



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320540-24

<b>Development</b>	Retention permission for demolition of house, construction of house and permission for all associated works.
<b>Location</b>	Bohernamoe, Ardee, Co. Louth.
<b>Planning Authority</b>	Louth County Council.
<b>Planning Authority Reg. Ref.</b>	2460305.
<b>Applicant(s)</b>	Kevin McConnon.
<b>Type of Application</b>	Permission for retention.
<b>Planning Authority Decision</b>	Refuse Retention Permission and Permission.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Kevin McConnon.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	1 <sup>st</sup> October 2024.
<b>Inspector</b>	Ciarán Daly

## **1.0 Site Location and Description**

- 1.1. The subject site, 0.373ha. in area, consists of a hipped roof bungalow with rear flat roof element set well back from the public road and behind the bungalow at a slightly lower level there is a single storey pitched roof dwelling which appears to be attached to the adjacent shed structures of the adjacent site to the north. The site also includes a side/rear strip of the adjacent rear site. The northern adjacent site is included in the blue line area and it includes sheds as part of a builders yard. This site has its own separate access via a driveway located to the side of the subject site.
- 1.2. The subject site slopes uphill from front to back whereas the adjacent rear site slopes downhill from south to north. There are areas of hard standing to the side of the main bungalow and to its rear and a landscaped garden to its front with central driveway which slopes upwards somewhat towards the house. There is also a hardstanding area in front of the main house.
- 1.3. To the east side of the dwelling boundary on the subject site is located a separate driveway access to the builders' yard to the rear. There is a line of semi-detached dwellings on the east side of the subject site and a line of detached dwellings on the west side of the site which is located c.1km east of Ardee directly off the N52 national road.

## **2.0 Proposed Development**

- 2.1. The proposed development consists of:
  - Retention for demolition of the semi-detached habitable house,
  - Retention for replacement detached single-storey house,
  - New boundary wall and private driveway for the replacement dwelling,
  - Two new wastewater treatment systems to replace the existing shared system which serves the two houses on the site with one system to be located in the front garden and the other to serve the rear house to be located at the rear of the builders' yard,
  - Separate soakaways to cater for each of the two dwellings.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Louth County Council decided to refuse permission for one no. reason which related to the principle of the existing dwelling having not been established, failure to demonstrate compliance with the criteria for a dwelling outside the settlement boundary of Ardee in Rural Policy Zone 2, the sub-division of the site in an ad-hoc manner gives rise to overdevelopment, excessive concentration of septic tanks in close proximity and the undesirable precedent for rural developments of excessive scale on restricted sites.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The Louth County Council Planner's Report forms the basis of the decision. It noted no history of planning permission having been granted for the original dwelling to the rear of the main dwelling which, with a flat roof structure, had the appearance of an extension to the main house. It noted that the replacement house does not conform with the policy for replacement dwellings of the Development Plan, the applicant's failure to demonstrate compliance with the housing needs policy for a house in a rural area under strong urban influence and the confined and adhoc nature of the site. It found the principle of the sub-division of the site in such a manner to constitute over-development and that this would set an undesirable precedent.

Concerns were also noted in relation to residential amenity given its location adjacent to a builder's yard. It noted no objection to the wastewater treatment systems from the Council's Environment section. It was recommended that permission be refused.

##### **3.2.2. Other Technical Reports**

- Environment Section: No objection subject to conditions.
- Placemaking and Physical Development Section: no response at time of Council decision.

#### **3.3. Third Party Observations**

None.

## 4.0 Planning History

### Subject Site

UD/23/039 – Enforcement file in relation to unauthorized dwelling on the site referred to in the Planner's Report.

### Site Surrounds

None relevant.

## 5.0 Policy Context

### 5.1. Louth County Development Plan 2021-2027 (as varied) (the CDP)

The above Development Plan includes the following relevant policies and objectives:

#### Section 3.17.3 Identifying Rural Area Types

Table 3.3 Rural Policy Zone 2 is applicable for Area under Strong Urban Influence.  
See Map 3.2.

Table 3.5 Local Housing Need Qualifying Criteria in Rural Policy Zone 2.

#### Section 3.17.7 Capacity of Areas to Absorb Further Development

- Policy Objective HOU 47 *To require applications for one off rural housing to comply with the standards and criteria set out in Section 13.9 of Chapter 13 Development Management Guidelines 'Housing in the Open Countryside'...*

#### Section 3.19 Replacement Dwellings

- Policy Objective HOU 50 *To ensure the design, scale, and layout of any replacement dwelling does not have a visual impact significantly greater than the dwelling to be replaced.*
- Policy Objective HOU 51 *To require applications for replacement dwellings to comply with the standards and criteria set out in Section 13.9.13 of Chapter 13 Development Management Guidelines 'Replacement Dwellings'.*

#### Section 10.2.3 On-site Wastewater Treatment Systems

#### Section 10.2.5 Sustainable Drainage Systems

#### Section 13.9 Housing in the Open Countryside

## 5.2. National Policy

### National Planning Framework Project Ireland 2040 (NPF)

- 5.2.1. The NPF includes National Policy Objective (NPO) 19 which seeks to facilitate rural housing in rural areas under urban influence based on economic or social need to live in an area and siting and design criteria per guidelines and plans having regard to the viability of smaller towns and rural settlements.

### Regional Spatial and Economic Strategy for the Eastern and Midland Region (RSES)

- 5.2.2. RPO 4.80 of the RSES seeks that Local Authorities manage urban generated growth in Rural Areas under Strong Urban Influence (commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by providing single houses in the countryside based on demonstrable economic or social need to live in a rural area.

### Sustainable Rural Housing Guidelines for Planning Authorities, 2005

- 5.2.3. These guidelines seek that people from rural areas are facilitated by the planning system in all rural areas, including those under strong urban influence. Circular Letter 5/08 was also issued. The Guidelines give examples including farmers (and their sons and daughters) or other persons taking over or running farms and persons who have spent substantial periods of their lives living in rural areas and are building their first homes. Ribbon development is not favoured in the Guidelines (see Appendix 4 thereof).

## 5.3. Natural Heritage Designations

- 5.3.1. In terms of proximity to designated sites, the subject site is located c. 0.5km south-east of Ardee Cutaway Bog Proposed Natural Heritage Area (PNHA) (site code 001454), c.1.2km south-west of the Louth Hall and Ardee Woods PNHA (site code 001616), c. 3.3km north-west of Kildemock Marsh PNHA (site code 001806), c. 4.3km north-east of Mentrim Lough PNHA (site code 001587), c.4.7km south-west of Corstown Loughs PNHA (site code 000552), c.5.2km south-west of Stabannan-Braganstown PNHA (site code 000456), c.6.2km south of Louth Hall and Ardee Woods PNHA (site code 001616), c.6.2km south-west of Stabannan-Braganstown Special Protection Area (SPA) (site code 004091), c.7.5km south-east of

Reaghstown Marsh PNHA (site code 0018285) and c.10.7km south-east of Ballyhoe Lough PNHA (site code 001594).

#### **5.4. EIA Screening**

- 5.4.1. See Forms 1 and 2 in Appendices 1 and 2 attached below. Having regard to 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, or an EIA determination therefore is not required.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

The main points of the appeal by the applicant, Kevin McConnon, can be summarised as follows:

- Lack of reasons given as to why the development is unacceptable.
- The demolished dwelling, in use for rental accommodation, was in poor condition and was established over a period of 34 years which provided a basis to permit /regularise the development.
- The replacement dwelling is an improvement including in terms of residential amenity.
- The two separate modern wastewater treatment systems, drainage systems, dedicated parking and separate sites further improve the situation.
- The policy on replacement dwellings applies given the short time between demolition and replacement.
- Section 3.19 of the CDP disapplies the local housing needs criteria for replacement dwellings.
- The site is not confined and adhoc and the position of the second dwelling is on the same footprint as the established dwelling.

- No overdevelopment or precedent arises given the large site size and unique situation in relation to a statute barred unauthorised development for which improvements have been made.

## **6.2. Planning Authority Response**

The Planning Authority advises the issues raised in the appeal statement have already been considered in detail in their planner's report and reiterates points on this.

## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Established dwelling and replacement dwelling policy.
- Local housing needs criteria.
- Residential amenity and Improvements.
- Layout of Development.

## **7.2. Established Dwelling and Replacement Dwelling Policy**

7.2.1. The appeal refers to the cover letter with the application which I have reviewed along with the application drawings and documents. The development for retention refers to the demolition of the second flat roof dwelling on site and its replacement with a modern dwelling with a pitched roof on a smaller footprint to the demolished dwelling.

7.2.2. The floor plans presented of the demolished dwelling show it interlinked with the main dwelling although with separate kitchen and bathroom and mono-pitch roof form with link to the main dwelling. While on a larger footprint, given the roof design, I am of the opinion that it had the scale of a more modest structure by comparison

with the existing replacement and one which related to the existing dwelling in the manner of a rear extension.

7.2.3. In the first instance, while it appears that the unauthorised dwelling previously on the site had the benefit of a legal status due to its length of time on the site without enforcement such that no enforcement action could be taken, this has no planning implication beyond the legal status. The unauthorised structure was demolished such that its previous legal status is no longer applicable. As a result, I am not persuaded, in principle, that the replacement dwelling policy applies notwithstanding the asserted short time between demolition and replacement.

7.2.4. Nevertheless, while not required, I will assess the retention proposal against the replacement dwellings policies of the Development Plan for completeness and per Policy Objective HOU51 on replacement dwellings. Per Section 13.9.13 of the CDP, the following criteria are all required to be met as the technical criteria in relation to access and services can be separately considered if these criteria are met:

- *“The original structure was last used as a dwelling and that its roof, internal and external walls are generally intact”*; - While the structure was last used as a dwelling, it was demolished and none of its structure is intact and there is no information to suggest that any part of the previous structure was retained in the new building so this criteria is not met.
- *“In the assessment of whether a house which it is proposed to replace is habitable or not, the Planning Authority will rely on the definition of a “habitable house” as defined in Section 2 of the Planning and Development Act 2000 (as amended)”* - The house was demolished and so is not habitable. Section 2 of the 2000 Act requires the disregarding of any unauthorised use such that the proposal cannot be considered under this bullet point.
- *“The new dwelling shall not have a visual impact significantly greater than the dwelling to be replaced”*; -The replacement dwelling, due to its pitched roof of significant height, while having a greater visual impact in its vicinity than the previous dwelling with low mono-pitch roof and which also reads as an extension, would not have a significantly greater impact due to the scale difference being relatively small. This criteria is met.



- *“The new dwelling shall be located within the curtilage of the dwelling to be replaced and shall generally be located on the footprint of the dwelling to be replaced, unless it can be demonstrated that an alternative position would provide visual, environmental, public health or traffic safety benefits”*; - The replacement dwelling is located on the same footprint as the previous dwelling such that this criteria is met.

7.2.5. As a result of the foregoing, I can conclude that the criteria for a replacement dwelling under Section 13.9.13 of the CDP have not been met and that the development is contrary to Policy Objectives HOU 50 and HOU 51. However, the development to be retained can be assessed under the rural local needs criteria of the Development Plan which I will do separately below. I note the applicant asserted that such criteria do not apply to replacement dwellings and I agree with this but given that the replacement dwelling policy does not apply I will review the development for retention under the local needs policy.

### **7.3. Local Housing Needs Criteria**

7.3.1. The subject site is located in a rural area outside the settlement of Ardee (by a distance of c.0.7km) and is thus within Rural Policy Zone 2. The area is thus considered to be under strong urban influence. While there are a number of houses in the vicinity of the site, these houses do not form a village or other such settlement and the site is clearly rural with fields to the north and south and not suburban. In such areas Table 3.5 with the Local Housing Need Qualifying Criteria applies in relation to applications for new dwellings. Policy Objective HOU47 requires this assessment consistent with Section 13.9 of the CDP (Housing in the open countryside).

7.3.2. The applicant has not submitted information in relation to this criteria as he is relying on the replacement dwelling policy of the CDP. As the application is for a second dwelling on the site, this criteria cannot be met in any event as the applicant is considered to already own a rural dwelling at this location and this policy only allows for rural dwellings in such locations by exception where the criteria is met and where

an applicant does not already own such a dwelling. For this reason and the failure to meet the policy criteria for a replacement dwelling, I recommend refusal for the retention elements, the demolition and replacement dwelling, of the proposed development.

#### **7.4. Residential Amenity and Improvements**

- 7.4.1. The appeal notes that significant planning improvements result from the proposed development including a new modern residence, access improvements, site layout improvements in relation to sub-division and separate parking and modern wastewater systems and drainage systems. It is effectively asserted that these changes would constitute significant planning improvement by comparison with the current situation and that this is a better planning outcome than refusing permission.
- 7.4.2. While I acknowledge that a modern dwelling should be of a higher comfort standard, for example in relation to energy performance, than the prior dwelling which was noted to be in poor condition, this is not of such significance as to overcome the recommendation for refusal in relation to the issues noted earlier in this report. It would have been open to the applicant to upgrade or retrofit the prior dwelling to a higher standard however demolition and replacement was chosen instead.
- 7.4.3. The other asserted improvements relate to the facilitation of the new dwelling on site which has been recommended to be refused permission. In this context, I note no planning rationale to permit the proposals to sub-divide the site, provide separate parking or separate wastewater systems or to upgrade the drainage system to cater for two dwellings on the site.

#### **7.5. Layout of Development**

- 7.5.1. The Planning Authority noted the restrictive nature of the site and the adhoc layout of development. While the site is relatively large, this issue relates to the site layout to the rear of the existing dwelling where the layout is constrained given the close proximity to the dwelling, the adjacent site to the north and to the western and

eastern boundaries. This is demonstrated by the proposed site layout with no rear garden for the main dwelling given the location of the second rear dwelling in what would have been former private open space and the limited depth of the rear private open space for the second dwelling when the site is sub-divided. This is notwithstanding the large front garden area and the large site to the rear which is irrelevant in relation to the proposed layout given it has a separate non-residential function and is separated from the subject site.

- 7.5.2. Given the location of the new dwelling to the rear of the existing dwelling in close proximity to it, the adjacent shed building to the north and to the boundaries, and noting the pattern of development in the vicinity and the rural location, I consider that the Planning Authority's view in relation to the adhoc and restrictive nature of the development is well founded and reasonable and I consider that this is out of character for the area. While there are no noted direct overlooking, overbearing or overshadowing impacts, I consider this form of development to be out of keeping with the receiving environment and I recommend that permission be refused accordingly.

## **8.0 AA Screening**

- 8.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located remote from and with no hydrological or ecological pathway to any European site.
- 8.2. The proposed development comprises a dwelling house, garage, entrance and wastewater treatment system. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:
- The small scale and domestic nature of the development and lack of impact mechanisms that could significantly affect a European site,
  - The nature of existing habitats on the rural site,

- The distance from European sites and absence of ecological pathways, such as a watercourse, to a European site,
- The Screening Determination carried out by the Planning Authority.

8.3. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Recommendation

I recommend that the planning application be refused permission for the following reasons and considerations.

## 10.0 Reasons and Considerations

1. The development cannot be considered to be a replacement dwelling given the previous demolition of the unauthorised structure and per Section 13.9.13 of the Louth County Development Plan 2021-2027 (as varied) where the criteria for a replacement dwelling have not been met. On this basis, the development is contrary to Policy Objectives HOU 50 and HOU 51 of the Development Plan. The development, being the second dwelling on the site owned by the applicant, also fails to meet the local housing needs qualifying criteria for a new dwelling in a rural area under strong urban influence being located in Rural Policy Zone 2. This is contrary to Policy Objective HOU 47 of the Development Plan. Furthermore, the layout of the development to the rear of the main house in close proximity to adjacent structures and boundaries with limited quality private open space is out of keeping with the pattern of development in the vicinity in this rural area, would result in a poor standard of residential amenity and would set an undesirable precedent for such development in the future. The proposed development is thus contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Ciarán Daly  
Planning Inspector

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-320540-24		
<b>Proposed Development Summary</b>	Retention permission for demolition of house, construction of house and permission for all associated works.		
<b>Development Address</b>	Bohernamoe, Ardee, Co. Louth.		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	
<b>Yes</b>	X	500 residential units	Class 10(b)(i)
			<b>Conclusion</b>
			No EIAR or Preliminary Examination required
			Proceed to Q.4

<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>	X	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Form 2**  
**EIA Preliminary Examination**

<b>An Bord Pleanála Case Reference Number</b>	<b>ABP-320540-24</b>
<b>Proposed Development Summary</b>	Retention permission for demolition of house, construction of house and permission for all associated works.
<b>Development Address</b>	Bohernamoe, Ardee, Co. Louth.
<p><b>The Board carried 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.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b> (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	The proposed development of modest scale, comes forward as a standalone project, includes a modest scale of demolition which has already taken place, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its residential type, does not pose a risk of major accident and/or disaster, or vulnerability to climate change. It presents no risks to human health.
<p><b>Location of development</b> (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	The development is situated on a residential site in a rural area with some residences located on either side and which area is largely surrounded by open greenfield lands. The development is removed from sensitive natural habitats, centres of population and designated sites and landscapes of identified significance in the County Development Plan.
<p><b>Types and characteristics of potential impacts</b> (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	Having regard to the modest nature of the proposed development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
<b>Conclusion</b>	



<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	No
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	NO

Inspector:

Date: \_\_\_\_\_

DP/ADP: \_\_\_\_\_  
(only where Schedule 7A information or EIAR required)

Date: \_\_\_\_\_