



An
Bord
Pleanála

Inspector's Report

ABP-318425-23

Development	Construction of 2 no. two storey detached houses, access road, footpaths and all associated site works and services.
Location	Millbrook, Killeigh, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	23100
Applicants	Justin & Gerard Heffernan
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Brendan Lynam
Date of Site Inspection	3 rd June 2024
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located at Millbrook, Killeigh, Co. Offaly, within the village. Killeagh is a small village located on the N80 c 4.5km south of Tullamore. Killeagh is an historic settlement in existence since the founding of a monastery here by St Sinchell in the sixth century. The site is located among historic sites and close to upstanding remains within the same field, to the north-west, associated with the religious house of the Augustinian canons. Cottages, close to the road, formerly occupied part of the site. A stream, a tributary of the Clodiagh River flows along the eastern boundary. This stream is liable to flood and a portion of the site, at the south eastern corner, is identified in the Killeagh Village Plan as 'constrained land use' for this reason. The site fronts the busy N80 Tullamore to Portlaoise road within the speed restricted village area. The 50 kph speed limit which applies is not always observed by the traffic on the N80 travelling east and downhill into the settlement.

2.0 Proposed Development

- 2.1.1. The proposed development, as described in the public notices, comprises:
Construction of 2 no. two storey detached houses, access road, footpaths and all associated site works and services.
- 2.1.2. In the course of the application process the proposed development was modified to a single dwelling.
- 2.1.3. The application was accompanied by an Archaeological Assessment report, prepared by John Purcell, Archaeological Consultancy. Test trenching was carried out in 7 trenches: four in the north of the site and three both within and outside the site to the west. In the northern trenches no archaeological finds or features were identified. Archaeological material including human burials was uncovered in those in the west. Of the two trenches nearest to the site only sections at the northern end were opened due to encountering human remains. The remaining parts of these trenches were not opened.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The planning authority (PA) decided to grant permission subject to 11 conditions, including:

2) group water scheme

3 finished floor level (to reduce the impact in the landscape).

4) boundary treatments.

5) materials / finishes.

6) development contribution

7) undergrounding of cables

8) a) A buffer area of 20m shall be implemented around Recorded Monument OF025017003-Class: Religious house - Augustinian canons and the site of the previously identified human burials. No ground works / storage or vehicle movements shall be carried out within the buffer area, including boundary works, landscaping or ground reduction. The buffer area shall be fenced off and protected during construction and shall not be used for storage or vehicular access.

b) All ground works associated with the proposed development shall be monitored under licence by a suitably qualified Archaeologist.

c) Should archaeological material be found during the course of works, the work on the site shall be stopped pending a decision as to how best to deal with the archaeology. The developer shall be directed by the National Monuments Service with regard to any necessary mitigation action (e.g. preservation in situ, or excavation) and should facilitate the Archaeologist in recording any material found.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

9) A foot path shall be provided at the developer's expense at the front boundary of the proposed site and shall be dished at site access.

10) road opening licence, surface water, construction vehicles, footpath continuity, fence securing site, clean road.

11) development standard, noise environmental nuisance etc.

3.2. Planning Authority Reports

3.3. Planning Reports

3.3.1. There are two planning reports on the file, the first, 4th May 2023, recommending a request for further information, which issued, includes

- The proposed access road for the two houses is on lands zoned open space, amenity and recreation; contrary to the zoning. Difficulties regarding the constrained land use designation of part of the site where the proposed road is to be situated; contrary to the policy on constrained land. A riparian zone of 10m is required either side of all watercourses, per DMS-25 of the development plan revision required. Compliance with DMS-17, landscaping and boundary treatment required.
- AA screening carried out - unlikely to have any significant effects on any European site.

3.3.2. Other Technical Reports

3.3.3. Planning, 4th April 2023 - recommendation for section 97 certificate. Certificate issued 5th April.

3.3.4. Municipal District Engineer, 25th April 2023, further information:

Sightlines,

Corner radii,

Pedestrian priority crossing at the entrance,

Road gullies,

Adequate visitor parking,

Auto track analysis.

3.4. **Prescribed Bodies**

3.5. TII, 23rd March 2023 – they have no observations.

3.6. DAU Department of Culture, Heritage and the Gaeltacht, 13th April 2023:

The proposed development is within the zone of notification associated with Recorded Monument OF025017003-Class: Religious house - Augustinian canons which is subject to statutory protection in the Record of Monuments and Places, established under Section 12 of the National Monuments (Amendment) Act 1994.

In October 2022 under Licence Number 22E0755 archaeological test trenching was carried out by John Purcell on the site of the proposed development. The pre-development archaeological testing included the excavation of a series of archaeological test trenches across the site. Human remains (burials) were recorded in three trenches at the west and North West of the site (Trenches 1-3). The Archaeological Assessment report recommended that the area of the burials be excluded from any future development. The report recommended that should development proceed in the remainder of the site, the area of the burials should be fenced to prevent accidental damage to the sub surface remains. Should development proceed in the east of the study area licenced archaeological monitoring is recommended.

Given the extent and location of the proposed development it could impact on subsurface archaeological remains. In line with national policy, see section 3.7 of 'Framework and Principles for the Protection of the Archaeological Heritage', 1999, the Department recommends that the following archaeological conditions be included in any grant of planning permission that may issue.

1 A buffer area of 20m shall be implemented around Recorded Monument OF025017003-Class: Religious house - Augustinian canons and the site of the previously identified human burials. No ground works / storage or vehicle movements shall be carried out within the buffer area, including boundary works, landscaping or ground reduction. The buffer area shall be fenced off and protected during construction and shall not be used for storage or vehicular access.

2 All ground works associated with the proposed development shall be monitored under licence by a suitably qualified Archaeologist.

3 Should archaeological material be found during the course of works, the work on the site shall be stopped pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the National Monuments Service with regard to any necessary mitigation action (e.g. preservation in situ, or excavation) and should facilitate the archaeologist in recording any material found.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

3.7. Further Information Request

3.7.1. A further information request issued 4th May 2024, on 8 points:

1 constrained land and riparian zone – revise; invitation to submit a proposal for a single house.

2 per Municipal District Engineer's report

3 If not revising to a single house, submit a detailed flood risk assessment

4 Boundary treatments per DMS-17

5 Submit a map showing the suggested excluded area per archaeological assessment.

6 Submit proposals to comply with SO8 of Killeagh village Plan (re. amenities including extending a walkway northwards along the river/stream).

7 Indicate the use and function of the area adjoining the access road at the north eastern end of the site.

8 Invitation to respond to third party submissions.

3.7.2. A further information response was received 21st August 2023, which included a revised proposal for one house.

3.8. Further Reports

3.8.1. The second planning report, 17th October 2023, recommending permission, which issued, includes:

3.8.2. Satisfied with responses. Development contribution €3,010.

3.8.3. Municipal District Engineer, 8th Sept 2023 – conditions:

Entrance details,

Surface water,

Construction vehicles,

Continuity of foot path,

Fencing,

Prevent spillage on public road.

3.8.4. Water Services, 9th October 2023 – conditions:

General, water, wastewater, storm water, waste management, environmental nuisance.

3.9. **Prescribed Bodies**

3.10. DAU Department of Culture, Heritage and the Gaeltacht, 13th September 2023 – conditions.

3.11. HSA, 26th September 2023 – no observations.

3.12. TII, 4th October 2023 – no observations.

3.13. **Third Party Observations**

3.13.1. Third party observations on the file have been read and noted.

4.0 **Planning History**

The planning history is given on the application form and details are supplied by the PA. It relates to land owned by the applicant some distance to the north, not adjacent to the subject site:

05/553 (details supplied by the PA), outline permission granted for construction of 20 no. dwelling houses and full permission to construct roads, footpaths and services;

17/223 (details supplied by the PA), permission granted for 6 no. two storey dwelling houses on sites no. 4, 6, 10, 15, 19 and 20 ,Millbrook Grove; and

20/358 (details supplied by the PA), permission refused for 3 no. two storey dwelling houses including the extension of road and footpaths and all ancillary works (reason included - not zoned).

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The Offaly County Development Plan 2021-2027 is the operative plan. Relevant provisions include:

Zoning

Land Use Zoning Objective – Open Space, Amenity and Recreation. It is an objective of the Council (LUZO-10) to protect and improve the provision, attractiveness, accessibility and amenity value of public open space, amenity and recreation.

Open Space, Amenity and Recreation - The use of land as 'Open Space' shall be taken to include the use of land for; parks, public woodland, pedestrian routes and greenways, riparian zones, housing estate open spaces, development incidental to the enjoyment of open space (including playgrounds, outdoor recreation centres and sports centres, civic/market square, village greens, landscaped areas, shelters, sanitary conveniences, play equipment, dressing rooms and similar facilities). It also provides for the use of such land or such facilities for games, educational and recreational purposes. High standards of accessibility are essential.

Designations - Land Use Zoning Objective – Constrained Land Uses

It is an objective of the Council (LUZO-14) to facilitate the appropriate management and sustainable use of flood risk areas designated as 'Constrained Land Use' on Settlement Plan zoning maps.

Constrained Land Uses - Flood risk areas in settlement plans are represented by a 'Constrained Land Use' designation. This designation generally limits new development but will facilitate existing development uses within these areas that may require small scale development such as small extensions. Development proposals within these areas shall be accompanied by a detailed Flood Risk Assessment,

carried out in accordance with The Planning System and Flood Risk Assessment Guidelines and Circular PL 2/2014 (or as updated), which shall assess the risks of flooding associated with the proposed development. Proposals shall only be considered favourably where it is demonstrated to the satisfaction of the Planning Authority that they would not have adverse impacts or impede access to a watercourse, floodplain or flood protection and management facilities, or increase the risk of flooding to other locations and be in accordance with the proper planning and sustainable development of the area. The nature and design of structural and non-structural flood risk management measures required for development in such areas will also be required to be demonstrated, to ensure that flood hazard and risk will not be increased. Measures proposed shall follow best practice in the management of health and safety for users and residents of the development.

Volume II

Killeigh is designated a 'village' in the settlement strategy; which is defined as a rural area.

Volume II of the plan 'Village Plans' includes a settlement plan for Killeigh, which includes:

The site is zoned partly open space, amenity and recreation, part new residential, and part is identified as constrained land use.

Other objectives:

Housing and Sustainable Communities Objectives

SO3 New development shall have regard to the existing character of the village and will be required to protect the setting of sites and features of archaeological significance

Healthy Place Making and Infrastructure Objectives

SO7 To seek the upgrade, consolidation and expansion of the public lighting and footpath network in the village.

SO8 To improve public amenities / recreational facilities in the village, including exploring the possibility of extending The Seven Blessed Wells of Killeigh walking route northwards along the river/stream.

5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura site is the River Barrow and River Nore SAC (site code 002162) located c 3.3 km straight line distance from the site to the south.

5.3. EIA Screening

- 5.3.1. Based on a preliminary examination of the nature, size or location of the development, there is no real likelihood of significant effects on the environment; Appendix 1 refers.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A third party appeal, against the decision to grant permission, has been submitted by Brendan Lynam.

- 6.1.2. The grounds include:

Condition number 8 is appealed.

It will not be possible to construct the proposed house in the location shown because the 20m buffer overlaps with the footprint of the house. The house should not have been granted. The reason for the buffer is correct as it will protect an important archaeological area that has yet to be fully investigated and this area should not be reduced.

6.2. Applicant Response

- 6.2.1. The applicant did not respond to the appeal within the allocated time.

6.3. Planning Authority Response

- 6.3.1. The Planning Authority has responded to the appeal, which response includes:

They note that an exclusion area was shown in Figure 10 of the John Purcell Archaeological report which appears generally consistent with the site layout plan.

Clarity regarding Dept. of Housing Local Government and Heritage Requirements would be beneficial in the Board's decision.

7.0 Assessment

- 7.1.1. I consider that the main issues which arise in relation to this appeal are appropriate assessment screening, archaeological potential, visual impact on the historic settlement and recorded monument, and zoning/flood risk, and the following assessment is dealt with under those headings.

7.2. Appropriate Assessment Screening

- 7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site, there is a requirement on the Board, as the competent authority in this case, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision.
- 7.2.2. Appendix 2 to this report details my assessment under this heading.
- 7.2.3. There is no likelihood of impact on any Natura site.

7.3. Archaeological Potential

- 7.3.1. The grounds of appeal states that it will not be possible to construct the proposed house in the location shown, in accordance with condition number 8, because the 20m buffer overlaps with the footprint of the house. The grounds is accompanied by a drawing indicating a 20m buffer, which includes a buffer from the previously identified human remains.
- 7.3.2. Condition number 8, requires a buffer of 20m around the recorded monument and the site of the previously identified human burials. It also requires measures to be implemented to protect this buffer and for monitoring of ground works by a licenced, qualified archaeologist.
- 7.3.3. The site is located within an archaeological area. As previously stated Killeagh is an historic settlement in existence since the founding of a monastery here by St Sinchell

in the sixth century. A recorded monument in the field in which the site is located is OF025-017003 Religious house - Augustinian canons.

- 7.3.4. An Archaeological Assessment report was submitted with the application. The report includes results of archaeological test trenches which were tested on a day in October 2022. Of the seven trenches excavated, four to the north and east of the subject site, trenches 4, 5, 6 and 7, report no archaeological finds of features. The other three are to the west and partly within the revised subject site. The westernmost of these trenches, trench 1, reported possible human remains at various locations along the extent of the trench. The middle trench, trench 2, was excavated for only 1m at the northern end as a small piece of bone was exposed at 0.2m below the surface and it was expected that further human remains would be exposed. The most eastern of the three trenches, trench 3, was opened at the northern end and, as bone was exposed, and it was expected that further human remains would be exposed, no further testing was carried out.
- 7.3.5. It is stated that trenches 1-3 were on level ground which drops off to the east where the remainder of the test trenches were located. The human remains were only located on this elevated platform.
- 7.3.6. The intention to excavate two trenches, one of which extended into the subject site was abandoned due to the fact that further human remains was expected to be exposed. Results from the remaining lengths of trench have not been ascertained. A buffer of 20m around the burials is insufficient, since the remainders of these trenches are likely to contain burials. No excavation was carried out in the location of the proposed dwelling. It therefore appears to me that the archaeological potential of the site is not fully resolved. In such circumstances planning permission should not be granted.

7.4. Visual Impact on the Historic Settlement and Recorded Monument

- 7.4.1. The Archaeological Assessment report refers to visual impact stating that the field for the proposed works contains a 17th century bawn wall that is locally associated with the priory. The proposed development will not impact on these remains physically, it will however be visible from the archaeological remains.

- 7.4.2. It also states that the area of the proposed development originally contained cottages that were demolished in the second half of the 20th century.
- 7.4.3. These cottages can be seen on historic mapping for the area, close to the road edge. The historic settlement of the recent past had a built form with development located close to the road. Development could likely be accommodated on the site, better integrated with the settlement, and limiting the impact on the historic structure. The layout and design of the proposed development, a modern two storey house set well back from the road, is not in keeping with the traditional settlement form. This is a very sensitive site, within the historic village and in close proximity to upstanding remains. In my opinion the proposed development would detract from the visual amenity of the historic settlement and the recorded monument and this is a reason to refuse permission.

7.5. Zoning/Flood Risk

- 7.5.1. The site is zoned in part new residential and a small portion at the south-eastern corner is zoned Open Space, Amenity and Recreation and is also designated 'Constrained Land Use'. 'Constrained Land Use' identifies flood risk areas in settlement plans where only limited development can take place, following a flood risk assessment. The Strategic Environmental Assessment of the Offaly County Development Plan 2021-2027, identifies this corner of the site as within flood zone A.
- 7.5.2. A flood risk assessment has not been carried out, and the development which is for residential use is contrary to the zoning. These are reasons to refuse permission.

8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1 The site is located within an area of archaeological potential where test trenching has identified archaeological material in the western part of the site and it has not been established that the area in which the development would take place

would not contain archaeological finds or features. The archaeological potential of the site has therefore not been resolved, and the proposed development would be contrary to the proper planning and sustainable development of the area.

2 The location and design of the proposed dwelling, set back from the road, and close to upstanding historic remains, would detract from the setting of the recorded monument and from the visual amenity of the historic settlement, therefore the proposed development would be contrary to the proper planning and sustainable development of the area.

3 The development for residential use of an area zoned Open Space, Amenity and Recreation and designated 'Constrained Land Use' would materially contravene the Offaly 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 inappropriate way.

Planning Inspector

27th September 2024

Appendix 1 EIA screening

Appendix 2 AA screening

Appendix 3 Photographs

Appendix 4 Offaly Development Plan 2021 – 2027 extracts.

Appendix 1 - Form 1 EIA Pre-Screening

An Bord Pleanála Case Reference	318425		
Proposed Development Summary	House construction and all associated site works and services		
Development Address	Millbrook, Killeigh, Co. Offaly		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	/
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes		Class.....	EIA Mandatory EIAR required
No	/		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	No EIAR or Preliminary Examination required
Yes	/	10 (b)(i)Construction of more than 500 dwelling units.	Proceed to Q.4
4. Has Schedule 7A information been submitted?			
No	/		Preliminary Examination required
Yes			Screening Determination required

Form 2

EIA - Preliminary Examination

An Bord Pleanála Case Reference	318425		
Development Summary	House construction and all associated site works and services		
Examination			
	Yes / No / Uncertain		
1. Is the size or nature of the proposed development exceptional in the context of the existing environment?	No		
2. Will the development result in the production of any significant waste, or result in significant emissions or pollutants?	No		
3. Is the proposed development located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location*?	No		
4. Does the proposed development have the potential to affect other significant environmental sensitivities in the area?	No		
Conclusion			
Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment?			
There is no real likelihood of significant effects on the environment	EIAR not required	Yes	
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Screening Determination required	No	
	Sch 7A information submitted?		No
There is a real likelihood of significant effects on the environment	EIAR is required	No	

Inspector: _____

Date: _____

Appendix 2

Template 1: Screening the need for Appropriate Assessment Screening Determination

I have considered the project: house construction and all associated site works and services, in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located at Millbrook, Killeigh, Co. Offaly

The proposed development comprises house construction and all associated site works and services.

No nature conservation concerns were raised in the planning appeal.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- Nature of works - small scale and nature of the development,
- Location-distance from nearest European site and lack of connections,
- Taking into account screening report/determination by PA.

I conclude that on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.