



An
Bord
Pleanála

Inspector's Report

ABP-314241-22

Development	Permission to retain imported subsoil and topsoil and raising of ground levels to agricultural land and all associated site development works (in connection with a waste permit application).
Location	Drumquill , Castleblayney, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	22216
Applicant(s)	John Brennan.
Type of Application	Retention.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	Martin Molloy.
Observer(s)	Pat Carragher.
Date of Site Inspection	5 th October 2022.
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 0.339ha appeal site lies c.3km to the north west of Castleblayney in the townland of Drumquill, County Monaghan. It lies immediately south of a lane off a county road, the L3441. The county road runs parallel to the N2 and links Castleblayney and Clontibret. The lane that provides access to the appeal site is not made up. It provides access to a farmyard to the east of the appeal site and a residential dwelling to the north of it.
- 1.2. The appeal site comprises an agricultural field that slopes down from north to south. It is bound by hedgerows on each side and adjoins agricultural land to the east and west. South of the site is a watercourse, WFD Fane_010. This water course discharges to Laragh Lough c.450m to the south of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of imported subsoil and topsoil and raising of ground levels to existing agricultural land and all associated site development works, in connection with a waste permit application. The Site Layout Plan and Sections (drawing no. 3.0_S100.00) indicates that the eastern part of the appeal site has been filled with a total of 1,050 cubic metres (1,575 tonne) of soils, raising ground levels by a maximum of c.3m. Material has been sourced from land to the east of the dwelling house, to the north of the appeal site. A section of the hedgerow along the eastern side of the site, which has been damaged, will be reinstated and a new land drain will collect water from the eastern side of the site and discharge to the watercourse to the south of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 7th July 2022 the PA decided to grant permission for the development subject to 5 no. conditions.
 - C1 - Precludes further development of the site without a prior grant of permission.

- C2 - Requires payment of a development charge.
- C3 - Requires repair of hedgerow to eastern boundary.
- C4 – Requires revised proposals in respect of the land drain.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 28th June 2022 – Refers to the planning history of the site and the adjoining site to the north, matters raised by third party, technical reports and relevant planning policies. The report considers the merits of the development under a number of headings including planning assessment, flood risk assessment and appropriate assessment. It considers that the historic infilled site is now vegetated and does not look out of character with surroundings, infill may have originated from unauthorised works but the matter for consideration is the acceptability of the deposition of soil and subsoil material on the site, damaged hedgerow to be repaired, site not subject to flood risk and no appropriate assessment required (distance from European sites, limited scope of development). The report recommends granting permission subject to conditions.

3.2.2. Other Technical Reports

- Water Services (28th June 2022) – No objections subject to conditions.
- Environmental Services (13th June 2022) – No objections subject to conditions.
- Municipal Engineer (13th May 2022) – No objections subject to conditions, including provision of bell mouth and sightlines at junction of lane and LP3441.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

3.4.1. There are two third party observations on file, one made by the appellant and one made by the observer to the appeal:

- Damage to hedgerow.
- Water directed to observers land.
- Radical impact on topography of land in the area. Only solution is restoration of the site to natural contours.
- Works are part of excavation development on the landholding that has been determined to be unauthorised by the Board (RL18RL3594). Works to deposit soil cannot be separated from its excavation. Planning permission should not be permitted.

4.0 Planning History

4.1.1. The following planning applications and section 5 referrals have been made in respect of the appeal site and adjoining lands:

Applications

- PA ref. 051068 – Permission granted to observer for an agricultural shed, on land to north west of appeal site.
- PA ref. 14217 – Retention permission refused for partially constructed storey and a half extension to side of existing two storey house and completion of same, on land to the north of the appeal site.
- PA ref. 1641 – Application deemed withdrawn, for permission to construct a storey and a half extension to side of existing two-storey dwellinghouse, retention of waste water treatment system and percolation area and all ancillary site development works, on land to the north and west of the appeal site.
- PA ref. 16403 – Incomplete application for change of use of existing two storey dwelling house to domestic storage area, construct replacement storey and half dwelling house, upgrade septic tank with new WWTS to serve

development, use of existing entrance onto public road, on land to north and west of appeal site.

- PA ref. 16463 – Incomplete application for permission for change of use of existing two storey dwellinghouse to domestic storage area, construct a replacement storey and a half dwellinghouse, upgrade existing septic tank on site with new waste water treatment system to serve the development, use of existing entrance onto public road with all ancillary site development works, on land to north and west of appeal site.
- PA ref. 17395 (ABP- 301047) – Permission refused for the construction of a storey and a half dwelling, wastewater treatment system, percolation area, new entrance and site development works on land that included part of the appeal site (southern part of field). Permission was refused on the grounds that (1) having regard to the topography of the site, removal of hedgerows and extensive earthworks, the development would form a discordant and obtrusive feature on the landscape at this location, would seriously injure the visual amenities of the area and would fail to follow the contours of the site and sit naturally within it, and (2) public health, the application did not demonstrate that the site was suitable for a septic tank system and percolation area. Board's decision was made on the 19th July 2018.
- PA ref. 17357 (ABP-301554) – Permission refused by the Board to retain and complete existing partially constructed storey and a half garage, on land to the north of the appeal site.
- PA ref. 21108 (PL18.312433) – Application made in respect of the dwelling to the north of the appeal site for (a) permission for retention of reduced levels and hard surface area to side of dwelling house, pillar structure housing electricity meter and (b) permission for installation of new waste water treatment area to serve existing dwelling house and site development works. Permission refused by the Board as the existing structure on the site (dwellinghouse) has been determined by the PA as not exempted development under Section 5. Therefore it was considered inappropriate to facilitate the ongoing residential use of the site, which is not authorised, where

the proposed development/development to be retained is associated with this use.

Referrals

- RL3594 – In respect of land to the north of the appeal site, the Board decided that the construction of a structure within the curtilage of an existing house and all associated site development works to include site clearance and connection to a septic tank at, constituted development and is not exempted development (2018).
- RL3532 – In respect of land to the north and west of the appeal site, the Board decided that the installation of a septic tank and percolation area is development and is not exempted development (2018).
- RL3811 - In respect of land to the north of the appeal site, the Board determined that the construction of a pillar structure to house electricity meter on the edge of a laneway is development and is not exempted development (2018).
- ABP-301312 - In respect of the land to the north of the appeal site, the board decided that the installation of septic tank and percolation area, construction of a house and connection to septic tank and erection of pillar box of right of way is development and is not exempted development (2018).
- RL18.302878 – In respect of the subject site the Board that works carried out to change the level of land up to three metres in parts, leading to the destruction of a boundary hedgerow and redirection of groundwater at subject site, is development or is not exempted development (2019).
- RL18.312636 – In respect of the dwelling to the north of the appeal site, the Board decided, in respect of the works to reinstate the residential use of a derelict structure of which the residential use has been abandoned (house to north of appeal site), to dismiss the referral as a separate determination had been previously issued by the PA (register reference 10/581), was not challenged and the basis of the planning facts had not changed (2022).

5.0 Policy Context

5.1. Monaghan County Development Plan 2019 - 2025

- 5.1.1. Policies of the MCDP recognise the importance of agriculture in the County and permit development on new and established agricultural holdings where it is demonstrated that it is necessary for the efficient use of the agricultural holding and the appearance, character and scale of the development is appropriate to its location, visually integrates into the local landscape and will not have an adverse impact on the natural or built heritage, residential amenity, water pollution or result in traffic hazard (AGP 1).
- 5.1.2. Other policies of the Plan protect rural character (RCP 1), landscape character (LCP 1 and 2) and water quality (WPP 18).

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is >10km from any European site. The nearest national site lies c.1.7km to the south east and comprises Lough Smiley proposed Natural Heritage Area (site code 001607). The waterbody, WFD Fane_010, that passes to the south of the site drains into this proposed NHA via Laragh Lough. Laragh Lough lies c.500m south west of the appeal site (see attachments).

5.3. EIA Screening

- 5.3.1. Having regard to the nature and modest scale of the proposed development, it would not result in a 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. Grounds of the third party appeal are:

- Confusing public notices and lack of clarity regarding nature of development. Risk of associated development and unsuitability of the site for percolation, as determined by the Board under ABP-301047. No information on associated works.
- Error in levels in planning application. No information on original levels in field.
- Pipe drains to appellant's property. No consent given. Applicant can access the stream via his own lands.
- Risk of pollution of stream. Upgrading of drainage within the site may cause pollution as lands lies south of an unauthorised percolation area which has not been upgraded.
- Plans flood appellant's land.
- Raising of levels was deemed development and not exempted development (PL18.312433). Site raised to service unauthorised dwelling house. Retention of subject works is a collateral attack on the decision by the PA that dwelling is unauthorised. The Board determined under RL18.312636 that PA decision cannot be revisited.
- Lack of clarity regarding ownership of site. Under PA ref. 17395 (PL18.301047) it was stated to be owned by Eamonn Brennan.
- Damage to ditch and hedgerow as a consequence of fill (heavy impermeable clay).

6.2. Applicant Response

- Response from applicant received outside of prescribed timescale and deemed invalid.

6.3. Planning Authority Response

- None.

6.4. Observations

6.4.1. There is one third party observation on the appeal. It makes the following comments:

- Observer built agricultural shed on lands under PA ref. 051068. Applicant sought his consent to build two dwellings within 100m of shed and observer refused on grounds that future occupants may complain re agricultural uses.
- Observer has subsequently sought enforcement action and made referrals in respect of unauthorised development in respect of the dwelling to the north of the appeal site and the associated landholding, including the appeal site.

Planning history referred to includes:

- Planning applications - PA ref. 051068, 14217 (ABP-312636), 16403, 1641, 16463, 17357 (ABP-301554), 17395 (PL18.301047) and 22108 (PL18.312433).
- Referrals - RL3811, RL3532, RL3594 and RL18.302878.

(See Planning History above).

- The PA is at liberty to divide an application. However, the proposed infill development is as a collateral attack on the decisions made, including the Board's permission to refuse permission for the excavation under ABP-301047. Section 5 declarations cannot be challenged when planning facts have not changed (*Narconon Trust v ABP*, Court of Appeal, Mr. Justice Costello, 17 November 2021 [2021] IECA 307).
- Decision by the PA in respect of subject development, and technical reports, were made before the Boards decision in respect of RL18.312636 and PL18.312433 and did not take them into account.
- The unauthorised dwelling to the north of the appeal site is served by an unauthorised septic tank which is not fit for purpose. Risk of pollution of public water supply (stream along feeds into Dundalk water supply).
- Similar to PA ref. 2250955 (Donegal County Council), a proper assessment of the site is impossible as there is no original survey of the site, no assessment of likely effects of the uphill sept tank system on the site and the drainage plan

will allow any overflow or leakage to access the stream and enter Dundalk water supply.

- The drainage being applied for will drain to a third party's field with no consent from the landowner.
- Under PA ref. 17395 (PL18.301047) an application was made by the applicant's brother (who claimed to be the owner) for a dwelling on the site. This was the first attempt to separate part of the property from the unauthorised works. The 'infill' separation seems to be another attempt.

6.5. 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 key issues in this appeal relate to:

- Land ownership.
- Public notices.
- Landscape impact.
- Flood risk.
- Impact on water quality.
- Collateral attack.

7.2. In addition I comment briefly below on the errors in the planning application, a precedent case cited and the timescale of the PAs decision.

- The appellant refers to the absence of original survey data and errors in the levels in the planning application documentation. The Site Layout and Sections drawing (Dwg no. 3.0_S100.00) indicates the original ground levels on the site. It is not clear if this is based on original survey work. However, it is evident from OS mapping that the topography of the site falls broadly from

north to southwest towards the River Fane and the topography of the appeal site ties in with the adjoining field to the west and lane to the north, exceeding the ground level only to the land to the east.

Errors in the levels in the planning application documentation are identified in the PA report i.e. that section EE inaccurately states that existing ground levels are 101.00 in two locations (one of these levels should read c.100.00). However, I note that the drawing indicates correct levels and reflect the rising topography of the existing site to be retained.

Having regard to the foregoing, I am satisfied therefore that the information supplied in respect of original and existing levels is sufficient to understand the nature of the original topography and therefore the effect of the development on it.

- Under PA ref. 2250955 (Donegal County Council), the PA refused to consider the application for the development, commercial unit and retention of fill material on site, under section 34(12) (b) of the Act (*sic*) on the grounds that an appropriate assessment would have been required in respect of the development before it was commenced. In this instance, no appropriate assessment (or EIA) issues arise. Further, I consider that it is possible to carry out an assessment of the likely effects of the development on the environment.
- The PA made their decision to grant permission for the development on 7th July 2022. The Planning Report (28th June 2022) and technical reports (various dates – above) were made in advance of this date. The Board made decisions in respect of RL18.312636 (referral in respect of works to reinstate use of abandoned house) and PL18.312433 (permission for retention of reduced levels and hard surface etc. to dwelling house and WWTS) both on the 29th June 2022. This assessment takes account of both of the decisions made by the Board under ‘collateral attack’ below.

7.3. Land Ownership

- 7.3.1. The application for the proposed development is made by John Brennan and the planning application states that he is owner of the appeal site. Parties to the appeal

state that a previous planning application, PA ref. 17395/18.301047, brought forward on the appeal site and adjoining land was made by Eamonn Brennan, the then stated owner of the site. I would accept that the ownership of the site is unclear, although it may be owned jointly by the stated parties. If the Board are minded to grant permission for the development and in the interest of clarity they may wish to establish legal ownership of the site.

- 7.3.2. The appellant argues that the applicant proposes to drain the site through land that he, the appellant, owns. Folio maps are included in the appeal which demonstrate ownership of the land between the drain from the appeal site to the adjoining watercourse (compare Folio map, Item 4 of appeal and Site Layout and Sections Map). This would suggest that the applicant does not have direct access over these lands to the stream. However other information on file, supported by the appellant, indicates that the applicant owns the field immediately to the west of the appeal site, which has direct access to the stream and the drain could be directed along the western boundary of the appeal site to these lands. If the Board are minded to grant permission for the development, this matter could be addressed by condition.

7.4. Public Notices

- 7.4.1. The public notices for the subject development refer to '*The retention of imported subsoil and topsoil and raising of ground levels to existing agricultural land and all associated site development works. (in connection with a waste permit application)*'. The notice is poorly punctuated, however, taken in conjunction with the plans that are submitted with the planning application I consider that the nature of the proposed development is clearly defined i.e. that the application is for the retention of imported subsoil and topsoil and the raising of ground levels, that has already taken place, to existing agricultural land and that apart from land drainage and reinstatement of hedgerow, no other future works are proposed.

7.5. Landscape Impact

- 7.5.1. The appeal site lies in a rural landscape that is characterised by its undulating drumlin topography. Information provided by the applicant indicates that, prior to filling, the site falls broadly from north to south towards the River Fane. The effect of

the importation of soils to the site has been to raise the landform along the eastern side of the site. Effects are most pronounced alongside the eastern boundary of the site where there is a sharp fall in levels towards the adjoining land. Notwithstanding this, from inspection it is evident that the site is now restored, in agricultural use and largely follows the natural topography. I do not consider, therefore, that the subject development is in any way incongruous or detracts from landscape character.

- 7.5.2. As stated by the appellant and observer, trees along the eastern side of the site have been damaged to some extent by the imported fill. The applicant's Site Layout Plan indicates that the section of hedgerow that has been damaged will be reinstated and planted with native species. This approach seems reasonable and would adequately address the matter and damage caused.

7.6. Flood Risk

- 7.6.1. The topography of the appeal site, as proposed, falls in a southerly direction. As such there is the potential for surface water to run off the site and to drain towards the land to the south/southeast of it. At the time of site inspection the field was dry under foot with no signs of impeded drainage. Along the eastern boundary of the site, as stated the topography falls sharply towards the adjoining site, but there was no evidence of water outflow from the site or a marked drainage ditch or watercourse along the eastern boundary.
- 7.6.2. The application for retention provides land drains along the eastern side of the site, to drain to the watercourse that flows along its southern boundary. Having regard to the observed characteristics of the site and subject to these measures I am satisfied that the proposed development would not significantly drain to the adjoining lands or cause flooding of these lands.

7.7. Impact on Water Quality

- 7.7.1. Parties to the appeal argue that, having regard to the provision of an unauthorised and defective septic tank system on land to the north of the appeal site, serving the unauthorised dwelling, there is a risk of pollution of discharge from the site to the adjoining stream.

- 7.7.2. The location of the unauthorised WWTS is shown in the plans accompanying history file ABP301047 (Proposed Site Layout, drawing no. 3.0_S100.0 Rev. A, dated 03.01.2017). These indicate a septic tank to the east of the dwelling, north of the appeal site, and an existing percolation area to the west of the appeal site, south west of the dwelling.
- 7.7.3. As observed on site drainage from the existing percolation area is likely to be towards the south, following topography. Soils have been imported to the appeal site and deposited on its eastern side. Groundwater flow from the existing unauthorised percolation area is unlikely to flow east towards the area of imported fill. I do not consider, therefore, that there is a real likelihood of pollution of waters on the subject site from the existing unauthorised WWTS. I also note that no concerns have been raised by the Environment Section or by other parties regarding the presence of pollution in the stream to the south of the appeal site, as a consequence (or otherwise) of the septic tanks system on land to the north of it.

7.8. Collateral attack.

- 7.8.1. Parties to the appeal argue that the proposed development is a collateral attack on other planning cases in the area of the site and seeks to overturn the validity of other decisions, where there has been no change in facts.
- 7.8.2. It is evident from the planning history of the appeal site and adjoining lands (including RL18.312636) that the existing house and associated structures to the north and west of it do not have the benefit of planning permission, and have been deemed to comprise development and are not exempted development.
- 7.8.3. Notably under PL18.312433 the Board refused permission for retention of reduced levels and hardstanding area to side of dwelling house, pillar structure housing electricity meter and permission for installation of a new WWTS to serve the dwelling house on the grounds that the existing dwelling house had been determined to be not exempted development and it would be inappropriate to facilitate the ongoing residential use of the site, which was not authorised, where the proposed use/development to be retained is associated with the use (see attachments).
- 7.8.4. The subject development has clearly taken place to facilitate the development of land to the north of it. However, it differs significantly from that considered by the

Board under PL18.312433 in that, unlike an entrance, access road or WWTS, the infill development is not directly associated with the unauthorised residential use and does not actively facilitate the ongoing residential use of the site. I consider therefore that it can be reasonably separated from it.

- 7.8.5. Further, for the same reasons I do not consider that the subject development, if granted permission, would undermine, contradict or alter in any way the planning status of the dwelling to the north of it or its associated structures. I do not consider therefore that a grant of permission would be a collateral attack on the other planning cases in the area of the site.

8.0 Recommendation

- 8.1. I recommend that the Board grant permission for the proposed development subject to conditions.

9.0 Reasons and Considerations

Having regard to the rural location of the proposed development, the landscape character of the area in which the appeal site is situated and the detailed scale and form of the proposed development, and subject to compliance with the conditions set out below, it is considered that the proposed development would not be visually obtrusive or give rise to water pollution or risk of flooding of adjoining lands and would be acceptable in terms of public health. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 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 13 th day of May 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
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	<p>planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Prior to commencement of development, the applicant shall provide details of his legal interest in the subject site.</p> <p>Reason: In the interest of clarity.</p>
3.	<p>(a) Prior to the commencement of development revised details in relation to land drainage and discharge to the watercourse to the south of the site shall submitted to and agreed in writing with the planning authority.</p> <p>(b) The land drainage arrangements shall be installed in accordance with these agreed details within three months of the written agreement of the planning authority.</p> <p>Reason: In order to prevent flooding on adjoining lands.</p>
4.	<p>The section of hedgerow to be reinstated, shown on 3.0_S100.00 submitted to the planning authority on the 13th day of May 2022, shall be provided to the satisfaction of the planning authority in the first planting season following the grant of permission and shall be permanently retained thereafter.</p> <p>All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased 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>Reason: In the interest of residential and visual amenity.</p>
5.	<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</p>

	<p>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>Reason: 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

19th October 2022