



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313339-22

<b>Development</b>	Single storey dwelling, detached domestic garage, treatment plant, percolation area, entrance and all associated site works. Significant further information submitted.
<b>Location</b>	Annahagh, DED Monaghan rural/Tirkeenan/Latlorcan, Monaghan town, Co. Monaghan
<b>Planning Authority</b>	Monaghan County Council
<b>Planning Authority Reg. Ref.</b>	21520
<b>Applicant(s)</b>	Padraig Keenan & Sara McGuinness
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	To grant.
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Sean McKenna & Marina Somers
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	5 <sup>th</sup> October 2022.
<b>Inspector</b>	Deirdre MacGabhann

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## 1.0 Site Location and Description

- 1.1. The 0.36ha appeal site is situated to the north east of Monaghan Town in the townland of Annahagh, County Monaghan. It lies to the north of an existing cluster of residential dwellings. The site comprises an agricultural field that slopes from south to north. It is bound by hedgerows and hedgerow trees. The appellants' single storey property lies immediately south of the appeal site. Another single storey residential dwelling lies directly east of the site.
- 1.2. Access to the site is via a minor road off the Annahagh Lane and a stated right of way (ROW) over a brownfield site. The ROW joins the appeal site between the two dwellings to the south and east of the site.

## 2.0 Proposed Development

- 2.1. The proposed development, as revised by way of significant further information (advertised 17<sup>th</sup> February 2022) comprises the construction of a single storey dwelling (292sqm) with detached domestic garage (54sqm), wastewater treatment plant, percolation area and new entrance to the site.
- 2.2. The single storey dwelling is situated on the southern side of the site and comprises a H shaped building, with a maximum ridge height of 6.2m. External finishes are blue/black slates, a mix of plaster/dash finish and natural stone to walls and UPVC triple glazed windows. The appeal site is sloped falling from north to south and the dwelling is cut into the site to provide a FFL of 84.4m.
- 2.3. A wastewater treatment plant and percolation area/soil polishing filter are situated to the north of the dwelling. The garage is situated to the south west of the proposed dwelling.
- 2.4. Water supply is from a bored well located to the east of the dwelling. Surface water will be disposed of into a soakpit (location not identified).
- 2.5. The landscaping plan indicates woodland planting along the southern and eastern boundaries of the site to screen the proposed dwelling from adjoining properties, native hedgerow mix along the northern boundary and additional native hedgerow planting at gaps in the hedgerow along the western boundary.

2.6. The planning application includes confirmation that the property enjoys a right of way from Annahagh Lane to the site and a Site Characterisation Report. It indicates that the site is suitable for wastewater treatment by secondary treatment system and soil polishing filter (sub-surface percolation value 46.31).

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

3.1.1. On the 23<sup>rd</sup> March 2022, the PA decided to grant permission for the development subject to 9 no. conditions, including:

- C1 - Comprises an occupancy condition.
- C2 - Levies development charges.
- C3 - Requires 49m visibility splays at the junction of the access road and local road LP1400.
- C4 - Governs construction of the effluent treatment system.
- C5 - Refers to cut and fill (to be graded to a natural contour).
- C6 - Deals with landscaping.

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

##### **3.2.1. Planning Reports**

- 8<sup>th</sup> November 2021 – Refers to the planning history of the site, pre-planning meetings, observations, technical reports and relevant planning policies. It considers the merits of the development under zoning, design, road access, effluent treatment, development contribution and appropriate assessment. It recommends further information in respect of the matters raised in observations, cross sections through the site, relocation of development 5m west of its current location, additional landscaping along boundaries, reduction in ridge height and means to supply water.
- 14<sup>th</sup> March 2022 – Considers the applicant has satisfactorily responded to the FI request. Recommends granting permission subject to conditions.

### 3.2.2. Other Technical Reports

- EHO (19<sup>th</sup> October 2021) – No objections subject to conditions.
- Water Services (15<sup>th</sup> September 2021) – No public water mains to serve development. Private supply required. No objections.
- District Engineer (15<sup>th</sup> October 2021) - No objection subject to conditions, including provision of visibility splays of 35m and 49m on the private lane and public road accesses respectively.

### 3.3. Prescribed Bodies

- None.

### 3.4. Third Party Observations

3.4.1. Third party observations are made by residents of the dwellings to the east and south of the site. Matters raised are:

- Precedent. Permission previously refused for a dwelling on the site under PA ref. 82/379.
- Water supply. No public water supply to site. Bored well to east of proposed dwelling had a poor yield.
- Access. Alternative access to it from the north via 'Dummies Lane'. Inadequate access for emergency vehicles (narrow lane with right angle bends). Dangerous adjoining exits (observers property/appeal site).
- Impact on privacy and amenity. Recent removal of gate and posts to site have impacted on privacy and security of neighbouring houses. Visibility of development due to gaps in hedgerow. No information on treatment of boundaries to property. Overlooking of adjoining housing by virtue of scale and proximity of imposing building. Design does not compliment the position or design of existing dwellings. Noise and light disruption and impact on privacy from use of proposed access. Impact of proposed trees on daylight and sunlight. No surface finishes/landscaping along access lane. Development should be located to lower field which has good road access or

to land owned by the applicant to the right side of Annahagh Lane with road access.

- Legal interest in land. Insufficient legal interest in land to provide access to the site (no registered right of way over appellants property).
- Surface water. No information on disposal of surface water (site is elevated).

#### 4.0 Planning History

- PA ref. 20471 – Planning application for dwelling on the subject site. Application withdrawn.
- PA ref. 82379 – Outline permission granted for two no. dwellings on the appeal site.

#### 5.0 Policy Context

##### 5.1. Development Plan

- 5.1.1. The appeal site is zoned Strategic Residential Reserve. Table 9.1 of the Plan states that the objective for such lands is to protect them for the location of future residential development. In respect of single houses it is stated:

*‘Single houses for landowners or their immediate family members will be considered on these lands provided that they do not compromise the overall objective of comprehensively developing the lands for sustainable urban housing in the future. Justification for a dwelling in this instance will have to be demonstrated by the applicant including documentation to show that the landholding has been in family ownership for at least 5 years. In such cases the applicant will be required to demonstrate by way of an overall plan for the development of the lands, how the proposed development would not adversely affect the comprehensive development of the lands in the future’.*

## 5.2. Natural Heritage Designations

- 5.2.1. The appeal site is substantially removed from any site of natural heritage interest (see attachments). The appeal site lies c.130m to the west of Shambles River which flows from north to south to discharge into the River Blackwater (Monaghan).

## 5.3. EIA Screening

- 5.3.1. Having regard to the location of the proposed development within a settlement structure and its modest scale there is no real likelihood of significant effects on the environment. 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. The third party appellants assert that the applicant does not have sufficient legal interest in the site to make the planning application and it should have been invalidated. Reasons are:
- The applicant has no legal right of way over the entrance to the appeal site which is owned by the appellant. A right of way over the entrance exists only as an agricultural right of way in favour of one of the applicant's father (Patrick McGuinness).
  - The 1986 Deed presented by the applicant is deficient (right of way not registered, does not refer to heirs and assigns of Patrick McGuinness, usual phraseology is missing).
  - Entrance to site and overgrowth cleared by applicant recently, without the permission of the owner (appellant's).
- 6.1.2. The appellants also refer to their observations on the planning application and the issues raised (see above).

## 6.2. Applicant Response

6.2.1. The applicant makes the following response to the appeal:

- Legal interest. The second applicant is a daughter of the owner of the property and she has permission from the owner to make the planning application (copy of consent in Annex I).
- Right of way. The property, Folio 2899, enjoys a right of way (ROW) over the objectors property (Folio 5870F). It is not the function of the Board to investigate issues of title. The appellants' acknowledge the existence of ROW in their claim that it is for an agricultural use. The ROW is a general one and not confined to agricultural purposes (see Annex 2). The c. 20-foot ROW has always been fenced off from the appellants' property. The applicant acknowledges that the ROW has not been registered with the Property Registration Authority, but it remains that the subject site enjoys a ROW over the adjoining property.

## 6.3. Planning Authority Response/Observations/Further Responses

- None.

## 7.0 Assessment

7.1. Having examined the policy context of the development, application details and all other documentation on file, and inspected the site, I consider that the main issues in this appeal relate to:

- Sufficient interest in the land to make the application and ROW.
- Impact on residential amenity.

7.2. In confining my consideration to these matters I am mindful of the following:

- The appeal site is zoned for residential development, Strategic Residential Reserve. This provides for the development of single houses if they do not compromise the development of adjoining lands and have been family ownership for at least 5 years. Alternative access is available from the north to the zoned lands and the applicant's father has owned the lands for >5



years. I am satisfied therefore that the development is consistent with the zoning of the CDP.

- A minor road off Annahagh Lane provides access to the appeal site. The proposed development adds one additional property to the small number served by the road (5 no.) and will result in a modest increase in road traffic. The existing and proposed alignment of the access road to the site slows traffic speeds considerably. There is no change in arrangements for access by larger vehicles including emergency vehicles. As per the requirements of the PA, sightlines of 50m are provided in each direction at the junction of the minor road and Annahagh Lane. No issues therefore arise in terms of traffic safety.
- PA ref. 82379 comprises a dated planning permission which has lapsed.
- The Water Services section raise no objections to the proposed arrangements for water supply by bored well. Issues with water supply, if these arise, would have to be addressed by the applicant (e.g. deeper well).
- The planning application states that surface water will be disposed of into a soakaway. This is not indicated on the revised plans but could be addressed by condition to allow surface water to percolate through soils to ground, away from the wastewater treatment system.

### **7.3. Legal Interest and ROW**

- 7.3.1. It is evident from the information on file that the planning application has been brought forward with the permission of the landowner and in this regard the applicant has sufficient legal interest in the site to make the planning application.
- 7.3.2. With regard to the ROW to the site, there is sufficient information on file to support the applicant's assertion that they have a legal ROW over the entrance to the appeal site from the public road. I acknowledge that this is disputed by the appellant. However, as set out in section 5.13 of the Department's Development Management Guidelines 2007 (DEHLG), the planning system is not designed as a mechanism for resolving disputes about rights over land, which are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the

Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.

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

- 7.4.1. The loss of vegetation and opening up of an access road to the appeal site increases the visibility of adjoining properties to the south and east. Further, use of the access road by the occupants of the new dwelling will bring occasional noise and, during darkness, light from headlights close to the appellants dwelling. Whilst these result in a change to the context for the property, I do not consider that the amount of traffic likely to be associated with the day to day use of the proposed dwelling will be excessive or likely to detract from the residential amenity of the appellant's property or adjoining dwelling to the east. Further, the applicant proposes additional planting along the southern and eastern boundaries of the site which will screen the residential developments from each other, and along the ROW. There is also scope for additional planting within the sites of the existing dwellings. Surface treatment of access lane can be addressed by condition.
- 7.4.2. The area in which the appeal site lies is characterised a mix of housing types, with no strong common design element. The proposed dwelling will fit within this cluster of housing and not preclude the development of wider lands which can be accessed from the north.
- 7.4.3. Like the existing adjacent dwellings, the proposed dwelling is single storey with a ridge height of 6.2m. It will be cut into the rising topography such that its FFL is 84.4m. This compares to a FFL of 85.87 for the appellant's property and 84.5m for the dwelling to the east of the site (see Planning Permission Drawings, no. 20-1200-02). With the cut into the site, the ridge level of the proposed dwelling will c.90.6m and not dissimilar to the ridge level of the adjoining properties (appellants property RL = 91.69m, property to east 89.06m). The proposed dwelling is sited c. 23.5m from the dwelling to the east and c.11m from the appellant's dwelling. The proposed dwelling will lie to the north of the appellant's dwelling and west of the property to the east of it. Consequently, it will not significantly impact on either of the adjoining properties by way of overlooking, being overbearing or overshadowing.

7.4.4. Having regard to the foregoing, I am satisfied proposed dwelling will not be detract from the residential amenity of the appellants property or the dwelling to the east of it, subject to full implementation of landscaping plan.

## 8.0 **Appropriate Assessment**

8.1. Having regard to the modest nature of the proposed development and its distance from European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 9.0 **Recommendation**

9.1. I recommend that permission for the proposed development be granted subject to conditions.

## 10.0 **Reasons and Considerations**

10.1. Having regard to the detailed design of the proposed development and arrangements for landscaping along site boundaries, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenity of property in the vicinity of the site and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 24 <sup>th</sup> day of February 2022, 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
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	<p>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. 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>(a) Prior to the commencement of development, visibility splays of 49m shall be provided at the junction of access road and the LP1400. These shall be measured to the nearside road edge in each direction from a point in the centre of the entrance, 2.4m from the road edge at a height of 1.05m to 2.0m above ground level to an object of 1.05m to 2.0m above ground level in both directions. The visibility splays shall be retained in perpetuity.</p> <p>(b) Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p><b>Reason:</b> In the interest of traffic safety.</p>

4.	<p>Prior to the commencement of development, the following details shall be submitted to and agreed in writing with the planning authority:</p> <p>(a) Arrangements for cut and fill to provide a graded natural topography across the site, and</p> <p>(b) Arrangements for the disposal of surface water within the site by soakaway.</p> <p>(c) Surface treatment of ROW and driveway to dwelling.</p> <p><b>Reason:</b> In the interest of visual amenity and water quality.</p>
5.	<p>The landscaping scheme shown on Drg no. 054-L01, Landscape Masterplan, as submitted to the planning authority on the 24<sup>th</sup> day of February 2022, shall be fully implemented prior to the occupancy of the dwelling or in the first planting season following substantial completion of external construction works, whichever is sooner.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p><b>Reason:</b> In the interest of residential and visual amenity</p>
6.	<p>(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 15<sup>th</sup> day of September 2021 and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤10)" – Environmental Protection Agency, 2009. Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p>(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.</p> <p><b>Reason:</b> In the interest of public health.</p>
7.	<p>The garage shall be used solely for purposes ancillary to the residential dwelling within the site and not for any separate purpose.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>
8.	<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 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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Deirdre MacGabhann  
 Planning Inspector

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13<sup>th</sup> October 2022