



An
Bord
Pleanála

Inspector's Report ABP 318823-24

Development	Retention and completion of dwelling house and all associated site works
Location	Trillickatemple, Longford, Co. Longford
Planning Authority	Longford County Council
Planning Authority Reg. Ref.	2360165
Applicant	Michael Maguire
Type of Application	Retention permission
Planning Authority Decision	To grant retention
Type of Appeal	Third Party
Appellant	James Mulhern
Observers	None
Date of Site Inspection	1 st May 2024
Inspector	Trevor Rue

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1.0 Site Location and Description

- 1.1. The application site, with a stated area of 0.53 hectares, is located in open countryside about 4.6 kilometres to the south of Longford Town.
- 1.2. The site comprises a rectangular area in the south-western corner of a roadside field and is occupied by a nearly completed dwelling house. The site takes access from the local road L5213. There is a splayed brick wall alongside the road frontage.
- 1.3. The nearest neighbouring dwellings on the northern side of the road are about 450 metres to the east and about 625 metres to the west.

2.0 Proposed Development

- 2.1. The proposal is to retain and complete the existing dwelling with a similar design to that previously approved but with the addition of a side extension; and to relocate the previously permitted garage to the rear of the site. The proposed development also includes a post-and-rail timber boundary fence to be backfilled with native deciduous trees, a wastewater treatment system with percolation area, and ancillary works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On 13th December 2023, Longford County Council decided to grant permission subject to 14 conditions. Condition 2(a) is a repeat of an occupancy condition attached to the previous planning permission.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. A planner's report was produced on 21st November 2023 and, following the submission of further information by the applicant, a second report was produced on 12th December 2023. These reports provided the reasoning for the authority's decision.
- 3.2.2. The planner's assessment may be summarised as follows:

- The planning authority was made aware of the death of the site owner and the proposed sale of the estate. The planning conditions identified in the original grant of planning permission remain valid and will be transferred to the new permission if granted, including the specific residency occupation condition.
- A report from the applicant's engineer confirms that the design of the wastewater treatment plant (WWTP) was changed given that the site was more suited to a tertiary treatment system with an eco-flo filter. It also confirms that the installed WWTP is in full compliance with Environmental Protection Agency's Code of Practice 2021 and that the applicant is willing to accept as a condition of planning permission that once the WWTP is commissioned a five-year maintenance contract will be obtained and a copy will be issued to the planning authority prior to occupation. The explanation for the change in design of the installed WWTP is accepted.

Other Technical Reports

- 3.2.2. Uisce Éireann had no objection to the proposed development subject to the applicant signing a connection agreement.

3.3. Third Party Submission

- 3.3.1. The present appellant made a submission to the planning authority, the substance of which was repeated in his appeal to the Board.

4.0 Planning History

- 4.1. **PL19-337:** On 23rd December 2019, Mr Joe McManus applied for outline planning permission for a dwelling house and garage at the present application site. In a letter seeking further information, the planning authority noted that the site was in an area of urban-generated development pressure. It requested Mr McManus to indicate a genuine need for the development at this location. The authority stated that it was not in a position to look favourably on speculative development in this area. Mr McManus withdrew the application on 2nd October 2020.
- 4.2. **PL20-238:** On 19th October 2020, Mr McManus applied for permission for a dormer bungalow type dwelling house with detached garage at the site. On the local need

form he stated that he had lived at an address in Longford Town for 18 years, that the application site formed part of a landholding he had owned over the same period, and that he intended to take over the running of the landholding/farm. The Council decided to grant permission subject to 15 conditions. There was no appeal and a final grant of permission was made on 19th January 2021.

4.3. Condition 2(a) of the 2021 permission reads as follows:

“The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant’s immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant.

Reason for Condition: To ensure that the proposed house is used to meet the applicant’s housing needs and that the development in this rural area is restricted to meeting essential local need in the interests of the proper planning and sustainable development of the area.”

5.0 Policy Context

5.1. Development Plan

- 5.1.1. Figure 4.5 of the Longford County Development Plan 2021-2027 shows the application site in an Area under Urban Influence. It is stated in Section 4.8.12 of the Plan that such areas exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large towns within the county with evidence of considerable pressure for development of housing owing to their proximity to such settlements. The policy in these areas is to facilitate housing development by people who have strong links to the particular rural area, who are an intrinsic part of the rural community. Such persons would normally have spent substantial periods of their lives living in the rural area as part of the established rural community.
- 5.1.2. County Policy Objectives (CPOs) for rural housing are set out on Page 105 of the Development Plan. CPO 4.24 is to accommodate demand from individuals for permanent residential development in defined Rural Areas under Strong Urban

Influence, subject to good planning practice, environmental carrying capacity and landscape protection considerations.

5.1.3. CPO 4.24 goes on to say that applicants seeking permission for the development of single dwelling rural housing in such areas must satisfy the following criteria:

1. The applicant was born within the local rural area or is living or has lived in the local rural area for a minimum of five years at any stage prior to making the planning application. The “local rural area” for the purpose of this policy is defined as the area generally within an 8-kilometre radius of where the applicant was born, living or has lived, but excludes towns and villages.
2. The applicant has a functional economic or social requirement to reside in this particular rural area. Economic requirements include persons involved in full-time farming, horticulture or forestry as well as similar rural-based part-time occupations where it is the predominant occupation. Pending the making of the revised Sustainable Rural Housing Guidelines by the Minister, a functional social requirement in County Longford shall be taken as compliance with Point 1 above.
3. The applicant does not already own or has not owned a house in the open countryside.

5.1.4. CPO 4.28 on Page 106 of the Development Plan is to attach an occupancy condition to planning permissions in respect of rural housing applications in identified Rural Areas under Strong Urban Influence, restricting the use of the dwelling to the applicant, as a place of permanent residence. The period of occupancy will be limited to a period of seven years from the date of first occupation.

5.1.5. CPO 4.32 is to discourage ribbon development (defined as five or more houses alongside 250 metres of road frontage). The Council will assess whether a given proposal will exacerbate such ribbon development, having regard to specified factors.

5.2. Natural Heritage Designations

The proposed site is not located within any Natura 2000 site. The closest site is Mount Jessop Bog Special Area of Conservation, which is located 1.7 kilometres to the south. Its qualifying features are degraded raised bogs and bog woodland.

5.3. EIA Screening

5.3.1. Having regard to the nature and modest scale of the proposed development and the separation from sensitive environmental receptors, I am satisfied that the development is not likely to give rise to significant environmental impacts and the requirement for submission of an environmental impact assessment report and the carrying out of environmental impact assessment may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The arguments presented by the appellant, who has an address in an adjoining townland, may be summarised as follows:

- The planning permission granted to Mr McManus in 2021 was void as he did not comply with the occupancy condition. He was not entitled to get permission as he owned at least two other houses and was not in housing need. The late Mr McManus was a former senior engineer with the Council.
- In October/November 2022, the appellant notified the Council that the site was being developed by a third party and that recycled fill (demolished concrete with steel through it) had been brought to the site. He queried whether the developer had a permit for waste recycling. The Planning Enforcement Department replied stating that the new owner had been identified and a warning letter was being issued. He received no answer from the Environment Department.
- The Council never gave permission to the builder Mr Maguire to develop or live on this site. Although none of the alterations which he now seeks to retain were approved in the 2021 permission, he had the house advertised for sale with a guide price of €320,000. The purchaser of the house never applied for permission to build.
- The applicant has not demonstrated a rural-generated housing need at this location. Other applicants for planning permission must think this behaviour acceptable and that housing need is not a serious issue in Co. Longford. It seems the Council makes planning rules and allows select people to flout them.

- The development exacerbates ribbon development and results in significant overdevelopment of the area. It would lead to an overconcentration of septic tanks, which would endanger public health. It would give rise to further pressure for community and public services which would be uneconomic to provide.

6.2. Applicant Response

6.2.1. The response of the applicant's agents, Cunningham Design and Planning Consulting Engineers, may be summarised as follows:

- The applicant, who is from the Stonepark area (to the west of the application site and about 3 kilometres away by road), purchased the site from the late Joe McManus to construct the dwelling house that was granted planning permission in 2021. When he was in the course of completing the dwelling he was approached by Mr Shawn Tomy and his partner Christy Pious who asked Mr Maguire if they could purchase it. The agents were satisfied that the applicant and also the potential purchasers satisfy the local rural housing need test.
- On 21st August 2023, the agents forwarded to the planning authority a letter written by Mr Tomy and a housing need form filled out by him. The agents stated in the cover letter that the applicant had sold the dwelling to the couple.
- Mr Tomy's letter reads in part as follows:

"We both work for Abbott Diagnostics, Lisnamuck, Co. Longford (about 7.9 kilometres from the site). I work as a Developmental Research Scientist in Abbott since over two years and my wife works as a Quality Assurance Specialist since over a year. We have been staying in Longford since June of 2021. We were working for Enfer Labs, Co. Kildare before and we moved to Longford for our jobs in Abbott. As a company, the working culture is great and hence, we see great opportunities to progress our career through Abbott.

We are expecting a child in January of next year and are hoping to buy this property and make it our family home. As we both are working, the closeness of the site to amenities like the Kids Paradise Montessori and Playgroup and Stonepark National School would be very helpful. We work in a fast-paced

busy environment where the working hours could go longer than 8 hours most days, a house closer to the workplace would be ideal.

We are members of the Sports and Social Club and are active members in supporting the charity activities done by Abbott in supporting local schools.”

- On the local need form, Mr Tomy listed his places of residence as follows:
2018 to 2020: two addresses in Athy, Co. Kildare
2020 to 2021: guest house in Carlow
2021 to 2022: Ardnacassa Avenue, Longford (in the town)
2022 to present: Forthill, Aughnacliffe, Longford (about 27 kilometres to the north east of the application site)
- On 22nd August 2023, the planning authority notified the applicant’s agents that it consented to occupation of the dwelling approved under the 2021 permission by Shawn Tomy and Christy Pious under Condition 2 of that permission.
- As chartered engineers the applicant’s agents have designed and supervised a proprietary wastewater treatment system with tertiary treatment in the form of a coco filter. This gives the greatest form of effluent treatment for a one-off rural dwelling. As assigned certifiers they are satisfied that the development would not in any way endanger public health or groundwater quality. A Certificate of Compliance is attached together with certification of the engineer’s qualifications and indemnity insurance to the value of €1,000,000.

6.3. Planning Authority Response

6.3.1. None

7.0 Assessment

7.1. Issues

7.1.1. Having inspected the site and considered in detail the documentation on file for this third-party appeal, it seems to me that the main planning issues are:

- whether the development is acceptable in principle in the countryside;

- whether it exacerbates ribboning and constitutes overdevelopment; and
- whether it would endanger public health.

7.1.2 I must also consider whether an appropriate assessment (AA) is required pursuant to the European Union Habitats Directive (92/43/EEC).

7.2. Acceptability in Principle

7.2.1. This appeal does not provide a means by which development rights conferred by the 2021 permission can be removed. Should the Board decide to refuse the present application, the site owner would still be entitled to complete the physical development works (including erection of the approved garage) in accordance with the previous application drawings at any time before 19th January 2026. The acceptability in principle of constructing a dwelling on the site has been established.

7.2.2. In regard to physical works, all that is left for consideration is the acceptability of the proposed changes to the design and layout of the development. No one has taken issue with these changes and I do not find any of them objectionable. Refusal of planning permission would not serve any useful purpose.

7.2.3. The Longford County Development Plan takes a restrictive approach to the occupancy of new dwellings in designated Areas under Urban Influence. Persons who wish to occupy such dwellings must show that they have strong links to the particular rural area and that they are an intrinsic part of the established rural community. They must not already own or have owned a house in the open countryside.

7.2.4. Remarkably, neither the planning authority report on the late Mr McMahon's application PL20-238 nor its report on the current application addressed the local need criteria. The reasons for the authority's positive response to the information provided by Mr Tomy are not recorded in its letter of 22nd August 2023. How his need case was assessed having regard to CPO 4.24 of the Development Plan is not explained.

7.2.5. The evidence as to whether the sale of the property to Mr Tomy and Ms Pious has been completed is contradictory. At the time of my site inspection, all the blinds were drawn and it was unclear whether the dwelling was occupied and if so by whom.

7.2.6. Condition 2(a) of the Council's decision, if adopted by the Board, would require the applicant, Mr Maguire, to occupy the dwelling in the first instance. While Mr Maguire is said to have local roots, there is no persuasive evidence that he has an essential

local need as defined in CPO 4.24. I consider that if permission is granted the standard occupancy condition should be amended to allow for occupation by persons who in the opinion of the planning authority have an essential local housing need as defined in the Development Plan.

7.3. Ribboning and Overdevelopment

- 7.3.1. Once it is recognised that there is already an extant permission for a dwelling on the application site, then objections concerning ribboning and overdevelopment fall away. In any case, given the existing spacing of houses along the L5213, the insertion of the proposed house does not give rise to ribbon development as defined in CPO 4.32. While driving along the road past the application site, I did not find it overdeveloped.

7.4. Public Health

- 7.4.1. I see no good reason to doubt the assurances given the applicant's chartered engineers that the proposed wastewater treatment system would not endanger public health or groundwater quality. Should the Board decide to grant permission, it could attach a condition providing for maintenance of the system.

7.5. Appropriate Assessment Screening

- 7.5.1. I endorse the findings of the AA screening report prepared by the planning authority. Having regard to the nature and scale of the proposed development, the installation of a certified wastewater treatment system, and the distance from the nearest Natura 2000 site, it is possible to screen out the requirement for the submission of a Natura impact statement and the carrying out of an AA at an initial stage.

8.0 Recommendation

- 8.1. I recommend the Board to grant permission subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the planning history of the application site and to the Longford County Development Plan 2021-2027, it is considered that the acceptability in principle of constructing a dwelling on the site has been established and that the proposed changes to the design and layout of the development would not involve ribbon development, result in significant overdevelopment or endanger public health. A grant

of retention permission would therefore be consistent with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be completed and retained in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: To ensure that the development accords with the permission.</p>
2.	<p>(a) For a period of seven years from the date of this permission, the dwelling shall not be occupied as a place of permanent residence by anyone other than persons in respect of whom the planning authority has certified in writing that in its opinion they have an essential local housing need as defined in the County Development Plan.</p> <p>(b) Within two months of the date of this permission, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.</p> <p>Reason: To ensure that development in this rural area is restricted to meeting essential local need in the interests of the proper planning and sustainable development of the area.</p>
3.	<p>Within two months of the date of this permission the fencing and planting shown on the site layout plan hereby approved shall be completed and a hedgerow composed only of native species shall be planted along the site frontage behind the existing wall, sufficient to provide screening from the road.</p> <p>Any trees or hedging which die, are removed or become seriously damaged or diseased, within five years from the date of this permission shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p>

	Reason: In the interest of visual amenity.
4.	<p>The applicant shall prior to occupation submit to the planning authority a five-year maintenance contract for the installed wastewater treatment plant.</p> <p>Reason: In the interest of public health.</p>
5.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority.</p> <p>Reason: In the interest of public health.</p>
6.	<p>The developer shall enter into a connection agreement with Uisce Éireann.</p> <p>Reason: In the interest of public health.</p>
7.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the development contribution scheme made under Section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the occupation of the dwelling 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 the Board 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 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>

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.



TREVOR A RUE

Planning Inspector

23rd May 2024