



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312926-22

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<b>Development</b>	Construction of a two storey house, sewerage wastewater treatment system, new entrance and all associated site development works.
<b>Location</b>	Cornacreeve, Ballybay, Co. Monaghan
<b>Planning Authority</b>	Monaghan County Council
<b>Planning Authority Reg. Ref.</b>	21686
<b>Applicant(s)</b>	PJ Murray.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Thomas McGuirk.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	16 <sup>th</sup> May 2022.
<b>Inspector</b>	Barry O'Donnell

## 1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.2ha and is located in a rural part of County Monaghan, at Cornacreeve, Ballybay. The site is greenfield in nature and consists of improved grassland, forming part of a larger field. It is located on a single lane carriageway that provides access to farmland and other housing in the area.
- 1.2. The site falls gently from a high-point in the south-east corner, falling away to the north and west. It is enclosed by a mix of hedging along the south/west and north boundaries and hedging/post and wire fencing along the east boundary.
- 1.3. The site is adjoined to the east by a detached residential property and by agricultural land on all other sides.

## 2.0 Proposed Development

- 2.1. The proposed development outlined within the public notices entails the construction of a two-storey house, wastewater treatment system and new entrance onto the public road, together with all associated site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority granted permission on 18<sup>th</sup> February 2022, subject to 6 No. conditions.
  - Condition 2(a) required that visibility splays of 2.4m x 50m shall be provided, measured to the nearside road edge in both directions.
  - Condition 4(c) required that only the portion of the roadside hedgerow that is required to be lowered or uprooted to provide adequate sightlines shall be removed.
  - Condition 4(d) required that the line of the recessed site entrance should be planted with a double staggered row of trees and a native hedgerow.

### 3.2. **Planning Authority Reports**

3.2.1. A Planning Report dated 16<sup>th</sup> February 2022 has been provided, which reflects the Planning Authority's decision to grant permission. The report states that the site is in a 'Category 2 – Remaining Rural Area' location, where policy RSP 3 of the development plan states that rural housing proposals will be facilitated subject to other relevant planning policies. No concerns are expressed regarding the proposed design and scale of the house and identified sightlines from the site access are deemed to be acceptable. Regarding appropriate assessment, the report includes a screening assessment which concludes that the development is not of a scale or nature to have significant effects on the integrity of a European site. The report recommends that permission be granted, subject to 6 No. conditions, which are consistent with those attached to the Planning Authority's decision.

#### 3.2.2. Other Technical Reports

An **Environmental Health Officer** report dated 28<sup>th</sup> January 2022 has been provided, which expresses no objection to the development, subject to recommended conditions.

A **Municipal District Engineer** report dated 15<sup>th</sup> February 2022 has been provided, which expresses no objection to the development, subject to recommended conditions. The report states that the Land Direct website was reviewed and there is no right-of-way registered on the Property Registration Authority website in proximity to the proposed house.

### 3.3. **Prescribed Bodies**

3.3.1. The Planning Authority report indicates that no prescribed bodies were consulted.

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

3.4.1. 1 third-party submission was received, the issues raised within which can be summarised as follows: -

- There is a right-of-way from the public road across the field, which is very near to the proposed site.

## 4.0 Planning History

4.1. I did not encounter any previous records in my review of the site's planning history.

### Relevant nearby planning history

06/942 – *Lands to the west*: Outline permission refused to PJ Murray for a house, wastewater treatment system, new water supply connection, entrance from public road and associated site works. Permission was refused for 2 reasons, related to (a) proximity to existing farm buildings that were outside the applicant's ownership and (b) unsuitability of the site for disposal of domestic effluent.

## 5.0 Policy Context

### 5.1. Monaghan County Development Plan 2019-2025

5.1.1. The site is in a rural, unzoned part of County Monaghan.

5.1.2. The Core Strategy Map, Map 2.1, identifies that the site is in the 'remaining rural areas' part of the county. Section 2.8.2 identifies the 'remaining rural areas' as all other rural areas outside of the settlements and the rural areas under strong urban influence (which are the rural areas around Monaghan, Carrickmacross, Castleblayney and Clones). The section states that in these areas, the challenge is to retain population and support the rural economy while seeking to consolidate the existing village network and, in this context, RSP 3 is relevant, where it states: -

**RSP 3:** To facilitate rural housing in the remaining rural areas subject to the relevant planning policies as set out in Development Management Chapter of the Monaghan County Development Plan 2019-2025.

5.1.3. Other relevant rural housing policies include: -

**HSP15:** To require all applications for rural housing to comply with the guidance set out in Development Management Chapter.

**HSP16:** To ensure that rural housing applications employ site specific design solutions to provide proposals that integrate into the landscape and that respect their location in terms of siting, design, materials, finishes and landscaping.

**HSP17:** To require that new houses in the rural areas ensure the protection of water quality in the arrangements for on-site waste water disposal, ensure provision of a safe means of access in relation to road and public safety and ensure the conservation of sensitive areas such as natural habitats, the environs of protected structures and other aspects of heritage.

**HSP18:** Apply a presumption against extensive urban generated rural development, ribbon development, unsustainable, speculative driven residential units in order to safeguard the potential for incremental growth of the towns and their potential beyond the plan period, to utilise existing physical and social infrastructure and to avoid demand for the uneconomic provision of new infrastructure.

5.1.4. Chapter 15 Development Management Standards contains standards and requirements that are relevant to rural housing proposals.

## 5.2. National Planning Policy Framework

5.2.1. National Policy Objective 19 is of relevance to the proposed development. It requires the following:

*'Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;*
- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements'.*

### 5.3. Sustainable Rural Housing Guidelines for Planning Authorities

- 5.3.1. The Guidelines identify a number of rural area typologies and accompanying Map 1 provides an indicative outline of these area typologies. According to this indicative map, the subject site is in a 'structurally weak area'. It is noted from the Guidelines that this map is an indicative guide to the rural area types only and that the development plan process should be used to identify different types of rural area.
- 5.3.2. For structurally weak areas the Guidelines outline that the development plan should *'accommodate any demand for permanent residential development as it arises subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.'*
- 5.3.3. The Guidelines require a distinction to be made between urban and rural generated housing needs, in the different rural area types. In relation to the identification of people with rural generated housing needs, the Guidelines refer to 'Persons who are an intrinsic part of the rural community' and 'Persons working full-time or part-time in rural areas. Of relevance to this appeal, 'Persons who are an intrinsic part of the rural community' are identified as having *"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."*

### 5.4. Natural Heritage Designations

- 5.4.1. The subject site is not located within or adjacent to a designated European site. The closest such site is Slieve Beagh SPA (Site Code 004167), which is approx. 24km north-west.
- 5.4.2. There are a number of proposed Natural Heritage Areas (pNHA) in this part of County Monaghan, including: -
- Cordoo Lough pNHA, approx 1km north
  - Dromore Lakes pNHA, approx. 4.8km south-west
  - Lough Tassan pNHA, 7.5km north-east

- Lough Smiley pNHA, approx. 8.6km east
- Muckno Lake pNHA, approx 10.4km east.

## 5.5. EIA Screening

- 5.5.1. An Environmental Impact Assessment Screening report was not submitted with the application.
- 5.5.2. Class (10)(b) of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) provides that mandatory EIA is required for the following classes of development:
- Construction of more than 500 dwelling units,
  - Urban development which would involve an area greater than 2 ha in the case of a business district, 10 ha in the case of other parts of a built-up area and 20 ha elsewhere.
- 5.5.3. The proposed development consists of one house, the installation of a wastewater system with percolation area and associated site works, on a site of 0.2ha. It falls well below both of the applicable thresholds for mandatory EIA, as set out above.
- 5.5.4. In respect of sub-threshold EIA, having regard to the limited nature and scale of the proposed development, it is considered that 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

- 6.1.1. A third-party appeal has been made by Thomas McGuirk and the grounds of appeal can be summarised as follows: -
- The appellant owns a parcel of adjacent land and there is a right of way to it that traverses the applicant's land. A map is provided as part of the appeal, which was provided to all people who bought a section of a farm that was sold at auction,

including the applicant. The map identifies the right-of-way, which passes through the applicant's site, and may result in trespassing.

- The right of way was formed with stones many years ago and has been used for many years by the appellant's family.
- The requirement to register a right of way on the Property Registry Authority website was abolished in November 2021, so the Planning Authority's statement that there is no registered right of way on the land is irrelevant.
- The applicant may be unable to enact permission for the development, given the existence of the right of way.
- A map is provided from a previous adjacent planning application, in 2001, under which permission was granted for a house and which identifies the route of the right of way.
- A copy of the proposed site layout drawing, with the right-of-way overlain is provided.

## **6.2. Applicant Response**

6.2.1. A first party response to the appeal was submitted on 1<sup>st</sup> April 2022, the contents of which can be summarised as follows: -

- The right-of-way is unregistered and the appellant has not provided sufficient evidence to prove its existence. Its existence is disputed and agreement has been entered into regarding it.
- Disputes regarding rights over land are not a matter for the Board to determine, as per Section 5.13 of the Development Management Guidelines. It is the responsibility of a developer to ensure that they have sufficient legal right to undertake development and any dispute regarding rights over land is a matter for the courts.
- The grounds of appeal are not sufficient for the Board to reconsider the Planning Authority's decision to grant permission.



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

6.3.1. None received.

### 6.4. **Observations**

6.4.1. None received.

### 6.5. **Further Responses**

6.5.1. None received.

## 7.0 **Assessment**

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Compliance with the rural housing strategy,
- Design and residential amenity,
- Right of way,
- Drainage, and
- Appropriate assessment.

### 7.2. **Compliance with the Rural Housing Strategy**

7.2.1. The subject site is situated in a rural area that, according to the development plan, forms part of the 'remaining rural areas' of the county. The remaining rural areas are the rural areas removed the county's mains towns (Monaghan, Carrickmacross, Castleblayney and Clones) and the development plan states that the challenge for these areas is to retain population and support the rural economy while seeking to consolidate the existing village network. Development plan policy RSP3 is the applicable rural housing policy in these areas and it states that rural housing proposals will be facilitated, subject to other planning policies.

7.2.2. The National Planning Framework also seeks, for rural areas outside of those under urban influence, to facilitate single houses in the countryside but includes the proviso '*having regard to the viability of smaller towns and settlements*'.

- 7.2.3. The Rural Housing Guidelines also state that in these areas, rural housing proposals should be accommodated, subject to good practice in matters such as design, location and the protection of important landscapes and any environmentally sensitive areas.
- 7.2.4. The site is not in an area under urban pressure and, as such, there is no restrictive approach to the development of single houses in this area, in accordance with the development plan, National Planning Framework or Rural Housing Guidelines
- 7.2.5. The lane on which the site is located has experienced limited development to date and it has a rural character. I am satisfied that the proposed development can be accommodated and that it would not contribute to overdevelopment of the area. I am satisfied that the proposal is in accordance with policy RSP3, subject to consideration of other matters as discussed below.
- 7.2.6. I note that the Planning Authority did not express any concern regarding compliance with the rural housing strategy and the grounds of appeal also do not raise any concerns in this regard.

### **7.3. Design and Residential Amenity**

- 7.3.1. Table 15.4 of the development plan contains design guidelines for rural housing proposals. Having considered the advice and requirements of this table, I am satisfied that the proposed scale, design and form of the house are acceptable. In my opinion it will have no material impact on the character or visual amenities of the area, nor on the neighbouring property to the east. I also note that the Planning Authority did not express any concern regarding this aspect of the development.
- 7.3.2. The development plan does not specify any minimum size requirement for rural housing but I have nevertheless given consideration to the internal layout, in the context of *Quality Housing for Sustainable Communities* (2007) and I am satisfied that it is adequately sized internally, with a stated gross floor area of 205sqm.

### **7.4. Right of Way**

- 7.4.1. The appellant states that a right of way traverses the applicant's field, which provides access to the appellant's land and which has been used by the appellant's family for many years. The appellant also states that there is no longer a requirement to register a right of way on the Property Registry Authority website.

- 7.4.2. In responding to the appeal, the applicant contests the existence of a right of way through the site and states that it is a matter for the courts to resolve any dispute in relation to rights over land.
- 7.4.3. Section 5.13 of the *Development Management Guidelines* (DOEHLG, 2007) provides detailed guidance on the issue of land ownership disputes within planning applications, outlining that the planning system is not appropriate for resolving land disputes and that these are ultimately matters for the Courts. Further, it is advised that permission should only be refused on the basis of land ownership, where it is clear that the applicant does not have sufficient legal title.
- 7.4.4. I have given consideration to the information provided as part of the appeal and there is clearly a dispute over the existence of a right of way through/adjacent to the subject site. I have reviewed the appellant's submissions on the issue and, in my view, it is not clear that the applicant does not have sufficient legal title, to undertake the development, if approved. In this context, and having regard to Section 5.13 of the development management guidelines, I consider it would be unjustifiable to refuse permission on this basis.

## 7.5. **Drainage**

### Foul Drainage

- 7.5.1. The development includes the provision of a proprietary sewage treatment system and raised sand polishing filter and gravel layer. The Site Suitability Assessment Report submitted with the application identifies the category of aquifer as 'poor', with a vulnerability classification of 'low'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R1' response category i.e., acceptable subject to normal good practice.
- 7.5.2. The Report indicates that a trial hole with a depth of 2.1m recorded 300mm of silt/clay and 500mm of clay intermixed with stone, with the water table encountered 800mm below ground level. Bedrock was not encountered. In relation to the percolation characteristics of the soil, a surface percolation test result of 48.77 min/25mm was returned. A sub-surface percolation test result of 68.72min/25mm was returned.

- 7.5.3. The Report concludes that the site is suitable for the installation of a primary, secondary or tertiary treatment system and proposes that a purpose-built sand polishing filter and gravel layer should be constructed, to ensure that there is a minimum 900mm of suitable percolating material between the base of the lowest part of the gravel base at all times.
- 7.5.4. Having regard to the site percolation test results, I consider it has been demonstrated that the site can accommodate a wastewater treatment system. I note the Planning Authority's Environmental Health Officer did not express any concern regarding this aspect of the development. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the on-site wastewater treatment system with the Planning Authority.

#### Surface water drainage

- 7.5.5. Surface water is identified as draining to a soakaway within the rear garden but further details of this system have not been provided, including confirmation that it is adequately sized to accommodate run-off. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicant to agree the detailed specification of the surface water drainage system with the Planning Authority.

### 7.6. **Appropriate Assessment**

#### Appropriate Assessment Screening

##### *Compliance with Article 6(3) of the Habitats Directive*

- 7.6.1. 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.

##### *Background on the Application*

- 7.6.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

##### *Screening for Appropriate Assessment- Test of likely significant effects*

- 7.6.3. The project 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).
- 7.6.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

*Brief description of the development*

- 7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for the construction of a two-storey house and a wastewater treatment system including a sand polishing filter. The site is located at Cornacreeve, Ballybay and is accessed from a single lane carriageway. Foul drainage is proposed to drain to a WWTP and sand polishing filter to the rear of the house and surface water is proposed to drain to a soakaway to the rear of the house.

Submissions and Observations

- 7.6.6. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

European Sites

- 7.6.7. There are no designated European sites within a 15km search zone of the subject site. There are a number of pNHA in this part of County Monaghan, as detailed in Section 5 of my report, including Cordoo Lough pNHA which is approx 1km north of the site.

Potential impacts on European Sites

- 7.6.8. There is a drain adjacent to the north site boundary. I am unclear where the drain ultimately discharges, but according to available EPA river flow mapping for the area<sup>1</sup>, the direction of flow for watercourses in the area is southward. In any case, there is a considerable distance from the site to a European site, the closest such site being Slieve Beagh SPA (Site Code 004167), which is approx. 24km north-west.

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<sup>1</sup> <https://gis.epa.ie/EPAMaps/>

7.6.9. Taking this into consideration, together with the smallscale nature of the development, I am satisfied that there is no possibility of significant effects on qualifying interests within a European site arising from the development.

#### *Screening Determination*

7.6.10. 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 any European Site, in view of the sites' Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6.11. This determination is based on the following:

- The separation distance between the subject site and any European site.
- The smallscale nature of the development, which does not require specialist construction methods, and the level of separation between the sites.

## **8.0 Recommendation**

8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Monaghan County Development Plan 2019-2025, in particular policy RSP3, which states that in the 'remaining rural areas' of the county rural housing proposals will be facilitated subject to other relevant planning policies, and the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (2005) and the National Planning Framework (2018), it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would, therefore, be in accordance with the proper planning and sustainable development of the area

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter [unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p><b>Reason:</b> To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.</p>

3.	<p>Water supply and surface water drainage arrangements, including the disposal of surface water which shall incorporate SuDS measures, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>The vehicular access, including visibility splays, shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p><b>Reason:</b> In the interests of traffic and road safety</p>
5.	<p>The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)" – Environmental Protection Agency, 2021.</p> <p><b>Reason:</b> In the interest of public health.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
7.	<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</p>



	<p>authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <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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Barry O'Donnell  
Planning Inspector

17<sup>th</sup> May 2022.