environs' and it includes the site subject of the planning application within its approx. 109 hectare area.

## **5.2. Natural Heritage Designations**

5.2.1. The closest Natura 2000 site is Charleville Wood SAC approx. 1.8km to the south. The closest heritage area is Ballyduff Wood pNHA approx. 400 metres to the north.

## **5.3. EIA Screening**

5.3.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment, a zoned area in proximity to an urban centre, 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 stage, and a screening determination is not required.

## **6.0 The Appeal**

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

The grounds of appeal are submitted by Joseph O'Brien, Ballyduff, Tullamore. The main points made can be summarised as follows:

- Point 1 of the original submission has been rectified and the appellant has no further issue with it.
- Point 2 of the original submission referred to boundary details. Point 2 was not clearly taken into account in the further information submitted e.g. the 'existing block wall' does not exist. This may have been an oversight and should have read 'proposed block wall'. Hedging inside the site boundary is acceptable.
- It is presumed the site was not re-inspected and the planning authority assumed the wall existed resulting in Condition 11(a) of the decision to grant.
- The appellant has no objection to the house but does have an issue with the lack of boundary detail. Despite attempts to address the issue with the applicant this has failed, and the appellant feels as if he is left with no choice but to appeal.
- The grounds of appeal include photographs and a copy of an email from the appellant to the applicant which indicates a preference for a block wall on this boundary rather than a fence as a fence will rot over time and would require maintenance and future replacement.

### **6.2. Applicant's Response**

The main points made can be summarised as follows:

- The appeal is vexatious. A demand that the applicant removes trees from an adjacent landowner's property is not within the powers of the Local Authority or An Bord Pleanála. The appellant states that the leylandii trees on his land may be considered a hazard but has not indicated how he intends to fulfil his legal obligation for the maintenance and safety of same. The applicant has no legal requirement to maintain an adjoining landowner's property. The trees are not a 'party structure'.
- Condition 11(a) specifies the site boundaries shall be planted with a continuous hedge of indigenous species, and which specifically precludes leylandii, not later than the first planting season after commencement of development. A wall constructed in place of the hedge along the site boundaries fails to protect the character of the rural area. Alternatively, the appellant appears to be insisting that a block wall be constructed along the boundary requiring the removal by the applicant of the appellant's leylandii trees to facilitate the applicant's preference rather than the requirements of the planning authority.
- Two leylandii trees from the appellant's land have fallen onto the site in recent months which is likely to cause considerable structural damage if further instances occur after development commences. It is the landowner's responsibility to safely maintain trees on his land. The applicant cannot be held liable for such works and should not be required to carry the cost of such works. The applicant has no objection to the appellant removing trees from his property or continuing the existing wall to the end of his land.
- Prior to the purchase of the site the applicant was advised through local elected representatives in discussion with the Senior Planner and Area Planner that the proposed development does not contravene the zoning set out in the County Development Plan.
- Considerable sums of money have been expended in relation to this planning application. The appeal is spurious and seeks to impose conditions outside the remit of the Board.

### 6.3. **Planning Authority Response**

6.3.1. The planning authority considers Condition 11(a) of the grant of permission is appropriate.

### 6.4. **Observations**

6.4.1. None.

### 6.5. **Further Responses**

6.5.1. None.

## 7.0 **Assessment**

The main issues are those raised in the grounds of appeal and the Planning Report and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Zoning/Impact of the Proposed Residential Development on Commercial Zoned Land
- Siting and Design
- Boundary Treatment
- Regional Road
- Wastewater Treatment
- Appropriate Assessment

### 7.1. **Zoning/Impact of the Proposed Residential Development on Commercial Zoned Land**

7.1.1. The application is for a house within an area zoned commercial in the Tullamore Town and Environs Development Plan 2010-2016 (extended to 2020). The first planning authority Planning Report recommended a refusal of permission, inter alia, because



the proposed development would materially contravene a development objective for the zoning of the land for commercial use. This recommendation was not accepted, and further information was sought in lieu.

- 7.1.2. The 0.222 hectare site forms a very minor part of the wider commercial zoned area. There is a house adjacent to the north of the site and three houses adjacent to the south so the subject site can be considered as an infill site in this line of residential development. The rest of the undeveloped commercial zoned area, largely to the west of the site, comprises agricultural land with an approx. 2 hectares area covered in trees 200 metres to the west of the site.
- 7.1.3. The zoning matrix in the Development Plan states that residential development is open for consideration and, therefore, may be permitted where, inter alia, it will not conflict with existing or adjoining land uses. While residential development in the wider area is limited, the site can be considered as an infill site given the presence residential properties to either side.
- 7.1.4. I do not consider that the provision of a house at this location, which comprises a very limited area in the context of the overall commercial zoned land and where a line of residential ribbon development is not extended further into the commercial zoned land, would have any significant impact on the ability to develop the balance of the land in a manner which may be more consistent with the commercial zoning objective.
- 7.1.5. Having regard to the foregoing, I consider that a house in this commercial zoned location is acceptable in principle.

## 7.2. **Siting and Design**

- 7.2.1. The site is flat, has a relatively large area of 0.222 hectares and is rectangular in shape. The proposed building line is slightly behind that of existing houses to either side. The house location is toward the front/east of the site with the proposed garage to the rear along the side boundary. A relatively large garden area is proposed to the rear of the house.
- 7.2.2. The proposed house is single storey in scale. The floor plan shows that the living area of the house (sitting room, kitchen, dining area and lounge) is in the southern area and the four bedrooms are located in the northern area. There are two separate 'arms' to the rear of the house which results in a courtyard type area in the centre. There are

three gable features to the front of the house, one either side of a central porch. Windows have vertical emphasis and are proportionate to the house. Proposed external finishes have not been identified but appear to be render with stone to the porch. The development will not result in any overlooking, shadowing or overbearing impact to adjoining properties

- 7.2.3. I do not consider that there is any significant design or siting concern in relation to the proposed development.

### **7.3. Boundary Treatment**

- 7.3.1. This issue is the basis of the grounds of appeal, specifically the approx. 40 metres in the western area of the southern boundary where there is a line of existing leylandii trees.
- 7.3.2. Proposed site boundary treatments were not outlined in the planning application initially submitted to the planning authority. The submission from Joseph O'Brien requested the planning authority clarify this boundary and stated that the applicant requested the removal of the leylandii trees which Mr. O'Brien had no objection to. It appears from the content of the Mr. O'Brien's submission that the trees are on his property rather than the application site.
- 7.3.3. Further information was sought by the planning authority requesting, inter alia, a landscaping plan indicating the proposed boundary treatments along the side and rear boundaries. The site layout plan received as part of the further information response did not identify the existing post and barbed wire fence to the north west and western boundaries, or cite any proposed boundary treatment along those boundaries, and also identified an existing wall along the southern boundary. Trees were indicated around the boundary of the rear garden. While there is a block wall along the common southern boundary for approx. 30 metres towards the front/eastern area there is no existing boundary wall where the existing leylandii trees are. There does not appear to have been any proper assessment of the further information response carried out in the planning authority's Planning Report. The planning authority decided to grant permission. Conditions specifically referenced in the grounds of appeal and the applicant's response are Conditions 4, 11(a) and 11(c). Condition 4 has seven subsections and includes conditions relating to the maintenance of sightlines, the

vehicular entrance and the front boundary fence. Condition 11(a) states site boundaries shall be planted with continuous hedging and Condition 11(c) states that the landscaping shall be implemented not later than the first planting season after commencement of the development.

- 7.3.4. I consider that the planning authority decision does not make the permission clear in relation to side/rear site boundaries, and specifically in relation to the area subject of the grounds of appeal. While the provision of hedging/trees around the boundaries is appropriate in a semi-rural area, I consider it reasonable that a more durable and permanent boundary be provided with an adjoining residential property. While there is a block wall to the side of Mr. O'Brien's house and shed (it appears the block wall is also the side wall of the shed) there is no physical boundary between the rear of the appellant's property and the subject site. I do not consider that a hedge is a sufficient boundary between two residential properties notwithstanding that the area to the rear of the appellant's house is fenced off from the rest of the property. Therefore, I consider it reasonable that the applicant should be required to provide a 2 metres high block wall, capped and plastered, along the approx. 40 metres stretch of the western end of the southern boundary of the site in order to preserve the amenity of the appellant's property as a result of the proposed residential development. Trees/hedging can be provided inside this boundary. There is currently a line of leylandii trees along this boundary within the appellant's property though it is likely there is a degree of overhanging and some lower boughs may need to be cut back to construct the wall. From a visual perspective these trees are of limited value and there would be no concern with their removal. However, as they appear to be within the appellant's property, they do not form part of this planning application. Any issue in relation to these trees such as their maintenance and safety, or in relation to the specific boundary location as there does not appear to be any physical boundary on-site, is a civil issue between both parties.
- 7.3.5. In conclusion, in relation to the issue raised in the grounds of appeal, I consider a block wall should be erected along this part of the common boundary in the interest of the residential amenity of the appellant's property.

#### **7.4. Regional Road**

- 7.4.1. The proposed development involves the intensification of use of an existing access at a point on the R420/Clara Road where a 100kph speed limit applies. The Area Engineer's report states the road is a national secondary road, but the Offaly County Council website Speed Limit Bye Laws 2017 and accompanying maps, on Drawing No. 072A, shows the road marked as the R420 Clara Road with a 100kph speed limit.
- 7.4.2. The road is of a very good standard at the site location. It is wide and straight and sightlines of 210 metres have been shown at the site location. The hard shoulder has been marked as a bicycle lane. The Area Engineer indicates no issue from a roads or traffic perspective nor does the Road Design report.
- 7.4.3. Having regard to the foregoing, and the fact the site is located within a zoned area in the environs of Tullamore, I do not consider there is a concern in terms of the intensification of use of the existing access.

#### **7.5. Wastewater Treatment**

- 7.5.1. The proposed development involves the provision of a wastewater treatment system and percolation area.
- 7.5.2. The aquifer is regionally important with high vulnerability. Groundwater or bedrock was not encountered in the 2.4 metres deep trial hole. Soil conditions found in the trial hole were mainly silt loam and sandy loam. The EPA Code of Practice (2009) indicates that the site falls within the R2<sup>1</sup> response category in Table B.2 (Response Matrix for On-Site Treatment Systems) where an on-site system is acceptable subject to normal good practice.
- 7.5.3. The T-test result was 20.86 minutes. Though the trial hole and percolation test holes were not available for inspection at the time of the site inspection I do not consider the result is inconsistent with the ground conditions observed on site. The result indicates that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater as per Table 6.3 (Interpretation of Percolation Test Results) of the Code of Practice.
- 7.5.4. Table 6.1 (Minimum Separation Distances in Metres) of the Code of Practice sets out separation distances to key features. Surface water is to be discharged to soakpits. A

5 metres separation distance is required. Though no soakpit location(s) are shown on the site layout plan the site is large enough to easily meet this separation distance requirement. There is no watercourse, stream, open drain, heritage feature, lake or foreshore in the vicinity of the site. The distances to the proposed house and existing house to the north are achieved. The system and percolation area are very close to the site boundary and proposed tree planting. However, as with the separation from the soakpit(s), the site is large enough to easily accommodate the required 3 metres separation from these features. I consider the 90sqm polishing filter proposed to be adequately sized for a population equivalent of 6 as per Table 10.1 (Minimum Soil Polishing Filter Areas and Percolation Trench Lengths Required for a Five-Person House) of the Code of Practice, notwithstanding the smaller area shown on the site layout plan.

- 7.5.5. Having regard to the T-test result and ground conditions observed on site I consider the relatively large site can accommodate a wastewater treatment system. I also note the planning authority's Environment Water Services Section indicated no objection subject to conditions in relation to this element of the proposed development.

## **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the development proposed and to the nature of the receiving environment, remote from and with no hydrological pathway to any 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.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission should be granted subject to conditions, for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

Having regard to the provisions of the Tullamore Town and Environs Development Plan 2010-2016 (extended to 2020) and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be consistent with the provisions of the Plan in terms of land use, would not result in a traffic hazard and would not injure the residential or visual amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on 06.01.2020 and 18.02.2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of visual amenity.

3. The site shall be landscaped, using only indigenous deciduous trees and hedging species in accordance with details which shall be submitted to, and

agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow/tree line along all side and rear boundaries of the site, and

(b) the construction of a 2 metres high block wall, capped and rendered on both sides, along the western part of the southern boundary of the site from the existing block wall on the adjacent property to the south west corner of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interests of visual and residential amenity.

4. A detailed front/roadside boundary layout and elevation shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** In the interest of traffic safety.

5. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. Prior to commencement of development, the applicant or developer shall enter into a water connection agreement with Irish Water.

**Reason:** In the interest of public health.

7. Site development and building works shall be carried out only between the hours of 0700 to 1830 Mondays to Fridays inclusive, between 0800 to 1330

hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

8. (a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.  $\leq 10$ )" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

9. The proposed garage shall be used solely for uses incidental to the residential enjoyment of the house on site and shall not be used for habitable purposes, the housing of animals or any commercial purpose.

**Reason:** In the interest of the amenity of property in the vicinity and the proper planning and sustainable development of the area.

10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development



Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Anthony Kelly

Planning Inspector

27.08.2020