



Development	Construction of single storey detached dwelling, new detached garage, new site entrance, new connection to existing utilities, new wastewater treatment system & percolation area, all associated site works. Retention also sought for temporary retention of existing mobile home unit and all associated site works.		
Location	Urard, Gortnahoe, Thurles, Co. Tipperary..		
Planning Authority Ref.	2360127.		
Applicant(s)	Thomas Cummins.		
Type of Application	Permission and Retention permission	PA Decision	Grant with conditions.
Type of Appeal	Third Party	Appellant	John Hayde & Elizabeth Toukabri
Observer(s)	None		
Date of Site Inspection	1 st August 2024	Inspector	Des Johnson

Context

1. Site Location and Description.

1.1 The site is located in Co. Tipperary, approximately 2.4km north-east of Gortnahoe, and 2.8km south of Urlingford. The site is in a rural townland, close to a small settlement, and has an existing access off the R690. It is a short distance south of a crossroads between the R689 and R690.

1.2 This is a large irregular shaped and flat site, mostly set out in grass. There is a corrugated iron shed and mobile home on the site close to its eastern boundary. There is mature hedging along this boundary, effectively shielding the mobile from public view on the R690. The site entrance and the standing for the mobile have a hardcore surface.

1.3 Adjoining the appeal site to the south is a single storey dwelling and large side garden. There is a single storey dwelling on the opposite side of the R690 to the appeal site. To the south of the site is a rectangular shaped field currently in grazing.

2. Description of development.

2.1 The proposal is for the construction of a single storey detached dwelling, detached garage, new site entrance, new connections to existing utilities, new wastewater treatment system & percolation area, all associated site works. Permission is also sought for the temporary retention of an existing mobile home unit and all associated works.

2.2 The stated site area is 1.040ha. The gross floor area of proposed works is stated to be 117.10sqm, and the gross floor area to be retained is 38.30sqm.

2.3 It is stated that the site was acquired in June 1993. The applicant is a farm labourer working on farms in the area.

3. Planning History.

3.1 Register Reference 02/1139 – Permission refused to Joseph and Olivia Wall for dwelling, domestic garage, entrance, and septic tank at this location. Two reasons for refusal summarised as follows:

- Endanger public safety by reason of a traffic hazard
- Contrary to Section 4.6 of the County Development Plan (CDP) to direct residential development to serviced centres.

3.2 TUD-21-075 – Enforcement Notice, dated 8th September 2021, relating to the subject site. Notice requires the removal of the mobile home in its entirety, and restoration of the area. A Warning Notice, dated 23rd June 2021, had previously issued.

4. Planning Policy

4.1 The Tipperary County Development Plan 2022-2028 applies.

Section 5.5 refers to Residential Development in the Open Countryside. In ‘Open Countryside’ the approach is to facilitate the provision of single housing in the countryside based on siting, environmental and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements

Policy 5-9 - Requires that climate change actions and measures be incorporated in new residential development of all scales to demonstrate how the development will minimise energy use, enhance accessibility, manage waste and support biodiversity.

Policy 5-11: Relates to facilitating proposals for dwellings in the countryside outside settlements. Categories of Need are detailed.

Policy 11-9 – Relates to new developments both within and without Flood Risk Zones

Policy 11-10 – Flood Risk Assessments to incorporate consideration of climate change impacts and adaptation measures.

5. Natural Heritage Designations

- Lower River Suir SAC – c. 17.6km to WSW
- The Loughlans SAC & pNHA - c. 5.1km to NE
- Spahill and Clomantagh Hill SAC & pNHA – c. 7.1km to NE
- River Barrow & River Nore SAC – c. 7.6km to SE.

Development, Decision and Grounds of Appeal

6. PA Decision.

6.1 The planning authority decided to grant permission subject to 13 conditions.

Condition 1(b) requires as follows:

Within 1 month of the occupation of the dwelling or within 12 months of a final grant of planning permission, whichever is the sooner, the mobile home on site shall be removed and the site shall be fully restored with the area grassed and landscaped as appropriate, in accordance with the landscape plan required at Condition 3 below.

Reason: *To clarify the terms of the permission.*

6.2 In addition to standard type conditions, other conditions of note are as follows:

- Condition 2 – Occupancy
- Condition 3 - Landscape plan
- Condition 5 – Water supply
- Condition 11 – Garage to be used for purposes incidental to the enjoyment of the dwelling house only
- Condition 13 – Financial contribution.

6.2 The Planner's report dated 19th April 2023, states that the development is acceptable in principle. There is sufficient documentary proof submitted to support the applicant's claim to satisfy the rural housing policy requirements. The site is within 5km of Gortnahoe and Urlingford and there are no serviced sites or cluster developments available within these settlements at the present time. The agricultural entrance has existed since prior to 2000. The overall design, scale and material finishes are satisfactory. Sightlines have been adequately demonstrated. The proposed effluent treatment system is outside a flood risk area. Further Information is recommended.

6.3 The Planner's report dated 22nd February 2024, following the submission of Further Information and new public notice, states that the proposal for the temporary retention of the mobile home for the duration of construction of the dwelling is acceptable. Similar proposals have been allowed elsewhere in the County. A condition is recommended to address the issue. A Flood Risk Assessment (FRA) carried out identifies that fluvial flood waters from a 1:100 and 1:1000 event will encroach on the western part of the site but will not impact the dwelling or any of the proposed services. The dwelling and associated services are located within Flood Zone C. The planning authority considers that the

findings of the FRA are acceptable. There is an existing connection to the Inchirourke GWS and this is acceptable. The revised site layout submitted is acceptable.

7. Third Party Appeal.

7.1 The grounds of appeal may be summarised as follows:

- The temporary mobile unit is operated by a generator which is run continuously and emits noxious fumes. It is approximately 26m from the appellants' house. The appellants cannot open windows or hang out washing and the generator is extremely impactful on their amenity.
- The mobile unit has been on site for 2 years and was the subject of enforcement proceedings. There is concern that there is no intention to construct the permanent dwelling. There is no confidence that Condition 1B will be enforced.
- The planning authority raised concerns in the request for Further Information in regard to the retention of the mobile home. The response to the FI request did not justify its retention.
- The appellants request that permission be refused for the mobile unit. There is no objection to the permanent dwelling and associated works.

8. PA Response

8.1 None on file.

Environmental Screening

9. EIA Screening

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

10. AA Screening

Having regard to the nature and scale of development, and to the separation from European sites and absence of connectivity to any such designated sites, it is

concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

The proposal is for the construction of a single storey detached dwelling, new detached garage, new site entrance, new connection to existing utilities, new wastewater treatment system & percolation area, and all associated site works. Permission is also sought for temporary retention of existing mobile home unit and all associated site works. The site area is stated to be 1.040ha., the gross floor area of proposed works is stated to be 117.10sqm, and the gross floor area to be retained is 38.30sqm. It is stated that the site was acquired in June 1993, and that the applicant is a farm labourer working on farms in the area.

- 2.1. The planning authority granted permission subject to 13 conditions, including an occupancy condition, and a condition requiring the removal of the mobile home upon first occupancy of the proposed dwelling, or within 12 months of the final grant of permission, whichever is the sooner.
- 2.2. There is a third-party appeal. The grounds of appeal relate to the retention of the mobile home, and the use of a generator used to service the mobile home. It is claimed that the generator is operated continuously, and emits noxious fumes causing nuisance. The third-party appellant does not object to the proposed development of a dwelling on the site.
- 2.3. I consider that the key issues for consideration in this appeal are as follows:
 - Principle of development of new dwelling
 - Design and layout
 - Septic tank and percolation area
 - Flood Risk Assessment
 - Retention of mobile home for the period of construction of proposed dwelling
 - Access arrangements
 - Environmental assessments

Principle of development of new dwelling

- 2.4. The 1st party is the owner of the site, and the proposed dwelling is to be for his permanent residence. He has lived in temporary accommodation on the site since June 2021. There is no evidence on file that this accommodation is authorised. He does not own any other property, and between 2002-2021 he lived with family in Two-Mile Borris. The 1st Party is a farm labourer working for 4 local farmers.
- 2.5. Section 5.11 of the Tipperary CDP relates to facilitating proposals for dwellings in the countryside outside settlements, and details categories of Need. The planning authority is satisfied that there is sufficient documentary proof submitted to support the applicant's claim to satisfy the rural housing policy requirements. The site is within 5km of Gortnahoe and Urlingford and there are no serviced sites or cluster developments available within these settlements at the present time. Based on the information on file, I concur with the planning authority determination that the proposed development is in line with rural housing policy requirements of the CDP.

Design and layout

- 2.6. The proposal is for a single storey, two-bedroom dwelling at the southern end of the site. Proposed finishes include blue/black tile/slate to roof, and nap plaster to walls. The proposed garage has similar finishes, and insulated garage door. Both dwelling and garage are set back from the north-eastern site boundary. I consider that the proposed design and layout are acceptable.

Septic tank and percolation area

- 2.7. The site is located on a Regionally important aquifer with high vulnerability. The bedrock is stated to be limestone but no karst features are recorded. The site is flat and in a sparsely populated area, with three dwellings within 250m. There is no vegetation on site to indicate poor drainage. Groundwater flow is to the west towards the River Goul, which skirts the western site boundary. The submitted Site Suitability Assessment records a surface percolation value of 26, and a subsurface percolation value of 33. The site is recorded as suitable for a Tertiary Treatment System and infiltration treatment area. Based on the information on file, and observations made at the time of inspection, I consider that the proposals for effluent treatment and disposal are acceptable.

Flood Risk Assessment

2.8. The planning authority notes that a Flood Risk Assessment (FRA) carried out identifies that fluvial flood waters from a 1:100 and 1:1000 event will encroach on the western part of the site but will not impact the dwelling or any of the proposed services. The dwelling and associated services are located within Flood Zone C. The planning authority considers that the findings of the FRA are acceptable. Based on the information on file, and noting that fluvial flood events would occur on the western part of the site, I conclude that the proposed dwelling, garage and effluent disposal and treatment facility, would not be impacted by any fluvial flood events.

Retention of Mobile Home for period of construction.

2.9. The planning authority has permitted the retention of the existing mobile home on the site for a maximum of 12 months or within 1 month of the occupation of the proposed dwelling, whichever is the sooner, and required that the mobile home be then removed and site restored, grassed, and landscaped. The third-party appellants request that permission for the retention of the mobile home be refused, and state that the mobile unit is operated by a generator which is run continuously and emits noxious fumes approximately 26m from their house.

2.10. There is no information on file to indicate that the mobile home has ever been authorised. It has provided temporary living accommodation for the 1st party since June 2021, and has been the subject of a Warning Notice and Enforcement Notice. At the time of inspection (Thursday c.1600 hrs) there was no generator sound and no evidence of any noxious fumes, but this observation was made over a relatively short period of time.

2.11. On balance, I agree with the approach adopted by the planning authority, permitting the temporary retention of the mobile home for a maximum period of 12 months, and then requiring its removal and restoration of the site. This would provide for a 12 month period for the construction of the dwelling, while allowing the continued occupation of the mobile home for the limited duration of construction only. In the event of permission being granted, I recommend that this be addressed by way of condition.

Access

2.12. There is an existing access at the north-eastern end of the site. The planning authority notes from orthophotos that this agricultural access is in place since prior to

2000. It is proposed to maintain this access for intermittent vehicular access. I conclude that, based on the information on file, this is an agricultural access and has never been authorised as an access for residential purposes. A new vehicular access is proposed further south at a point where visibility along the public road (80kph) is good in both directions. I consider that the proposed access arrangements are acceptable, but recommend as a condition restricting the use of the existing entrance to agricultural use.

Environmental assessments

- 2.13. Having regard to the nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 2.14. Having regard to the nature and scale of development, and to the separation from European sites and absence of connectivity to any such designated sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

3.0 Recommendation

- 3.1. I recommend that planning permission be granted.

4.0 Reasons & Considerations

Having regard to the nature and scale of development, the location of the site, and the provisions of the Tipperary County Development Plan 2022-2028, it is considered that the proposed development, subject to compliance with the following conditions, would meet an established housing need, would not be seriously injurious to the amenities of residential property in the vicinity, and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be retained, carried out and completed in accordance with the drawings and documentation submitted with the planning application on the 25/02/2023 as amended by the further information submitted on 26/09/2023, 24/01/2024, 01/02/2024 & 26/02/2024 in response to a request for further information issued on 27/09/2023, save as may be amended by the following conditions.

Reason: In the interest of clarity.

2. Within 1 month of the occupation of the dwelling or within 12 months of a final grant of planning permission, whichever is the sooner, the mobile home on site shall be removed and the site shall be fully restored with the area grassed and landscaped in accordance with the requirements of the planning authority.

Reason: In order to clarify then terms of the permission hereby permitted.

3. (a) The proposed dwelling when completed shall be first occupied as a place of permanent residence by the applicant, and shall remain so occupied for a period of at least seven years thereafter ii

(b) Within two months of the occupation of the proposed dwelling a written statement of confirmation of the first occupation of the dwelling shall be submitted to the Planning Authority in accordance with paragraph (a) and include the date of such occupation.

(c) 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.

Reason: To ensure that the proposed house is used to meet the applicants' stated housing needs, and to ensure that development in this rural area is appropriately restricted to meeting essential economic or social need in the interest of the proper planning and sustainable development of the area.

4. (a) Domestic effluent from the dwelling shall discharge to a tertiary treatment system and infiltration/treatment area. The tertiary treatment system and infiltration/treatment area shall be designed, located and constructed in

accordance with the requirements of 'EPA Code of Practice 2021 - Domestic Wastewater Treatment Systems'.

(b) the location, construction and commissioning of the tertiary treatment system and infiltration/treatment area shall be supervised by a Civil Engineer or appropriately qualified individual, who upon completion of works/commissioning shall submit to the Planning Authority certification (to include photographs) that the system has been laid out and constructed in accordance with the "EPA Code of Practice 2021 - Domestic Wastewater Treatment Systems', within three months of installation.

(c) A signed maintenance contract in respect of the installed system for a minimum period of 3 years shall be put in place prior to the occupation of the dwelling and this shall be available for inspection by the Planning Authority

(d) The owners/occupiers of the subject site shall be responsible for the maintenance of their tertiary treatment system and infiltration/treatment area and shall undertake regular sampling to ensure same adheres to manufacturers guidelines.

Reason: In the interest of public health.

5. Before development commences, the developer shall submit details of the following for the written agreement of the planning authority:

- Water supply which shall meet the requirements of Uisce Eireann
- Surface water disposal on the site
- Landscaping details, including details for the restoration of the site on which the mobile home stands
- Access details, including setback of the access from the roadside boundary and provision of wing walls

The development shall be carried out in accordance with the written agreement.

Reason: In the interests of visual amenity, public health, and traffic safety.

6. All service cables associated with the development shall be placed underground.

Reason: In the interest of visual amenity.

7. The proposed garage shall be used solely for purposes incidental to the enjoyment of the dwelling house and shall not be used for any residential, commercial, or industrial purpose.

Reason: In the interests of clarity and the proper planning and sustainable development of the area.

8. Upon first occupation of the dwelling, the use of the existing access to the site shall be restricted to agricultural use.

Reason: In the interest of public safety, and the proper planning and sustainable development of the area.

9. 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 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 the Board to determine the proper application of the terms of the Scheme.

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.

Des Johnson

Planning Inspector

29th August 2024.

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.

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