



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322665-25

<b>Development</b>	Two houses with extension to existing building for home office and associated site works.
<b>Location</b>	Bienvenu Collins Lane , Tullamore , Co. Offaly
<b>Planning Authority</b>	Offaly County Council
<b>Planning Authority Reg. Ref.</b>	2460301
<b>Applicant(s)</b>	Jithin & Veena Annu Sabu & Jacob
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission with Conditions
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Ian Lee
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	1 <sup>st</sup> October 2025
<b>Inspector</b>	Aoife McCarthy

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Appendix 1 – Form 1: EIA Pre-Screening

Form 2: EIA Preliminary Examination

## **1.0 Site Location and Description**

- 1.1. The subject application has a stated floor area of 0.21 hectares and is located at Collins Lane (R443, a Regional road), Tullamore, Co. Offaly.
- 1.2. The site is located c.2.4km to the north of Tullamore town centre.
- 1.3. The site comprises a single storey dwelling with separate garage to the rear (north), with access from Collins Lane to the south with grassed gardens to front and rear.
- 1.4. The site includes a vacant infill site to the rear of the property with separate access from the R443 (Collins Lane). The site to the rear is bound by a low boundary wall between the existing dwelling to the south, with blockwork on the northern, eastern and western boundaries.
- 1.5. The site is bound by an established residential estate (Droim Liath) comprising 2 storey detached and semi-detached dwellings to the north and west. These comprise the grounds of a detached house (No. 172) and rear boundaries of a pair of semi-detached dwellings (No. 169 and 170) to the west and the grounds of a semi-detached dwelling (No.137) and cul-de sac to the north. A laneway extends to the immediate north of the subject site, on a west to east alignment, accessed from positions to the south of No's. 168 to No. 137 Droim Liath.
- 1.6. The site is bound by the grounds of a single storey dwelling to the east, with access from the R443 and from a public right of way.
- 1.7. The site and immediate environs are primarily residential in character; with former quarry uses apparent on lands to the north-east of the site.

## **2.0 Proposed Development**

- 2.1. The development will consist of:
  - (i) 2 No. two and a half storey four bedroom detached dwellings on a site to the rear of the existing dwelling on site.
  - (ii) An extension to the existing garage building on site to create a home office.

- (iii) All associated drainage works, landscaping, boundary treatments, access lane upgrade works and site works.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

- 3.1.1. The Local Authority issued a Notification of a Decision to Grant Permission, on the 9<sup>th</sup> May 2025, subject to 14 no. Conditions.

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

#### **3.3. Planning Report (30<sup>th</sup> September 2024)**

- The Report includes a summary planning history of the subject site, most recently (P.A. Reg. Ref.: 16/232).
- The report includes a summary of 2 no. third party submissions received on the file (see below).
- The proposal complies with standards of the Development Plan relating to density (DMS-02), separation distances (DMS 13), space around buildings (DMS-14), side windows (DMS-15), landscape and boundary treatments (DMS-17), private open space provision (DMS-18).
- Further Information (FI) is required with respect to compliance with development plan standards relating to Development Capacity (DMS-01) and Urban Infill and Brownfield Development (DMS-10).
- The overall ridge height of the proposed dwellings is 1.725m higher than the adjacent 2 storey semi-detached dwelling to the north. The Report sets out that FI is required to reduce this height to “more in line with” the existing two-storey dwellings to the north and west.
- The local authority considers that FI should also be sought with respect to the proposed design and use of the existing wayleave to the proposed dwellings.

- A screening exercise for an appropriate assessment has been carried out which concludes that the development is unlikely to have significant effects on any European sites.
- The report concludes that FI should be sought with respect to 6 no. Items:
  1. The Applicant is invited to address the substantial difference in height between the proposed dwellings and existing dwellings within the vicinity, having regard to DMS-01 and DMS-10.
  2. Review 3<sup>rd</sup> party submissions, specifically addressing the case that the applicant does not have legal right to use the existing laneway as access to the dwellings.
  3. Incorporation of a raised crossing across with gullies at the entrance to the site.
  4. Submission of surface water drainage proposals for the access road.
  5. Submission of a drainage design report.
  6. Incorporation of nature-based solutions for the management of surface water and rainwater run-off.

#### 3.4. **Planning Report (25<sup>th</sup> February 2025)**

- This Report includes a summary of the response to the 6 no. FI Items; noting the following:
  - The applicant has provided a response to Item 1, which includes a reduction in height of the units by 450mm from 9750mm to 9250mm, noting the wider area includes a mix of 1 and 2 storey dwellings of various styles and sizes, with a 2 and a half story dwelling at the entrance to Droim Liath.
  - With respect Item 2, a legal right of way is registered with Tailte Éireann - Instrument No. (D2018LR0649940W) appurtenant right for Folio OY4206F, is in the ownership of the applicant.
  - The access lane was historically used as a public right of way. Ian Lee has provided a letter of consent to submit the application. The Report notes that consent has subsequently been withdrawn through a third

party submission on the application. As such, Clarification of Further Information relating to the submission of folios and land registry maps, to confirm whether the proposed dwellings would have a legal right of way to access the site directly from Collins Lane (R443).

- The local authority is otherwise satisfied with the responses to Items 3, 4, 5 and 6 of the FI request.

### **3.5. Planning Report (27<sup>th</sup> March 2025)**

- The applicant has submitted copies of folios OY496F, OY32795F & OY4206F, a Deed of Grant of Right of Way' for folios OY496F & OY4206F confirming that the first party has legal right to traverse along the right of way.
- The applicant also proposes to widen the current access lane by moving the western boundary to accommodate piped services along the proposed access laneway, all on lands within the applicant's ownership (Folio OY32795F refers).
- An additional clarification of further information is recommended confirming, inter alia, that services would not be located within the right of way; and the type of boundary treatment on the western boundary.

### **3.6. Planning Report (8<sup>th</sup> May 2025)**

3.6.1. The report includes a response relating to a Second Clarification of further information as requested on 27<sup>th</sup> March 2025. The report notes the following:

- The Second Further Information was deemed Significant.
- The access lane as widened has a new overall width of 6.4m. Of this total 3.9m is the existing right of way and 2.5m has come from lands within the ownership of the applicant. This 2.5m zone will facilitate the necessary services to the new dwellings.
- To facilitate these services, the applicant proposes to relocate the existing garage to the west. All services for both the proposed dwellings and the existing dwelling will be located within lands in the applicant's ownership (and will not encroach onto the existing right of way).

- A 1200mm high render blockwork wall with capping is proposed as the replacement boundary to the western side of the access lane, similar to the current boundary that is to be removed to facilitate the widening of the access lane.
- The report notes that, subject to conditions, the Planning Authority is satisfied with this response.
- The report includes a summary of 1 no. third-party submission received on the Significant Information (see below).
- The report concludes that the parcel of land located to the south of the applicant's entrance, is, in the opinion of Offaly County Council, located on the public road and therefore under the control of the Local Authority.
- The demolition of the existing boundary wall is a civil matter between the applicant and the adjacent property owner to the east.
- Having regard to the referral reports received, the policies and objectives of the Offaly County Development Plan 2021-2027, the report concludes that, subject to conditions, it is reasonable to permit the subject development proposal.

3.7. **Tullamore Municipal District Area Engineers Report (18<sup>th</sup> February 2025):** No objection, subject to conditions.

3.8. **Tullamore Municipal District Area Engineers Report (28<sup>th</sup> April 2025):** No objection, subject to conditions.

3.9. **Environment & Water Services (4<sup>th</sup> September 2024):** Request Further Information.

3.10. **Environment & Water Services (25<sup>th</sup> February 2025):** No objection, subject to conditions.

### 3.11. **Prescribed Bodies**

3.11.1. None received.



### 3.12. Third Party Observations

3.12.1. The grounds of 2 no. submissions received on file are summarised separately as follows:

**Submission 1:** Ian Lee of Collins Lane.

- That the third party is the registered, current beneficial, legal owner of Folio Number OY496F, which includes the area to the south of the applicants' entrance and that all references to 'the right of way' refer to a strip shaded in yellow on the area coloured in red on the Land Registry map of Folio OY496F.
- The third party provided a letter of consent to enable the application to be made, utilising this access.
- However, on examination of the file, the proposal is at variance with the provision of a single dwelling for family members, as intimated in early discussions with the applicant.
- The multi-unit residential scheme would not meet design standards with respect to access and public open space. The third party has in addition, concerns in relation to the impact the development will have on his neighbour's privacy and quiet enjoyment of their properties.

**Submission 2:** Loughlin and Sinead Fitzsimons of 169 Droim Liath.

- The design, including scale, and overbearing nature of the units to the rear of their property would have an injurious impact on the privacy and amenity of their home.
- The proposal is inconsistent with the design of properties in the immediate area.

### 3.12.2. Significant Further Information

3.12.3. A single submission was received further to the publication of statutory notices with respect the receipt by the authority of Significant Further Information from third party, Ian Lee; the grounds of which can be summarised as follows:

- The submission reiterates that the appellant is the registered, current, beneficial, legal owner of Folio Number OY496F, which includes the area to the south of the applicants' entrance and that all references to 'the right of way'

refer to the narrow strip shaded in yellow on the area coloured in red on the Land Registry map of Folio OY496F.

- The boundary wall to the west of the right of way was originally constructed by the owner of the neighbouring property in the 1980s on what was and still is his property. This was undertaken with Ian Lee's consent.
- Subsequently in 2016 the piece of land which remained to the west of this boundary wall was transferred to the ownership of the neighbouring property to the west. However, the wall which was constructed in the 1980s was sited on his land and remains within the curtilage of his house ever since.
- The removal of the wall would destroy the integrity of the right of way.
- The section of historical Collins Lane of which the right of way was part has been closed to through traffic for over sixty years. The historical right of way over Collins Lane has no bearing on the current situation.
- The right of way is registered as an appurtenant right to Folio OY4206F, which is the applicants' property; the proposed houses may not have any such rights.

## **4.0 Planning History**

### **4.1. Subject Site**

4.1.1. **P.A. Reg. Ref.: 16/232:** Retention Permission Granted in November 2016 for a domestic extension and the retention of an existing domestic detached garage. Both structures are intended for domestic use.

4.1.2. **P.A. Reg. Ref: 81/225:** Permission Granted for the erection of a dwelling house.

### **4.1.3. Adjoining Site**

4.1.4. **P.A. Reg. Ref: 02/671, Collins Lane, Tullamore:** Permission Granted in January 2005 for the erection of 181 No. dwellings, 1 no. creche and 1 no. shop.

## **5.0 Policy Context**

5.1. **Quality Housing for Sustainable Communities, Best Practice Guidelines, 2007**

5.1.1. These Guidelines set out national planning policy and guidance in relation to housing design.

5.1.2. The guidelines include the following relevant target for a two storey 4B/7P dwelling; target floor area (110m<sup>2</sup>); minimum main living room (15 m<sup>2</sup>) aggregate living area (40m<sup>2</sup>); aggregate bedroom area (43m<sup>2</sup>) and storage (6m<sup>2</sup>).

## **5.2. Quality Housing for Sustainable Communities, Best Practice Guidelines 2024**

5.2.1. These Guidelines set out national planning policy and guidance in relation to the creation of settlements that are compact, attractive, liveable and well designed.

5.2.2. Development standards for housing are set out in Chapter 5, including SPPR 2 in relation to private open space (4-bed + 50 m<sup>2</sup>).

## **5.3. Development Management Guidelines for Planning Authorities 2007**

5.3.1. Section 5.13 provides guidance with respect to Title to Land, stating the following:

“Under the Planning Regulations as amended, a planning applicant who is not the legal owner of the land or structure in question must submit a letter of consent from the owner in order to make the planning application. Where an applicant is not the owner and does not submit such a letter of consent, the application must be invalidated.”

“In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development.”

Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission.

However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.

#### **5.4. Climate and Low Carbon Development Act 2015 (as amended)**

- 5.4.1. The Acts, to be read in conjunction with Climate Action Plan 2025 with reference to CAP2024, outline measures and actions by which the national climate objective of transitioning to a climate resilient, biodiversity rich, environmentally sustainable and climate neutral economy by 2050 is to be achieved. They include budgets appropriate across a range of sectors. Of relevance to residential development is the built environment sector. The Commission must be consistent with the Plan in its decision making.

#### **5.5. National Biodiversity Action Plan (NBAP) 2023-2030**

- 5.5.1. The NBAP includes five strategic objectives aimed at addressing existing challenges and new and emerging issues associated with biodiversity loss.
- 5.5.2. Section 59B (1) of the Wildlife (Amendment) Act 2000 (as amended) requires the Commission, as a public body, to have regard to the objectives and targets of the NBAP in the performance of its functions, to the extent that they may affect or relate to the functions of the Commission. The impact of development on biodiversity, including species and habitats, can be assessed at a European, National and Local level and is taken into account in our decision-making having regard to the Habitats and Birds Directives, Environmental Impact Assessment Directive, Water Framework Directive and Marine Strategy Framework Directive, and other relevant legislation, strategy and policy where applicable.

#### **5.6. Offaly County Development Plan 2021-2027**

- 5.6.1. The subject site is zoned as LUZO-03 'Existing Residential', with an objective to "protect and enhance the amenity and character of developed residential communities."
- 5.6.2. 'Residential – Multiple (two or more units)' is Permitted in Principle under this zoning objective.

#### **5.7. Development Plan - Development Management Standards (Chapter 13)**

5.7.1. The Development Plan includes the following relevant standards:

**DMS-01 Development Capacity**

The following considerations will be taken into account in the assessment of planning applications for residential developments;

- An economical use of land and public services;
- An appropriate density, scale and size relative to the site location and settlement strategy tier;
- That the capacity of the physical and social infrastructure (for example, existing school capacity) can cater for the design population;
- The adequacy of community facilities;
- Adequate privacy and residential amenity for individual residential units;
- The safety of proposed layouts and the capacity of the existing roads infrastructure to absorb future development;
- floor gable/side windows which are more than 6 metres from a properly screened common boundary may be permitted.

**DMS-02 Density** The appropriate residential density of a site shall be determined with reference to;

- Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities (2009) and the accompanying Urban Design Manual (2009);
- Sustainable Urban Housing: Design Standards for New Apartments 2020; and the Urban Development and Building Heights Guidelines 2018;
- The prevailing scale and pattern of development in 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. To maximise activity in town and village centres, the street edge should be lined with development that promotes a high level of activity and animation such as retail, commercial or other appropriate uses. To maximise the effectiveness of these uses, setbacks should be minimised (for

example 0-3m) and a high frequency of entrances provided (for example every 5-10 metres). Higher levels of privacy are desirable where residential dwellings interface with streets. This may be provided via a small setback (for example 1-3 metres) which incorporates planted strip that defines public and private space. Greater flexibility in regard to setbacks may be needed in existing areas where they are defined by an existing pattern of building lines.

**DMS-13 Separation Distances/Overlooking** A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall be observed but may be relaxed in village and town centre locations where high quality design is achieved and where alternative provision has been designed to ensure privacy.

**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.

**DMS-15 Side Windows** Generally, windows in the gable/side walls of dwellings will not be permitted where the windows would closely overlook the curtilage of an adjoining dwelling. Ground floor gable/side windows which are more than 6 metres from a properly screened common boundary may be permitted.

**DMS-17 Landscaping and Boundary Treatment** Landscaping and boundary treatment plans shall be submitted for residential development which include;

- Planting schemes consisting of local native plant types and semi mature trees from the list contained in Table 4.16 in Chapter 4 of Volume 1 of this Plan;
- Where sites contain mature trees and/or substantial hedgerows, a detailed tree and hedgerow survey shall be required clearly outlining the extent of what is to be retained and replaced. Any existing mature trees shall be protected during site development works and incorporated into the overall development design;
- A coherent treatment for the boundaries of individual sites throughout a residential development;

- In general, unless front gardens are stipulated open plan on planning application drawings, front boundaries shall be defined by capped walls or fences of a maximum height of 0.5 metres high in keeping with the house design. Mature hedging is also acceptable as a front boundary;
- Side boundaries of rear gardens 1.8 metres to 2 metres in height and shall be formed by concrete block walls rendered and capped in a manner acceptable to the Council or concrete post and rail fencing.
- Privacy strips to the front of residential development in town and village centres providing a buffer clearly defining the private domain and public realm and streets will be encouraged.

**DMS-18 Private Open Space Minimum Standards for Houses** Minimum

Requirement of 75 m<sup>2</sup> for four bedroom or more house types.

**DMS-24 Surface Water Management** Surface water shall not be permitted to flow on to the public road. Accesses and road frontage should be designed in such a manner as to deal with surface water and ensure that it does not impact on the public road. Existing roadside drainage shall be maintained by the incorporation of a suitably sized drainage pipe. Each application shall be accompanied by design calculations or appropriate evidence to support the size of the pipe selected.

Applications for substantial hard-surfaced areas must demonstrate methods of controlling and limiting surface water run-off such as;

- Use of permeable paving/surfaces
- Bio-retention areas; and
- Swales (which should be maintainable), such that rainfall is not directed immediately to surface drains.

## 5.8. Natural Heritage Designations

5.8.1. There are no European sites within the subject site.

5.8.2. The closest European site to the subject site is the Charleville Wood SAC (Site Code: 000571), located c.1.65 km to the south-west of the site.

5.8.3. The closest site with a NHA designation is the Grand Canal pNHA (Site Code: 002104), located 1.2km to the south of the site.

#### **5.9. Water Framework Directive Assessment**

5.9.1. The closest waterbody to the subject site is the Grand Canal Main Line located c.1.2km to the south of the site.

5.9.2. The proposed development comprises Permission for the construction of 2 no. 2 and a half storey 4 bedroom detached dwellings; an extension to the existing garage, access lane upgrade and all associated works.

5.9.3. No water deterioration concerns were raised in the planning appeal.

5.9.4. I have assessed the proposed development 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 waterbodies 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/or groundwater water bodies either qualitatively or quantitatively.

5.9.5. The reason for this conclusion is as follows:

- the small scale and nature of the development.
- distance from nearest water bodies and lack of hydrological connections.

5.9.6. I conclude that 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 quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

#### **5.10. EIA Screening**

5.10.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed



development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

## **6.0 The Appeal**

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

6.1.1. The appeal is from an adjoining landowner and may be summarised as follows:

- He is the registered, current, beneficial, legal owner of Folio Number OY496F, which includes the area to the south of the applicants' entrance and that all references to 'the right of way' refer to a narrow strip shaded in yellow on the Land Registry map of Folio OY496F.
- It is not possible to widen the right of way, which includes the re-siting of a boundary wall, in order to connect to services for the proposed dwellings, without impacting on lands in the appellants ownership.
- The boundary wall to the west of the right of way was originally constructed in the 1980s on lands in the ownership of the appellant and cannot be interfered with without his consent.
- The appellant refers to Chapter 5, Section 13 of the Development Management Guidelines for Planning Authorities, 2007,

"In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis."

- The developers misrepresented the scale of the development proposal when seeking his consent to make the application; consent would not have been given had the appellant been aware of the scale of the development.
- The appeal is accompanied by evidence that the wall is the ownership of the third party.

## 6.2. **Applicant Response**

- The boundary wall along the eastern side of the Applicants' lands is, at worst a party boundary wall with equal ownership between the applicant and appellant.
- The area to the front of the proposed entrance is in the public domain, with an established right of way in this area.
- The applicant has suggested an alternate arrangement as part of this appeal response, whereby access is provided on lands fully within the ownership of the applicant; with no works proposed to the existing laneway and subject boundary wall (Drawing No. PL08 Rev A, as submitted with the first party response refers).
- In this scenario, the applicant would cede their rights of way over the existing shared access lane.

6.2.1. The layout and submission as received from the first party was circulated to the local authority and Appellant for comment.

## 6.3. **Planning Authority Response**

6.3.1. The local authority has no objection to the revised layout as issued.

## 6.4. **Appellant Response**

6.4.1. The response of the appellant may be summarised as follows:

- The grounds of the appellant's original appeal stand.
- The applicant has failed to address the substantive and core issue, that is the absence of any legal right of way on their part to remove or otherwise interfere with the boundary wall, which forms part of the right of way and constructed on lands in the appellant's ownership.

- Any interference with the boundary wall requires the appellant's consent, which is not given, and will not be given in the future.
- The appellant notes the alternate layout is materially different from those as submitted in the first instance. No commentary is otherwise provided on the first party's document.

## 6.5. **Observations**

6.5.1. None received.

## 6.6. **Further Responses**

6.6.1. None received.

## 7.0 **Assessment**

7.1. Having examined the application details and other documentation on file, including the report of the local authority, having inspected the site and having regard to the relevant national and local planning policy guidance, I consider the substantive issues in this appeal area as follows:

- Principle of Development
- Roads and Access
  - Other Matters

## 7.2. **Principle of Development**

- 7.2.1. The proposed development relates to the provision of a 2 no. two and a half storey 4 bed houses, located to the rear of an existing dwelling on this site, an extension to an existing garage to create a home office; and all associated drainage works, landscaping, boundary treatments, access lane upgrade and site works.
- 7.2.2. The site is subject to Established Residential zoning objective under the Development Plan, under which Residential – Multiple (two or more units) is Permitted in Principle.

- 7.2.3. This is a regularly shaped infill site located to the rear of a property fronting a regional road at the fringes of an established residential estate.
- 7.2.4. Having regard to the above, I consider that the proposed development is acceptable in principle, subject to assessment with respect to design and layout, roads and access and site services, with respect to the grounds of appeal as raised by the appellant. These relate to as addressed below.

### **7.3. Roads and Access**

- 7.3.1. The application includes the provision of 2 no. 2 ½ storey detached houses to the rear of a dwelling fronting to the R443 and all associated works. At the time of lodgement, it was proposed that access to these units would be via a shared laneway from the R443, comprising lands in the ownership of both the applicant and appellant, including a right of way.
- 7.3.2. The shared access has a total width of 6.5m (2.5m on lands within the applicant's ownership and 4m within the right of way). The works also include the relocation of a 1.2m high blockwork boundary wall to the west.
- 7.3.3. It is proposed that the widened laneway would also serve the existing dwelling on site via a repositioned access as well as providing access to the appellant's property to the east. The principal access to this property is from the R443, to the east of the laneway.
- 7.3.4. The widened access would egress to the R443 at a position to the east of the established vehicular access point serving the existing dwelling on site. The junction has width of 5.5m, increasing to 6.25m at the entrance point to the existing dwelling on site, and reducing to 4.2m serving the proposed dwellings to the rear of the site. From site inspection I note that sightlines can be achieved in both directions.
- 7.3.5. From a review of these plans, I consider that the widened shared access arrangement would reduce accesses to/from the R443 and facilitate the development of an undeveloped infill site to the rear of an existing dwelling. The proposal would also support pedestrian connectivity to Droim Liath estate to the north of the subject site.

- 7.3.6. The appellant refers to Chapter 5, Section 13 of the Development Management Guidelines for Planning Authorities, 2007, which outlines that permission should be refused where applicant does not have sufficient legal interest.
- 7.3.7. The appellant submits that he is the owner of lands to the east of the site, including the subject right of way of lands to the south of the access road, all within Folio OY4206F.
- 7.3.8. From a review of the documentation, the applicant has stated that Folios OY496F and OY4206F are the original folios of land in this area. Folio OY4206F has been transferred in parts and is now registered as Folio OY32795F following the sale to the applicants in 2021. In addition, the applicant sets out that the right of way, originally granted in favour of the property in Folio OY4206F in 2018 has been passed onto the registered owners of folio OY32795F – the applicants.
- 7.3.9. The documentation also confirms that Collins Lane is taken in charge and as such providing unimpeded access from the R443 to the subject site. This conflicts with the case of the appellant lands to the south of the site are in his ownership.
- 7.3.10. This aside, the Commission will note the Commission's role is not to adjudicate on legal matters. I note that legal matters relating to, inter alia, land ownership and rights of way, cannot be assessed as part of the appeal process and I refer the Commission to the provisions of Section 34(13) of the Act which states the following:  
  
'A person shall not be entitled solely by reason of a permission under this section to carry out any development.
- 7.3.11. In conclusion, I note that the applicant has submitted sufficient legal interest to make an application, and that the planning authority has accepted same.
- 7.3.12. The appellant sets out that the boundary wall is on lands in his ownership and objects to any works being undertaken.
- 7.3.13. I refer the Commission to the first party appeal response which contest that the boundary wall is at the least a party wall, with equal ownership between both parties.
- 7.3.14. The applicant argues that given the shared nature of the access lane between both properties and the historical upkeep and maintenance (including painting the wall capping), it can be contested that the wall is in the ownership of the applicant.

- 7.3.15. In this context, the first party has submitted an alternate layout in response to the third party appeal; in which access to the proposed houses would be provided on lands fully within the ownership of the applicant, retaining the existing boundary wall in place; and without undertaking any works within lands subject to the right of way, that is, within the appellant's ownership.
- 7.3.16. The arrangement includes the realignment of the boundary wall west, resulting in an entrance width of 6m at the R443, reducing to 5.5m at the entrance to the existing dwelling and 4m serving the dwellings to the rear.
- 7.3.17. The layout includes the relocation of the car parking to the north-east of the access road to the proposed units with a 1.2m high boundary wall to the south of the car parking area. The proposal would not affect the design of the proposed house units, services, and the extension to the existing residential garage.
- 7.3.18. Whilst the appellant has not commented on the actual layout, the local authority has no objection to same.
- 7.3.19. From a review of the plans I consider that the repositioning of the car parking spaces from immediately in front of the house units to the north-eastern corner of the site, may reduce pedestrian connectivity from the R443 to Droim Liath estate to the north of the subject site.
- 7.3.20. However, I consider that on balance, the scheme as revised as part of the first party appeal response, provides an acceptable layout, including with respect to traffic safety. Notably, the works would relate to lands fully within the ownership of Applicant, as requested by the appellant as part of the third party appeal.
- 7.3.21. As such, in the event that the Commission decide to grant permission, I recommend the inclusion of a condition ensuring that development is undertaken in accordance with this arrangement option.
- 7.3.22. As noted above, whilst matters relating to land ownership and rights of way are civil matters outside remit of Planning Acts; I note the applicant has submitted sufficient legal interest to make the application; and that this has been accepted by the planning authority.

## **Site Services**

- 7.3.23. The appellant sets out that it is not possible, to widen the right of way, which includes the re-siting of a boundary wall, in order to connect to services for the proposed dwellings, without impacting on lands in the appellants ownership.
- 7.3.24. The scheme was revised at CFI stage (including surface water and water connections to the R443), with all services located on lands fully within the ownership of the applicant. This is also the case with respect to the alternate layout as submitted as part of the first party appeal response, whereby development is set back from the right of way located on lands in the ownership of the Appellant.
- 7.3.25. In conclusion, I am satisfied, services to the proposed development can be achieved to the subject site in both layout options as discussed above. I am therefore satisfied that, subject to condition, the proposed development is acceptable with respect access to site services.

#### **7.4. Other Matters**

##### **Noise**

- 7.4.1. The local authority has included condition relating to control of noise at the subject development. They have also included condition relating to noise and dust during the construction phase.
- 7.4.2. Having regard to the nature and scale of the proposed development, I do not consider this necessary and recommend the inclusion of a condition relating to the hours of construction only.

##### **Replacement Garage and Home Extension**

- 7.4.3. The proposal includes an extension to the existing residential garage associated with the existing property, to provide a home office. The plans were amended in order to accommodate services to the proposed dwellings on lands fully within the applicant's ownership, as proposed at CFI stage.
- 7.4.4. As such, it is now proposed to move the garage to the west, as well provide an extension as proposed to the west of the structure. These works are not affected by the proposal to relocate all development from the laneway, as proposed as part of the first party appeal response.
- 7.4.5. In the event that the Commission decide to grant permission, I recommend the inclusion of conditions which ensure that FFL of the extension are the same as the

existing garage. It is also recommended that the condition is applied to restrict the use from human habitation, or any commercial activity or for any other purpose than

## **8.0 AA Screening**

- 8.1. Screening the need for Appropriate Assessment: Screening Determination (Stage 1, Article 6(3) of Habitats Directive).
- 8.2. I have considered the 2 no. 2 and a half storey 4 bedroom detached dwellings; an extension to an existing garage, access lane upgrade and all associated works, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.3. The closest European site to the subject site is the Charleville Wood SAC (Site Code: 000571), located c.1.76 km to the south- east of the site.
- 8.4. No nature conservation concerns were raised in the planning appeal.
- 8.5. The application was accompanied by a Appropriate Assessment Screening Report, which concludes that the proposed development is unlikely to have significant effects on any European sites.
- 8.6. 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 effect on a European Site.
- 8.7. The reason for this conclusion is as follows:
  - The distance from nearest European site.
  - The small scale and nature of the subject proposal.
- 8.8. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 8.9. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.



## 9.0 Recommendation

- 9.1. It is recommended that Planning Permission is Granted, subject to conditions, for the reasons and considerations as set out below.

## 10.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development, the established residential use on part of this site, the New Residential zoning objective, policies, objectives and design standards (including DMS-01 relating to Development Capacity and DMS-10 relating to Urban Infill and Brownfield Development) as indicated in the Offaly County Development Plan 2021-2027, it is considered that, subject to conditions, the proposed development would not adversely impact on the would provide for an increase in housing on infill, suburban site. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 6th August 2024, 31st January 2025, 5th March 2025 and 3rd April 2025 and as received as part of the appeal response by An Coimisiún Pleanála on 1<sup>st</sup> July 2025 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

- 2 Notwithstanding any drawings submitted, the following schedule of materials/finishes only shall be used in the proposed development except where conditions hereunder specify otherwise.
- (a) The roofs shall be finished in slate/flat tile black, dark grey or blue/black in colour except where conditions specify otherwise.
- (b) The colour of the ridge tile shall match the colour of the roof.
- (d) Any stone facing shall be of natural local cut stone. All pointing shall be recessed or flush.

**Reason:** In the interests of visual amenity and in order to ensure a standard of materials and finishes appropriate to this area

- 3 The replacement garage and home office extension shall have the same finish floor level as the existing garage and shall not be modified in any way without the prior written consent of the Planning Authority.

**Reason:** To reduce the visual impact of the proposed house in the interest of amenity

- 4 The replacement garage and proposed home office extension shall not be used for human habitation, or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling.

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

- 5 All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

**Reason:** In the interest of orderly development and visual amenity.

- 6 (a) Any works which are to be carried out on the public roadway and/or footpath shall be subject to a grant of a licence by Tullamore Municipal District.

- (b) No construction vehicles will be permitted to park on the public road during construction works. No loading or unloading will be permitted on the public roadway. The road network shall remain unaffected by the construction works at all times.
- (c) If the public roadway is being contaminated by site material being drawn off site, the developer must address immediately to the standard required by the District Engineer.
- (d) Any damage to the public road as a result of the Works shall be the liability of the Applicant.
- (e) All necessary measures shall be taken by the Developer to prevent any spillage or deposition of clay, dust, rubble or other debris, whether arising from vehicle wheels or otherwise, on the adjoining and/or adjacent public road and footpath network during the course of the construction works.

**Reason:** In the interests of traffic safety and orderly development.

- 7
  - (a) The dwelling houses shall be serviced with water from a public water main and shall not be occupied until there is a safe and adequate connection to the water main.
  - (b) All water and wastewater infrastructure shall be constructed in accordance with the Uisce Éireann Codes of Practice and Standard Details.
  - (c) Uisce Éireann must carry out all works to the Irish Water infrastructure, including works in the public space.
  - (d) (d) In the event that it is proposed to build over or divert existing water or wastewater services the applicant shall have received written Confirmation of Feasibility (COF) of Diversion(s) from Uisce Éireann prior to any works commencing.

**Reason:** In the interest of public health and to ensure adequate water and wastewater facilities.

- 8
  - (a) The surface water drainage network should be designed in accordance with the Greater Dublin Strategic Drainage Study (GDSDS),

Sustainable Drainage Design & Evaluation Guide 2021 & CIRIA SuDS Manual 2015.

- (b) The surface water drainage system should be designed so as to restrict a 1% AEP surface water run-off event, by means of an attenuation and flow control system, from the impervious areas (i.e. roofs, roads, paved areas etc.) so that the ultimate discharge from the subject development to the existing public surface water pipe is equivalent to the green field run-off from an equal area. The Developer should calculate the greenfield run-off rate in accordance with the Institute of Hydrology Report 124 as referenced in the Greater Dublin Drainage study (GDSDS).
- (c) Surface water run off from the roofs, roads and hardstanding areas shall be collected and disposed of within the site to soakaways. No such surface water run off shall be allowed to flow onto the public roadway or other adjoining properties.

**Reason:** In the interests of public health and traffic safety.

- 9 (a) Prior to commencement of development, the Developer shall submit detail to the Planning Authority for written agreement details of how effluent will be collected & treated during the construction phase.
- (b) In the event that foul waste is to be removed regularly from site by a contractor during the construction phase, the developer shall submit to the Planning Authority for written agreement a signed maintenance contract with an Authorised Waste Collector and all foul waste must be transported to an Authorised Waste Facility.

**Reason:** In the interest of public health and orderly development.

- 10 All wastes arising from/at the proposed development shall be managed in accordance with the Waste Management Acts 1996 as amended. While awaiting removal, all waste materials shall be stored in designated areas and protected against spillage or leachate run-off.

**Reason:** In the interest of public health and orderly development.

- 11 Site development and building works shall be carried out only between the hours of 0700 to 1830 Mondays to Friday inclusive, between 0800 to 1330 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

- 12 The developer shall pay to the planning authority a financial contribution of €8,020 in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to 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.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

Aoife McCarthy  
Planning Inspector

6<sup>th</sup> November 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	322665-25
<b>Proposed Development Summary</b>	Construction of 2 no. 2 and a half storey 4 bedroom detached dwellings; an extension to an existing garage, access lane upgrade and all associated works.
<b>Development Address</b>	Bienvenu, Collins Lane, Tullamore, Co. Offaly.
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed	

<p>type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	<p>Class 10(b)(i) Construction of more than 500 dwelling units – Sub Threshold.</p>

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	<b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b>

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



## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	322665-25
<b>Proposed Development Summary</b>	Construction of 2 no. 2 and a half storey 4 bedroom detached dwellings; an extension to an existing garage, access lane upgrade and all associated works.
<b>Development Address</b>	Bienvenu, Collins Lane, Tullamore, Co. Offaly.
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<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 application relates to the construction of 2 no. dwellings to the rear of an existing dwelling and all ancillary works, including a new access.</p> <p>The operational development will be served by existing water supply and wastewater systems.</p> <p>The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable 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 site is located 2.4km from the centre of Tullamore town.</p> <p>The development is removed from sensitive natural habitats, designated sites, protected views, protected structures as designated within the Development Plan.</p> <p>The subject site is not located within or adjacent to any Natura 2000 sites.</p> <p>The closest European is Charleville Wood SAC (Site Code: 000571), located c.1.76 km to the south- east of the site.</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 scale and nature of works, distance of the site from sensitive habitats, 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.</p>
<b>Conclusion</b>	

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.	
There is a real likelihood of significant effects on the environment.	

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

DP/ADP: \_\_\_\_\_ Date: \_\_\_\_\_

(only where Schedule 7A information or EIAR required)