



An
Bord
Pleanála

Inspector's Report ABP315472-23

Development	Construction of a two-storey house, wastewater treatment unit and percolation area and new entrance onto the public road.
Location	Shanlis, Ardee, Co Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	22666.
Applicant(s)	Hayley McKeever.
Type of Application	Permission.
Planning Authority Decision	To refuse permission
Type of Appeal	First v. Decision
Appellant(s)	Hayley McKeever.
Observer(s)	None.
Date of Site Inspection	12 July 2023.
Inspector	Richard Taylor.

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1.0 Site Location and Description

- 1.1. The appeal site is located in Shanlis, a rural area approximately 2.6km to the south-west of Ardee. The site is approximately 0.29 hectares in size and broadly rectangular in shape. It is located in the southeastern corner of a larger agricultural field currently in use as grazing lands for cattle. There is an existing field boundary along the eastern boundary which consists of mature trees and vegetation. The northern and eastern boundaries are currently undefined. The southern boundary also comprises mature trees and vegetation and abuts the public road, the R165 which is a Regional Route. The southern boundary is set back off the public road with a roadside verge varying in width by approximately 4-4.5m. The topography of the site slopes gently from the roadside boundary towards the rear site boundary. The topography of the wider agricultural field also rises gently to the north. There is an existing agricultural vehicular entrance located to the West but outside of the appeal site.
- 1.2. The neighbouring area to the application site also comprises agricultural lands. Lands immediately adjacent to the appeal site are also in agricultural use, and a new agricultural entrance has been formed following a grant of permission 05/04/21 under reference 20/433 to the adjoining landowner. To the east of the new access the roadside boundary comprises mature trees and hedging. The adjoining public road sits at a higher level than adjoining lands to the South.

2.0 Proposed Development

- 2.1. The proposed development comprises a 1 1/2 story dwelling, amended in response to a request for further information from the Council. The dwelling comprises a living, dining, and kitchen room with utility to the rear. At first floor accommodation comprises 4 bedrooms and bathroom. The floor area is 236 square metres in size. The dwelling has a ridge height of 7.5 metres and finished with a nap plaster to the exterior walls with blue black roof slates. The dwelling is sited towards the rear of the site, approximately 45 metres from the roadside front boundary providing a large front garden area. The gable of the dwelling would be 10.5 metres from the northern boundary, approximately 12.5 metres from the southern boundary, and approximately 12 metres from the rear/northern boundary. The proposal includes a

new access located in the southeastern corner of the site adjacent to the eastern boundary. It includes gates set back off the side boundary by approximately 10.4 metres. The updated site layout plan, received following a request for further information, also shows proposed site splays of 3 metres x 125 metres across existing roadside verges to the west and east. The proposal also includes a drainage percolation area within the proposed front garden. An access driveway and parking area is also included. Additional landscaping is also proposed to include trees in the front garden and along, and adjacent to, the eastern boundary. New site boundaries will be formed along the northern of western boundaries and will comprise timber post and rail fencing with thorn hedge vegetation. The site location plan indicates that the family home is located approximately 450 metres to the West of the site.

3.0 Planning Authority Decision

3.1. Decision

Louth County Council issued a notification of decision to refuse on 01/12/2022, citing one reason for refusal:

This proposal seeks to achieve access to a Regional Road (R165) and the applicant has failed to demonstrate that adequate visibility can be achieved at the junction with the public road as required by Section 13.16.17 “Entrances and Sight lines” and table 13.13 of the Louth County Development Plan 2021-2027, as varied. The revised site layout and landscaping plan submitted as further information does not demonstrate that the visibility splays of 125 metres by 3 metres over a height of 0.62-1.05 metres above road level in each direction are within the applicant’s ownership or control and no formal legal agreement with the relevant third-party landowner has been submitted to ensure their future implementation and maintenance.

As such the proposed development would materially contravene the Louth County Development Plan 2021-2027, as varied, and would endanger the public safety by reason of traffic hazard and obstruction of road users and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The first planning report is dated 27/09/22. This notes the following;
 - i. Site is located in Rural Policy Zone 2 which is described as an area under strong urban influence.
 - ii. Receipt of two observations and consideration of associated issues raised.
 - iii. Note of responses from the infrastructure section dated 26/09/22 requesting further information. Environment section response dated 31/08/22 no objections subject to conditions.
 - iv. No likelihood of significant effects on the environment and EIAR is not required.
 - v. Appropriate Assessment: no screening report provided. It is concluded that no appropriate assessment issues arise, and the development would not have a significant effect individually, or in combination with other projects, on a European site.
 - vi. Assessment against Rural Policy Zone (RPZ) 2 and supporting information concluding that the applicant has a genuine rural housing need.
 - vii. Layout and design concluding the proposal does not comply with policy HOU 47.
 - viii. Amenity space provision is acceptable and no adverse impacts on amenity of nearby dwellings.
 - ix. Traffic and transport considerations: site is accessed directly off the R165 regional route which is not identified as protected in table 7.10 of the Louth CDP 2021-2027. Referring to Section 7.8.4 regional and local roads the indicated sightlines are not in accordance with table 13.13 of the plan, therefore further information requested showing 3 metres by 125 metres sight lines in both directions.
 - x. Environmental considerations: the application is acceptable in relation to flood risk, water and wastewater connections, and surface water. The environment

section report dated 31/ 08/ 22 recommend approval subject to conditions and that there will be no risk of environmental pollution.

- xi. No impacts on built heritage.
- xii. Development contributions are applicable are set out in article 5.0 of the developer development plan equating to €4200 for class one infrastructure under €1200 for Class 2 amenity, €5400 cumulatively.
- xiii. Concluded that the site is considered suitable in accommodating a new dwelling subject to compliance with all the further information requests.
- Second planning report following receipt of further information dated 28/11/22:
 - i. Consideration of revised design of proposed dwelling considered acceptable and in compliance with policy HOU 47 and section 13.9 of chapter 13 of the development plan.
 - ii. Further information relating to surface water attenuation and disposal is acceptable taking account of the infrastructure section report dated 16/11/22 who had no comments to make.
 - iii. Revised sightline details: The Council's Infrastructure section recommend refusal. The revised site layout drawing shows the entrance at the same position and appears to indicate that sight lines to the east require encroachment over third party land and no legal agreement has been submitted to ensure their implementation and maintenance. These third-party lands belong to an objector, concluding agreement with the suggested refusal reason by the Infrastructure section.

3.2.2. Other Technical Reports

First Infrastructure engineering response dated 26th September 2022 recommends, following review of submitted documentation on visual site inspection, that further information is provided relating to visibility sight lines, evidence of third party agreement if works are required, detailed drawing showing proposed entrance walls, gate set back 5.5 metres minimum from edge of public road, wing walls splayed at an angle of 45 degrees and gates opening inwards, and the gradient of the access not greater than 2% for a minimum distance of five metres from the edge of the private road, and various further information in relation to soakaways and drainage.

Second infrastructure engineering response dated 16 November 2022 recommends, following examination of supporting information and site visit, refusal of the application.

Environmental Compliance section response dated 31st August 2022 adequate information provided to demonstrate that there will be no threat of environmental pollution from the proposed development and recommending the planning permission be granted subject to conditions.

- 3.2.3 Two observations were received during the processing of the application. Issues raised included access, road safety, and traffic.

4.0 Planning History

Appeal site has no relevant history.

Immediately adjacent site to East: planning application reference number 20433. Approval for agricultural access for Mr Stuart McKeever Approved 4th March 2021. This comprised an entrance 8 metres in width with piers at either end, with site visibility splays of 4.5 metres x 125 metres.

5.0 Policy and Context

5.1. Development Plan

- 5.1.1 The Louth County Development Plan 2021-2027 (LCDP) is the operative plan for the area. The proposed development site is located within a rural area under strong urban influence (Rural Policy Zone 2). Relevant LCDP policies include:

- i. HOU 41: to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with qualifying criteria relative to the rural policy zone set out in tables 3.4 and 3.5.
- ii. HOU 42: to manage the development of rural housing in the open countryside by requiring that any new or replacement dwelling is appropriately designed and located so it integrates into the local landscape and does not negatively impact or erode the rural character of the area in which it would be located.

- iii. HOU 47 requires all applications for one off rural housing to comply with the standards and criteria set out in section 13.9 of Chapter 13 “Development Management Guidelines Housing in the Countryside”. Sections 13.9.8 and 13.9.9 provide guidance in relation to house design and design, detailing and material finishes respectively.
- iv. MOV 56: to safeguard the capacity and safety of the national and regional road network by restricting further access onto national primary, national secondary, and protected regional roads in accordance with the details set out in tables 7.9 and 7.10.
- v. Chapter 13, 13.16.5.1 National and Regional Roads and 13.16.17 Entrances and Sightlines table 13.13 and figure 13.1.
- vi. ENV 39: to protect and preserve existing hedgerows particularly species rich roadside townland boundary hedgerows where their removal is necessary during the course of road works or other works seek their replacement with new hedgerows of native species indigenous to the area.
- vii. IU16, IU17, IU18 relating to wastewater treatment system and water supply.
- viii. IU19 relating to surface water drainage.

5.1.2 Other Relevant Planning Policy:

- i. Project Ireland 2040 National Planning Framework (NPF).
- ii. National Development Plan 2021- 2030 (NDP).
- iii. Guidelines for Planning Authorities and An Board Pleanála on carrying out Environmental Impact Assessment, August 2018.
- iv. EPA Code of Practice Domestic Wastewater Treatment Systems, population equivalent of less than 10, 2021.
- v. Sustainable Rural Housing Guideline for Planning Authorities, April 2005.
- vi. Appropriate Assessment of Plans and Projects in Ireland-Guidance for Planning Authorities, 2010.

5.2. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site. The nearest designated site is the Stabannan-Braganstown Special Protection Area (SPA) (Site Code: 004091), approximately 8.57km to the north-west.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity or any connectivity to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The family have lived at Shanlis for generations. The family farm is located all along the north side of the R165 regional road between Shanlis Cross and the Meath border. There is no other road frontage available for forming an entrance to the proposed development. The R165 regional road is long and straight with very wide grass verges each side as indicated in supporting photographs and survey. The entirety of the R165 regional road is in charge of the Local Authority.
- The drawing submitted with the application clearly showed a **site** triangle of 215 metres at 0.6x1.05 metres in each direction to both sides of the road. The Local Authority subsequently requested by way of further information that the demonstrated sight distance was reduced to 125 metres. Revised drawings demonstrating a safe distance of 125 metres at 0.6- 1.05 metres was subsequently submitted. The relevance of this was unclear as if it was possible to see 215 metres, it is clearly possible to see 125 metres in each direction.

- The engineers report indicates a full assessment of the site proposed entrance was carried out. This again was clearly not the case as attached photographs demonstrate full visibility and both directions.
- Full third-party topographical survey of the road in the vicinity of the entrance with the requisite sight lines marked, the survey further confirms that the sightlines can be achieved.
- Contrary to the view of the Local Authority and, as demonstrated by the submitted drawings, no works are required on 3rd party lands to achieve the sightlines. No formal legal agreement with a third party is therefore required. This is the case with hundreds, if not thousands, of applications throughout the country.
- Application reference 20433, granted on 05 April 2021, in the name of the applicant's uncle Stuart McKeever attached. This permission is for an agricultural entrance directly adjacent to the proposed entrance. This entrance would have heavier and much slower moving traffic than an entrance to a single house. While a decision was made under the previous County Development Plan, the criteria is the same it is not clear why virtually the same sight lines were acceptable at this entrance when they are not acceptable of the proposed entrance. No third-party legal agreements were required in this case either.
- Application reference 21660, granted retention permission on 21 February 2022, in the name of the applicant's brother Corey McKeever. This permission is also for an agricultural entrance where the road alignment is similar. This was a long-protracted planning application as, as in this case, the engineers at Louth County Council refused to accept the validity of the information submitted, even where it was supported by third parties.

6.2. Planning Authority Response

- The planning authority reiterates its opinion and recommendation to refuse planning permission for the subject residential development.
- The issues raised in the appellants appeal statement in relation to the proposed site entrance and traffic safety issues such as sight lines and legal consents have

already been considered and detailed by the planning authority and the planning reports.

- Summary of responses dated 01 February 2023.

6.3. Observations

- No observations have been received by ABP to the appeal.

6.4. Further Responses

- No further responses received.

7.0 Assessment

7.1. Having examined all the application and appeal documentation on file and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the Local Planning Authority (LPA) reasons for refusal, and I am satisfied that no other substantive issues arise. Appropriate Assessment (AA) also needs to be considered. The main issues, therefore, are as follows:

- a. Access, Sightlines, Visibility Splays and Road Safety.
- b. Appropriate Assessment

a. Access, Sightlines, Visibility Splays and Road Safety.

7.2. The issues and this appeal relate to the single refusal reason provided by the LPA, namely the access and associated visibility splays. For clarity, the LPA have accepted, based on the evidence provided, that a dwelling on the site is acceptable in principle and associated policy requirements have been satisfied. Accordingly, I shall limit my consideration to the matters set out in the refusal reason.

7.3. In relation to these issues, the policy considerations relating to access, entrances and sightlines within chapter 13 of the LCDP are of most relevance. Table 13.13 on page 13-50 states:

Table 13.13 sets out the minimum visibility standards for new entrances onto streets and roads where the speed limit is in excess of 60km/h and the 'Design Manual for

Urban Roads and Streets' is not applicable. These are minimum standards, and the Authority can request greater standards depending on the characteristic of the road, observed traffic speeds, volume and type of vehicles etc.

Figure 13.1 relates to junction (access) visibility splays on page 13.51. Footnote 3 states:

Where the creation of minimum visibility standards involve works on third party lands, the applicant must furnish evidence of a legal right to carry out such works. The applicant shall be requested to submit a formal legal agreement together with a map showing the extent of the lands so affected outside the site boundary and detailing the works required to comply with the visibility splay together with an undertaking from the landowner's solicitor that the agreement will be entered as a burden against the title of the land.

- 7.4. The access is located in the southeastern corner of the site, within a typical hedgerow field boundary within lands belonging to the applicant's father. The access is adjacent to a hedgerow field boundary close the eastern site boundary. Mr Stuart McKeever, one of the objectors to the planning application, owns lands immediately abutting the site to the east. The planning permission secured by Mr McKeever for the agricultural access is located approximately 10 metres from the common boundary between these lands at the closest point.
- 7.5. On reviewing the submitted plans and associated documentation, the required sightlines submitted for the further information request by the Council and development plan requirements at page 13-50 of the LCDP table 13. 13 of 3.0 metres x 125 metres are indicated. A specified set back distance of 3 metres is shown to be accommodated within the roadside verge. The LPA have not raised any issues relating to the accuracy of the submitted details.
- 7.6. The westerly, or right hand emerging from the site, sight distance and visibility splay can be accommodated by the appellant without interference, or obstruction, given that they are in ownership (albeit the applicant's father), of the field boundary hedgerow that runs parallel to the Regional Road R165, as evidenced by the site location map submitted in support of the application and appeal. Approximately 36 metres of the visibility splay is within the redline site boundary, with the remaining 89 metres outside of the red line. The site layout drawing indicates that this splay is

within the roadside verge, and accordingly would not necessitate the removal of any significant hedgerow vegetation. Policy considerations relating to the loss of hedgerows therefore do not arise with this splay.

- 7.7. The key issue in this appeal is the visibility splay in an easterly, or left-hand side emerging from the access, direction. This visibility splay is almost entirely outside the applicant's ownership save for approximately 7.5 metres within the red line site boundary. A small section is adjacent to the access, on or abutting the lands owned by Mr McKeever, with the remainder over the roadside verge. According to the site layout the roadside verge is of a reasonable depth and technically could accommodate the majority of the required visibility splay. Based on site observations, however, it is apparent that the roadside boundary vegetation has increased in depth across the roadside verge resulting in an obstruction of the required sight lines in this direction when viewed from the proposed access location. This hedgerow, and accompanying lands to the rear, are outside the ownership and therefore control, of the applicant. Significant pruning, and associated ongoing maintenance, would be necessary to secure an unobstructed visibility splay for the proposed access. As stipulated in footnote 3 of figure 13.1 of the plan as set out above, evidence of legal right to carry out such works is therefore required, however this has not been provided. Accordingly, I am not satisfied that this easterly sightline can secure and facilitate an unobstructed and safe view from the site access to meet the requirements set out in the plan.
- 7.8. The appellant has referred to the original plans submitted in support of the application in which sightlines of 2.4 metres x 225 metres were initially proposed. I have reviewed these details but also conclude that they are not appropriate given the requirements set out in the plan and would not overcome the obstruction of the adjacent field hedgerow for the easterly visibility splay requirements as discussed above.
- 7.9. The R165 is a reasonably straight public road in terms of its route and alignment. It is subject to a speed limit of 80 KMPH for vehicular traffic. From my site observations traffic generally appeared to travel at, or around, the speed limit. I have not been provided with any other evidence to justify a reduction in the required visibility splay requirements as a departure from those stipulated in the development plan. In

addition, I do not consider that the appellants need for a dwelling at this location outweighs the safety issues with the proposed access as discussed above.

- 7.10. The appellant has also referred to the adjacent agricultural entrance and associated details on behalf of Mr McKeever. They consider similar arrangements were approved in that case and accordingly is comparable to the proposal. I note from the planning report that the agricultural access was subject to a different policy context including the previous iteration of the LCDP 2015-2021. This proposal had the support of the Council Infrastructure directorate, who recommended approval subject to conditions. I do not therefore consider this case to be materially relevant given these factors and the different location of the site access in that case.

(b) Appropriate Assessment (AA)

- 7.11. Having regard to the character of the site; the modest nature, scale and extent of development sought, it is considered that no appropriate assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. It is recommended the proposed development is REFUSED for the following reason and considerations.

9.0 Reasons and Considerations

- 9.1 It is considered that the proposed development would endanger public safety by reason of traffic hazard because adequate visibility cannot be achieved at the junction with the public road where sightlines are restricted in an easterly direction and are not within the applicant's ownership or control and no formal legal agreement with the relevant third-party landowner has been submitted to ensure their future implementation and maintenance. Accordingly, it is considered that the proposal would contravene the Louth County Development Plan 2021-2027 and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or in inappropriate way.

Richard Taylor
Planning Inspector

14th August 2023