



An
Coimisiún
Pleanála

Inspector's Report

ABP-320879-24

Development	Retention of house with revised site layout, permission to complete house and all associated site works.
Location	Clonminch, Tullamore, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	2460248
Applicant	Olive Heffernan
Type of Application	Retention permission and Permission
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant	Conor Meehan
Observer	Susanne Garry
Date of Site Inspection	5 th February 2025
Inspector	John Duffy

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	4
3.4. Third Party Observations	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
5.2. Natural Heritage Designations	7
5.3. EIA Screening	7
6.0 The Appeal	7
6.1. Grounds of Appeal	7
6.2. Applicant Response	10
6.3. Planning Authority Response	11
6.4. Observations	11
6.5. Further Responses.....	12
7.0 Assessment.....	13
8.0 AA Screening.....	20
9.0 Recommendation.....	22
10.0 Reasons and Considerations	22
11.0 Conditions	22

Appendix 1 – Form 1: EIA Pre-Screening

Appendix 2 – Form 2: EIA Preliminary Examination

1.0 Site Location and Description

- 1.1. The appeal site (0.66 ha) is situated on the southern side of Clonminch Lane, located to the south of Tullamore town centre, and which is accessed off the R443. The site accommodates a house which is partially constructed, with blockwork up to first floor level. A bungalow adjoins the site to the east, and a row of detached single storey and dormer type houses on individual plots are located on the opposite / northern side of Clonminch Lane. Lands to the west and south of the subject site appear to be in agricultural use.

2.0 Proposed Development

- 2.1. The proposal relates to the following:

- Retention permission is sought for the two-storey dwelling house incorporating altered position of the house on the site.
- Permission is sought to complete the dwelling house and all associated site works.

The public notices state that the house was previously granted under Planning Authority Register Reference Numbers 17/258 and EX/22012.

No changes are proposed to the site access, and the design, height and size of the house as permitted under Register Reference Number 17/258.

The revised position of the eastern gable wall of the subject house lies c 5.2m west of the appellant's western gable wall, compared to c 6m as permitted under Reg. Ref. 17/258. In addition, the subject house is repositioned c 0.9m further north when compared to its permitted position on the site.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 26th August 2024 Offaly County Council granted retention permission and permission for the proposal subject to two conditions.

Condition 2 requires the development to be carried out in all other respects in accordance with the relevant particulars and conditions of the parent permission (Reg.

Ref. No. 17/258) other than the amendments, which are the subject of this planning application (Reg. Ref. 2460248).

3.2. Planning Authority Reports

3.2.1. Planning Report

The Senior Executive Planner's report notes the site's zoning (Enterprise and Employment), the relevant planning history and the nature of the third party submissions. The report notes the application relates to the completion of the house and considers that the proposal is for minor changes to a permission and is acceptable within the parameters of Objective LUZO-12 (relating to Established / Non-Conforming uses) of the Offaly County Development Plan 2021-2027. It is considered that the suggested conditions provided by Environment and the Area Engineer are not required given the proposal is to finish and amend an existing planning permission (Reg. Ref. 17/258) which includes applicable conditions. A grant of permission is recommended.

3.2.2. Other Technical Reports

Environment / Water Services – No objection subject to conditions.

Area Engineer – No objection subject to conditions.

3.3. Prescribed Bodies

The planning authority notified Uisce Éireann (UÉ) and the Health and Safety Authority (HSA) of the planning application. No submissions from these bodies were received. An Bord Pleanála circulated copies of the appeal to An Taisce, The Heritage Council and the Development Applications Unit in November 2024. No subsequent submissions were received.

3.4. Third Party Observations

The planning authority received submissions from four third parties in connection with the planning application. The issues raised as summarised in the planner's report are as follows:

- Concerns regarding property boundaries.

- Lack of landowner consent.
- Impact on daylight and shadow.
- Positioning of the structure.
- Safety Concerns.
- Precedent for unauthorised development.

4.0 Planning History

Subject site

Planning Authority Reg. Ref. 17/258 refers to a September 2017 decision to grant permission, subject to 13 no. conditions, for a two storey dwelling house and domestic garage.

Under Planning Authority Reg. Ref. EX22/12 an extension to the appropriate period of Reg. Ref. 17/258 was granted in November 2022 on the basis that works had commenced on site. The appropriate period was extended to 31st January 2025.

Under Planning Authority Reg. Ref. EX22/003 an extension of the appropriate period of Reg. Ref. 17/258 was refused in April 2022 on the basis that no works had commenced on site.

Adjoining site to west

Planning Authority Reg. Ref. 23266 refers to a February 2024 decision to grant permission consequent on the grant of outline permission (PA Reg. Ref. 20326) for 2 no. two storey houses and all ancillary services and works. An invalid third party appeal (Ref. No. ABP-318985-24) was submitted in connection with the proposal. This permission was not implemented on the date of the site inspection.

Planning Authority Reg. Ref. 20326 refers to a March 2021 decision to grant outline permission for 3 no. two storey houses and all ancillary services and works. Condition 3 of the permission authorised 2 no. dwellings only.

5.0 Policy Context

5.1. Development Plan

The operative Plan is the Offaly County Development Plan 2021-2027. The site is zoned 'Enterprise and Employment.' **Table 12.1** sets out the Land Use Zoning Matrix.

The relevant objectives, policies and Development Management Standards in the Development Plan are as follows:

LUZO-01: *Ensure that development progresses in accordance with the land use zoning objectives as set out in Section 12.4 and the Land Use Matrix contained in Table 12.1.*

LUZO-06 *Provide for enterprise and employment development*

LUZO-12 *Generally support reasonable extensions and improvements to premises that accommodate established/non-conforming uses, where it is considered by the Planning Authority that the proposed development would not be injurious to the amenities of the area and would be consistent with the proper planning and sustainable development of the area.*

DMS-10 *Urban Infill and Brownfield Development: New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area.*

DMS-12 *Daylight, Sunlight and Overshadowing: Where new dwellings are proposed very close to adjoining buildings and may impact upon the residential amenities of an adjacent property daylights and shadow projections will be required in accordance with the recommendations of Site Layout Planning for daylight and Sunlight: A Guide to Good Practice (BR 209, 2011) and BS 8206 Lighting for Buildings, Part 2, 2008: Code of Practice for daylighting or other updated relevant documents.*

DMS-14 *Space around Buildings: A minimum distance of 2.5m for single storey, and 3m for two-storey buildings will be required to be maintained between the side walls of adjacent dwellings or dwelling blocks with each building having a minimum of 1 metre to the boundary. This standard may be relaxed where the dwelling incorporates a single storey structure to the side.*

5.2. Natural Heritage Designations

Charleville Woods SAC – Site Code 000571 which is located c 1.8km from the subject site.

5.3. EIA Screening

See completed Forms 1 and 2 below. Having regard to the nature of the proposal comprising retention of a partially completed house, a revised site layout and permission for completion of the house within Tullamore town, there is no real likelihood of significant effects on the environment arising from the proposal. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

This is a third party appeal from Conor Meehan of Robin Hollow, Clonminch Lane, Tullamore, Co. Offaly who resides beside (to the east) the development proposed to be retained. The appellant requested that an oral hearing be held in relation to the proposal. An Bord Pleanála decided on 12th December 2024 not to hold an oral hearing on the basis that there is sufficient information on file to determine the appeal.

The appeal grounds may be summarised under the following headings:

Incorrect property boundaries depicted

- The submitted drawings are inaccurate as they do not reflect the true site boundaries.
- The applicant intends to build a shed on the appellant's property without consent. The planning authority did not seek clarity on the matter of lack of consent provided.
- Proposal is not compliant with Development Plan standard DMS14 – Space around buildings, on account of the inaccurate boundaries reflected on the submitted drawings.

- The subject dwelling is partially constructed on another person's site.

Overshadowing / Impact on daylight

- The proximity of the structure to the adjoining property adversely affects natural light, particularly to the front rooms of the appellant's house. In this regard reference is made to Development Plan standard DMS12 - Daylight, Sunlight and Overshadowing.
- The proposal threatens the efficiency of solar panels which the appellant plans to install.
- The planning authority did not seek a daylight and shadow report in respect of the proposal.
- The repositioning of the house on the site is not a minor matter as it is moved forward on the site and located closer to the existing adjoining dwelling (Photographs provided in the appeal submission).

Failure to provide with previous condition

- A condition relating to Reg. Ref. 17/258 requires specific landscaping to be completed within the first planting year following commencement of development. Construction began in July 2022 and this condition has not been satisfied / fulfilled.

Incorrect location / position of house and impact on visual amenity

- The incorrect position of the house on the site significantly diminishes the value and amenity of the adjoining property to the east.
- The proposal is an eyesore in this area.
- The adjustments made in relation to this proposal are highly noticeable.
- The planning authority has an active file relating to unauthorised development on the site.

Safety concerns

- Traffic hazard / safety concerns raised regarding the junction of Clonminch Road and Clonminch Lane.
- Clonminch Lane is narrow in width, without footpaths and is poorly maintained.

Other

- Third party submissions made in connection with the proposal were not considered by the planning authority.

Several attachments are appended to the third party appeal as follows:

- Land Registry documentation relating to Folio No. OY31199F and associated maps.
- A drawing entitled 'Boundary Check' indicating existing fence boundary and registered boundary position of OY7536F (which is stated to be owned by another third party).
- Photographs of the subject unfinished house relative to the appellant's property.
- A copy of an e-mail dated 16th August 2023 to the appellant from JD Scanlon & Co. Solicitors detailing ownership of lands relating to Folio Numbers OY31199F, OY7536F and OY18665F.
- Copies of the Site Location Map and Rural Place Map submitted in connection with planning application Reg. Ref. 23266, indicated to be 'incorrect maps.'
- A Site Location Map indicated to be a 'Correct Map' which shows Folio Numbers OY31199F, OY7536F and OY18665F.
- A Section Drawing of the subject dwelling which states its ridge height of 9m is 'not consistent with other houses in the area.'
- Elevation drawings of the subject house.
- Drawings relating to boundary details.
- A map indicating a 'Retained strip' located west of the appellant's property.
- Copies of planning documentation and submissions relating to the following applications: Reg. Refs. 20/326, 23/266, EX 22/12, and EX 22/003.
- Copies of submissions made in respect of 'Planning Enforcement Complaint' relating to the subject development.
- A copy of the Site Layout Plan dated June 2023.
- A USB Drive which contains two videos of the site and its environs and five aerial images of the development to be retained and adjoining areas. The

voiceover on one of the videos refers, inter alia, to overlooking impacts from the development on neighbouring properties, that the subject dwelling is not in line with the appellant's house, and the presence of dangerous bends in the area.

- A Disc which is stated to be a copy of the submitted USB Drive.

6.2. Applicant Response

On behalf of the applicant, The Planning Partnership responded to the third party appeal grounds on the 18th of October 2024. This response may be summarised as follows:

- The principle of residential development was considered acceptable on the site by the planning authority on two occasions (Reg. Refs. 17/258 and EX/22012 refer).
- The appeal process may be being used to delay development; it is possible the life of the permission as already extended may expire in the instance of further delay. In this context, reference is made to section 138(1)(a)(ii) of the Planning and Development Act 2002 as amended.
- Items 1, 2, 5, 7, 8 and 9 as set out and listed in the appeal submission are extraneous to planning considerations and fall outside the Board's remit, in respect of civil matters and enforcement matters. In this regard the validity of the appeal in terms of its nature and content are questioned.
- The singular material planning consideration to be addressed relates to amenity impacts arising, if any, from the repositioned house. It is noted that neither property has window openings on their gable elevations.
- The appellant's front rooms which are closest to the development to be retained and completed are north, north-west in orientation and comprise secondary rooms (bedrooms). The separation distance between the gables would not prejudice use of the front rooms as a principal habitable room.
- The 45 degree angle test on both plan and elevation (as set out in Appendix A of the submission) finds the proposal would not result in adverse impact on daylight and sunlight in terms of the appellant's property.

- The gable of the structure as built measures between 5.2m and 5.3m from the appellant's gable. The distance between the approved gable on plan measures between 6m and 6.1m from the appellant's gable end. The separation distance remains substantive.

6.3. Planning Authority Response

The response received on 11th October 2024 advised that Offaly County Council has no comments to make on the appeal.

6.4. Observation

An observation on the appeal was received on 21st October 2024 from Susanne Garry of Ballylevin House, Killeigh, Co. Offaly, stated to be acting on behalf of Peter Garry (deceased). The observation may be summarised as follows:

- The planning authority did not adhere to relevant planning laws, has not adequately addressed the submissions, particularly issues relating to light, access and landownership.
- Under section 32 of the Planning and Development Act 2000, no development requiring permission should proceed without landowner consent. The structure in question encroaches upon private property. Folio Number OY7536F is stated to be in the observer's ownership and is inaccurately represented in the application as belonging to the applicant.
- Reference is made to an attached map, titled 'Land Registry Compliant Map,' which the observer states demonstrates that the applicant does not possess ownership of part of the site.
- A shadow and light survey (titled 'Solar Study') prepared using 3D models of the existing house and proposed house and developed by the observer using Autodesk Revit is submitted with the observation. The observation considers the study illustrates the overshadowing and loss of light affecting the adjoining property.
- The findings of the observer's solar study are, inter alia, that the proposal would significantly reduce natural light access to the existing adjoining property, would hinder potential future plans for installation of solar panels on that property,

would lead to increased moisture and dampness, and deterioration of exterior finishes.

6.5. Further Responses

6.5.1 The applicant's response to the appeal was circulated on the 19th December 2024 to the parties and the observer for comments in accordance with section 131 of the Planning and Development Act 2000, as amended. Similarly, on the same date, the observation made by Susanne Garry was also circulated to the parties under section 131 of the Act.

6.5.2 In reply to the applicant's response to the appeal, the planning authority noted the content of that submission and requested that the decision to grant permission be supported.

6.5.3 The Planning Partnership on behalf of the applicant, responded to the observation received from Susanne Garry. This response is summarised under relevant headings, as follows:

Disputed land ownership

- Applicant is confident they have the requisite power to undertake the development.
- Disputed land ownership is not a material planning consideration. A grant of planning permission is subject to section 34(13) of the Planning and Development Act 2000, as amended, which states 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'

Solar Study

- Having regard to the physical nature and orientation of the dwellings at the subject location, the principle source of overshadowing would always exist associated with the path of the evening sun. The dwellings enjoy a significant south-facing rear aspect for outdoor space and principal rooms.
- Any meaningful analysis associated with the impacts of the proposed retained development would be more appropriately presented in analysing the differences between the approved scheme and the now to be retained scheme.

This approach is included in the applicant's response to the appeal, by application of the 45 degree angle test, confirmed in the BRE document 'Site Layout Planning for Daylight and Sunlight.' The 45 degree test undertaken has indicated further investigation is not required.

- The presented Solar Study is not a recognised tool to measure the impact for Vertical Sky Component. The solar paths created are not disputed although the modelling calculations are not fully referenced or explained.
- Reference made to 'right to light' is mistakenly applied in that this applies to 'natural daylight' and not sunlight.
- The proposed development to be retained does not conflict with widely adopted and universal guidelines as applied and associated with the BRE Guidelines.

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 and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of development
- Legal matters / Ownership
- Impact on Visual Amenity
- Impact on Residential Amenity
- Other Matters
- Matter Arising
- AA Screening
- Water Framework Directive – Screening

7.2 Principle of development

- 7.2.1 The appeal site is zoned 'Enterprise and Employment' under the current Offaly County Development Plan and in this regard Objective LUZO-06 refers, which states 'Provide for enterprise and employment development.'
- 7.2.2 Table 12.1 of the Plan comprises the Land Use Zoning Matrix. 'Residential – Multiple (two or more units)' and 'Residential – Single' are indicated as not normally permitted within 'Enterprise and Employment' zoned lands. Notwithstanding, I advise the Commission that the appeal site was zoned 'Business / Employment' under the previous County Development Plan and residential use was open for consideration under that zoning objective when the parent permission for the subject development was granted under Reg. Ref. 17/258. As such, the planning authority appropriately considered that planning application against the provisions of the operative County Development Plan and I note that the duration of the permission was extended under Reg. Ref. EX22/12. In my view, this is not a matter that should be reviewed or revisited in the context of this appeal.
- 7.2.3 This proposal relates to the retention of a partially constructed house and revised site layout, along with permission to complete the dwelling. Section 12.5.1 of the current Offaly County Development Plan relates to Established Use and Non-Conforming Uses, which notes, inter alia, that 'It is not intended that existing uses which appear to be inconsistent with the land use zoning objective should be curtailed.' I consider the proposal relates to relatively minor changes to the position of the subject dwelling on the appeal site and as such I concur with the planning authority's position that the proposal may be considered in the context of Objective LUZO-12 of the County Development Plan, which is supportive of reasonable extensions and improvements to premises that accommodate established / non-conforming uses and requires that the proposal 'would not be injurious to the amenities of the area and would be consistent with the proper planning and sustainable development of the area.' My view is that the proposal comprising the retention of the partially completed and repositioned house along with its completion would be consistent with the proper planning and sustainable development of the area. The matter of whether the proposal would be injurious to the amenities of the area on account of its repositioning on the site is examined below in section 7.5 of this report.

7.2.4 The third party appeal and the observation received raise matters relating to the site access, the ridge height of the subject dwelling, traffic safety concerns in the wider area and the condition and configuration of Clonminch Lane. I note the subject application proposes no changes to the permitted site access, and the height and design of the dwelling. Further, the principle of a house (ridge height of 9m) and access was established under Reg. Ref. 17/258, the duration of which was extended by EX22/12. The appropriate juncture to raise these aforementioned concerns would have been in the context of the parent application (Reg. Ref. 17/258). I conclude, therefore, that these matters are not pertinent to the consideration of this appeal. It is, however, appropriate to assess planning issues raised regarding potential impacts from the repositioned house on the amenities of the area, and this is addressed in section 7.5 of this report.

7.3 Legal matters / Ownership

7.3.1 One of the main issues raised in both the third party appeal and the submitted observation is that the application drawings are inaccurate on the basis that site boundaries are incorrectly depicted and that parts of the subject site within the red line boundary are owned by third parties. In this regard it is contended that the location of the shed, permitted in the parent application (Reg. Ref. 17/258), would be on lands owned by the appellant, and that part of the partially completed house is on lands in the ownership of the observer or their family. In this regard, I note the attachments to the third party appeal, specifically Land Registry information and other site location maps which are stated to show the true site boundaries. The third party submissions also note that consent has not been given to use third party lands for the purposes of the development.

7.3.2 In response to this ground of appeal, the applicant's agent notes this matter is a civil issue, and as such, is extraneous to planning considerations. In the applicant's response to the observation received from Susanne Garry, it is also submitted that disputed land ownership is not a material planning consideration and, in this regard, reference is made to section 34(13) of the Planning and Development Act 2000, as amended, which states that 'A person shall not be entitled solely by reason of a permission under this section to carry out any development.' The applicant also contends they are confident they have the requisite power to undertake the development.

- 7.3.3 Section 10 of the submitted planning application notes that Therese Heffernan owns the subject site and a letter of consent authorising the applicant to make a planning application on the subject lands was provided to the planning authority on 2nd July 2024.
- 7.3.4 It is clear that the ownership of or legal interest in parts of the site is in dispute. I note that Section 5.13 of the Development Management Guidelines for Planning Authorities (DEHLG, 2007) states ‘the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the courts.’ While the guidance envisages that some enquiry be made where a dispute arises, it goes on to advise that ‘only where it is clear...that the applicant does not have sufficient legal interest should permission be refused on that basis.’
- 7.3.5 Disputes with respect to party boundaries are addressed under the Land and Conveyancing Law Reform Act 2009 and not the Planning and Development Act 2000, as amended. I am satisfied that, as per the Development Management Guidelines, it would not be reasonable to refuse retention permission and permission in this case for reasons relating to lack of sufficient legal interest on the part of the applicant. Should the Commission decide to grant permission, the onus is on the applicant, having regard to section 34(13) of the 2000 Act as amended, to ensure they have adequate legal interest to carry out the development as applied for.

7.4 Impact on Visual Amenity

- 7.4.1 As outlined above, the proposal involves the retention of the subject dwelling (and its completion) at a revised position on the subject site, compared to the permitted position, as set out in the parent permission (Reg. Ref. 17/258 refers).
- 7.4.2 Upon review of the submitted drawings and Drawing No. H, as provided in the applicant’s response to the appeal, it is apparent that the revised position of the eastern gable wall of the subject house lies c 5.2m west of the appellant’s western gable wall, compared to c 6m as permitted under Reg. Ref. 17/258. In addition, the subject house is repositioned c 0.9m further north when compared to its permitted position on the site.
- 7.4.3 The third party appellant considers the development to be an eyesore and highly noticeable. I would agree that in its present unfinished state, the house is prominent

when viewed from Clonminch Lane. However, in my opinion, the dwelling would not negatively impact on the visual amenity of the area in the event it was completed and finished, as proposed. My view is that the relatively minor repositioning of the dwelling within the site, as described above, would cause no negative impact to occur on the visual amenity of the area.

7.5 Impact on Residential Amenity

7.5.1 Overbearance

The appellant expresses concern that the proposal would negatively impact on their residential amenity. County Development Plan standard *DMS14 – Space around Buildings* requires, inter alia, a minimum distance of 2.5m for single storey and 3m for two-storey buildings to be maintained between the side walls of adjacent dwellings. I note that the separation distance between the side gable of the repositioned house and the appellant's side gable is c 5.2m, which is significantly in excess of the minimum standard. As such, I am satisfied that the repositioned house would not have an overbearing impact on the adjoining property to the east.

7.5.2 Overlooking impacts

Commentary on one of the videos contained on the submitted USB Drive considers that the proposal would lead to overlooking impacts on neighbouring properties and also notes that the subject dwelling is not in line with the appellant's property. In relation to this latter point, I note the dwelling as permitted on the site under the parent permission is set forward of the building line of the appellant's house. The revised position of the subject house is set c 0.9m further north than permitted in the parent permission. Having regard to the separation distance of c 5.2m between the subject unit and the appellant's property and given that no first floor gable windows are proposed, I do not foresee undue overlooking impacts arising. I also note that there is no existing or proposed house to the rear of the subject dwelling and as such there is no potential for overlooking impacts to arise from opposing rear first floor windows.

7.5.3 Overshadowing / Impact on daylight

7.5.4 The appellant contends that the proximity of the subject dwelling to his house affects natural light provision to two front rooms, with reference made in this regard to County Development Plan standard *DMS-12 Daylight, Sunlight and Overshadowing*. The

appellant is critical of the planning authority on the basis that it did not require a daylight and shadow study to be submitted. Concern is also raised that the proposal threatens the efficiency of solar panels, which the appellant plans to install in the future.

7.5.5 *DMS-12* of the County Development Plan requires a daylight and shadow study to be provided where new dwellings are proposed 'very close' to adjoining buildings and may impact upon the residential amenities of an adjacent property. In this instance, the separation distance between the side gable of the repositioned and partially completed house and the side gable of the appellant's house is approximately 5.2m. Given that separation distance, my opinion is that the new dwelling cannot be described as being 'very close' to the appellant's dwelling and I consider that a daylight and shadow study are not required in accordance with *DMS-12*. I note also that there are no gable windows in the subject properties (other than a ground floor window in the western gable wall of the house to be retained) and also that front elevations of both the subject dwelling and the appellant's house have a north-western orientation, while their rear elevations benefit from a south-eastern facing aspect.

7.5.6 In the response to the appeal, the applicant's agent has presented an analysis of loss of natural light using the 45 degree test, a method for assessing diffuse skylight impact and to be interpreted flexibly on a case by case basis, (as set out by the BRE 2011 document 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice' – Paul Littlefair) and which is described in the submission as the 'initial litmus test as can rule out any necessary additional investigations.'

7.5.7 Appendix A of the response submission depicts the 'as built' position of the subject unit on plan (overlying its permitted position under Reg. Ref.17/258) relative to the appellant's house. On plan it is demonstrated that the partially completed unit does not transect the appellant's front windows. On elevation, eaves and roof plane mid-points do not transect the front window mid-point. While the ridge line on the elevational view does transect one of the appellant's front windows, the associated 45 degree angle on plan falls onto the appellant's gable wall. The conclusion is reached that no significant amenity impacts on the appellant's house relating to diminished light would arise from the repositioned dwelling. I concur with the analysis provided by the applicant and note that for amenity impacts to occur, 45 degree impacts both on plan

and on elevation would be necessary. As such, I do not anticipate undue impacts arising in terms of loss of light or overshadowing of the appellant's property.

7.5.8 I note the Solar Study included as part of the submitted observation, which was prepared using 3D models of the relevant buildings. I concur with the applicant's view that this study is not a recognised methodology to measure impact of development on daylight. In this regard I refer to Section 5.3.7 'Daylight' of the *Sustainable and Compact Settlements - Guidelines for Planning Authorities (2024)* which notes that regard should be given to quantitative performance approaches to daylight provision when a technical assessment of daylight performance is made, as outlined in specific guides like 'A New European Standard for Daylighting in Buildings' IS EN17037:2018, UK National Annex BS EN17037:2019 and the associated BRE Guide 209 2022 Edition (June 2022).

7.5.9 The appellant has raised concerns that the proposal would block sunlight and potentially threaten the efficiency of solar panels should they be installed in the future. I note, however, that no evidence to support this assertion is provided by the appellant and as such it has not been demonstrated that such impacts would arise.

7.6 Other Matters

7.6.1 Unauthorised development / Planning Authority conditions

Reference is made in the appeal submission to unauthorised development having taken place on the subject site and, also, that a condition of Reg. Ref. 17/258 relating to completion of landscaping within a specific timeframe has not been met. I advise the Commission that matters of enforcement and compliance with planning conditions fall under the jurisdiction of the planning authority and are not matters for consideration in this appeal.

7.6.2 Validity of third party appeal

In their response to the appeal submission, the applicant's agent has questioned the validity of the third party appeal. Having examined the appeal submission I am satisfied that it is valid and complies with the provisions of section 127 of the Planning and Development Act 2000, as amended and all other relevant provisions therein.

7.6.3 Garage / shed structure

The appellant has raised concern relating to the construction of a shed on the site, as detailed under section 7.1 of this report. In this regard I would note that the current application relates only to the retention of the positioning of the subject dwelling and its completion, and that it does not relate to provision of a shed / garage on the site. While a domestic garage was authorised under Reg. Ref.17/258, the garage has not been constructed to date. I note the duration of the permission under Reg. Ref. 17/258 was extended (under Reg. Ref. EX/12) to 31st January 2025. As the garage has not been constructed to date and that the current application relates only to the subject dwelling, my view is that permission to construct the garage as authorised under Reg. Ref. 17/258 has expired.

7.6.4 Devaluation of property

I note the concerns raised in the grounds of appeal in respect of devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposal would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

7.7 Matter Arising

Conditions

I am satisfied that the conditions attached by the planning authority in its decision to grant retention permission and permission for the proposal are appropriate. On the basis that the proposal is to retain amendments to the permitted dwelling and to complete construction, I share the planning authority's view that the conditions specified in the parent permission, Reg. Ref. 17/258, remain applicable.

8.0 AA Screening

- 8.1. The subject site is located within the development boundary of Tullamore, to the south of the town centre and it accommodates a partially constructed house. The immediate area is characterised by single storey and dormer dwellings on individual plots, while lands to the west and south of the appeal site appear to be in agricultural use.
- 8.2. The nearest European Site to the proposed development is Charleville Woods SAC (Site Code 000571), located approximately 1.8km from the appeal site.

The proposal comprises retention permission for the subject partially completed dwelling incorporating its altered / revised position on the site and permission for its completion, and all associated site works.

Having considered the nature, scale, and location of the project, I am satisfied it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows:

- Small scale and nature of the proposal.
- Location-distance from nearest European Site and lack of connections.
- Taking into account the screening determination of the planning authority.

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

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

9.0 Water Framework Directive

9.1. The appeal site is situated on the southern side of Clonminch Lane, to the south of Tullamore town centre. The site accommodates a partially constructed house.

9.2. I have assessed the proposal and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water bodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. 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 groundwater water bodies either qualitatively or quantitatively. The reason for this is as follows:

- The nature of the works comprising a small scale and nature of development.

- Location-distance from the nearest waterbodies and the lack of direct hydrological connections from the site to any surface and transitional water bodies.
- Standard pollution controls that would be implemented.

9.3 I conclude on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and as such can be excluded from further assessment.

10.0 Recommendation

10.1. I recommend that retention permission and permission be granted for the proposal subject to the conditions set out below.

11.0 Reasons and Considerations

11.1. One of the main grounds of appeal is that parts of the subject site are not in the applicant's ownership. This is, however, a civil matter to be resolved between the parties, having regard to the provisions of s.34(13) of the Planning and Development Act 2000, as amended. Matters raised regarding purported non-compliance with planning conditions and unauthorised development fall under the jurisdiction of the planning authority and are not for consideration in this appeal. Matters raised relating to the site access, the design and roof ridge height of the subject dwelling, along with transportation considerations were assessed in the parent application, Reg. Ref. 17/258, which established the principle of the subject house and access to this site, and the duration of the permission was extended under Reg. Ref. EX22/12. It is considered that, subject to compliance with the conditions set out below, the proposal would not be injurious to the residential and visual amenities of the area and would not devalue property in the vicinity. The proposal would, therefore, be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposal shall comply with the conditions of planning application register reference number 17/258, except for the amendments authorised by this permission.</p> <p>Reason: In the interest of clarity.</p>

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

John Duffy
Planning Inspector

2nd September 2025

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-320879-24		
Proposed Development Summary	Retention of house with revised site layout, permission to complete house and all associated site works.		
Development Address	Clonminch, Tullamore, Co. Offaly		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	X	Tick if relevant and proceed to Q2.	
		Tick if relevant. 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)?			
Yes	X	Class 10 (b) (i) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001 as amended.	Proceed to Q3.
No			Tick if relevant. No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	X		Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____

Appendix 2

Form 2 - EIA Preliminary Examination

Case Reference	ABP-320879-24
Proposed Development Summary	Retention of house with revised site layout, permission to complete house and all associated site works.
Development Address	Clonminch, Tullamore, Co. Offaly
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development (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).	The development would not result in the production of significant waste, emissions, or pollutants. No significant risks of accidents or to human health. No demolition works proposed.
Location of development (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).	The size of the site at 0.066 ha is not exceptional. There is no hydrological connection present which would give rise to significant impact on water courses in the wider area (whether linked to any European site or other sensitive receptors). The site is not located within any European Sites. The closest European Site Charleville Woods SAC is located c 1.8km to the west.
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration,	There are no other locally sensitive environmental sensitivities in the vicinity of relevance. There would be no significant cumulative considerations.

cumulative effects and opportunities for mitigation).	
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
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. Not applicable to this appeal case.
There is a real likelihood of significant effects on the environment.	EIAR required. Not applicable to this appeal case.