



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311246-21

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<b>Development</b>	Construction of a two storey dwelling with a new entrance and all associated site works.
<b>Location</b>	Clonminch Avenue, Tullamore, Co. Offaly
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	21213
<b>Applicant(s)</b>	Barbara Murphy
<b>Type of Application</b>	Outline Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Eileen Moore
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	22 <sup>nd</sup> October 2021
<b>Inspector</b>	Ian Boyle

## 1.0 Site Location and Description

- 1.1. The subject site is located at the rear of an existing dwelling (R35 VK71) that fronts on to the Clonminch Road (R443). Clonminch Road is the main southern approach road into Tullamore town centre, linking Tullamore to Mountmellick and Portlaoise, to the south. Tullamore town centre is within walking distance of the site and is approximately 1.1km to the north.
- 1.2. The site accommodates an existing shed on its western boundary. There is dead and decomposing vegetation at the centre of the site, which is mainly briars, sticks, and twigs, and a dense screen of Leyland cypress trees runs across the front of the site. It is possible that the site has been recently cleared.
- 1.3. There is an existing gated vehicular entrance fronting onto Clonminch Avenue at the southwestern boundary. The site access is approximately 35m from the corner of where Clonminch Avenue meets Clonminch Road. This is no longer in use, however, and the driveway is covered with further stacks of light wood and branches. There is a single utility pole and small electricity box situated at the front of the site.
- 1.4. The site is adjoined to the northeast by an existing two-storey dwelling, and to the northwest and southwest by the rear gardens of residential properties. There are further dwellings located across the street and along Clonminch Avenue further to the east.
- 1.5. The site has a stated area of 0.11ha.

## 2.0 Proposed Development

- 2.1. The proposed development is for outline permission to construct a two-storey dwelling with a new site entrance and associated site works.
- 2.2. The Planning Authority requested further information on 9<sup>th</sup> June 2021 in relation to proposed boundary treatment details (Item 1); the relocation of the existing electrical cabinet to facilitate the future proposed site access (Item 2); and clarification if it is intended to close the existing site access (Item 3).
- 2.3. The Applicant responded to the Council's further information request on 6<sup>th</sup> July 2021.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority granted outline permission on 29<sup>th</sup> July 2021, subject to 10 no. conditions. The conditions are standard in nature.

- Condition 2(a) states that no development shall take place until an application for permission consequent to this outline permission has been granted.
- Condition 2(c) requires that detailed drawings shall ensure there shall be no overlooking at first floor level of adjoining residential properties.
- Condition No. 3 requires details regarding site boundaries.
- Condition No. 7 is in relation to the construction phase of the development (control of noise, waste, dust, vibration, etc.) and limits site working hours.
- Condition No. 10 is for payment of a financial contribution (€4,010.00).

### 3.2. Planning Authority Reports

### 3.3. Planning Reports

- The proposed development is compatible with the zoning for the site (residential) as per the *Tullamore Town and Environs Development Plan 2010-2016 (as extended)*.
- There is sufficient space proposed between the building and its side boundaries.
- As detailed design is not assessed at this stage, it is accepted that a two-storey development could give rise to overlooking. However, a condition is attached restricting overlooking of adjoining properties from the first floor. Detailed drawings must also be submitted as part of the permission consequent application.
- Overshadowing would not have a significant, negative impact given the orientation of the proposed house, relative to surrounding properties.

- No concerns were raised in relation to traffic and transport, water and wastewater services, or siting and design.
- The proposed development would incur a development contribution levy.

### 3.4. Other Technical Reports

District Engineer: Noted that the submitted drawing (Drwg. no. C001) shows that the existing shed proposed to be demolished is directly on the southwest boundary of the site. The Applicant is requested to clarify if the site boundary is correct or if the location of the existing shed is across two separate lines.

To facilitate the relocation of the site entrance, the existing electrical cabinet on the public footpath will require relocation. The Applicant is requested to clarify with the relevant Utility Provider / Cabinet Owner that the relocation is possible. Any charges associated with the relocation of services will be borne by the Applicant.

Environment and Water Services: No objection subject to conditions.

### 3.5. Prescribed Bodies

Irish Water: No objection subject to standard conditions.

### 3.6. Third Party Observations

A total of 2 no. third party observations were received by the Planning Authority from residents in the area. The objectors' properties are situated directly to the north (R35 FX630) and across Clonminch Avenue to the southeast (R35 W954), respectively.

The main issues raised can be summarised as follows:

- The proposed dwelling would lead to loss of privacy for adjoining and nearby dwellings, including inappropriate overlooking.
- As the application is for outline permission only, there are no drawings on which to make a full appraisal of the proposed development. However, from viewing the drawings submitted it appears that the separation distance

between the proposed new house from the rear of dwelling to the northwest would be only 9m. This suggests overlooking would be a concern.

- Concern expressed regarding the potential height and positioning of windows at ground and first floor level, the detail of which is not included in the application documentation.
- The proposed development would result in the adjacent properties being devalued.
- A previous application for 2 no. two-storey dwellings on the appeal site should be considered in the context of the proposed development (Reg. Ref. 3781).

## 4.0 Planning History

### Subject Site

Reg. Ref. 19228: Planning application seeking outline permission for the construction of a dwelling and associated site works withdrawn on 19<sup>th</sup> February 2020.

Reg. Ref. TU458707: Permission refused on 8<sup>th</sup> February 2008 for the construction of a new dwelling, entrance and ancillary site works.

Reg. Ref. TU378102: Permission refused on 8<sup>th</sup> January 2003 for 2 no. two-storey semi-detached houses.

Reg. Ref. TU361701: Outline Permission refused on 26<sup>th</sup> September 2001 for 2 no. two-storey semi-detached houses.

Reg. Ref. TU277594: Permission granted on 22<sup>nd</sup> February 1996 for construction of a two-storey house and garage.

### Surrounding Area

Reg. Ref. TU265593: Permission granted on 5<sup>th</sup> October 1993, on the adjoining site to the west, for the conversion of a garage to offices.

## 5.0 Policy Context

### 5.1. Offaly County Development Plan 2021-2027

The *Offaly County Development Plan 2021-2027* ('Development Plan') is the relevant statutory plan for the site. It came into effect on 20<sup>th</sup> October 2021.

The site is zoned 'Existing Residential' under the Development Plan and a residential use is listed as 'Permitted in Principle'. The zoning allows for the conservation and enhancement of the quality and character of existing residential areas, to protect residential amenities and to allow for small scale infill development which is appropriate to the character and pattern of development in the area.

The relevant development management standards for the proposed development are set out under Chapter 13 of the Development Plan, which includes:

- 13.2.6 Healthy Place Making
- DMS10 Urban Infill and Brownfield Development
- DMS12 Daylight, Sunlight and Overshadowing
- DMS13 Separation Distances / Overlooking
- DMS14 Space around Buildings
- DMS18 Private Open Space Minimum Standards for Houses

### 5.2. National Planning Policy

- *Design Manual for Urban Roads and Streets, 2019*
- *Quality housing for Sustainable Communities – Best Practice Guidelines, 2007*
- *Sustainable Residential Development In Urban Areas – Guidelines for Planning Authorities, 2009*
- *Urban Design Manual: A Best Practice Guide, 2009*

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

There are no designated European sites within the vicinity of the subject site. Charleville Wood SAC and pNHA (Site Code 000571) are the nearest and located approximately 1.5km and 1.9km to the west of the site, respectively.

The Grand Canal pNHA (Site Code 002104) is situated roughly 1km to the north.

### 5.4. **EIA Screening**

Having regard to the nature and small scale of the proposed development, which is for a single infill residential dwelling within a fully serviced urban area, and its proximity to 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**

One Third Party Appeal has been received. The main grounds of appeal are as follows:

- The Appellant has completed a 3D Shadow Study and has found no reason for concerns regarding overshadowing.
- There are concerns regarding potential overlooking and negative visual impact by the proposed development.
- The wording of Condition 2(c) attached by the Planning Authority in their Notification of Decision to Grant Outline Permission is confusing as it states that there shall be no overlooking at first floor level of adjoining properties.
- Where first floor windows are to be provided, these would severely overlook the rear garden of the residential property to the northwest (R35 FX63) (referred to as Site B in the Appellant's submission).

- Windows on the side elevations of the proposed dwelling would also severely overlook the Applicant's own land to the southwest, the residential property to the northeast, and the residential property to the southeast, which are referred to as Sites A, C, and D, respectively, in the Appellant's submission.
- An Overlooking and Visual Impact Study is appended to the appeal submission. The report makes various observations regarding potential overlooking of certain locations in the surrounding vicinity.
- The proposed dwelling would be overdevelopment of the site from a density and floorspace (sqm) perspective. A dwelling of approximately 90sqm would be more appropriate for the site instead.

## 6.2. Applicant Response

- The Planning Authority have addressed concerns regarding potential overlooking under Condition 2(c) of their Notification of Decision to Grant Outline Permission.
- The Applicant questions, however, if Condition 2(c) is required given the generous setback distances that would exist between the proposed dwelling and house to the northwest.
- The Third Party Appeal is premature given the application is for outline permission only.
- There are various design options that would allow natural light to enter into the rear elevation of the proposed dwelling at first floor level.
- The provision of first floor windows at the gable ends of the proposed dwelling would be normal.
- The images shown in the Appellant's Overlooking and Visual Impact Study have omitted certain details and buildings from the 3D graphic / illustration.
- There is a letter of support appended to the Appeal Response which is from the property owner to the northeast of the subject site. This site is referenced as 'Site C' in the Appellant's report.



- The proposal complies with the *Tullamore Town and Environs Development Plan 2010-2016 (as extended)*, including Chapter 14 'Infill' and the zoning objective for the site.
- The Planning Authority previously granted permission for a two-storey house and garage under Reg. Ref. TU27759 in in 1996.
- The security and visual appearance of the appeal site and surrounding area would be improved by the proposed development.

### 6.3. Planning Authority Response

- The Planning Authority confirms its Decision. The issues raised in the appeal have been covered in the Planner's Report and various technical reports on file.
- As a more detailed design will follow at the permission consequent stage, the Planning Authority is satisfied that an appropriate design solution can be reached then and that Condition 2(c) is sufficient in that regard.

### 6.4. Observations

- None.

## 7.0 Assessment

The main planning considerations relevant to this appeal case are:

- Layout and Design
- Residential Amenity
- Appropriate Assessment

### 7.1. Layout and Design

- 7.1.1. The proposed development is for outline permission for a detached, two-storey house. The site is suitably zoned and from the submitted plans it is evident that a

dwelling with suitable private amenity space can be provided here. As the application is for outline permission, the design and layout of the house is not provided.

- 7.1.2. The subject site is an infill site located within an established residential estate, situated on Clonminch Avenue. It is with walking distance to Tullamore town centre. The wider surrounding area consists of a mix of housing styles and there is no single prevailing building type or design. The houses on Clonminch Avenue and Ashley Court are mainly large, detached dwellings. The overall style, appearance and scale of the proposed dwelling is comparable to the houses within its immediate receiving environment. However, I note that the appeal site is smaller and, therefore, potentially more constrained than the other residential properties in the surrounding vicinity.
- 7.1.3. There are limited drawings with the application, which is acceptable as it is for outline permission only. It appears, however, that the design of the proposed dwelling would have a pitched roof and is setback approximately 7m from its front (southeastern) boundary. The setback distance from the rear boundary (northwest) is noted as 9m on the plans and there are sufficiently wide side setbacks, which are 3.4m and 4m, respectively. In this regard, I note that the Development Plan (DMS14) requires a minimum distance of 3m for two-storey buildings between the side walls of adjacent dwellings or that dwelling blocks with each building have a minimum of 1 metre to the boundary.
- 7.1.4. The Development Plan (DMS13) states that a minimum separation distance of 22m between directly opposing rear first floor windows shall be observed but that this may be relaxed in village and town centre locations where high-quality design is achieved and where alternative provision has been designed to ensure privacy. Whilst it is difficult to gauge if the proposed development would be 'high-quality' in the absence of detailed drawings – for example, there are no elevations, sections or details of external finishes – such information would be provided as part of the application for permission consequent.
- 7.1.5. In addition to the proposed rear garden depth, I note, also, that the dwelling to the northwest is setback off the shared boundary by approximately 14.5m and that the two buildings would not directly oppose each other given the positioning of the that house on the adjacent site.

- 7.1.6. It is further noted that the proposed dwelling does not encroach past the established building line set by the house to the southwest, which is on the corner of Clonminch Avenue and Clonminch Road. The building line along the street will, therefore, be maintained due to the proposed positioning of the new dwelling on the site. As a result, the house would be set slightly deeper into the site and have a setback of 9m from its rear boundary. I consider this to be acceptable, however, and have no concerns in relation to potential overdevelopment of the site.
- 7.1.7. In relation to car parking and access, there is space for 2 no. off-street car parking spaces at the side of the proposed house. I note also that the Council's Transportation Department have raised no objection to the proposal.
- 7.1.8. In summary, I consider that the proposed development would respect the legibility of existing houses on the street and that the design and layout of the proposed development would be appropriate and in keeping with its surrounding context.

## **7.2. Residential Amenity**

- 7.2.1. The Development Plan (DMS13) protects against inappropriate overlooking of adjoining properties. I note also that the main concerns raised by the Planning Authority in their assessment of a previous, proposed dwelling on the site was in relation to potential visual and residential impacts arising on neighbouring properties due to overlooking, overshadowing and visual intrusion (Reg. Ref. TU458707).
- 7.2.2. Firstly, I would note that the potential for overlooking caused by the proposed development is difficult to quantify in the absence of any rear elevational drawings or sections. I note the proximity and orientation of the existing house on the adjoining site to the northwest, which is the Appellant's property, and concur that there are valid concerns regarding the potential for overlooking. However, as noted above, the proposed dwelling would be setback off the rear boundary by 9m, which is a reasonable distance, in my opinion, and which should not give rise to excessive overlooking of the rear curtilage of the adjoining site.
- 7.2.3. I would note, also, that in urban settings, it is generally acceptable for gardens to be overlooked by first floor windows where there is not a direct view. I am also satisfied that there are likely to be various design mechanisms available to the Applicant that could simultaneously allow adequate natural light to enter the house, but which

would also help mitigate against direct views into the private amenity space associated with this property. This could potentially include the careful placement and positioning of windows, such that significant direct overlooking of the abutting private amenity space should not occur.

- 7.2.4. I am less concerned regarding potential overlooking from first-floor windows placed on the gable ends of the proposed house, however. Subject to design and the internal layout of the house, these windows could be limited in size and number, and/or utilise a frosted or opaque treatment, which is typically the case for ensembles, bathrooms or landing areas. This would likely prevent any significant loss of privacy for neighbouring properties to the northeast or southwest.
- 7.2.5. I note that the Planning Authority included a condition (2(c)), which seeks to restrict overlooking of adjoining properties. However, I do not consider this to be necessary as a full set of drawings, including elevations and sections, will be required as part of the future application.
- 7.2.6. Having regard to the site's eastwards orientation, and its proposed layout, siting and physical relationship with adjoining properties and their rear gardens, I consider that there would be negligible impact arising due to overshadowing on adjoining properties. I note also that the Appellant states in their appeal submission that they have completed a 3D Shadow Study and have no reason for concern.
- 7.2.7. In terms of potential for visual impact, it is considered that given the positioning and layout of the proposed dwelling on the site – which can only be assessed on the material submitted as part of the current, outline application – there is limited prospect of significant overbearing or visual impact when viewed from adjoining properties, or wider vicinity. The scale and orientation of the development proposed is in keeping with the context of the established character and pattern of development in the vicinity, in my view. As such, I do not consider that the proposal would be seriously injurious to the residential or visual amenities of adjacent properties and would be acceptable from a residential amenity perspective.
- 7.2.8. In summary, I consider that the provision of the proposed, new dwelling in this infill location would optimise the use of zoned, serviced lands in proximity to Tullamore town centre, and that it is in accordance with the relevant planning policy, including Chapter 13 'Development Standards'.

### 7.3. Appropriate Assessment

7.3.1. Having regard to the nature and scale of the proposed development, which is for a single infill dwelling in an established urban and serviced area, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, 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 outline planning permission be granted for the reasons and considerations set out below.

### 9.0 Reasons and Considerations

9.1. Having regard to the provisions of *Offaly County Development Plan 2021-2027*, including Chapter 13 'Development Management Standards', and to the nature, design and layout of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would, subject to detailed design, not seriously injure the visual or residential amenities of the area, or of property in the vicinity, and would provide an acceptable standard of amenity for future residents. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### 10.0 Conditions

1.	<p>This outline permission relates solely to the principle of a detached dwelling type development on this site and it shall not be construed as giving consent to the following matters:</p> <ul style="list-style-type: none"><li>a) The overall site layout of the development.</li><li>b) The vehicular access.</li></ul> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>The plans and particulars to be submitted by way of a separate application for permission consequent shall include the following:</p> <ul style="list-style-type: none"> <li>a) A comprehensive site survey, to a scale of not less than 1:500, including contours at intervals of 0.5 metres, showing all existing trees, boundaries and other features,</li> <li>b) A site layout plan to a scale of not less than 1:500 showing the layout of the house, driveways and drainage, water and wastewater services.</li> <li>c) The finished ground floor level of the house by reference to existing site levels and road level at the proposed entrance,</li> <li>d) Proposals for the landscaping of the site, including planting,</li> <li>e) Proposals for boundary treatment(s).</li> <li>f) Proposals to protect the privacy and amenity of existing adjacent properties.</li> <li>g) Design proposals which have regard to the design and character of the built environment in the vicinity.</li> <li>h) Details of external finishes.</li> </ul> <p><b>Reason:</b> To enable the application for permission consequent to be fully assessed.</p>
3.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting 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</p>

An Bord Pleanála to determine the proper application of the terms of the Scheme.
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<p><b>Reason:</b> 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.</p>
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Ian Boyle  
Planning Inspector

14<sup>th</sup> December 2021