



An  
Bord  
Pleanála

## Inspector's Report ABP-311015-21

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<b>Development</b>	Construct a three-bedroom dwelling. The application will also include the introduction of a new entrance, an effluent treatment unit with percolation area and all associated site works and drainage.
<b>Location</b>	Moydrum, Athlone, Co. Westmeath.
<b>Planning Authority</b>	Westmeath County Council
<b>Planning Authority Reg. Ref.</b>	21309
<b>Applicant(s)</b>	Cian Hayden
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party v. Decision
<b>Appellant(s)</b>	Cian Hayden
<b>Observer(s)</b>	Peter & Bernie Walker
<b>Date of Site Inspection</b>	17 <sup>th</sup> February, 2022
<b>Inspector</b>	Robert Speer

## 1.0 Site Location and Description

- 1.1. The proposed development site is located in the rural townland of Moydrum, Athlone, Co. Westmeath, approximately 2.5km northeast of Junction 8 on the M6 / N6 National Road and c. 1km west-southwest of the small rural node of Bealin, where it occupies a position within the hinterland of Athlone town. While the surrounding landscape is primarily one of undulating rural countryside, there is a considerable concentration of piecemeal one-off housing and linear / ribbon development along roadways in the area. The site itself has a stated site area of 0.418 hectares, is irregularly shaped, and presently forms part of the rear garden of an adjacent dormer-style dwelling to the immediate west (with the adjacent lands to the north, east and south in agricultural use). There is evidence of poor drainage both on site and in the surrounding area with noticeable instances of ponding observed during a site inspection.

## 2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a single-storey bungalow based on an irregular floor plan with a stated floor area of 253m<sup>2</sup> and a ridge height of 6.185m. The overall design encompasses a contemporary interpretation of the traditional vernacular and comprises two narrow plan forms offset from one another in an irregular 'H'-shaped arrangement and linked by a flat-roofed entrance lobby (and bathroom area). External finishes include a smooth render, cedar timber cladding, natural stone, dark grey uPVC windows, and natural roof slates.
- 2.2. Access to the site will be obtained via a new shared entrance arrangement with the adjacent dwelling house (the family home). This will involve the replacement & repositioning southwards of the existing site entrance with associated alterations to the roadside boundary, including the setting back of the boundary wall to provide a 3m wide parking strip and the replacement of the existing masonry wall with a random rubble limestone construction.
- 2.3. It is proposed to install a packaged wastewater treatment system with treated effluent being discharged to ground via a polishing filter. A water supply is available from the public mains.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On 26<sup>th</sup> July, 2021 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 2 No. reasons:

- The proposed development by virtue of its backland nature, scale and lack of integration with the established pattern of development in the area, is considered to be visually harmful and incongruous and out of character with the surrounding area. It is considered that the positioning of the proposed dwelling house to the rear of existing properties will have a detrimental and negative impact on the residential amenities of the two neighbouring properties, would seriously injure the amenities of the area and depreciate the value of properties in the vicinity. The development is contrary to policies CPO16.32 of the Westmeath County Development Plan, 2021-2027, the Westmeath Rural Design Guidelines, (2005), and the proper planning and sustainable development of the area.
- It has not been demonstrated to the satisfaction of the Planning Authority, by reason of the submitted documentation, that the proposed site is suitable for the safe treatment and disposal of domestic effluent. It is considered that the proposed development would be prejudicial to public health and accordingly would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

3.2.1. *Planning Reports:*

Details the site context, including the relevant policy considerations, and states that Objective CPO 9.1 of the Development Plan is applicable in this instance given the site location in a 'rural area under strong urban influence'. It proceeds to consider the submitted particulars as regards the relevant eligibility criteria and states that while the applicant has shown the location of his family home, in the absence of further details the case planner is not satisfied that he has adequately demonstrated compliance with the housing need provisions of the Development Plan. In terms of

siting and design, concerns are raised as regards the absence of levels (including those of adjacent lands) while it is considered that the overall height and backland location of the dwelling will have a detrimental impact on the residential amenity of neighbouring properties by reason of overlooking. It is also stated that the length of the construction is excessive and does not accord with the rural housing design guidance. With respect to the wastewater treatment proposals, reference is made to the concerns raised by the Area / District Engineer as regards the possible flood risk on site. The report thus concludes by recommending a refusal of permission for the reasons stated.

### 3.2.2. *Other Technical Reports:*

*Area Engineer:* States that there are concerns as regards the site suitability / characterisation details provided with the application (noting that the testing was carried out on 27<sup>th</sup> July, 2017) due to the historical flooding of a nearby river and the risk posed to the proposed percolation area. In this regard, the report recommends that an appropriate assessment allowing for winter flooding be submitted by way of further information. It is also queried whether the works approved under PA Ref. No. 18/7210 have been carried out.

### 3.3. **Prescribed Bodies**

*Irish Water:* No objection, subject to conditions.

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

- 3.4.1. A single submission was received from an interested third party, however, in the interests of conciseness, and in order to avoid unnecessary repetition, I would advise the Board that the principal grounds of objection / areas of concern raised therein can be derived from my summation of the observation received from that party on this appeal.

## 4.0 **Planning History**

### 4.1. **On Site:**

PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19. Was refused on 28<sup>th</sup> November, 2019 refusing Cian Hayden permission to construct a three-bedroom dwelling, the introduction of a new shared entrance with the adjoining property, an

effluent treatment unit with percolation area, and all associated site works and drainage (a first party appeal was subsequently withdrawn).

PA Ref. No. 187210. Was granted on 13<sup>th</sup> February, 2019 permitting John Hayden permission to replace an existing effluent treatment unit, to provide a new percolation area, and all associated site works and drainage.

PA Ref. No. 187209. Application by Cian Hayden for permission to construct a three-bedroom dwelling, an effluent treatment unit, percolation area. and all associated site works and drainage. This application was withdrawn.

PA Ref. No. 01531. Was granted on 7<sup>th</sup> August, 2001 permitting John Hayden permission for a single storey extension to the side of the existing house and elevational changes to the front of the house to incorporate an existing balcony within the new entrance lobby.

PA Ref. No. 001215. Was granted on 19<sup>th</sup> November, 2000 permitting John Hayden permission to alter a field entrance and to construct a replacement septic tank and Puraflo system.

## 5.0 Policy and Context

### 5.1. National and Regional Policy

- 5.1.1. The '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site is located in an '*Area under Strong Urban Influence*' as indicatively identified by the Guidelines. Furthermore, in accordance with the provisions of the Guidelines, the Westmeath County Development Plan, 2021-2027 includes a detailed identification of the various rural area types specific to the county at a local scale and '*Map 9.1: Rural Typology*' of the Plan details that the site is located in a '*Rural Area under Strong Urban Influence*'.
- 5.1.2. The '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*' published by the Department of the Environment, Heritage and Local Government in November, 2009 introduce comprehensive mechanisms for the

incorporation of flood risk identification, assessment and management into the planning process. The core objectives of the Guidelines are to:

- Avoid inappropriate development in areas at risk of flooding;
- Avoid new developments increasing flood risk elsewhere, including that which may arise from surface water run-off;
- Ensure effective management of residual risks for development permitted in floodplains;
- Avoid unnecessary restriction of national, regional or local economic and social growth;
- Improve the understanding of flood risk among relevant stakeholders; and
- Ensure that the requirements of the EU and national law in relation to the natural environment and nature conservation are complied with at all stages of flood risk management.

In achieving the aims and objectives of the Guidelines the key principles to be adopted should be to:

- Avoid the risk, where possible,
- Substitute less vulnerable uses, where avoidance is not possible, and
- Mitigate and manage the risk, where avoidance and substitution are not possible.

The Guidelines outline the need to identify flood zones and to categorise these according to their probability of flood events. Notably, these should be determined ignoring the presence of flood protection structures as such areas still carry a residual risk of flooding from overtopping or breach of defences and as there is no guarantee that the defences will be maintained in perpetuity.

A staged approach to Flood Risk Assessment is advocated with only such appraisal and / or assessment as is needed to be carried out for the purposes of decision-making at the regional, development and local area plan levels, and also at the site specific level. Stage 1 entails the identification of flood risk by way of screening of the plan / project in order to determine whether there are any flooding or surface water management issues related to the area or the site that may warrant further

investigation. This is followed by Stage 2 (Initial flood risk assessment) which seeks to confirm the sources of flooding that may affect a plan area or site, to appraise the adequacy of existing information and to scope the extent of the risk of flooding which may involve preparing indicative flood zone maps. Where hydraulic models exist, the potential impact of a development on flooding elsewhere and of the scope of possible mitigation measures can also be assessed. The third and final stage (Stage 3: Detailed flood risk assessment) aims to assess flood risk issues in sufficient detail and to provide a quantitative appraisal of potential flood risk to a proposed or existing development or land to be zoned, its potential impact on flood risk elsewhere and of the effectiveness of any proposed mitigation measures.

Chapter 3 of the Guidelines states that the key principles of a risk-based sequential approach to managing flood risk in the planning system are to:

- Avoid development in areas at risk of flooding;  
If this is not possible, consider substituting a land use that is less vulnerable to flooding.  
Only when both avoidance and substitution cannot take place should consideration be given to mitigation and management of risks.
- Inappropriate types of development that would create unacceptable risks from flooding should not be planned for or permitted.
- Exceptions to the restriction of development due to potential flood risks are provided for through the use of a Justification Test, where the planning need and the sustainable management of flood risk to an acceptable level must be demonstrated.

It is a key instrument of the Guidelines to undertake a sequential approach in order to guide development away from areas at risk from flooding such as through the use of flood zones and the vulnerability of different development types.

Where a planning authority is considering the future development of areas at a high or moderate probability of flooding that would include types of development that are inappropriate in terms of their vulnerability, the 'Justification test' set out in Box 5.1 of the Guidelines should be employed.

The vulnerability of development to flooding depends on the nature of the development, its occupation and the construction methods used. The classification of different land uses and types of development as highly vulnerable, less vulnerable and water-compatible is influenced by various factors including the ability to manage the safety of people in flood events and the long-term implications for the recovery of the function and structure of buildings.

## 5.2. Development Plan

### 5.2.1. **Westmeath County Development Plan, 2021-2027:**

*Chapter 2: Core Strategy:*

Section 2.14: *Rural Areas:*

Section 2.14.1: *Rural Area Under Strong Urban Influence:*

This area comprises most of the County and is characterised by stable population levels with well-developed town and village structures and a strong agricultural base. The objective in these areas is to maintain a stable population base in rural areas within a strong network of villages and small towns. The policy is to facilitate housing development by people who have strong links to the particular rural area, who are an intrinsic part of the rural community.

Such persons would normally have spent substantial periods of their lives living in the rural area as part of the established rural community, e.g. people employed in the rural area including farmers and their sons and daughters, people originally from the rural area and wishing to return, people wishing to reside near elderly parents to provide security and care, elderly parents wishing to live near other family members, people who would have grown up in rural areas seeking to build their home close to other family members, people working in rural areas such as teachers in rural schools.

The aim is to support the desire of individual applicants with strong rural links to settle in that area and to encourage people with no such links to settle in the identified extensive network of towns or villages.

*Core Strategy Policy Objectives:*



*CPO 2.11:* Support the sustainable development of rural areas in Westmeath by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

*CPO 2.12:* Support the servicing of rural villages (serviced sites) to provide an alternative to one-off housing in the countryside, in line with RSES Objective RPO 4.78.

### *Chapter 3: Housing:*

#### *Section 3.5: Future Housing Requirements:*

##### *Section 3.5.2: Rural Single Housing:*

It is recognised that there is a continuing need for housing provision for people to live and work in rural Westmeath. The NPF states that it will continue to be necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. Elsewhere, single housing in the countryside will be facilitated based on siting and design criteria and having regard to the viability of smaller towns and rural settlements. These requirements are reflected in the Core Strategy of this Development Plan which includes a differentiation between 'Rural Areas under Strong Urban Influence' and 'Structurally Weak Rural Areas'.

### *Chapter 7: Urban Centres & Place-Making:*

#### *Section 7.8: Urban – Rural Interface:*

The distribution and location of new development in Westmeath is guided by the Settlement Strategy and the Core Strategy. This Plan supports the hierarchy of attractive, compact and consolidated settlements from the large settlements of Athlone and Mullingar to the smaller towns and villages serving the County. It is important to ensure that the future development of the settlements in the hierarchy physically distinguishes the development envelopes of town and villages from the surrounding rural hinterland and protects against unsustainable sprawl of urban growth.

The approach views to towns and villages are important in projecting the initial image and character of place. Traditionally, the interface between urban and rural areas was clearly defined; in this regard future development must be carefully considered to ensure the protection of the distinct settings between established built-up settlements and the surrounding countryside by creating a defined urban edge.

*Urban-Rural Interface Policy Objective:*

**CPO 7.46:** Protect the unique setting of towns and villages by providing for the maintenance of strong defined urban edges.

*Chapter 9: Rural Westmeath:*

*Section 9.4: Rural Settlement Strategy:*

*Rural Housing Need Policy Objectives:*

**CPO 9.1:** *Areas Under Strong Urban Influence:*

To accommodate demand from individuals for permanent residential development in defined 'Rural Areas Under Strong Urban Influence' who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations.

Local Housing Need:

Permit residential development in areas defined 'Rural Areas Under Strong Urban Influence and Stronger Rural Areas' subject to the following circumstances:

1. Persons who are actively engaged in agriculture, horticulture, forestry, bloodstock and peat industry,
2. Members of farm families seeking to build on the family farm,
3. Landowners for this purpose being defined as persons who own the land 5 years prior to the date of planning application,
4. Persons employed locally whose employment would provide a service to the local community,

5. Persons who have personal, family or economic ties within the area, including returning emigrants,

6. Persons who wish to return to farming and who buy or inherit a substantial farmholding which is kept intact as an established farm unit, will be considered by the Council to be farmers and will be open to consideration for a rural house, as farmers.

Where there is already a house on the holding, refurbishment or replacement of this house is the preferred option.

The local area for the purpose of this policy is defined as the area generally within a 10km radius of the applicant's family home

*CPO 9.2:* In line with Circular Letter PL 2/2017, review rural housing policy in line with Development Plan or other relevant Guidelines issued by the Minister in this area having regard to NPO 19.

*Section 9.5: Environmental Capacity:*

*Rural Housing Criteria Policy Objectives:*

*CPO 9.8:* Ensure that, in permitting one-off rural housing, key rural assets such as water, natural and cultural heritage and landscape quality are protected and maintained.

*CPO 9.9:* Protect the natural assets of the county including ground and surface water and ensure that physical standards are met including soil conditions suitable for effluent disposal and the avoidance of flood areas.

*CPO 9.10:* Protect the integrity of the landscapes as identified in the Landscape Character Assessment and protected views.

*CPO 9.11:* Seek that all proposed on-site wastewater treatment systems for single dwellings and extensions which will increase the population equivalent loading shall comply with the EPA Code of Practice for Wastewater Treatment and disposal Systems serving Single Houses (2009) and any revision thereof.

*CPO 9.12:* Seek to ensure that waste water treatment systems are installed by competent persons with regular monitoring and testing carried out on the treatment system, in accordance with the planning permission.

*CPO 9.13:* Have regard to the Department of Environment, Community and Local Government's Sustainable Rural Housing Guidelines 2005, and any subsequent amendment in the assessment of applications for rural housing

#### *Section 9.5.1: Rural Housing Siting and Design*

#### *Section 9.6: Development within the Hinterland of Settlements:*

The aim of policy in these areas is to avoid undesirable ribbon development on the approaches to settlements and to protect the fabric of settlements by restricting development on the outskirts of the regional centre, towns and villages. Provision will be made for farmers, members of farm families and people that have spent substantial parts of their lives as part of the established rural community building their first home.

Proposals shall in all instances, except for reasons of traffic safety, design or other environmental consideration, be clustered with the existing family home or if farm buildings are isolated from the family dwelling, consideration can be given to grouping with farm structures.

#### *Development within the Hinterland of Settlements Policy Objectives:*

*CPO 9.14:* Promote the clustering of houses particularly on the same landholding or for the same family and promote shared accesses to minimise hedgerow removal.

*CPO 9.15:* Control ribbon development, particularly on approach roads into the county's regional centre, key town, self-sustaining growth towns and self-sustaining towns.

*CPO 9.17:* Ensure that the road network is adequate to cater for the development and that the traffic movements generated by the development will not give rise to a traffic hazard.

*CPO 9.18:* Retain, insofar as practicable, existing hedgerows and trees on new house sites. Replacement trees and hedgerows should be of native species.

*CPO 9.19:* Generally, resist urban generated and speculative residential development outside the settlement hierarchy.

*CPO 9.21:* Undertake a review of the Westmeath Rural Housing Design Guidelines.

*Chapter 10: Transport, Infrastructure & Energy:*

*Section 10.13.1: Wastewater Treatment and Disposal Systems Serving Single Houses*

*Wastewater Policy Objectives:*

*CPO 10.100:* Ensure that private wastewater treatment plants, where permitted, are operated in compliance with EPA's Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (PE. ≤10) (EPA 2009), as may be amended.

*Section 10.14: Flood Risk*

*Section 10.15: Flooding Policy Context*

*Flood Risk Policy Objectives:*

*CPO 10.105:* Have regard to the "Guidelines for Planning Authorities on the Planning System and Flood Risk Management" (DoEHLG/OPW 2009) and Circular PL2/2014, through the use of the sequential approach and application of the Justification Tests in Development Management.

*CPO 10.106:* Ensure that a flood risk assessment is carried out for any development proposal within 200m of a watercourse and at risk of flooding, in accordance with the "Guidelines for Planning Authorities on the Planning System and Flood Risk Management" (DoEHLG/OPW 2009). This assessment shall be appropriate to the scale and nature of risk to the potential development.

*Chapter 11: Climate Change:*

*Section 11.7: Flood Risk Management*

*Chapter 13: Landscape and Lake Management:*

*Section 13.12: Character Area 7: Western Lowlands*

*Chapter 16: Development Management Standards:*

*Section 16.3.7: Rural Housing:*

Notwithstanding an applicants' demonstration of compliance with the rural housing criteria as set out at Chapter 9, it is important to note that applicants are also required to meet overriding sustainable planning practices in terms of visual impact, design standards, environmental and traffic safety issues.

The design of rural housing development requires careful design consideration to ensure that all new development sensitively integrates into the landscape. This requires specific focus on site selection, design, scale and form of the proposed development. The most successful designs subtly integrate with the receiving landscape by selecting naturally sheltered and screened sites and the development of a simple built form complimented with the use of materials that are reflective of traditional vernacular.

*Development Management Standards Policy Objectives - Rural Housing:*

CPO 16.32 – CPO 16.34 (incl.)

### **5.3. Natural Heritage Designations**

5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Carn Park Bog Special Area of Conservation (Site Code: 002336), approximately 1.1km southeast of the site.
- The Carn Park Bog Proposed Natural Heritage Area (Site Code: 000676), approximately 1.1km southeast of the site.
- The Crosswood Bog Special Area of Conservation (Site Code: 002337), approximately 1.6km south of the site.
- The Crosswood Bog Proposed Natural Heritage Area (Site Code: 000678), approximately 1.6km south of the site.

- The Lough Ree Special Area of Conservation (Site Code: 000440), approximately 3km northwest of the site.
- The Lough Ree Special Protection Area (Site Code: 004064), approximately 3km northwest of the site.
- The Lough Ree Proposed Natural Heritage Area (Site Code: 000440), approximately 3km northwest of the site.
- The Waterstown Lake Proposed Natural Heritage Area (Site Code: 001732), approximately 3.1km north of the site.

#### **5.4. EIA Screening**

- 5.4.1. Having regard to the nature and small scale of the proposed development, the site location outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### **6.0 The Appeal**

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

- By way of background, the Board is advised that the applicant was previously refused permission for a dwelling house on site under PA Ref. No. 197209 with a first party appeal against that decision being subsequently withdrawn. However, in advance of the withdrawal of the aforementioned appeal an inspector's report was prepared and this has been used to inform the subject application. Furthermore, the subject application is, for all intents and purposes, identical to that refused permission under PA Ref. No. 197209 with the same determination having been made by the Planning Authority.
- The inspector's report prepared in respect of PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19 reviewed the concerns of the Planning Authority and a

third-party observer and determined that the only concerns arising were the absence of a percolation 'T'-test and the need for a tertiary wastewater treatment system. Therefore, on the advice of that inspector's report, a 'T'-test was conducted on site following a period of prolonged rainfall in support of the subject application.

- In the assessment of ABP Ref. No. ABP-306171-19, the reporting inspector concluded as follows:
  - The applicant satisfies the rural housing eligibility criteria set out in the Development Plan.
  - The development would not give rise to any negative impact on the residential amenity of adjoining properties (although the separation between the proposed dwelling and the family home has been increased as part of the subject proposal).
  - The site is not identified as being at risk of flooding in the national flood mapping (although it is acknowledged that there was pluvial / rainfall flooding of lands to the south of the site).
  - It was recommended that a flood risk assessment be undertaken (which has been provided as part of the application).
  - There was a need for both 'T' & 'P' percolation tests (these have been included with the application while the use of a tertiary wastewater treatment system has also been proposed).
  - Following screening for the purposes of appropriate assessment, it was determined that the development would not have an impact on any European Site.
- The report of the case planner in the assessment of the subject application is flawed as follows:
  - It has ignored the inspector's report prepared for ABP Ref. No. ABP-306171-19 (PA Ref. No. 197209).
  - No consideration has been given to the cover letter provided with the application which sets out the relevant planning history.



- The District Engineer who undertook a technical appraisal was clearly unaware that the documentation provided includes 2 No. site characterisation studies. Reference is only made to the site characterisation study carried out in July, 2017 while it has been recommended that further information be sought in relation to 'T'-tests already submitted in response to the inspector's report prepared in respect of ABP Ref. No. ABP-306171-19.
- Despite the recommendation of the District Engineer, further information was not requested. In this regard, it is submitted that the purpose of seeking additional information is to allow the Planning Authority to make an informed decision.
- While it was recommended that further information be sought to establish whether the wastewater treatment system approved under PA Ref No. 187210 had been installed on site, it is abundantly clear that the approved system is not yet in place.
- With respect to a query arising in the inspector's assessment of ABP Ref. No. ABP-306171-19, it can be confirmed that proposed dwelling is sited proximate to the family home in response to Objective CPO 16.32 which states that *'clustering with existing rural buildings is generally preferable to standalone locations'*.
- The inspector's report for ABP Ref. No. ABP-306171-19 determined that the proposed development site was not located in a Flood Risk Zone as per the OPW's national flood mapping. The Flood Risk Assessment provided with the subject proposal has reached the same conclusion.
- The decision to refuse permission does not take cognisance of ABP Ref. No. ABP-306171-19 and cites the following reasons for refusal:
  - o The proposal constitutes backland development which would have a detrimental and negative impact on the residential amenity of neighbouring property.
  - o It has not been demonstrated that the site is suitable for the safe treatment and disposal of effluent.

In this regard, the Board is advised as follows:

- The inspector's assessment of ABP Ref. No. ABP-306171-19 has already determined that the proposed dwelling would not impact on the residential amenity of the neighbouring property.
- The additional Site Characterisation Study and the amended wastewater treatment proposals address the issue of site suitability.
- The applicant satisfies the local needs eligibility criteria by reference to ABP Ref. No. ABP-306171-19.

## 6.2. Planning Authority Response

None.

## 6.3. Observations

### 6.3.1. *Peter & Bernie Walker (owners / occupiers of the neighbouring dwelling & lands to the south / southwest of the site):*

- While the substance of the appeal appears to have been informed by the recommendation of the Board's inspector with respect to the previous application considered under PA Ref. No. 197209 / ABP Ref. No. ABP-306191-19, that appeal / application was withdrawn and no decision was issued by the Board. Therefore, that report is irrelevant to the assessment of the subject proposal.
- PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19 was assessed under the previous development plan which has been superseded by the Westmeath County Development Plan, 2021-2027. Accordingly, the inspector's recommendation for ABP Ref. No. ABP-306171-19 is inconsequential.
- The proposed development site is located in a 'Rural Area Under Strong Urban Influence' and it would appear from the report of the case planner that the applicant has not provided sufficient information to demonstrate compliance with the applicable rural housing policy i.e. Objective CPO 9.1.

- National Policy Objective No. 19 of the National Planning Framework states that the provision of single housing in rural areas under urban influence will be based on the core consideration of a demonstrable economic or social need to live in a rural area. In this regard, it is submitted that the applicant has no economic need (such as the nature of his profession) to reside at the location proposed nor has he demonstrated a social need to live in this rural area. Therefore, the proposal amounts to urban-generated housing.
- Notwithstanding the conclusions of the Flood Risk Assessment provided with the application, the lands to the south of the development site are subject to periodic flooding during the winter and summer while the lands to the north are also understood to flood on occasion. Flooding of the application site has been witnessed by the observers (please refer to the accompanying photographs).
- There are significant drainage channels in the area, including around the field to the south of the application site, and during periods of heavy rainfall these can overflow into surrounding lands (including the development site and the observers' land).
- Although the desktop assessment suggests that the site is not prone to flood events, an examination of the situation on the ground will reveal that the lands are wet underfoot as a result of periodic flooding while there are also vegetative indicators of poor drainage conditions.
- There are concerns that the proposed wastewater treatment system will not function properly during periods of heavy rainfall and / or flooding giving rise to the potential for untreated effluent to contaminate floodwaters which will subsequently flow towards the observers' house and lands thereby posing a risk to public health.
- The Surface Water Regulations, 2009 (S.I. No. 272/2009) preclude a public authority from making a decision that could potentially result in the contamination of surface waters.
- The Site Characterisation Report prepared by Spollen & Associates, Chartered Engineers, fails to identify the drainage ditches in the locality or to recognise that the lands to the south flood periodically. The inability to obtain

a 'T'-value as part of that report would also be indicative of impermeable subsoils or a high water table.

- In relation to the report compiled by Cunningham Design & Planning, Consulting Engineers, the accompanying photographs show extremely wet ground conditions underfoot, however, the percolation tests are stated as having recorded a 'T'-value of 29.44. Therefore, the accuracy of the percolation test results is questionable. Moreover, it would have been more appropriate if a full Site Characterisation Report had been submitted in accordance with the EPA's 'Code of Practice, Wastewater Treatment Systems for Single Houses, 2021'.
- With respect to the replacement wastewater treatment plant granted under PA Ref No. 18/7210, this was likely approved on the basis that the Planning Authority surmised it would represent an improvement over the existing system in terms of the protection of ground and surface waters.
- In screening the proposal for the purposes of Appropriate Assessment, it has not been definitively established that there is no hydrological connection between the proposed development site and Lough Ree, with specific reference to the Lough Ree Special Area of Conservation and the Lough Ree Special Protection Area. Therefore, it cannot be concluded that the proposed development either alone or in combination with other plans and / or projects would not result in the loss, fragmentation, disruption, or the disturbance of habitats or species that are of conservation interest. Accordingly, the proposed development necessitates the preparation of a Natura Impact Statement.
- The proposed dwelling will occupy a backland position relative to the observers' property and has the potential to accommodate a first floor / mezzanine level. Therefore, the proposal could overlook both the applicant's family home and the observers' dwelling to the detriment of the residential amenity of both properties (it is not accepted that any such impact on the family homeplace could be dismissed as this property could be sold to a third party).

- Notwithstanding the inspector's recommendation with respect to ABP Ref. No. ABP-306191-19, that application was withdrawn and no decision was issued by the Board as regards the issue of backland development.
- The proposed development will have a detrimental impact on the residential amenity of neighbouring dwellings with an associated devaluation of property.
- The backland nature of the development does not conform with the concept of the clustering as recommended by Objective CPO 9.14 of the Development Plan.

#### 6.4. Further Responses

None.

### 7.0 Assessment

7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues relevant to the appeal are:

- The principle of the proposed development / rural housing policy
- Overall design & layout / visual impact
- Impact on residential amenity
- Flooding implications
- Wastewater treatment and disposal
- Appropriate assessment

These are assessed as follows:

#### 7.2. The Principle of the Proposed Development / Rural Housing Policy:

7.2.1. In terms of assessing the principle of the proposed development having regard to the applicable rural housing policy, it is of relevance in the first instance to note that the proposed development site is located in an '*Area under Strong Urban Influence*' as indicatively identified by the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' and that the detailed identification of the various rural area types at a county level shown on Map No. 9.1: '*Rural Typology Co. Westmeath*' of the

Westmeath County Development Plan, 2021-2027 similarly indicates that the site is located in a '*Rural Area under Strong Urban Influence*'. The Guidelines state that '*Areas under Strong Urban Influence*' will exhibit characteristics such as their proximity to the immediate environs or the close commuting catchments of large cities and towns (e.g. Athlone Town) and will generally be under considerable pressure for the development of housing due to their proximity to these urban centres or the major transport corridors accessing them (e.g. the N61, N62 & N55 National Roads and the M6 / N6 Corridor). Notably, within these '*areas under urban influence*', the National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate '*a functional economic or social requirement for housing need*' (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area and the siting and design criteria for rural housing contained in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements). The Guidelines further state that the housing requirements of persons with roots or links in rural areas are to be facilitated and that planning policies should be tailored to local circumstances.

- 7.2.2. Considering the proliferation of one-off rural housing development observed in the wider area during the course of my site inspection, and the evidence of continuing pressure for such development due to the close proximity of Athlone town and a number of national routes, I would concur that the prevailing characteristics of the surrounding area are indicative of an '*Area under Strong Urban Influence*'. Accordingly, it is necessary to consider whether the applicants satisfy the relevant eligibility criteria, with particular reference to Objective CPO 9.1 of the Development Plan which seeks to accommodate individuals for permanent residential development in '*Rural Areas Under Strong Urban Influence*' who have strong links to the area and who are an intrinsic part of the rural community, subject to good planning practice, environmental carrying capacity and landscape protection considerations. More specifically, it must be established whether the applicants meet the 'local housing need' provisions by reference to one of 6 No. qualifying criteria (with the local area for the purpose of this policy defined as the area generally within a 10km radius of the applicant's family home).

7.2.3. Given the site context, cognisance should also be taken of Section 9.6:

*'Development within the Hinterland of Settlements'* of the Development Plan which aims to avoid undesirable ribbon development on the approaches to settlements and to restrict development on the outskirts of the regional centre, towns and villages. Notably, provision is to be made for *'farmers, members of farm families and people that have spent substantial parts of their lives as part of the established rural community building their first home'* within the 'hinterland of settlements', and all such proposals, except for reasons of traffic safety, design or other environmental consideration, are required to be clustered with the existing family home or if farm buildings are isolated from the family dwelling, consideration can be given to grouping with farm structures.

7.2.4. In addition to the foregoing, I would suggest that it is appropriate to have regard to the provisions of the *'Sustainable Rural Housing, Guidelines for Planning Authorities'* which state that in facilitating housing intended to meet rural-generated needs eligible persons can include those working full-time or part-time in rural areas or persons who are an *'intrinsic part of the rural community'* which are defined as follows:

*'Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first homes near their family place of residence'.*

(For the purposes of clarity, I would advise the Board that Circular letter PL 2/2017: *'Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local Needs Criteria in Development Plans'* clearly states that the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* remain in place and thus form the current 'default' position (as supported by the National Planning Framework) pending the publication of revised guidance by the Department).

7.2.5. From a review of the available information, it can be ascertained that the applicant is acquiring the subject site from his father (Mr. John Hayden, Moydrum, Athlone, Co. Westmeath) and that he has lived all his life in the adjacent family home where he continues to reside with his parents. Further support is lent to the proposal by the assertion that the applicant attended the local primary school in Baylin (c. 1.2km to the north-northeast) as well as his familial connections to the wider Moydrum area and his involvement in local community and sporting organisations. In addition, it has been submitted that the applicant does not own a dwelling or any other property suited to his accommodation needs. At this point, I would advise the Board that the only change in the applicant's housing circumstances since the determination of PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19 would appear to be that he no longer attends Athlone Institute of Technology and has taken up employment with An Post. In this regard, the applicant's employment with An Post would not appear to give rise to any economic or functional need to reside at the subject site, although I note that the actual location of his place of employment has not been identified and is simply described as being at a distance of five miles from the development site. It is also of relevance to note that the reporting inspector in their assessment of ABP Ref. No. ABP-306171-19 (although it should be acknowledged that the Board did not issue a decision on that appeal) was of the opinion that the applicant did then appear to satisfy the rural housing requirements of the Westmeath County Development, 2014-2020 (since superseded) while National Policy Objective No. 19 of the National Planning Framework was also in place at the time of that assessment.

7.2.6. On the basis of the foregoing, I would accept that the applicant has a housing need and that he has clear long-term residency and social / familial links to the immediate locality to the effect that he has '*strong links to the area*' and is '*an intrinsic part of the rural community*' thereby satisfying the local housing need provisions of Objective CPO 9.1: '*Areas Under Strong Urban Influence*' of the current Development Plan. Moreover, given that the applicant has lived adjacent to the subject site for all his life, he would satisfy Section 9.4 of the Development Plan which states that persons applying for permission in 'Rural Areas Under Strong Urban Influence' must have strong links and a need to settle in that area and will '*normally have spent substantial periods of their lives living in the rural area as part of the established rural community*'. Similarly, the applicant's connections to this rural



area would accord with the Section 9.6 of the Plan in that he has spent all his life as part of the established rural community and is seemingly building his first home. Accordingly, it is my opinion that the applicant satisfies the eligibility criteria set out in Objective No. CPO 9.1 of the Development Plan and that the proposal amounts to rural-generated housing by a person who is an *'intrinsic part of the rural community'* as per the 'Sustainable Rural Housing, Guidelines for Planning Authorities'. I am also satisfied that the applicant's residency and familial connections to the locality are sufficient to establish a social need to live in this rural area in accordance with Objective 19 of the NPF.

### **7.3. Overall Design & Layout / Visual Impact:**

- 7.3.1. The proposed development site encompasses much of the rear garden area of the adjacent family home and in this regard the siting of the proposed dwelling behind the existing roadside residence amounts to 'backland' development. It will be reliant on access via a new shared entrance arrangement which will entail a vehicular driveway extending between the existing dwelling house and the northern site boundary while it will also be contingent on the replacement and relocation of the wastewater treatment system serving the existing dwelling (with these works having already been approved under PA Ref. No. 187210).
- 7.3.2. Broadly speaking, the type of backland development proposed can give rise to difficulties as regards the preservation of the residential amenities of neighbouring properties, however, in the subject instance, I am mindful of Objective CPO 9.14 of the Development Plan which aims to promote the clustering of houses (particularly on the same landholding or for the same family) and the use of shared accesses. Given the familial relationship between the applicant and the occupants of the adjoining dwelling house (i.e. the family home), the proposed shared access arrangement, and as the siting of the development will serve to reduce its wider landscape and visual impact, I am amenable to the site layout as submitted.
- 7.3.3. In reference to the actual design of the dwelling house, it is my opinion that the proposal adheres to the basic design principles set out in Objective CPO 16.32 of the Development Plan and has sought to evoke a contemporary interpretation of the traditional vernacular through its use of features such as the single-storey construction, the narrow plan forms offset from one another, the steep roof pitches,

the chimney stack over the ridge line, and the palette of external finishes that includes a smooth render, cedar timber cladding, natural stone, dark grey uPVC windows, and natural roof slates.

#### **7.4. Impact on Residential Amenity:**

- 7.4.1. Having regard to design of the dwelling, the separation distances involved, the level of screening provided by existing intervening vegetation, and the supplementary planting proposed along the southern site boundary as shown on the landscaping plan, I am satisfied that the proposed development will not give rise to any detrimental impact on the residential amenity of the (observers') dwelling house to the southwest of the application site.
- 7.4.2. With respect to the siting of the proposed dwelling relative to the family home, while I would acknowledge the concerns raised by the Planning Authority as regards the backland nature of the development and the potential for overlooking with an associated loss of privacy / amenity, I would reiterate my view that the proposal is broadly in keeping with the intent of Objective CPO 9.14 which aims to promote the clustering of houses, particularly on the same landholding or for the same family. Accordingly, I would suggest that some degree of cognisance must be taken of the familial relationship between the occupants of the existing and proposed housing. It is also apparent that the repositioning of the proposed dwelling further eastwards into the site thereby increasing the separation distance between it and the existing house is purposely intended to address the concerns previously raised by the reporting inspector in the assessment of ABP Ref. No. ABP-306171-19 (as regards the siting of the dwelling then proposed alongside the shared boundary).
- 7.4.3. In light of the foregoing considerations, and noting that the single storey design and general orientation of the proposed dwelling (including the limited fenestration on the western elevation of the proposed dwelling which serves a utility room and a combined kitchen / dining area), I am inclined to suggest that the subject proposal can be satisfactorily accommodated on site without detriment to the residential amenity of the neighbouring dwelling to the west, subject to the provision of suitable screen planting / landscaping and boundary treatment.

## 7.5. Flooding Implications:

7.5.1. From a review of the available information, including the grounds of appeal and the planning history of the application site, it is apparent that particular consideration needs to be given to the potential flooding implications of the proposed development due to the proximity of lands known to flood and the evidence of poor drainage both on site and in the surrounding area. In this respect, I would advise the Board that on examination of the most up-to-date flood mapping for the area prepared by the Office of Public Works (including that compiled as part of the CFRAM programme), which has been made available on [www.floodinfo.ie](http://www.floodinfo.ie) and has informed the development of Flood Risk Management Plans for specific areas, it can be established that the proposed development site is located in an area which has been indicatively identified as being subject to fluvial flooding seemingly attributable to floodwaters overflowing the series of watercourses / drainage channels to the south and southeast. The 'National Indicative Fluvial Mapping – Present Day' shows almost all of the development site, including that area to be occupied by the proposed dwelling, and much of the surrounding lands, as being inundated by fluvial floodwaters in both the 'low' (0.1% AEP) and 'medium' (1% AEP) probability scenarios. This is similarly reflected in the National Indicative Fluvial Mapping of the 'Mid-Range Future' and 'High-End Future' scenarios.

(It should however be noted that the 'National Indicative Fluvial Mapping' is not definitive and serves only as a useful tool in highlighting the potential for flood events in a particular area).

7.5.2. Within the Strategic Flood Risk Assessment prepared as part of the Westmeath County Development Plan, 2021-2027, the relevant mapping does not identify any fluvial or pluvial flood risk within the immediate site surrounds, although there are multiple instances of lands at flood risk in the wider area, including 1% AEP fluvial flooding approximately 350m south of the application site as well as pluvial flooding c. 200m to the west. Notably, this mapping does not correspond with the 'National Indicative Fluvial Mapping' published by the OPW given that it does not identify the application site itself as being at flood risk, however, the likelihood for this inconsistency is that the SFRA itself is informed in part by datasets obtained from the OPW's Draft Preliminary Flood Risk Assessment (a national screening exercise undertaken to identify areas at potential risk of flooding) which has since been

superseded by the mapping available at [www.floodinfo.ie](http://www.floodinfo.ie). In this regard, I would draw the Board's attention to the contents of Circular PL2/2014 issued by the Department of the Environment, Community and Local Government on 13<sup>th</sup> August, 2014 which states that the Draft Indicative Preliminary Flood Risk Assessment Maps were prepared for the purpose of an initial assessment, at a national level, of areas of potentially significant flood risk and that '*the maps provide only an indication of areas that may be prone to flooding. They are not necessarily locally accurate and should not be used as the sole basis for defining Flood Zones, or for making decisions on planning applications*'. This Circular further recommends that for the purposes of decision-making in respect of planning applications, a Stage II Flood Risk Assessment as set out in '*The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*' should be undertaken where there are proposals for development in areas that may be prone to flooding. It must also be acknowledged that the Strategic Flood Risk Assessment was informed by a number of datasets which recorded either historical or predicted flood extents and that the input data was developed at a point in time and, therefore, there may be changes within the catchment that mean a future study or more localised assessment of risk may result in a change in either flood extent or depth. The strategic nature of the SFRA also limits its reliability as regards site-specific flood risk assessment.

- 7.5.3. Therefore, on the basis of the foregoing, while I would accept that there are a number of inconsistencies in the identification of flood risk areas between the Council's Strategic Flood Risk Assessment and the 'National Indicative Fluvial Mapping' available from the OPW, I am inclined to conclude that greater credence should be given to the more up-to-date OPW mapping.
- 7.5.4. At this point, I would advise the Board that there is considerable disagreement between the applicant and the third-party observers as regards the extent of flooding in the surrounding area and whether or not the site itself is prone to flooding. For example, while the applicant and his representatives have rejected any suggestion that the application site floods, the observers have sought to counter this argument by claiming that floodwaters have previously encroached into the site with reference to a series of accompanying photographs which purportedly show extensive flooding / ponding in the vicinity of the site (it is regrettable that the quality of several of these photographs is lacking and thus difficulties arise in ascertaining the actual vantage

points from which they have been taken and the location / extent of the flooding / ponding shown).

7.5.5. Given the potential flooding implications associated with the proposed development, and in response to the concerns raised in the assessment of PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19, the subject application has been accompanied by a site-specific flood risk assessment. This report has collated and reviewed data from a number of sources, including the National Flood Hazard Mapping database, the OPW's Preliminary Flood Risk Assessment, and the Shannon Catchment Flood Risk Assessment and Management (CFRAM) Study, and has concluded as follows:

- The proposed development site is not within Flood Zones A, B or C as defined by the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities'.
- On the basis of information obtained from the OPW's Preliminary Flood Risk Assessment and the Shannon Catchment Flood Risk Assessment and Management (CFRAM) Study, the site is not predicted to be liable to flooding in the 1 in 1,000-year Mid-Range Future Scenario.
- There is no evidence to suggest groundwater flooding on site.
- The Preliminary Flood Risk Assessment does not identify the site as being liable to pluvial flooding.
- The extent of flooding shown in the Preliminary Flood Risk Assessment mapping is likely to be less given the surrounding network of open drains (which would not have been considered as part of the national pluvial flood model).
- The mitigation measures proposed will address any notional flood risk and include the raising of the finished floor & access levels. In addition, surface water runoff will be limited to greenfield rates and disposed of on site.
- The risk of flooding to people & property etc. will be minimal.
- The development will not increase the risk of flooding elsewhere.
- The proposal satisfies the Justification Test set out in the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities'.

- 7.5.6. Having reviewed the submitted site-specific flood risk assessment, I would have serious concerns as regards the reliability of the conclusions drawn therein given that no account appears to have been taken of the 'National Indicative Fluvial Mapping (NIFM) River Flood Extents' compiled by the Office of Public Works. These datasets (in reference to the 'Present Day', 'Mid-Range Future' and 'High-End Future' scenarios) show the modelled extent of land that might be flooded by rivers (fluvial flooding) during a theoretical or 'design' flood event with an estimated probability of occurrence, rather than information for actual floods that have occurred in the past. Within all of the modelled scenarios, almost all of the development site, including that area to be occupied by the proposed dwelling and its wastewater treatment system, and much of the surrounding lands, are shown as being inundated by fluvial floodwaters in both the 'low' (0.1% AEP) and 'medium' (1% AEP) probability scenarios. Therefore, contrary to the applicant's FRA, the subject site would seem to be situated within Flood Zone A where the probability of flooding is highest as defined by the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009*'. By extension, the potential arises for the displacement of floodwaters consequent on the proposed development. Accordingly, the failure to consider these indicative predictions and to instead rely on more outdated mapping derived from the OPW's Preliminary Flood Risk Assessment serves to undermine the submitted flood risk assessment.
- 7.5.7. I am also cognisant that the site-specific FRA makes no reference to the fluvial and pluvial flooding risks identified in the Strategic Flood Risk Assessment appended to the current Westmeath County Development Plan, 2021-2027. In this regard, the photographs provided by the third-party observers to the appeal, the wet ground conditions underfoot, and the multiple instances of ponding observed along the site boundaries and on adjacent lands during the course of my site inspection, would lend weight to the possibility that the site or part thereof may be subject to pluvial flooding.
- 7.5.8. By way of further comment, the FRA has erred in its interpretation of Flood Zone 'C' and has also mistakenly stated that 'housing' does not amount to 'highly vulnerable' development despite Table 3.3: '*Classification of Vulnerability of Different Types of Development*' of the '*Planning System and Flood Risk Management, Guidelines for*

Planning Authorities' clearly identifying dwelling houses as a highly vulnerable form of development.

7.5.9. Therefore, having regard to the site location in an area identified by the Office of Public Works as being at risk of fluvial flooding, the broader evidence of pluvial flooding in the surrounding area, the policies and objectives of the County Development Plan, and the provisions of the '*Planning System and Flood Risk Management, Guidelines for Planning Authorities*', I am inclined to apply the precautionary principle in this instance in that I am not satisfied that it has been adequately demonstrated that the proposed development would not negatively impact on the flood regime of the surrounding area or that it would accord with national guidance.

#### 7.6. **Wastewater Treatment and Disposal:**

7.6.1. The proposed development is contingent on the implementation of PA Ref. No. 187210 i.e. the relocation & replacement of the effluent treatment unit serving the existing dwelling house, and includes for the installation of a packaged wastewater treatment system which will discharge treated effluent to ground via a polishing filter. In this regard, I would advise the Board that the subject application has been accompanied by a copy of the same Site Characterisation Form (prepared by Spollen & Associates, Chartered Engineers, July, 2018) as was provided with the previous application lodged under PA Ref. No. 197209 / ABP Ref. No. ABP-306171-19 in addition to a supplementary report (compiled by Cunningham Design & Planning, Consulting Engineers, April, 2021) which includes the results of a 'T' - test (percolation) conducted on site.

7.6.2. With respect to the Site Characterisation Form, I would have a number of concerns as regards the veracity of the information provided and would reiterate the commentary provided by the reporting inspector in their assessment of ABP Ref. No. ABP-306171-19 (noting that no decision was issued by the Board). More specifically, I would concur with the previous inspector that the timing & results of the site suitability assessment, when taken in conjunction with the evidence of poor underlying ground / drainage conditions on site as observed during a site inspection, would give rise to concerns as regards the potential for the satisfactory treatment and disposal of effluent at this location. By way of summation, the site suitability

testing was carried out in July, 2018, one of the driest months on record, with the water table recorded at 1.4m below ground level and water ingress occurring at 0.8m bgl, however, the wet ground conditions and the prevalence of surface water ponding (including along the site boundaries) observed during my site inspection would raise concerns that a higher water table during wetter periods would impact on the capacity to dispose of effluent. In this regard, I am in agreement with the previous inspector that winter testing of the on-site ground conditions would be appropriate in this instance – for the purposes of clarity, this should entail new percolation and trial hole tests (not just the results of ‘T’ - tests as per the report of Cunningham Design & Planning, Consulting Engineers) and, given passage of time, should also include a newly completed Site Characterisation Form (EPA CoP, 2021).

- 7.6.3. Further concerns with respect to the Site Characterisation Form include its failure to identify any watercourses / streams or drainage ditches within 250m of the site as part of the visual assessment despite the presence of several such features in the immediate surrounds of the application site. Similarly, although the absence of any surface water ponding may be explained by the dry weather conditions experienced during the preparation of the Site Characterisation Form, the wider evidence of ponding / flooding in the area (as observed during my site inspection and as supported by third party observations and available flood mapping) should have been used to inform the site suitability assessment. The veracity of the site characterisation is also compromised by the fact that the report is dated 20<sup>th</sup> July, 2018 and thus pre-dates the timing of the actual trial hole and percolation tests (27<sup>th</sup> – 28<sup>th</sup> July, 2018).
- 7.6.4. In relation to the ‘T’ - tests prepared by Cunningham Design & Planning, Consulting Engineers, I note that the accompanying photographs would appear to show considerably wetter ground conditions on site than was acknowledged in the original Site Characterisation Form. This would seem to undermine the reliability of the results of the wider site suitability assessment as presented.
- 7.6.5. Having considered the available information, and following a site inspection, the wider area would seem to be characterised by poor overall ground conditions with several notable drainage ditches while also being at risk of flooding. Therefore, it is my opinion that it has not been established that foul effluent can be safely treated and disposed of within the site.



## 7.7. Appropriate Assessment:

7.7.1. From a review of the available mapping, including the data maps from the website of the National Parks and Wildlife Service, it is apparent that although the proposed development site is not located within any Natura 2000 designation, there are a number of such sites within the wider area with the closest as follows:

- The Carn Park Bog Special Area of Conservation (Site Code: 002336), approximately 1.1km southeast of the site.
- The Crosswood Bog Special Area of Conservation (Site Code: 002337), approximately 1.6km south of the site.
- The Lough Ree Special Area of Conservation (Site Code: 000440), approximately 3km northwest of the site.
- The Lough Ree Special Protection Area (Site Code: 004064), approximately 3km northwest of the site.

7.7.2. In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 12 of the Westmeath County Development Plan, 2021-2027, to protect and conserve Special Areas of Conservation, candidate Special Areas of Conservation, Special Protection Areas and candidate Special Protection Areas, designated under the EU Birds and Habitats Directives respectively.

7.7.3. More specifically, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive (save for the exception provided in Article 6(4) of the Habitats Directive, namely, there must be a) no alternative solution available, b) imperative reasons of overriding public interest for the project to proceed; and c) adequate compensatory measures in place). Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

### 7.7.4. *Stage 1: Screening:*

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

7.7.5. In screening the proposal for the purposes of appropriate assessment, I would refer the Board at the outset to the '*Appropriate Assessment Screening*' (Liam Madden, Vitruvius Hibernicus: March, 2021) submitted with the application which provides a brief description of the proposed development before identifying the site location relative to the Carn Park Bog Special Area of Conservation, the Crosswood Bog Special Area of Conservation, the Lough Ree Special Area of Conservation, and the Lough Ree Special Protection Area. This screening exercise borrows heavily from that undertaken by the reporting inspector in the assessment of ABP Ref. No. ABP-306171-19 and notes that while surface drains are a characteristic of the area, the site is not directly bounded by any such features. It proceeds to state that the development site is located downstream of the Carn Bog SAC where the prevailing water flow direction is to the northwest (the screening for ABP Ref. No. ABP-306171-19 noted that the site was also downstream of the Crosswood Bog SAC). The report then states that watercourses and arterial drains in the area ultimately discharge to the Lough Ree SAC & SPA c. 4km downstream with the qualifying interests of the SAC as follows:

- Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition* - type vegetation
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (\* important orchid sites)
- Degraded raised bogs still capable of natural regeneration
- Alkaline fens
- Limestone pavements
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Bog woodland
- *Lutra lutra* (Otter)

7.7.6. The screening continues by stating that the main threat to aquatic life in the lake has been identified as artificial enrichment of the waters through the release of agricultural and domestic waste, and by peat / silt in suspension. In this regard, it has been submitted that in light of the scale of the proposed development, the separation from the aforementioned European Site, and the lack of any direct connection

therewith, it is reasonable to conclude that the proposal, both individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lough Ree SAC, SPA, or any other European Site, in view of the site's conservation objectives.

- 7.7.7. The findings of the applicant's screening report thus conclude that 'there are no identifiable impacts from the proposed development, either individually or cumulatively with other proximate developments, which would or could adversely affect or impact upon the Natura 2000 site . . . the proposed development can be objectively said not to have any significant *[effect]* on SAC 001818 *[this would seem to be an error and should instead refer to 000440]*, will not contribute to or impact upon any identified sensitivities or threats and will have no adverse impact on the NPWS conservation objectives'.
- 7.7.8. The proposed development was further screened by the Planning Authority (please refer to the report of the case planner) which determined that on the basis of the nature and scale of the development proposed, the wastewater treatment system, and the lack of any direct hydrological link to any Natura 2000 site, it could be concluded that there is no potential for significant effects on the Natura 2000 network arising from the proposed works either alone or in combination with other plans and / or projects by way of loss, fragmentation, disruption, disturbance to habitats, species or habitats of species that are of conservation interest.
- 7.7.9. In screening the proposal for the purposes of appropriate assessment, it should be noted at the outset that the project under consideration is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s). Accordingly, the proposed development requires to be examined in relation to any possible interaction with European Sites designated Special Areas of Conservation (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.
- 7.7.10. The proposed development involves the construction of a dwelling house, a new entrance arrangement, and the installation of a wastewater treatment system. It is also reliant on the implementation of PA Ref. No. 187210 which entails the relocation & replacement of the effluent treatment plant serving a neighbouring dwelling house.

Accordingly, taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- The contamination of waters from the wastewater treatment arrangements.

7.7.11. In assessing the zone of influence of the proposed development on Natura 2000 sites, the identification of European sites within a 15km radius of the project has become commonplace in screening for the purposes of appropriate assessment, however, this is not founded on scientific evidence and derives from a misapplication of the recommendation for 'Plans' contained in the 'Appropriate Assessment of Plans and Projects in Ireland, Guidance for Planning Authorities' published by the Department of Environment, Heritage and Local Government (which in turn derives from UK guidance). In this regard, it is my opinion that the following European Sites are within the zone of influence of the proposed development given their location downstream of the application site:

- European Site: The Lough Ree Special Area of Conservation (Site Code: 000440):

*Distance & Direction:* c. 3km northwest

*Qualifying Interests:* Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation

Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (\* important orchid sites)

Degraded raised bogs still capable of natural regeneration

Alkaline fens

Limestone pavements

Old sessile oak woods with Ilex and Blechnum in the British Isles

Bog woodland

Lutra lutra (Otter)

*Conservation Objectives:* To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.

(The status of Old sessile oak woods with Ilex and Blechnum in the British Isles as a qualifying Annex I habitat for the Lough Ree SAC is currently under review. The outcome of this review will determine whether a site-specific conservation objective is set for this habitat).

- *European Site: The Lough Ree Special Protection Area (Site Code: 004064):*

*Distance & Direction:* c. 3km northwest of the site.

*Qualifying Interests:* Little Grebe *Tachybaptus ruficollis*

Whooper Swan *Cygnus cygnus*

Wigeon *Anas penelope*

Teal *Anas crecca*

Mallard *Anas platyrhynchos*

Shoveler *Anas clypeata*

Tufted Duck *Aythya fuligula*

Common Scoter *Melanitta nigra*

Goldeneye *Bucephala clangula*

Coot *Fulica atra*

Golden Plover *Pluvialis apricaria*

Lapwing *Vanellus vanellus*

Common Tern *Sterna hirundo*

*Conservation Objectives:* To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.

To maintain or restore the favourable conservation condition of the wetland habitat at Lough Ree SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.

- 7.7.12. Having regard to the small scale and nature of the proposed development, the nature of the receiving environment, the proximity of the lands in question to the nearest European site, and the absence of any direct hydrological link to any European Site, it is my opinion that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.
- 7.7.13. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on European Site Nos. 000440 & 004064, or any other European site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

## **9.0 Reasons and Considerations**

1. Having regard to the site location in an area at risk of flooding, the evidence of poor drainage characteristics in the wider area, and the underlying soil conditions and high water table, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily treated and disposed of on site, notwithstanding the proposed use of a proprietary wastewater

treatment system. The proposed development would, therefore, be prejudicial to public health.

2. Having regard to the site location in an area identified by the Office of Public Works as being at risk of fluvial flooding, the Strategic Flood Risk Assessment appended to the Westmeath County Development Plan, 2021-2027, and the provisions of the 'Planning System and Flood Risk Management, Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in November 2009, the Board is not satisfied, on the basis of submissions made in connection with the planning application and the appeal, that the subject site is an appropriate location for the scale and type of development proposed; that the proposed development would not negatively impact on the flood regime of the surrounding area and the amenities of surrounding properties; and that the proposed development would not cause or exacerbate flooding on adjoining lands contrary to national flood guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Robert Speer  
Planning Inspector

11<sup>th</sup> March, 2022