



An
Bord
Pleanála

Inspector's Report

ABP-319262-24

Development	Proposed dwelling, garage, carport, waste water treatment system, driveway and all ancillary site works
Location	Shanbally, Norwood, Nenagh, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2360989
Applicant(s)	Paddy Grace.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party v Decision
Appellant(s)	Kate Duggan.
Observer(s)	None.
Date of Site Inspection	03 August 2024.
Inspector	L. Gough

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1.0 Site Location and Description

- 1.1. The proposed development is located in the townland of Shanbally, c.7km to the southeast of Nenagh and c. 1.5 km to the west of the western outskirts of Toomevarra settlement, Co. Tipperary.
- 1.2. The appeal site, which has a stated area of 0.59ha, is located on a local road, the L2255, c. 0.5km from the R445, within an 'Area of Urban Influence' as designated in the Tipperary County Development Plan 2022-2028.
- 1.3. The proposed dwelling site is generally flat, sloping south-westwards towards a treeline and the Ballinaboy/ Ballintotty River, which is c.90m from the south-western site boundary.
- 1.4. A bungalow dwelling is located on a site to the immediate south-east of the proposed dwelling site and a two-storey dwelling is located immediately south of that bungalow. A complex of agricultural farm buildings, including Lismore House, a protected structure (Ref. TRPS250), is situated to the east, on the opposite side of the L2255 and c.200m down a private bogreen/ driveway.
- 1.5. Shanbally House, a Protected Structure (Ref. TRPS355) and part of Shanbally House and Demesne, a 200-acre Georgian estate and farmland, is situated c.700m to the north-west of the proposed dwelling site.
- 1.6. The site and surrounding adjacent lands are currently generally in agricultural use. The southern and eastern (roadside) boundaries are comprised of mature hedgerows.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following:
 - 318sqm Dwelling with maximum ridge height of 6.67m
 - 42sqm Garage and carport
 - Wastewater treatment system
 - New entrance and driveway

- All associated site works

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission subject to fourteen conditions. These are of a generally standard nature, and relate to surface water management, water connection, domestic effluent, vehicular access/ sightlines and roadside/ hedgerow boundaries and landscaping, external finishes, the undergrounding of service cables associated with the proposed development, construction management and payment of a development contribution.

Conditions of note include Condition 2, which relates to the requirement that the proposed dwelling be first occupied by the applicant as a place of permanent residence for a period of 7 years. Condition 9 specifies that the proposed garage shall be used only for purposes incidental to the enjoyment of the dwelling house and shall not be used for any residential, commercial or industrial purpose; Condition 13 requires a 1:500 scale landscape plan and accompanying planting schedule to be subject of a written agreement by the Planning Authority prior to the commencement of development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The planner's report assesses the development in terms of the planning history within the area, noting that the same applicant was refused permission, on appeal (ABP Ref. 312742-22), on a site located c.250m north of the subject proposed dwelling site.
- The planner's report also considers and assesses the proposed development in terms of rural housing policy, siting and design, impact on residential amenity, access, servicing and flooding. The report states that the applicant has provided substantial documentation to demonstrate their 'social' housing connection to the area, and that having regard to same, the planner was

satisfied that their housing need had been demonstrated, in compliance with Policy 5-11.

- The planning report highlights that water supply to the proposed dwelling will be by public water mains and that a speed check form had been submitted demonstrating that sightlines of 90m in both directions would be appropriate. The planning report also noted that a Site Suitability Assessment accompanied the planning application, which indicated that the site is underlain by a locally important aquifer with moderate vulnerability and that the site drainage values meet EPA 2021 Code of Practice requirements.
- The planning report recommended a grant of permission, generally as set out in the Chief Executive's Order.

3.2.2. Other Technical Reports

District Engineer – Indicates satisfaction with the proposals for 90m sightlines as being achievable as shown on the site layout plan, subject to conditions relating to the setting back of the roadside front hedgerow south of the proposed entrance and no planting being carried out which would hinder achieving the sightlines.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

- One submission was received by the planning authority in relation to the proposed development, with the submission being made by the appellant in the subject case. Matters raised include that the land in question previously formed part of the curtilage of the Shanbally Estate and that concerns raised in relation to the previous application (ABP Ref. 312742-22), still stand. Such matters, include:
 - Vistas to and from Shanbally House (RPS Ref. S355);
 - Potential establishment of a commercial business by the applicant;
 - Excessive scale of the proposed dwelling;

- Location of a proposed dwelling for the applicant would be more appropriate and sustainable on family lands in Coolkereen on the outskirts of Toomevarra village;
- The intention of the proposed dwelling being used as a permanent dwelling or holiday home, is queried;
- New Development Plan indicates that sightlines of 160m in both directions is required; this is not achievable;
- The scale and mass of the proposed dwelling, along with its excessive length (40m), would comprise an element that is out of character with the surroundings and it would visually dominate the approach to Shanbally from Grennanstown;
- An Bord Pleanála's previous reason for refusal remains applicable.

4.0 Planning History

Same Site: None

Site c. 250m to the north (same applicant as subject appealed planning application):

LV92.312448: Application for leave to appeal granted for the following reasons and considerations: It was considered that it had been shown that –

- (i) the development, in respect of which a decision to grant permission has been made, will differ materially from the development as set out in the application for permission by reason of condition number 5 imposed by the planning authority to which the grant is subject, and
- (ii) (ii) the imposition of condition number 5 will materially affect the applicant's enjoyment of the land adjoining the land in respect of which it has been decided to grant permission.

ABP-312742-22: Permission **refused** for the construction of a dwellinghouse, garage, wastewater treatment system, entrance, driveway along with all ancillary site works. The basis of the Board's refusal of that application was for two reasons, namely traffic safety and visual impact on a protected structure.

Adjacent site (south-west): PA Ref. 03/51/0940 – Permission granted for an extension with basement and revised entrance.

5.0 Policy Context

5.1. Development Plan

- The Tipperary County Development Plan (TCDP), 2022-2028, is the operational plan for the area and came into effect on 22nd August 2022. The Core Strategy of the Development Plan makes a distinction between rural areas 'under urban influence' and the areas outside of these or 'open countryside' as part of its overall approach to strengthening the rural fabric and the protection of the environment.
- The TCDP policy for one-off rural houses in the countryside (Policy 5-11), has been developed in compliance with NPO 19 of the NPF, the Circular Letter PL 2/217 relating to the Flemish Decree, the 'Sustainable Rural Housing: Guidelines for Planning Authorities' (DEHLG, 2005) and the broader settlement strategy of the CDP.
- Section 5.5.1 outlines the rural area designations and outlines the approach to 'Areas under Urban Influence' and the 'Open Countryside'. The site is in a rural 'Area 'under Urban Influence'. In 'Areas Under Urban Influence' and 'Primary Amenity Areas', the Council will consider single houses for persons where the criteria set out in Category 1A or B, or Category 2 hereunder are met:

Category 1: 'Economic Need' A:

The applicant must demonstrate an economic need to reside in the area through active employment in farming/agricultural activity (farming, horticulture, forestry, bloodstock). The farm must exceed 20ha in total and all the criteria below is met:

- (i) The applicant must be actively engaged in farming,
- (ii) The applicant must demonstrate that they have been engaged in farming at that location for a continuous period of over 5 years prior to making the application,
- (iii) The applicant does not or has never owned a house in the open countryside.

Economic Need B:

The applicant must i farming/agricultural activity provides local employment.

And all the criteria below is met:

- (i) The applicant is trained in good farming practice (or qualifies for an exemption from training), owns or occupies, works and maintains land for the purposes of achieving outputs, and demonstrate that they have been engaged in farming/ agricultural activity at that location for a continuous period of over 5 years prior to making the application
- (ii) The applicant does not, or has never owned a house in the open countryside,
- (iii) A detailed 5-year business plan will be required to demonstrate 'compliance with Section (i)

Category 2: 'Social Need':

The applicant must demonstrate a social need to reside in the local rural area for social purposes in line with Table 5.3; and all the criteria set out below is met:

- (i) Within a 'Primary Amenity Area', the applicant must have resided within 5km of the site where they intend to build for a substantial period of their lives (10 years),
 - (iii) Within an 'Area of Urban Influence', the applicant must have resided within 10km of the site where they intend to build for a substantial period of their lives (10 years), and
 - (iv) (iii) The applicant does not, or has never owned a house in the open countryside.
- Chapter 8 (Enterprise and Rural Development), Section 8.4.2 (Equine and Related Industries): *Tipperary is internationally recognised for its bloodstock industry. Quality land coupled with an experienced labour force, whose tradition of working with horses has resulted in some of the world's best breeding and training establishments being in the county. The Council will seek to ensure that the vitality and viability of the equine industry is maintained through the appropriate management of the rural environment on which the equine industry is reliant. The Council will seek to protect, promote and enhance the*

development of the equine industry and to continue to promote the county as a recognised centre of excellence for the bloodstock industry and equine based leisure and tourism.

- Chapter 13 Built Heritage
- Section 13.4 Record of Protected Structures
- Policy 13-1: Encourage and support the sympathetic restoration, re-use and maintenance of protected structures thereby ensuring their conservation and protection. In considering proposals for development, the Council will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities, (DAHG 2011) or any amendment thereof, and proposals that will have an unacceptable impact on the character and integrity of a protected structure or adjoining protected structure will not be permitted.
- Volume 3 – Appendix 3 Rural Housing Design Guide; Appendix 6 Development Management standards. Section 3.5 relates to Site Proportion and Set-Back and notes that *“the new house will need to be set-back an acceptable distance from the public road to provide adequate frontage for planting and to reduce the visual impact of development”*. The set-back distance will vary according to plot size, adjacent building line and the natural features of the site generally. Figure 10 provides an illustrative guide to appropriate setbacks.

Section 6.0 outlines requirements for Parking, Traffic and Road Safety, and outlines the parameters associated with operational and design speed and the measurement of same, stating that *“on non-national roads, in cases of particular difficulty, the use of a lower design speed for a given mandatory speed limit (as set out in table 6.2) may be accepted by the Council. In such a case, the applicant must demonstrate to the satisfaction of the Council that the ‘operational speed’ of the road is less than the specified design speed. In such cases, the Council may accept the use of the lower speed than identified in column 2 of Table 6.2 above.”* Section 6.1.1 further qualifies that *“the minimum design or operating speed that will be allowable under any circumstances for a rural non-national road shall be 50kph, and for an urban non-national road it shall be 40kph. The Council’s decision on the appropriate design or operating speed shall be final.”*

- The **Rural Housing Design Guide** is set out in **Appendix 4** of the Development Plan.

5.2. **National Policy**

- Climate Action Plan 2023
- Project Ireland 2040 – National Planning Framework (2018) and National Development Plan 2021-2030

National Policy Objective 15

Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

National Policy Objective (NPO) 19

Makes a distinction between areas under urban influence and elsewhere. It seeks to ensure that the provision of single housing in rural areas under urban influence on the basis of demonstrable economic and social housing need to live at the location, and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. **Regional Policy**

- Regional Spatial and Economic Strategy for the Southern Region

5.4. **National Guidance**

- Sustainable Rural Housing, Guidelines for Planning Authorities (2005)
- Environmental Protection Agency's 2021 Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)
- Architectural Heritage Protection Guidelines for Planning Authorities (Dept. of Arts, Heritage and the Gaeltacht, 2011).
 - The guidelines deal specifically with the 'Curtilage and Attendant Grounds' of protected structures, within Chapter 13, and advise that planning authorities should *'take care to identify, using old maps or other documentation, any surviving boundary walls and other details which*

originally pertained to the protected structure and now lie within its attendant grounds and which merit protection’.

- Para. 13.1: *‘By definition, a protected structure includes the land lying within the curtilage of the protected structure and other structures within that curtilage and their interiors. The notion of curtilage is not defined by legislation, but for the purposes of these guidelines it can be taken to be the parcel of land immediately associated with that structure and which is (or was) in use for the purposes of the structure...In the case of a large country house, the stable buildings, coach houses, walled gardens, lawns, ha-has and the like may all be considered to form part of the curtilage of the buildings unless they are located at a distance from the main building’*
- Para 13.2: *‘The attendant grounds of a structure are lands outside of the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. In many cases, the attendant grounds will incorporate a designed landscape deliberately laid out to complement the design of the building or to assist in its function...a planning authority has the power to protect all features of importance which lie within the attendant grounds of a protected structure. However, such features must be specified in the RPS...’.*
- Paragraphs 13.3-13.7 set out a series of general principles (10No) to be considered when considering development proposals within the curtilage or attendant grounds of a protected structure.
- Section 13.8.3 Other Development Affecting the Setting of a Protected Structure – *‘The extent of the potential impact of proposals will depend on the location of the new works, the character and quality of the protected structure, its designed landscape and its setting’....‘Proposals should not have an adverse effect on the special interest of the protected structure’.*

5.5. Other Guidance

- CIRIA SuDS Manual (2015)

5.6. Natural Heritage Designations

None relevant - the appeal site is not located in or immediately adjacent to a European Site.

The Killavalla Wood pNHA (Site Code 001178) is the closest designated site and is situated c.6.0 km south of the proposed development site. The Slievefelim to Silvermines Mountains SPA (site code: 004165) is c 8.6 km to the south-west of the appeal site and the Kilduff, Devilsbit Mountain pNHA and SAC (site Code: 000934), is located approximately 11.65 km south-east of the appeal site.

5.7. EIA Screening

See Form 1 and Form 2. Concerning the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development will have an adverse impact on the character and setting of Shanbally House and Demesne. The location and scale of the proposed development will affect a significant adverse and irreversible impact and would not accord with accepted best conservation practice and protocols.
- It would negatively impact the amenities of the appellant's property, the value of same and on the architectural heritage importance of Shanbally House and Demesne which is a protected structure. The proposed development is thus contrary to Policy 13-1 of the Development Plan.
- The proposed development would materially contravene guidelines published under Section 28 of the Planning and Development Act 2000, as amended, in relation to impact of architectural heritage and also with regards to one-off housing in the rural area.

- The appeal references the Board's decision on the previous planning application on the same landholding which was refused (ABP-312742-22), and the reasons thereof. It also refers to paragraph 7.3.15 of the Inspector's assessment as being of direct relevance. None of the considerations grounding the Board's previous refusal, have been addressed or overcome.
- Whilst the proposed development is located further away from Shanbally House, it remains within its curtilage; it will be situated on land which once comprised an integral part of the Shanbally demesne. The relocation does not represent a materially significant reduction in the extent of visual impact on Shanbally House and its curtilage. It is the opinion of the architectural heritage consultant that the proposed development is situated within the 'curtilage/attendant grounds' of Shanbally House.
- The planning application, subject of the appeal, was not referred to the prescribed bodies with competency in architectural heritage, particularly the Dept. of Housing, Local Government and Heritage, An Taisce, and The Heritage Council.
- The finished floor level of the proposed dwelling will be 102.4m – 3.94m higher than the finished floor level of Shanbally House which is at 98.46m, giving rise to concerns in relation to the visual impact and vistas towards and from Shanbally House across the attendant demesne landscape. The new proposal appears more elevated and prominent than the previously refused site.
- The conclusion of the AHIA opinion is that the proposed development, *by virtue of:*
 - *Its elevated siting (floor level c. higher)*
 - *Its larger footprint and higher ridge levels*
 - *Its particular articulated form, length, massing and scale,**(will) be very visually intrusive in what is otherwise an open undulating pastoral landscape and will significantly impact prospect from the Protected Structure and its curtilage and attendant grounds.*

- The proposed development is non-compliant with the policies and objectives of the Architectural Heritage Protection Guidelines for Planning Authorities, 2011, is a material contravention of the Tipperary County Development Plan (ref. section 5.5.1 of the Development Plan), the Sustainable Rural Housing Guidelines and Policy Objective 19 of the NPF.
- The applicant is not intrinsic to the subject land or to its environs and his family home is 6.5km from the subject appeal site. The applicant is currently in full-time employment in Dublin and also has a home there in which he resides, full-time. He is not farming the land, nor is he the owner or operator of a farm, either at the subject lands or at any other location.
- The proposed development does not comply with the required 160m sightlines (in both directions) for rural non-national roads with a mandatory speed limit of 80km/h.
- The proposed development amounts to a breach of the Water Framework Directive 2000/60/EC, as the appellant is not satisfied that the proposed waste water treatment plant can ensure protection of nearby surface waters and groundwaters.
- The local authority has failed to ensure the submission of objective information which would enable them to conduct an assessment in accordance with the requirements of the Habitats Directive (92/43/EEC), and has therefore failed to carry out an AA of the proposed dwelling and wastewater treatment system as it is obliged to do.
- The proposed development would contribute to the encroachment of random rural development in an area of architectural heritage sensitivity and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. This is unsustainable development that must be avoided in an area that is under pressure for such development.
- The appeal is accompanied by a number of appendices as supporting documentation, including:

- a photomontage of the proposed dwelling as viewed from the first floor of Shanbally House;
- A context report and update/ progress report in relation to the restoration of the ornamental grounds, conservation of the parkland landscape and management of the c.186 acre farm, prepared by specialist Amenity and Environmental Landscape Advisors, dated March 2021 and February 2022 respectively;
- An Architectural Heritage Impact Assessment Opinion of the subject appeal proposed development.

6.2. Applicant Response

- The applicant's response to the third-party appeal is accompanied by a Landscape Design, Conservation Report, and a Visual Impact Assessment.
- Images ('photomontages') of the proposed dwelling, provided by the appellant, and information provided by their consultant, are inaccurate/ misleading, do not represent the proposed materials nor colour scheme, and have been provided without benefit of a site visit. A more accurate photographic representation is provided to compare same.
- The proposed dwelling site is not within the curtilage of Shabally House, will be located at a significant remove from same and is not listed within the RPS.
- It is the view of the applicant's conservation architect that the pond to the south is and was the absolute limit of the Shanbally House curtilage on the south side.
- There is no feature (stable buildings, coach houses, walled gardens, lawns, ha-has and the like) on the proposed dwelling site. The NIAH garden survey of Shanbally states that there are no architectural features within the garden except the principal building, and that there are no significant landscape 'movement' features such as avenues, woodlands drives etc.
- Subject appeal site has been moved c.310m away from the previously proposed dwelling site location and Shanbally House, to the southernmost extent of the applicant's landholding.

- Landscaping is proposed (Appendix 1 Image C of the Landscape Report submitted as part of the Response to Appeal) within the applicant's landholding, which will replicate the locations of trees and hedgerows as indicated on 1839 historical mapping; serving as a screening solution and a means of restoring the area's original trees and hedgerows.
- Conservation architect report states that it is the writer's professional opinion that the proposed dwelling will be located within what was farmland and historic hedgerows separating (both visually and physically) this area from Shanbally House. The site of the proposed development is outside any attendant grounds or area that was part of '*a designed landscape laid out to complement the design of the building...*'.
- In addition to his business in Toomevara, Spelling for Me Ltd, and active involvement in Grace Sawmills (a family business in Toomevarra of which he will become the owner in 2025), the applicant is actively engaged in farming (for over 5 years) and is a national hunt horse breeder (since 2010) with broodmares requiring intensive care during their pregnancies; necessitating his presence in Shanbally. Records relating to the breeding endeavours, equine registration number and registration with the Department of Agriculture, Food and the Marine, have been provided.
- The proposed dwelling location would enable the applicant to live and commute in closer proximity to both his business interests in Toomevarra, as well as his active farming operations; reducing his current commute from his rental accommodation in Nenagh significantly.
- The applicant references section 8.4.2 (Equine and Related Industries) of the County Development Plan and notes that he is a proactive supporter of the equine industry in Tipperary and plays an integral role in advancing the industry's interests, with tangible contributions to the industry's growth, visibility, tourism and leisure. Documentation in support of same is submitted.
- Proposed sightlines meet the requirements of the County Development Plan and have been assessed and accepted by the County Council.

- The appellant has previously indicated acceptance with the proposed relocated dwelling. Their conservation consultant previously indicated (text copied from report) that the subject appeal proposed site location *‘would minimise or even eliminate visual impact’*, and their architectural consultant indicated that *“it may be a more appropriate solution to condition that the applicant locate the dwelling towards the southern end of the landholding. There are currently two number dwellings located in this area and adequate space is available for provision of future farm buildings, a farm yard etc...”*. These statements are now inconsistent with the appeal which has been lodged.
- The existing single storey dwelling adjacent to the proposed subject appeal dwelling, has no impact on the protected structure (Shanbally House).
- Proposed relocated dwelling addresses previous reasons for refusal by An Bord Pleanála, with regard to road and traffic safety and visual impact to Shanbally House.
- Report provided by the Grade 1 accredited Conservation Architect notes that the proposed single storey dwelling is unlikely to be seen from Shanbally House (at ground level [98.46m OD]), which is 3.94m below the floor level of the proposed dwelling, except perhaps for the roof ridge hidden in a line of dark foliage.
- The visual impact assessment notes that *“Even during the winter months with no leaf canopy, the combination of the trees’ branches breaks up the lines of the structure and causes it to largely blend in with the trees to the rear of the proposed house. As the trees grow, for the first several years, the lower canopy may hide more of the proposed house. When the view from Shanbally House is considered, the level of impact is considered as imperceptible.”*
- Applicant’s Conservation Architect opinion is that *“the proposed development has little or no impact on the Protected Structure Shanbally House and the Planning Authorities assessment of the application in relation to the protection of the architectural heritage was correct and in accordance with best conservation practice and meets the requirements as set out in Part IV of the 2000 Planning Act (as amended) and International Conservations e.g. Burra Charter 2013”*.

6.3. Planning Authority Response

None on file.

6.4. Observations

None.

6.5. Further Responses

None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, after an inspection of the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues to be considered in this appeal are as follows:

- Principle - Rural Housing Policy
- Impact on Architectural Heritage
- Public Health
- Water Quality
- Traffic Safety
- Appropriate Assessment
- Other Issues

Principle – Rural Housing Policy

7.2. The site is located within a rural 'Area Under Urban Influence'. I refer to Policy 5-11, where it is the stated intention to facilitate proposals for dwellings in the countryside outside of settlements in accordance with NPF Policy NPO 19 for new Housing in the Open Countryside where either an economic or social need is met. All applicants for one-off rural housing will need to demonstrate compliance with the qualifying criteria of one of these categories unless otherwise specified as being located within an area where the Rural Housing Policy does not apply.

- 7.3. As with the previous appeal on the landholding and in terms of the information submitted with the application and response to appeal, it is noted that the applicant's family home is located c. 5km from the site. His family own 'Grace Sawmills' based on the outskirts of the village of Toomevara and he is the future part owner of the sawmills and the director of 'Spellings for Me' which is run from his family home on the outskirts of the village of Toomevara. His family own a small landholding (which is nonetheless in excess of 20Ha) and the applicant will shortly inherit these lands. A significant amount of documentation has been submitted with the application to demonstrate his long-term links with the area and social and economic housing need, including that relating to his equine pursuits and activity.
- 7.4. The information submitted in relation to establishing such long-term links, includes:
- Confirmation of the existence of the applicant's business, since 2019, on the outskirts of Toomevara, which has grown and provides additional employment within the local area;
 - Confirmation of the existence of the family sawmill business, operating over more than 30 years, also on the outskirts of Toomevara;
 - Confirmation of the Shanbally farm landholding as the Department of Agriculture, Food and the Marine registered equine premises of the applicant's broodmare and equine operations, and records of his breeding endeavours through the Weatherbys Ireland General Studbook Account, since 2011. Records are also provided of participation in National Hunt races.
 - Confirmation that the applicant was born and grew up in the local area, to a farming family living within the Toomevara locality and also attended a local rural national school whilst growing up, located c. 2.6km from the proposed dwelling. Confirmation letters and affidavits are also provided in regard to these matters.
- 7.5. The grounds for appeal assert that the applicant owns a house and lives in Dublin. This issue has been addressed and responded to in the application documentation as well as the previous appeal, wherein it is stated that the applicant ceased working in Dublin in 2020 and returned to his family to live in Toomevara (at the family home) and subsequently in rental accommodation in Nenagh, since the birth of their first child, since then. The housing need criteria, as set out in Table 5.2 of the

Development Plan, provides that *'an applicant seeking a new rural dwelling must be building their first home for their permanent occupation, demonstrate a housing need, and must not already own a dwelling in a rural area.'*

- 7.6. The documentation as submitted with an application is the only acceptable way to determine a person's compliance with National and Local Policy. National Policy Objective 19 clearly sets out that in rural areas, single housing is to be facilitated '... in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area' subject to design considerations.
- 7.7. Having regard to the aforementioned documentation on file, and as relevant to both the subject and previous planning appeals pertinent to the applicant of the subject appeal site, and having reviewed the provisions of the Tipperary County Development Plan, I am satisfied that the proposed development is in accordance with the provisions of section 5.5.1 and does not contravene same, and that the applicant demonstrates both a social (Category 2) and economic need (Category 1, Economic A criteria), to reside in the area through:
- active agricultural and bloodstock activity,
 - on a farm landholding which exceeds 20ha in total
 - where the applicant has demonstrated that they have been engaged in farming/ such activity at that location for a continuous period of over 5 years prior to making the application,
 - the applicant has resided within 5km of the proposed dwelling site for a substantial period (in excess of 10 years) of their lives, and
 - the applicant does not nor has never owned a house in the open countryside.
- 7.8. It is also noted that the Tipperary County Development Plan requires that an 'Occupancy Condition' be attached to any grant of permission, requiring that the applicant must live in the dwelling for the first 7 years after its construction. It is therefore recommended that should the Board be minded to grant permission, that such a condition be attached.
- 7.9. In addition to the above notwithstanding the applicant's social and economic housing need qualification, on the basis of the existing settlement patterns within the area, the topography of the site and surrounds, the proposed setback and screened nature of the dwelling, and the single storey size of same, I am satisfied that the proposed

development would not be unduly obtrusive within the landscape nor contribute to ribbon development and is thus acceptable within the proposed site and locality.

Impact on Architectural Heritage

7.10. The impact on the character and setting of the Shanbally House protected structure is the primary ground of appeal. In this regard, both the applicant and appellant have submitted expert reports, with contrary conclusions.

7.11. I have noted, as outlined in Section 5.4 of this report, the provisions of Chapter 13 of the Architectural Heritage Protection Guidelines for Planning Authorities (AHP), specifically in relation to the definition of curtilage (Section 13.1) and attendant grounds (Section 13.2). In this regard, a number of observations are made, including:

- In accordance with the provisions/ considerations provided at section 13.1 of the AHP, the notion of curtilage is taken to be the parcel of land immediately associated with Shanbally House which is (or was) in use for the purposes of the structure. In this regard, my opinion would thus accord with the applicant's specialist in identifying the curtilage of Shanbally House to comprise the immediate gardens of the house from the fish pond/ lake edge to the north and west, including the main driveway and entrance. In the instance of the subject appeal site, which is not immediately associated with Shanbally House and is located at some distance away from same (c.670m), it is not therefore considered to form part of the curtilage of the main building (ie Shanbally House).
- In accordance with the provisions/ considerations provided at section 13.2 of the AHP, which highlight the fact that '*The attendant grounds of a structure are lands outside of the curtilage of the structure but which are associated with the structure and are intrinsic to its function, setting and/or appreciation. In many cases, the attendant grounds will incorporate a designed landscape deliberately laid out to complement the design of the building or to assist in its function...a planning authority has the power to protect all features of importance which lie within the attendant grounds of a protected structure. However, such features must be specified in the RPS*'. In this regard, the Board is directed to Figure 4 (Historic 6" Map [c.1840]), contained within the applicant's Architectural Heritage Assessment Report, submitted in response to the appeal, which clearly indicates that whilst the

subject appeal site was once located within the historic farmland area, outside of the historic parkland area associated with Shanbally House, the site was separated, both physically and visually, from same by a hedgerow and the fish pond/ lake, and there were also a number of trees situated within the agricultural lands. Figure 5 (Historic 25" May, circa 1890) and Figure 13 (SMR Map c. 1900), also from the applicant's Architectural Heritage Assessment Report, further illustrates the presence of additional trees, not only in front of Shanbally House but also in/ around the lake area, which had been established over that intervening 50-60 year period, and the establishment of what appear to be agricultural lands, similar to the current context, unassociated with Shanbally House.

- The Planning Authority do not appear to have identified (by way of a Section 57 Declaration), the lands comprising the subject appeal site, as comprising part of the curtilage of Shanbally House;
- The subject planning appeal site lands are not identified within the RPS as attendant grounds to Shanbally House;
- In the above regard I would thus also concur with the applicant's specialist that the subject appeal site is located any attendant grounds or area that was part of a *'designed landscape laid out to complement the design of the building...'*.

Having regard to the above-outlined considerations, I would therefore concur with the applicant's arguments made in relation to the proposed subject appeal site not comprising lands which are considered to be part of the curtilage or attendant grounds of Shanbally House, and would also therefore not consider the planning authority to have erred in not referring the application to the Dept. of Housing, Local Government and Heritage, An Taisce, or The Heritage Council.

7.12. In relation to the impact on the character and setting of the Shanbally House, the grounds of appeal state that the proposed development would negatively impact the amenities of the appellant's property, the value of same and the architectural heritage importance of Shanbally House by way of location, scale and visual impact on the Shanbally House protected structure and its curtilage.

7.13. As reflected in the National Inventory of Architectural Heritage (NIAH) and the NIAH Gardens Survey, I consider the architectural characteristics of Shanbally House itself

and its immediate parkland garden setting to represent its principal character and setting. I do not consider that the proposed development would negatively impact the architectural characteristics of this property, nor the view to and from same, due to the separation distance from Shanbally House and the proposed location of the dwelling, at a significant remove from same, in the southeastern end of the subject appeal property.

- 7.14. On the matter of the impact of the proposed development on the vista from Shanbally House, I accept the appellants' argument that the proposed development may alter the visual aspect, to some degree, when viewed from the first floor of the protected structure. However, in consideration of the single storey scale of the dwelling proposed, existing topography and mitigation planting proposed, which will reflect that of the Historic 6" 1840 mapping, I do not consider the visual aspect to be altered to such an extent that it would impact the character or setting of Shanbally House.
- 7.15. As referred to above, the applicant's response to the appeal has included proposed planting on their landholding, which would replicate the location of historical trees and hedgerows, and photomontages are provided which support the fact that these would assist in screening the proposed dwelling and thus mitigate against any negative visual impact, whilst also further addressing arguments made in respect of the Shanbally House curtilage and attendant grounds. In this regard, the Board is directed to Figures 2 and 4 of the Architectural Heritage Assessment Report and Drawing No. J1008D001 (Landscape Plan) within Appendix 7 of same, within the applicant's Response to the appeal. Whilst such proposed planting is located outside of the red line boundary of the application site, it is nonetheless located within the applicant's landholding. It is therefore considered that this may be dealt with through the imposition of an appropriate condition in the event a grant of permission is recommended.
- 7.16. The appeal also argues that the proposed development is contrary to policy 13-1 of the Tipperary County Development Plan. In this regard, it is noted that this policy specifically relates to development which is proposed and directly associated with a protected structure – eg redevelopment, extensions, alterations etc to same, in the context of the potential proposed restoration, re-use and maintenance of a protected

structure. In this regard, as the subject proposed development does not relate to an alteration, extension and change of use to Shanbally House itself, the proposed development is not considered to be contrary to policy 13-1.

- 7.17. Furthermore, I am satisfied with the proposed single style dwelling design and materials (and colour of same) solution, having regard to the topography of the site and wider lands and character of existing development in the area. I am satisfied that there will be no unduly negative impact in terms of the visual amenity of the area, nor on the ability to continue farming adjacent farmlands. Overall, I consider the siting and design of the proposed development acceptable in terms of the provisions of the Tipperary County Development Plan 2022-2028 (CDP) and the rural house design guide.

Public Health

- 7.18. The development includes the provision of a septic tank and percolation area together with private well. A site suitability report was included with the application. The test results indicate values that are within the standards that would be considered acceptable for the installation of a septic tank system designed for a PE of 8 under the EPA Code of Practice: Domestic Wastewater Treatment Systems. The drawings submitted meet the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).
- 7.19. From the information available to me, I am satisfied that the site can accommodate a septic tank and percolation area as proposed. The Planning Authority did not express any concerns regarding foul drainage proposals.

Water Quality

- 7.20. The subject site is located in the townland of Shanbally, Norwood, near Nenagh, and is generally flat, sloping south-westwards towards a treeline and thereafter the nearest waterbody, the Ballinaboy/ Ballintotty River, which is c.90m from the south-western site boundary. This distance exceeds the EPA specified distance of 10m from the periphery of the proposed tank/ plant and infiltration/ treatment area to a waterbody.
- 7.21. The proposed development comprises of a 318sqm, single storey dwelling, 42sqm garage and carport, wastewater treatment system and new entrance and driveway,

for which a site suitability assessment has been undertaken, the results of which indicate that the proposed development would comply with the 2021 EPA Code of Practice.

- 7.22. I have assessed the development proposal and considered the objectives as set out in Article 4 of the Water Framework Directive to protect and, where necessary, restore surface and ground waterbodies in order to reach good status (meaning both good chemical and good ecological), and to prevent deterioration. In 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 surface and/or ground waterbodies.
- 7.23. The reason for my conclusion is based on the small scale of the development proposed, comprising a single storey dwelling, garage and carport, the results of the site character assessment which indicate the suitability of the site for the proposed dwelling, and the location and distance from the nearest waterbody.
- 7.24. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any waterbody (rivers, lakes, groundwaters, transitional and coastal) either on a temporary or permanent basis and consequently can be excluded from further assessment.

Traffic Safety

- 7.25. I note the existing and proposed planting, including the setback of the existing roadside hedgerow to achieve the required sightlines. Such proposed reinstatement planting will ensure the continued presence of a roadside boundary hedgerow and that there is no excessive removal of hedgerow in order to achieve sightlines.
- 7.26. As highlighted within section 5 of this report and as provided for within section 6 of Volume 3 of the Tipperary County Development Plan, the applicant has submitted a speed check form which demonstrates the achievement and suitability of a 90m sightline in both directions. This has been undertaken on the basis that the natural bends in the road when approaching the site from both directions, will act to calm the traffic. Having undertaken a site visit and driven on these roads, I can confirm that this is a reasonable and valid assumption. I would also add that all mandatory speed limits on local country roads have been reduced across the country, since this application was lodged.

7.27. The proposed 90m sightlines have been reviewed and accepted by the Council's District Engineer, in accordance with the provisions of the County Development Plan development management standards. Having considered the information available on the file, I am thus satisfied that the sightline requirement for the site is acceptable.

AA Screening

7.28. A screening report for Appropriate Assessment was not submitted with this planning appeal case. However, in the Local Authority assessment of the proposed development, Appropriate Assessment Screening was undertaken by Tipperary County Council as part of their planning assessment and a finding of no likely significant effects on a European Site was determined.

7.29. Section 1 and 2 of my report provide a description of the proposed development and its location context. In summary, the proposed development comprises the construction of a single storey dwelling, garage and car port with driveway and wastewater treatment system, on existing agricultural lands and associated site works.

7.30. There are no watercourses or other ecological features of note on the site that would connect it directly to European Sites in the wider area.

7.31. No nature conservation concerns were raised in the planning appeal.

7.32. As identified in section 5.6 of this report, the appeal site is not located in or immediately adjacent to any designated European Site. Also as previously identified, two European sites are located within 10km of the potential development site. These are:

- The Killavalla Wood pNHA (Site Code 001178) - c.6.0 km south of the proposed development site.
- The Slievefelim to Silvermines Mountains SPA (site code: 004165) - c 8.6 km to the south-west of the appeal site

A third European Site, the Kilduff, Devilsbit Mountain pNHA and SAC (site Code: 000934), is located c. 11.65 km south-east of the appeal site.

7.33. Given the limited scale of the proposal, and the significant distance between the above-identified European Sites and the subject appeal site, I do not consider it

necessary to examine the potential for significant effects on any of the identified European Sites. Having considered the nature, scale and location of the project, I am therefore satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site.

7.34. The reason for this conclusion is based on:

- The small scale and nature of the development.
- The distance from the nearest European site(s) and lack of direct connections.
- Taking into account the screening report and determination by the local Planning Authority.

7.35. 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.

Other Issues

7.36. Development Contributions – I refer to the Tipperary County Council Development Contribution Scheme. The development is not exempt from the requirement to pay a development contribution. It is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

8.1. Having considered the contents of the application the provision of the Development Plan, the grounds of appeal and the responses thereto, my site inspection and my assessment of the planning issues, I recommend that permission be **GRANTED** for the following reason.

9.0 Reasons and Considerations

- 9.1. Having regard to the policy and objectives as set out in the Tipperary County Development Plan 2022 – 2028 in respect of rural residential development, the nature, scale and design of the proposed development, its separation from adjoining residential properties and protected structures, to the pattern of existing and permitted development in the area it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would respect the existing visual character of the area and would not adversely affect the character or setting of the Shanbally House protected structure and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the provisions of the Tipperary County Development Plan 2022-28, and the Architectural Heritage Protection Guidelines for Local Authorities, and would therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 14/12/2023, as amended by information received by An Bord Pleanála on 04/01/2024 and unsolicited Further Information submitted on the 09/04/2024, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. Reason: In the interest of clarity.
2.	a) 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]. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect. b) Within two months of the occupation of the proposed dwelling, 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. This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale. Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted [to meeting essential local need] in the interest of the proper planning and sustainable development of the area
3.	a) The roadside boundary shall be setback behind the required sight triangle. The sight triangle is taken from a point 2.4m back from the road edge at the centre of the proposed access to a point as per depicted on drawings submitted in both directions at the nearside road edge. The sight triangle shall be achieved prior to further construction on site. b) Where the roadside hedge is removed a new roadside boundary hedge shall be constructed. The new roadside boundary shall compose of an earthen bank to a consolidated height of 1.2 metres that shall be planted with shrubs suitable for hedging and common to the locality (e.g. holly, hawthorn, blackthorn, ash, elder, bramble etc.). All landscaping and planting shall take place in the first planting season following occupation of the dwelling. c) Alternatively, the new front boundary fence shall be of stone and sod, stone-faced masonry or dry stonewall. The stone used shall be indigenous

	to the area. The wall shall not be more than 1.2 metres in height over road level. A post and rail type fence is specifically not permitted. d) The area between new road fence and road carriageway shall be trimmed and rolled level with the carriageway, top soiled, seeded with grass and thereafter maintained without obstruction, trim and tidy. Reason: In the interest of traffic safety AND in the interest of visual amenity.
4.	The proposed septic tank drainage system shall be in accordance with the standards set out in the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021. Reason: In the interest of public health.
5.	a) All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties. b) The access driveway to the proposed development shall be provided with adequately sized pipes or ducts to ensure that no interference will be caused to existing roadside drainage. Surface water shall be discharged to soakways and/or sustainable urban drainage methods within the site to be agreed in writing with the Planning Authority. Reason: In the interest of traffic safety and to prevent pollution.
6.	Prior to commencement of development, the developer shall enter into water connection agreement with Uisce Éireann. Reason: In the interest of public health.
7.	Details of the materials, colours and textures of all the external finishes to the proposed dwellings shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Reason: In the interest of visual amenity.

8.	All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. All existing over ground cables shall be relocated underground as part of the site development works. Reason: In the interests of visual and residential amenity.
9.	The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following: (a) Proposed planting which would replicate the location of historical trees and hedgerows as indicated in Drawing No. J1008D001 (Landscape Plan), received by An Bord Pleanála on 09 April 2024 as part of the applicant's response to the appeal (b) Specifications for mounding, levelling, cultivation and other operations associated with plant and grass establishment (c) Proposals for the protection of all existing and new planting for the duration of construction works on site, together with proposals for adequate protection of new planting from damage until established (d) A timescale for implementation, including details of phasing, which shall provide for the planting to be completed before the dwelling is first made available for occupation. Reason: In order to screen the development and assimilate it into the surrounding urban landscape, in the interest of visual amenity.
10.	Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional

	circumstances where prior written approval has been received from the planning authority. Reason: In order to safeguard the residential amenities of property in the vicinity.
11.	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, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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.

L. Gough
Planning Inspector

23 February 2025

Appendix 1 - Form 1: EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319262-24			
Proposed Development Summary	Proposed dwelling, garage, carport, waste water treatment system, driveway and all ancillary site works			
Development Address	Shanbally, Norwood, Nenagh, Co. Tipperary			
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	√	Class 10, (b) (i)	Sub-threshold	Proceed to Q.4
4. Has Schedule 7A information been submitted?				
No	√	Preliminary Examination required		
Yes		Screening Determination required		

Inspector: _____

Date: _____

Appendix 2 - Form 2 - EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-319262-24	
Proposed Development Summary	Proposed dwelling, garage, carport, waste water treatment system, driveway and all ancillary site works	
Development Address	Shanbally, Norwood, Nenagh, Co. Tipperary	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? Will the development result in the production of any significant waste, emissions or pollutants?	The site is located in a predominately rural location on a site of agricultural land. The proposed development is not exceptional in the context of existing environment. No, the proposal is to construct a dwelling house All waste can be managed through standard construction management measures.	No No
Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? Are there significant cumulative considerations having regard to other existing and/or permitted projects?	The size of the proposed development, of a single dwelling on a site of c.0.59ha, is notably below the mandatory thresholds in respect of a Class 10 Infrastructure Projects of the Planning and Development Regulations 2001 as amended. There are no other developments under construction in proximity to the site. All other developments are established uses.	No No
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly	There are no ecologically sensitive locations in the vicinity of the site. The site is not within a European site and the nearest European sites to the subject appeal site are: The Killavalla Wood pNHA (Site Code 001178) c.6.0 km south of the proposed development site.	No

impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	• The Slievefelim to Silvermines Mountains SPA (site code: 004165) is c 8.6 km to the south-west of the appeal site • The Kilduff, Devilsbit Mountain pNHA and SAC (site Code: 000934), is located approximately 11.65 km south-east of the appeal site The proposal includes standard best practice methodologies for the control and management of wastewater and surface water on site. There are no other locally sensitive environmental sensitivities in the vicinity of relevance.	No
Conclusion		
There is no real likelihood of significant effects on the environment in terms of the nature, size and location of the proposed development and having specific regard to the criteria set out in Schedule 7 of the P&D Regs 2001 (as amended). EIA not required.		

Inspector: _____

Date: _____