



An  
Bord  
Pleanála

## Inspector's Report ABP 316081-23

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<b>Development</b>	Two detached houses and one detached house with attic conversion with individual secondary effluent treatment systems, recessed entrance and associated works.
<b>Location</b>	Clogheen, Monasterevin, Co Kildare
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	22 1018.
<b>Applicant</b>	Aiden Melia
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party x Refusal
<b>Appellant</b>	Aiden Melia.
<b>Observers</b>	
<b>Date of Site Inspection</b>	26 <sup>th</sup> June, 2023
<b>Inspector</b>	Jane Dennehy

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## 1.0 Site Location and Description

- 1.1. The application site has a stated area of 0.428 hectares, is roughly rectangular in shape and is formed from agricultural lands on the north, north side of the R445. The location is to the southwest of Monasterevin, Clogheen Bridge. The Grand Canal and its towpaths on each side are to the east north-east and southeast and it is a valued public recreational amenity area accessible to the public. The River Barrow is to the southwest on the opposite side of the R 445.
- 1.2. The R445, (formerly the N7) is elevated above the levels within the site and at the site frontage along which there is dense hedgerow, there is a ditch, a grass verge and narrow footpath. There is a hard shoulder with yellow road markings along the side of the carriageway which itself has good vertical and horizontal alignment. The site location is within the 60 kph speed limit with the eastern end adjacent to the 50 kph speed limit sign on approach to Monasterevin. The carriageway is circa eight metres in width there is a continuous white line on the north side adjacent to a broken white line on south side of the centre of the carriageway.
- 1.3. An agricultural entrance and track to the site lands are located adjacent to a single storey dwelling which has access off a minor road close to a junction with the R445 to the west. There are outbuildings to the rear of the single storey dwelling which is on a deep plot adjacent to the application site.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for the construction of three detached houses, on three individual plots with each to be serviced by separate private wastewater and systems providing for secondary treatment with discharge to percolation areas to the ground. Two houses have a stated floor area of 392 square metres and one incorporating an attic conversion, has a stated floor area of 232 square metres are to be accessed via a shared recessed entrance off the R445. Water supply is to be sourced from the public mains system and surface water drainage, (the site being in Flood Zone C) which incorporates attenuation measures to provides for discharge at predevelopment flow rates to the existing drainage network and on to the canal.

- 2.2. The planning authority issued a request for additional information in which it is requested, having regard to matters raised in the technical reports, (see para 3.2.2 below) that an entrance directly onto a local road instead of onto the R445 be considered and information to address issues relating to the design at the location direct onto the R445 design, impact on the operational flow and safety of traffic on the R445. The applicant is also requested to consider providing for revisions to the proposed percolation areas and to make minor changes to the house plans.
- 2.3. A response was lodged on 17<sup>th</sup> January, 2023 along with revised site and newspaper notices erected and published on 25<sup>th</sup> January 2023. It is stated in the submission that the applicant is not willing to relocate the proposed entrance from the R445 to the minor road to the west of the site. It includes proposals for an amended redline boundary for the site lands so that an enlarged secondary percolation area and increased separation distances can be provided. A comprehensive flood risk assessment report was also submitted.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

By order dated 20<sup>th</sup> February, 2023 the planning authority decided to refuse permission based on two reasons which are outlined in brief below:-

Reason One: The proposed development would be prejudicial to public health due to unacceptable risk of water pollution because of lack of capacity for three domestic wastewater treatment systems within the site. It is not demonstrated that there are sufficient separation instances from other facilities, properties and geological features, having regard to sections 6.3 and Table 6.2 of the EPA Code of Practice for Domestic Wastewater Treatment Systems, (2021)

Reason Two Endangerment of public safety by reason of traffic hazard by creation of right turning at an entrance due to the nature of the proposed entrance as there is lack of adequate measures to limit speed and collision severity at the approach to the frontage of the development along the R445.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The planning officer in his final report of 21<sup>st</sup> February, 2023 following receipt of the further information submission in indicated a recommendation for refusal of permission based on the reasoning outlined under 3.1 above. He indicated acceptance of the proposed development having regard of the density, dwelling mix, design, site layout and residential qualitative standards, with supplementary boundary treatment being necessary.

### 3.2.2. Other Technical Reports

The report of the Transportation Department dated, 3<sup>rd</sup> October, 2022 in which it is stated that the Department is minded towards a recommendation for refusal of permission pending road improvements indicates a recommendation for a multiple item additional information request. In the report it is stated that while the nominal speed limits 50 kph and 60 kph surveys conducted in 2019 have indicated speeds on the carriageway at 84 kph and it is stated that the proposed development would contribute to increased hazard. Among the recommendations within the report the applicant is requested:-

- to consider locating a vehicular junction off a local road to the southwest or northwest at a minimum distance of fifty metres from the junction with the R445. or at a distance of fifty metres from the junction. Alternatively, in the absence of consent to connection the development to the local road to the southwest or northeast, the applicant is requested to give consideration of and proposals for detailed measures to effect speed reduction on the R445.

Submission of a revised Stage 1 and Stage 2 Road Safety Audit by an independent competent person is also requested with a Stage 3 audit being required post planning and detailed further information on technical matters are also requested.

Irish Water indicates a recommendation for a requirement for comprehensive watermain, surface and foul drainage drawings to be provided.

The internal report dated, 11<sup>th</sup> October, of the Water Services Department indicates a recommendation for a requirement for comprehensive watermain, surface and foul drainage drawings to be provided.

The report of the Water Services Department dated 19<sup>th</sup> August, 2022 indicates a recommendation for several requirements to be addressed by condition.

The Environment section's report of 29<sup>th</sup> September, 2022 indicates a concern as to the capacity of the site to accommodate the three dwellings having regard to the site characterisation form lodged with the application. A request for further information in respect of trial holes, levels for the proposed drainage systems, and consistency with EPA standards is recommended.

The Environment section's supplementary report of 12<sup>th</sup> February, 2023 notes that connection to the foul sewer network is not feasible having regard to reports from Water Services and Irish Water. A recommendation for refusal of permission is recommended because the proposed development would be prejudicial to public health. It is stated that the site is not suitable for three domestic wastewater treatment systems in that minimum separation distance from water, water services, properties and geological features as specified in Section 6.3, Table 6.2 of the EPA Code Practice is not demonstrated.

The report of the Heritage Officer indicates a recommendation for hedgerow planting on the site frontage in native species.

### 3.2.3. Third Party Observations.

Submissions were lodged by six parties indicating on grounds of concerns as to impact of residential development on the amenities of the area, vehicular safety at the proposed entrance, the implications of the proximity of the proposed entrance/exit access onto the R445 to the Grand Canal which is an amenity area and an agricultural right of way and about flooding risk.

## 4.0 Planning History

P.A. Reg. Ref 19/176:- Permission was refused for fifteen houses, twelve two storey terraced, two semi-detached, and a detached house along with parking

shared vehicular access, a pump station/rising main and associated site works based on six reasons.

Reason 1 relates to traffic safety impact with the 60 kph speed limit by reason of the proposed entrance by a junction onto the R445 houses. The other reasons relate to planning issue and conflict with the CDP and LAP over design and suburban character, density, layout, and natural and visual amenities.

## 5.0 Policy and Context

### 5.1. Development Plan

The operative development plan is the Kildare County Development Plan, 2023-2029 which superseded the Kildare County Development Plan, 2017-2023 in January, 2023. The site location is within a 'Rural Area.'

Policy Objective MTO - 2 provides for investigation of feasibility of traffic calming measures of the R445 on approach to Monasterevin from the east and west in accordance with the principles in DMURs

Criteria for dwelling floor areas and storage are in table 17.4. and section 17.4.5

Development management policies are within Chapter 15 with sections 15.2, 15.4 and 15.7 being applicable to the current proposal.

Monasterevin Local Area Plan.2016-2022

The site is within the development boundary but located just outside the main development boundary to the west of the town. It is subject to the zoning objective C - (C10)– New residential – to provide for new residential areas with the site lands and adjacent land extending to the Local Road to the east being identified as providing for three units.

The views north-west along the Grand Canal to the north-west of the site are protected views.

### 5.2. Strategic and technical Guidance.

Design Manual for Roads (DMURS)

EPA: Code of Practice, "Domestic Waste-Water Treatment Systems (population equivalent less than 10).

*Sustainable Residential Development in Urban areas, Guidelines for Planning Authorities* (DoEHLG, 2009) (SRDS)

### 5.3. **Natural Heritage Designations**

The River Barrow, which is a designated SAC, is to the east and southeast of the site.

### 5.4. **EIA Screening**

5.5. Having regard to the existing development on site, the limited nature and scale of the proposed development and the absence of 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**

An appeal was received from the applicant's agent on 20<sup>th</sup> March, 2023 attached to which are revised drawings, a revised site layout plan and a traffic report.

With regard to Reason 1 regarding the proposal to provide for three individual private effluent treatment systems within the site the appeal can be outlined as follows:-

- The three wastewater systems can be accommodated on the site. There is nine metres separation distance from the two northernmost percolation areas, as opposed to the minimum separation distance of ten metres required in the EPA Manual 2021 (Section 6.3 and Table 6.2.) A revised design for the percolation areas is proposed and shown on Drawing NO 'AM/PLN – appeal' showing ten metres separation distances between each plant. There are no geological features in the vicinity.



With regard to Reason 2 it is submitted that the reasoning is based on subjective opinion as opposed to a reasonable objective engineering basis on traffic and road safety audits.

- The site frontage is in the 60 kph speed limit and it reduces to 50kph along a section by the proposed site access. (An extract from the report is included in the appeal.) The extent of visibility at the proposed site priority T junction access onto the R445 concurs with Section 4.4.5 of DMURS. The principle of direct vehicular accesses taking the form of priority junctions is well established in the area. Sightlines of 2.4 metres x 49 metres are provided at the proposed access to the leading and the non-leading traffic directions on the R445. (Drawing AM/PN/002 refers.) Autotrack swept path assessments shown on Drawing 122-A43-SP01 demonstrate manoeuvres for entering exiting turning by refuse and emergency vehicles.
- The recommendations in the Stage 1 / 2 Road Safety Audit can be implemented in a future detailed design of road infrastructure. No safety issues were raised in connection with the proposed access off the R445.
- It is outside the control of the applicant to respond to the request by the planning authority for proposals for design elements for speed reduction along the R445 for traffic calming measures within a transition area from a rural location to an urban or village location. Such works are in the remit of the local authority and Transportation Infrastructure Ireland and considered under Part 8 of the PDA or the Road Traffic Act. The applicant can provide a financial contribution towards the cost of the works.
- With regard to Policy Objective MTO – 2 of the CDP, no detailed design proposals for the traffic calming measures are available. If such measures were to be implemented to the west of the proposed site access the speed limit at the entrance would be 50 kph.

## 6.2. Planning Authority Response

In a submission lodged with the Board on 5<sup>th</sup> April, 2023, it is stated that the appeal grounds are the same as those raised at application stage and that the planning

authority took them into consideration in its assessment of the proposed development. The planning authority has no further observations.

## 7.0 Assessment

7.1. The lands subject of the application is subdivided from a larger parcel of lands for which there is a zoning objective within the Monasterevin LAP providing for development of three dwellings. The larger parcel of lands includes adjoining land to the west over which there is a farm track and agricultural entrance onto a local road at a location which is a short distance from a junction with the R445.

The issues within the two reasons for the decision to refuse permission which are central to the determination of the decision can be considered below under the following two sub-headings:

Reason One - Wastewater treatment and disposal – risk of water pollution

Reason Two - Proposed Entrance Arrangements - Traffic Safety on the R445.

With regard to all other considerations, there are no issues arising or outstanding with regard to residential qualitative standards. There is no objection to the deep setback of the dwellings from the road frontage and details as to landscaping, planting and boundary treatment can be finalised by compliance with conditions if permission is granted. The proposed arrangements for water supply and surface water drainage, which provide for discharge at greenfield predevelopment rates, are substantively satisfactorily addressed at application stage.

7.2. Reason One -Wastewater treatment and disposal – risk of water pollution.

The applicant has submitted a revised site plan in which the red line boundary is extended and outlined by a broken red line at the south-west within the larger parcel of zoned lands subject to the zoning objective for three houses. This amendment provides for separation distances in excess of the ten metres minimum required having regard to Table 6.3 within the EPA Guidelines This additional area is adjacent to and adjoining residential property and its outbuildings on third party lands to the west and northwest. The size of the actual percolation area within this area is not annotated on the plan and there are no details of existing wastewater treatment

facilities or alternative arrangements for effluent collection and disposal at the property in the adjoining lands. It therefore cannot be established with certainty that the proposed development conforms to the standards as outlined in section 6.3 and Table 6.2 of the EPA Guidelines with regard to separation distances from water/wastewater services, properties and geological features.

It is however noted that the planning authority technical reports have indicated that connection to the foul sewer network, (a preferred option on the part of the applicant) in the area is not feasible, hence the need for the alternative proposal for the three on site wastewater treatment systems.

### 7.3. Reason Two Proposed Entrance Arrangements - Traffic Safety on the R445.

The assertion in the appeal to the effect that it is within the remit of the local authority to design and implement traffic calming measures and that the applicant is willing to provide a financial contribution towards such works is reasonable, in the absence of any alternative agreement between the parties.

However, it is considered that the submissions provided in connection with the appeal do not overcome the concerns of the Transportation Department over an entrance directly onto the R 445 to serve three dwellings as represented in the reason for refusal of permission.

The Transportation Department's observations regarding the actual speed of traffic along the section of the R445 at which the site is located and as to substantial risk of collision that would be attributable to additional turning movements and specifically right turning movements generated by the proposed new entrance direct onto the R445 are not disputed. Having inspected the site and environs, mid-afternoon on a weekday it was clearly apparent that the speed of vehicles in both directions was well in excess of the 60 kph limit where it applies and the 50 kph limit where it applies at a point immediately to the west of Clogheen Bridge. Drivers are undoubtedly disinclined to reduce speed on the section between the 60 kph and 50 kph maximum speed limit west of Monasterevin in view of the that the high-quality road and driving conditions. It is considered that irrespective of design proposals which the applicant proposes to mitigate obstruction conflict and collision risk on the carriageway, in principle, a proposed entrance direct onto the R445 to serve three

dwellings cannot be accepted in the absence of effective speed reduction measures to mitigate risk of collisions being in place.

It is therefore agreed with the planning authority the an entrance to serve three dwellings at the subject location off the R445, irrespective of any design measures to provide for priority and to enhance and maximise sight lines and visibility cannot be accepted on grounds of prematurity pending effective measures for management of speed of traffic on the R445 in the sections where the 60 kph and 50 kph maximum speed being in place. While provision for these measures is included among the objectives within the CDP there is no evidence of any progress towards the delivery of these objectives by way of pre-design or design proposals or and agreed timeline.

To this end, it is considered that the planning authority decision to refuse permission on grounds of prematurity and endangerment of public safety by reason traffic hazard is reasonable and justified notwithstanding the policy objectives of the recently adopted CDP which facilitates for development of three houses for the larger parcel of lands from which the site is formed.

Finally, as previously stated, the application site is subdivided from a larger parcel of lands (outlined in blue in the application drawings) subject to the zoning for three houses. There is an existing agricultural access and track through the land outside the red line boundary from the local road to the west close to the junction with the R445, which may be suitable for an entrance to serve the proposed development. This option, which the planning authority requested the applicant to investigate, is outside the remit of consideration of the appeal in that it is not included in the proposals connection with the application and appeal. It is agreed with the planning authority that an access to the east side adjacent to the canal would be undesirable owing to the location and conflict with the recreational amenity and access to the Canal corridor for the public.

#### **7.4. Appropriate Assessment Screening**

- 7.5. Having regard to the nature and limited scale of the existing development and the proposed development, and to the nature of the receiving environment and the distance from any European site or pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an AA at an initial stage.

## 8.0 Recommendation

- 8.1. It is recommended that the planning authority's decision to refuse permission should be upheld based on the following reasons and considerations.

## 9.0 Reasons and Considerations

1. Based on the information available in connection with the application and the appeal, the Board is not satisfied that it has been demonstrated that the proposed development of three dwellings serviced by independent waste water treatment and disposal systems for each dwelling would satisfy the minimum standards set out in section 6.3 and Table 6.2 of the *Code of Practice for Domestic Waste Water Treatment Systems* (EPA: August, 2021) would not lead to unacceptable risk of water pollution. As a result, the proposed development would be prejudicial to public health.
2. Having regard to the location of the proposed new entrance to serve the proposed development of three dwellings directly onto the R445 which would necessitate right turning movements and, to the absence of measures which limit speed of vehicles on the carriageway, it is considered that the additional and conflicting turning movements generated by the proposed development would increase the risk of traffic hazard and collisions resulting in endangerment of public safety by reason of traffic hazard.

*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 inappropriate way.*

**Jane Dennehy**  
**Inspector**  
**14th July, 2023.**