



An
Bord
Pleanála

Inspector's Report (Part 2)

ABP-313013-22

Development	Entrance and partially constructed driveway and outline permission for construction of a house.
Location	Ross Road, Ross, Co Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	21121
Applicant(s)	Morgan Byrne
Type of Application	Permission/ Outline Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Pat McCarthy Mary T. Kelly Friends of the Environment
Observer(s)	An Taisce
Date of Site Inspection	18th of May 2022.
Inspector	Caryn Coogan

1.0 Introduction

1.1 The Board met on the 23rd of June 2023 to consider the case ABP-313013. It was decided to defer the case and to issue a Section 132 Notice to the planning authority to submit two relevant documents:

The planning authority was asked to provide:

1. A copy of the Supplementary Application Form No. 1 referenced at the end of Page 3 of the second planning report signed on the 7th and 8th of March 2022.
2. The response to the further information received by the planning authority to address the discrepancies in the address provided by the applicant dated 5th of May 2021.

On the 4th of July 2023 the planning authority submitted the two outstanding items to the Board.

1.2 The Board has requested an addendum report on the following matters:

- Assessment as to whether the applicant demonstrates functional economic or social requirement to reside in a rural area asset out in SSP-27 of the Offlay County development Plan 2021-2027, based on material provided by the planning authority.
- A more detailed assessment of the material presented in the Ecological Report dated 14th of January 2022, prepared by the applicant in response to the request for further information. This assessment should consider the substantive nature of issues raised on appeal, including the applicable Development Plan policies and objectives relating to:
 - (i) Biodiversity and Landscape and
 - (ii) Water Services and Environment and associated Development Management Standards, in addition to any national legal requirements.

2.0 Assessment

2.1 The following extract from the Offaly County Development Plan 2021-2027 is :

SSP-27 *Having regard to the need to protect County Offaly's natural resources, environment, landscape and infrastructure, it is Council policy to consider a single dwelling for the permanent occupation of an applicant in Rural Areas under Strong Urban Influence and Stronger Rural Areas and Areas of Special Control where all of the following (1-4) can be demonstrated:*

1. *The applicant has a functional economic or social requirement to reside in this particular rural area in accordance with (i) or (ii):*

*(i) **Economic requirements** will normally encompass persons referred to in the revision to the Sustainable Rural Housing Guidelines 2005 and, if applicable, circulars. Pending the making of the revised Sustainable Rural Housing Guidelines by the Minister, a Functional Economic Requirement in County Offaly shall be taken as including persons who by the nature of their work have a functional economic need to reside in the local rural area close to their place of work. It includes persons involved in full-time farming, horticulture or forestry as well as similar rural-based part-time occupations where it can be demonstrated that it is the predominant occupation. The 'local rural area' is defined as the area generally within 8km radius (5km radius particular to Areas of Special Control) of the place of work.*

Or

*(ii) **Social requirements** will normally encompass persons referred to in the revision to the Sustainable Rural Housing Guidelines 2005 and, if applicable, circulars. Pending the making of the revised Sustainable Rural Housing Guidelines by the Minister, a Functional Social Requirement in County Offaly shall be taken as including (a) or (b) below:*

(a) The applicant was born within the local rural area, or is living or has lived in the local rural area for a minimum of 5 years (15 years particular to Areas of Special Control) at any stage prior to making the planning application. It includes returning emigrants seeking a permanent home in their local rural area. The 'Local Rural Area' for the purpose of this policy is defined as the area generally within an 8km radius (5km radius particular to Areas of Special Control) of where the applicant was born, living or has lived. For the purpose of this policy, the rural area is taken to include

'Villages' listed in the Settlement Hierarchy, but excludes Tullamore, Birr, Edenderry, Portarlington, Banagher, Clara, Daingean, Ferbane and Kilcormac (i.e. the Key Town, Self-Sustaining Growth Town, Self-Sustaining Towns, Towns and Smaller Towns listed in the Settlement Hierarchy.

Or

(b) Special consideration shall be given in cases of exceptional health circumstances - supported by relevant documentation from a registered medical practitioner and a disability organisation proving that a person requires to live in a particular environment or close to family support, or requires a close family member to live in close proximity to that person.

2. The applicant does not already own or has not owned a house in the open countryside.

3. If the site is located within an Area of Special Control, there is no alternative site outside of Areas of Special Control.

4. High quality siting and design.

2.2 The applicant, Morgan Byrne, states he has resided on Ross Road at his parents house, 200metres from the subject site, for the past 30 years. His parents erected the house over 40years ago. He attended the local primary school in the village and is a member of the local GAA Club.

In accordance with SSP -27 of the Offlay County Development Plan, the applicant must satisfy specified criteria.

(a) **Economic Requirements:** The applicant has not demonstrated a functional economic need to reside in a local rural area. He is not engaged in full-time farming, horticulture or forestry, and he has not demonstrated he has a rural-based occupation,

Or

(b) **Social Requirements:** Under this heading the applicant must satisfy one of two criteria. The applicant has submitted information to support the first element of this Social need to live in the area.

Morgan Byrne was born into the area and has lived in the area for more than five years. His application details state he has resided 200metres from the site for over 30years at his parents' home. As stated, his parents erected their house over 40years ago in 1979. He attended the local primary school in the village and is a member of the local Shamrocks GAA Club.

Proof of his residency includes the following documentation which is on the planning application file:

Revenue documentation dated from 28/10/2016-20/06/2020; (there are other documents stated in the applicants letter dated 19th of January 2022 which were submitted to the planning authority, but these were not forwarded by the planning authority to the Board).

From the outset, the planning authority had failed to submit the full documentation with the appeal file. Following a request from the Board the further information received by the planning authority on the 27th of January 2022 can now be reviewed.

- 2.3 There was confusion in the planning documentation regarding the applicant's place of residence. The planning application file included a form signed by a practicing solicitor on the 5th of July 2019, stating the applicant's address to be 55 Clontarf Road, Tullamore, Co. Offlay. One of the third-party appeals made an unsubstantiated claim the applicant resided at 55 Clontarf Road, Tullamore town. The applicant was requested to clarify this discrepancy because it could materially affect compliance with development plan policy.

The applicant replied to the planning authority's request for further information stating, 55 Clontarf Road was a derelict property purchased by him as an investment property. It was not Morgan Byrne's place of residence. The investment property was to allow him to gain financial means to construct his own dwelling in close proximity to his parents house. Mr. Morgan states he refurbished the property in Tullamore town and sold it in April 2021. A section 604 tax relief could not be claimed as he did not live in the property.

On balance I believe the applicant has satisfied Policy SSP-27, in terms of a social need to live in the area. He does not own/reside in another dwelling. His primary residence is his parents' house. The site is not located in an Area of Special Control. The application is for outline permission therefore the design of the dwelling house is

not included with the submission documents. An indicative house design featuring a two-storey dwelling was submitted with the planning application. In my opinion, the vernacular style would be in keeping with the area and should not detract from the high visual qualities of the area.

- 2.4 As stated in the primary report the applicant submitted an Ecological Report on foot of a further information request from the planning authority.

On appeal the third-party submissions have raised concerns regarding the loss of the woodland from the subject site which is 0.652ha. There is extensive woodland to the west and south of the site. It is development plan policy to protect the woodlands of Co. Offaly under policies:-

- *NHP-19 It is Council policy to promote the preservation and enhancement of native and semi-natural woodlands, groups of trees and individual trees.*

Trees, Forestry and Hedgerows

- *BLP-22 It is Council policy to support the protection and management of existing networks of woodlands, trees and hedgerows which are of amenity or biodiversity value and/ or contribute to landscape character and to strengthen local networks.*
- *BLO-14 It is an objective of the Council to encourage the preservation and enhancement of native and semi-natural woodlands, groups of trees and individual trees, not listed in Table 4.14 and 4.15; (a) in particular, on the grounds of Country Houses, Gardens and Demenses and on approaches to settlements in the county.*

It is submitted the incremental ribbon development along Ross Road undermines the Development Plan's attempt to protect the County's woodlands outside of protected sites. With the requirement of a 90metres sightline a 3metre wide strip is to be removed along the front boundary of the site is a contravention of the development plan. The loss of woodland will mean the loss of the red squirrel, the pine martin, badgers, barn owls and bats.

In addition, there is concern regarding the Site Characteristics Form which indicates the site is located on the interface between sand and gravel and peat bog, with a

locally important aquifer with high vulnerability. The surface water is to be disposed of by a soakpit. The site is composed of unauthorised infill carried out between 2003-2004. It is submitted the applicant states the closest stream is 1.5km from the site when a watercourse forms a site boundary. The third parties submit there is potential for pollution of surface waters because of the unknown nature of unauthorised infill.

- 2.5 The third-party submissions focus on works carried out to the site in 2003 which allegedly are contrary to the Forestry Act 1946, contrary to the Planning Act and contrary to the Waste Management (Permit) Regulations 1998. The entire history of actions and proceedings taken is submitted on appeal, which were ongoing during 2004. I have noted the subject matter, and I consider the issues raised to be beyond the remit of An Bord Pleanála.
- 2.6 The application is Retention of Permission of entrance and partially constructed driveway, with outline permission for a dwelling house. The planning authority sought further information on the 5th of May 2021. A full response was received on the 14th of January 2022. An Ecological Report which was not requested by the planning authority but one was provided by the applicant to address the third party concerns which are re-iterated in the third party appeals.

The salient issues raised in the Ecological Report are outlined below following two site surveys in Summer and Autumn.

- The dwelling is to be located along the northern portion of the site, with the entrance off Ross Road along the north-eastern site boundary.
- There are no works proposed to the watercourse along the western site boundary. All treated water will be discharged by ground by way of percolation and all surface water will discharge to ground via soakaways. There will be no discharge to the watercourse along the western site boundary.
- To the south of the development the woodland area will be retained.
- The eastern site boundary also includes woodland and it is proposed to retain and plant additional trees.
- The watercourse includes duckweed which is indicative of the slow moving water.

- Deer traverse the site which is evident from woodland clearing which is located in the middle of the site. The woodland floor showed most season specific biodiversity in Autumn. The site has potential to support nighttime foraging for species such as bats.
- There are patches of heather on the woodland floor where the sunlight reaches it, particularly along the western boundary where there are peat soils.
- There were no protected species observed on the site.
- There are all four woodland layers on the site, i.e. the canopy, understorey, field and ground layer. Large scots pine and conifers make up the canopy, with birch and willow providing the understorey layer. The field layer consists of ferns, young sapling trees and flowering plants with the ground layer consisting of fungi.
- The eastern (roadside) boundary has the appearance of a densely planted boundary, however on closer inspection there are a lot of gaps.
- There were details provided on third party submissions regarding species dependent on the woodland and report outlined the ecological dynamic of the animals which include Pine Martens, Red Squirrel, Hedgehog, Frog, Deer, badger, fox. However only pine marten, red squirrel and deer are restricted to woodland habitats. Although there was no evidence of these species on site, anecdotal evidence from a neighbour was included in the report.

2.7 The Ecological report examined 3No. options for the subject site. The first was to level and clear the entire site, which would be contrary to the stated development plan policy outlined above. Option No. 2 required granting permission for a dwelling in the northern portion of the site area as proposed and retaining a significant portion of the woodland on site. The third option required relocating all elements of the proposal on the site which would require a new planning application and the option would impact on the deer crossing the site.

In my opinion, Option 2 is the most acceptable approach because it involves minimal removal of the woodland area on the site:

Planning is granted and the construction of the proposed development is undertaken. As part of the proposed development management of the site is undertaken. Brambles are cleared to provide access to the site. The woodland

dynamic of shade and clearing is maintained. Tree regeneration is encouraged to replace old and damaged trees. Screening along the northern and eastern site boundaries is development.

Furthermore, an arborist or tree surgeon should be sought prior to Approval to provide advise on the condition of the trees and the long-term management of the woodland area on the site. The Arborist can inspect the trees for nests, dreys or roosts prior to pruning. Hollows in the trees can provide shelter for woodland species such as pine marten and red squirrel. The proposed development can occupy the northern portion of the site subject to non-removal of the woodland portion of the site post construction. Wildlife corridors and activity will remain under those conditions. This should ensure the proposed development will differ from other residential developments along Ross Road by maintaining the mixed woodland aspect of the site and it should not have a negative visual impact on Ross Road or interfere with the biodiversity the woodland section on the site which it currently supports.

In terms of the requirement to provide a 3metre setback along the roadside boundary to provide adequate sightlines, the Ecological Report and my site inspection indicate a high level of sapling and field level within this 3metres strip. Having regard to the context of the 3metre strip within the extensive woodland area to the west and south of the subject site, I am satisfied the removal of the 3metres strip will not have a material impact on the entire woodland area of the site or the wider woodland area to the west and south of the site. It is small area to be removed. An Arborist should be consulted prior to any works commencing on site.

- 2.8 The third parties have criticised the content of the Site Characteristics Form on the planning application file. It is proposed to connect to the Co. Co. Watermains and install a sewage treatment plant to dispose of the domestic effluent and a soakpit to dispose of the surface water.

The Site Characteristics Form - Section 2.0 states the closet stream is 2km from the site, and Section 3 states closest Stream/ Watercourse is 1.5km east of the site, and it specifically states no watercourse located close to site. This information is incorrect and contradictory. There is a watercourse/ open drain forming the western

boundary of the site. I note the Site Suitability Assessment which determined the Site Characteristic Form. The soil structure of the Trial Hole indicated underlying sand and gravel, with the Water Table Level at 1.6 metres. The average T Value was found to be 5.33 which is deemed suitable for the direct discharge of treated effluent to ground. The P value was found to be 8.06.

A packaged wastewater treatment system and polishing filter is recommended in the Site Characteristics Form. I note from the drawings accompanying the planning application in particular the site layout, an open drain is included along the western site boundary. Having regard to the *EPA Code of Practice Domestic Waste Water Treatment Systems March 2021*, it is my opinion, the desk and onsite assessment did not include sufficient information in accordance with the Guidelines and the site layout does not provide the required separation distances i.e. 10m from an open drain. Given the history of the site regarding the alleged infilling back in 2003/2004, it is my opinion, the design of treatment and disposal of the sewage is critical and a new Site Characteristics Form is required in line with the stated EPA Guidelines and a revised design and layout to meet with the EPA requirements. The Ecological Report indicates a flora species conducive to a peat soil along the western site boundary where the proposed percolation area is located which does not correspond to the Form. I have no confidence in the conflicting information presented on the planning file regarding the domestic effluent disposal on site, and I will be recommending the proposed dwelling be refused on that basis.

3.0 Recommendation

There are two elements to this permission:

Retention Permission for the entrance and partially constructed driveway, and

Outline Permission to construct a dwelling house, garage, effluent treatment system and all ancillary services.

It is my recommendation the decision be a split decision:

Permission should be **Granted** for the retention of the entrance and partially constructed driveway subject to the following conditions:

CONDITIONS:

1. Prior to the commencement of the development on site the roadside boundary shall be setback 3metres from the edge of the metalled edge of the public carriageway along the roadside boundary of the site to achieve the required sightlines. Nothing shall be planted or sown in front of these sightlines without the prior written permission of the planning authority. It is the responsibly of the developer to ensure that a minimum of 90metres sightlines measured at a distance of 3metres from the edge of the road in each direction is maintained at all times.

Reason: In the interest of traffic safety.

2. A linear drainage channel shall be provided across the vehicular entrance to be discharged to a soakaway within the site. No surface water shall be allowed discharge onto the public road from the development. Soakaways within the site shall be designed, installed and maintained in accordance with the BRE Digest 365.

Reason: In the interest of traffic safety.

3. The developer shall consult with and agree in writing with the planning authority the construction and specification of the 3metres setback strip along the roadside boundary.

Reason: In the interest of traffic safety.

4. Prior to the commencement of the development, the developer shall appoint an arborist or tree surgeon to provided and submit a report regarding the condition of the trees along the eastern site boundary and the long-term management of the woodland area on the site.

Reason: In the interests of the proper planning and sustainable development of the area.

5. Any damage to the public road caused by the development shall be repaired to the satisfaction of the planning authority.

Reason: In the interest of traffic safety.

Outline Planning permission for the dwelling house, garage, effluent treatment system and all ancillary services should be **Refused** for the following reason:

Having regard to the EPA Code of Practice Domestic Waste Water Treatment Systems March 2021, the underlying soil conditions and abutting watercourse along the western site boundary, 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 or disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system. The proposed development would, therefore, be prejudicial to public health.

Caryn Coogan

20/07/2023