



An
Bord
Pleanála

Inspector's Report ABP-320260-24

Development	Construction of a dwelling house, domestic shed, and all associated site works.
Location	Treascon, Portarlinton, Co. Offaly.
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	2360231
Applicant(s)	Roman Mukhin
Type of Application	Permission
Planning Authority Decision	Grant permission with conditions
Type of Appeal	Third Party
Appellant(s)	<ol style="list-style-type: none">1. Kenneth Hoey2. Pam and Fergus Bergin3. Sine and Shane Treanor
Observer(s)	Gearoid Bergin.
Date of Site Inspection	13/12/24
Inspector	Ronan Murphy

1.0 Site Location and Description

- 1.1. The subject site has an area of c. 0.300ha and is located in a rural area of south County Offaly c. 3.km to the northeast of Portarlinton. The site is accessed off a small laneway which itself is accessed from the L1006-1 local road. The area in which the site is located contains a number of dwellings which are accessed off the laneway.
- 1.2. The site is generally rectangular in shape and is bound to the north by a dwelling in separate ownership, a tree plantation to the south, vacant land to the east and the lane way which provides access to the west.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following:
- A single storey dwelling.
 - A separate garage.
 - Chieftain SBR 6,000 litre tank and infiltration treatment area.
 - New vehicle access.
 - All associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1 The planning authority decided on 10th July 2024 to grant planning permission subject to 19 conditions including conditions relating to ensuring that all mitigations set out in the Site Specific Flood Risk Assessment are implemented 7-year occupancy, external finishes, habitation of the shed, vehicle access, surface water run-off, wastewater infrastructure, noise emissions and landscaping.
- 3.1.2 The decision was in accordance with the planning officer's recommendation.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

There are three planning reports on file.

The first report, dated 31st January 2024 recommended that further information be sought relating to the following:

- Revised site layout plan detailing proposed hard and soft landscaping.
- Photographic samples of proposed cut stone finishes to the east and front elevation and external door finishes and window finishes.
- Designs and details of the proposed site entrance.
- Details of the proposed and existing boundaries of the site.
- Revised site layout plan to show the treatment of the roadside open drain and the provision of gullies at the entrance to the site and details of location of the proposed soakaways.
- Details of how the proposal would connect to public water supply in line with DMS-44 of the county development plan. The applicant is required to engage with Uisce Eireann in relation to water connection.
- Copies of land registry maps with written folio numbers regarding the applicants' current local rural address to demonstrate that the applicant does not own an existing rural house.

3.2.2. Other Technical Reports

- Area engineer report dated 26th January 2024 requesting further information relating to details of the site entrance, all open drains, treatment of roadside drainage, how surface water will be disposed of and details of the proposed and existing boundaries of the site.
- Environment and Water services report dated 25th January 2024 requesting further information relating to the need to connect to public water supply and to engage with Uisce Eireann in relation to this connection, the need to supply an updated site layout plan to show the proposed soakaways.

3.2.3 A further information response was received on 25 March 2024. A second planning report dated 17 April 2024 recommended that clarification of further information be requested relating to the following:

- The applicant was requested to provide a site-specific flood risk assessment for the proposed development.
- The applicant was requested to provide a revised site specific DWWTS design in accordance with the recommendations of the 2021 EPA Code of Practice: Domestic Wastewater Treatment systems.

3.2.4 Other Technical Reports

- Area Engineer: Satisfied with the applicants' response.
- Environment and Water Services: Report dated 9th April 2024 requested clarification of further information relating to potential flooding and groundwater pollution.

3.2.5 The third planning report dated 1st July 2024 recommends that planning permission be granted, subject to conditions. The third planning officers report notes that there are no objections to the proposed development from any of the internal departments including the Environment and Water Services section pursuant to a report dated 28th June 2024.

4.0 Planning History

4.1 Subject land

Reg. Ref. 0218. In 2002 permission refused for a dwelling, septic tank, and effluent treatment system for the following reasons:

1. *The proposed development would be prejudicial to public health because tests carried out on site and site inspections carried out on site and site inspections indicate that ground conditions are not suitable for the disposal of foul effluent in accordance with SR61991, notwithstanding the proposal to install a proprietary effluent treatment system.*
2. *Taken in conjunction with existing development in the vicinity the proposed development would contribute to undesirable ribbon development in an unzoned rural area. The proposed development would, therefore, be contrary to the proper planning and development of the area and the provisions of the County Development Plan.*

Site to the north

Reg. Ref. 00/927: Permission granted for a bungalow, septic tank, and effluent treatment system.

Reg. Ref. 98/900: Application for outline permission for two dwellings on a site which included the subject land and the site to the north. Outline permission was restricted to one dwelling on the site to the north.

5.0 Policy Context

5.1 Development Plan

- 5.1.1 The *Offaly County Development Plan 2021-2027* is the operative plan. Chapter 2 of the Development Plan sets out the Core Strategy for County Offaly and seeks to ensure that the development objectives of the Development Plan are consistent with national and regional development objectives. With regard to the development of the rural areas of the county Section 2.4.7 outlines that rural population will continue to be supported through smaller towns, villages and Sraids. While there is support for housing and repopulation, as necessary, taking place within towns and villages to help act as a viable alternative to one-of housing in the open countryside, Section 2.5.7 acknowledges that the open countryside is and will continue to be, a living and lived in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, tourism and rural enterprise. It is noted that this would be achieved at the same time as avoiding ribbon and over-spill development from urban areas and protecting environmental qualities. Section 2.4.7 of the Development Plan notes that the Council will ensure that development of the open countryside takes place in a way that is compatible

with the protection of key economic, environmental, biodiversity and cultural / heritage assets such as the road network, water quality and important landscapes.

5.1.2 As shown on the map in Figure 2.6 'Open Countryside Housing Policy Map' the subject land is identified as being within the Rural Areas Under Strong Urban Influence and Stronger Rural Areas. Section 2.5 of the Offaly County Development Plan sets out the Settlement Strategy policies. The following are the relevant standards / policies set out in the *Offaly County Development Plan 2021-2027*:

SSP-01 It is Council policy to develop the county in accordance with the Settlement Hierarchy and to require future residential development to locate at and be of a scale appropriate to the settlement tiers and levels identified in the Core Strategy Table.

SSP-27 sets out in four criterion which must be satisfied. One criterion which must be satisfied is that the applicant is born within the local rural area or is living / has lived in the local area for a minimum of 5 years. A second criterion is the applicant should not already own a home or has not owned a home in the local rural area, while a third criterion is that the site is located within an Area of Special Control and if so, there is no alternative site outside of Areas of Special Control. The fourth criterion relates to the need for high quality siting and design to be demonstrated.

5.1.3 Chapter 13 sets out Development Management Standards for County Offaly. The following are pertinent to the consideration of a dwelling in the countryside:

DMS-44- On-site Wastewater Treatment requires that all individual on-site wastewater treatment systems meet the standards of Environmental Protection Agency (EPA) 'Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses' (October 2009) or any later version.

DMS-45 Site Size requires that a minimum site size of 0.2 hectares (0.5 acres) is required to accommodate a dwelling in the open countryside.

DMS-46 Road Frontage states that dwellings in the open countryside shall provide a minimum of 30 metres road frontage unless on a case-by-case basis and it is desirable to maintain existing boundary or landscape features.

DMS-48 Design and Siting states that all planning applications for single houses in the countryside shall demonstrate a high standard of siting and design.

DMS-52 Water Supply relates to the provision of a safe and reliable water supply and that where a site is served by mains water, a connection must be made.

DMS-53 Surface Water Drainage broadly requires that surface water is not permitted to flow on to the public road from any rural residential site.

DMS-57 Domestic Garage / Stores requires that the development of a domestic garage/store for use ancillary to the enjoyment of the dwelling house should have a maximum floor area of 100m² and height of a maximum of 5m and the design and external finishes shall match the main dwelling.

DMS-97 Safe Site Distances requires access onto National, Regional and Local Roads and states that. A sightline of 60m from vehicular entrances for tertiary roads is 60 metres.

5.1 EIA Screening

5.1.3 Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage, and a screening determination is not required. Please refer to Form 1 in Appendix 1.

6 The Appeal

6.1 Grounds of Appeal

Three third-party appeals have been submitted. The first is by Total Planning and Design Solutions on behalf of Kenneth Hoey. The second is by Pam and Fergus Bergin and the third is by Sine and Shane Treanor. The key issues raised with the appeal submission in relation to planning matters can be summarised as follows:

- Proper notice of the application was not given. The site notice was erected 24th December not the 13th of December.
- The application form was incorrectly filled out in relation to flooding. Throughout the winter the land is swamp like.

- In a previous application tests indicated that the ground conditions were not suitable for the disposal of effluent and would be prejudicial to public health.
- A previous application for two dwellings on the land was reduced by way of condition to one dwelling.
- Concerns in relation to the destruction of natural habitat will have a detrimental impact on the large variety of wildlife on site-red squirrels, frogs, and a wide variety of birds, including birds of prey.
- Environmental conditions on the land have not improved since the previous application was refused on the land.
- The Environment / Water Services Section of Offaly County Council in response to the clarification of Further Information stated that the site is unsuitable for development and have concerns with existing ground water levels observed on site. Localised flooding is evident throughout the site.
- Notwithstanding the French drainage proposals, the proposal is inadequate to prevent contamination to include odour nuisance and water pollution. It is a requirement of the EPA Code of Practice DWWTS-PE <10 to ensure systems are designed to eliminate odour nuisance and water pollution. This cannot be achieved through the current design as the proposed invert of the drainage channel would be 600mm below ground level and subject site is frequently flooded to a depth of 200mm above ground level. The drainage channel cannot function as it would be submerged by seasonal flood waters.
- The Local Authority has disregarded key point in the *Offaly County Development Plan 2021-2027* specifically the need to avoid inappropriate development in areas at risk of flooding and to avoid new developments increasing flood risk elsewhere.
- Flooding consequence will affect all residents on the lane not only the adjoining site.
- Justification Test should prove the site does not meet the specific criteria for proper planning and sustainable development.

- *The Planning System and Flood Risk Management Guidelines and Flood Risk Guidelines for Planning Authorities and Technical Appendices 2009* recommends that a precautionary approach to climate change is adopted due to the level of uncertainty involved in the potential effects. Point 1.2 states that all flood risk assessments should be supported by appropriate data and information including historical information on previous events but focus more on predictive assessment of less frequent or more extreme events taking the likely impacts of climate change into account.
- The proposal would not comply with the Core Strategy of the *Offaly County Development Plan 2021-2027*.
- The existing road drainage system will be adversely affected by any proposed development on the east side of this private lane.
- The proposed development will have an adverse effect on the volume of traffic on the private lane. There is constant agricultural activity in the vicinity together with the local gun club, families harvesting turf and walkers who utilise the adjoining bog land for recreational purposes.
- The proposal would not comply with point 2.4.4 of the Core Strategy of the *Offaly County Development Plan 2021-2027*.
- All landowners and residents on the private laneway must be informed of any proposed development prior to the disturbance of hedging or natural land boundaries.
- Correspondence from Uisce Eireann to the applicants engineer states that ‘the customers site is located on a private road leading to their site and that the customer shall obtain any permission/consents/wayleaves (if required) for the pipe route from their site to the edge of the public road.
- The site has been refused permission by Offaly County Council on previous occasions (PL2/98/900 and PL/02/18) due to the high-water table.
- A previous application for an all-weather soccer pitch was refused planning permission.

- The development borders a 45-acre Coillte Biodiversity plantation and borders a private lane. There are regulations in relation to fire breaks i.e., distance from the existing house on the lane, the lane itself and the proposed development must be taken into account.
- The proposed percolation and polishing filter are 400mm above the existing ground level. Given that the site experiences flooding 200mm above the existing ground level, the proposed separation distance is inadequate to prevent contamination of the receptor / groundwater.
- The subject land is immediately adjacent to a primary drainage channel.
- The area is immediately adjacent to Mid-range future scenario and High-end future scenario flood areas as per the OPW National Catchment based Flood Risk Assessment and Management (CFRAM). The increased risk of flooding only exacerbates the vulnerability of the site and further strengthens the need to ensure that no development is permitted which would endanger the local drainage basin and potential pollution of the reiver Barrow through the adjacent primary drainage channel.
- The site is in a Rural Area Under String Urban Influence. In line with policy the applicant has not demonstrated a functional economic or social requirement to reside at this location as such the application contravenes the Regional Spatial Economic Strategy.
- In addition to written submissions and plans, video evidence was submitted showing surface water ponding on the appeal site.

6.2 Applicant Response

Letter dated 22nd August 2024 from Ruairi Whelan Consulting Engineering on behalf of the application. The key issues raised in relation to planning matters can be summarised as follows:

- All three of the objections put forward the same arguments e.g., planning history, environment, and flooding. All these arguments have been considered and addressed.

- Unfair to say OCC did not carry out their duties thoroughly because they sought clarification of further information in order to be satisfied that the site is suitable for this development. Mitigation measures have been considered and designed by experts qualified in their field.
- The Environment / Water Services section of OCC visited the site and noted the pooling and that is why they requested clarification of further information, which led to a site-specific flood risk assessment.
- Reference to previous planning applications have also been outlined and considered in the OCC's planners report. Their decision to grant is obviously and rightly based on the current development plan.
- The applicant owns the land in question and has a legal right of way on the laneway.
- The site notice was destroyed / removed/ defaced several times during the planning process.
- The applicant feels that intimidation has arisen during the process due to his nationality.

6.3 Planning Authority Response

- Response dated 20/8/24 drawing the Boards attention to the technical reports on file and requesting that An Bord Pleanála support its decision to grant permission.

6.4 Observations

An observation has been received from Gearoid Bergin dated 5th August 2024. The key issues raised in relation to planning matters can be summarised as follows:

- The applicant applied for planning permission without seeking permission for a right of way to the site from the lane, which is private property.
- Site notices were erected on Christmas Eve with no permission to remove any part of the ditch. The only legal access to the site is from the R159 through a forestry plantation owned by the vendor.

- The site is prone to flooding. The proposal to construct a French drain will not alleviate this situation as the water has nowhere to flow from this site. Offaly County Council support the proposal that the water will flow into the adjoining property and out into the forestry plantation. The issue is the lack of maintenance of the drains on this plantation.
- The history of the site originates with the vendor seeking planning permission for two dwellings on the land and the planning authority limiting the number of houses to one. A subsequent application for a second dwelling was refused on public health grounds.

6.5 Further Responses

- No further responses were received.

7 Assessment

7.1 Having inspected the site and reviewed the documents on the file, I consider that the appeal can be addressed under the following headings:

- Principle of development
- Planning History
- Flooding
- Wastewater Management
- Traffic Safety
- Property issues
- Appropriate Assessment

7.2 Principal of Development

7.2.1 The development of a dwelling in the rural area requires consideration under chapter 2, 'Settlement Strategy' of the *Offaly County Development Plan 2001-2027*. In broad terms the Settlement Strategy seeks to support rural population through smaller towns, villages and Sraids to act as a viable alternative to one-off housing in the open

countryside. This approach is compliant with National and Regional policies. The subject site is located in open countryside within an area of Offaly which is designated as 'Areas Under Strong Urban Influence and Stronger Rural Areas' in the *Offaly County Development Plan 2021-2027*. It is further noted that the subject land is approximately 3.5km to the north-east of the centre of Portarlinton. Portarlinton is identified as a Self-Sustaining Town.

- 7.2.2 Given the location of the land within an area designated as 'Areas Under Strong Urban Influence and Stronger Rural Areas' in the *Offaly County Development Plan 2021-2027*, the applicant is required to satisfy policy set out in **SSP-27** which sets out in four criterion which must be satisfied. One criterion which must be satisfied is that the applicant is born within the local rural area or is living / has lived in the local area for a minimum of 5 years. A second criterion is the applicant should not already own a home or has not owned a home in the local rural area, while a third criterion is that the site is located within an Area of Special Control and if so, there is no alternative site outside of Areas of Special Control.
- 7.2.3 The application material includes a map showing the properties in which the applicant wither has lived or currently lives. The information provided shows that the applicant has lived within 2km of the appeal site for a combined period of 12 years. The applicant has stated that they do not own any dwellings or sold any houses in County Offaly. I do not question the bone fides of the applicant with respect to respect to the above and there is no evidence to the contrary. Therefore, I accept that the applicant has demonstrated that they currently live in the area and have done for a period of 12 years and have not previously owned a home in the area. Further to this, the site is not with an Area of Special Control. I am satisfied that the applicant has demonstrated that they comply with policy **SSP-27 (1-3)** of the *Offaly County Development Plan 2021-2027*.
- 7.2.4 The fourth criterion of policy **SSP-27** notes that in order for a dwelling in Rural Areas under Strong Urban Influence and Stronger Rural Areas to be considered high quality siting and design must be demonstrated. In addition to this Development Management Standard (**DMS-48 Design and Siting**) notes that all planning applications for dwellings in the county side should demonstrate a high standard of siting and design in accordance with the '*Designing Houses, Creating Homes-A Guide for Applicants on the siting and design of new houses in the Offaly countryside*'.

7.2.5 The proposed development comprises of a single storey dwelling with a maximum height of c.6.7m with a predominantly nap render finish and a gable finished in stone. The proposal also includes a single storey detached garage which has a maximum height of c.5.0m.

7.2.6 Having considered the policy set out in the *Offaly County Development Plan 2021-2027* I am satisfied that the design of the proposed development would comply with the fourth criterion of policy SSP-27 and Development Management Standard (**DMS-48 Design and Siting**).

7.3 Planning History

7.3.1 The third-party observations highlight that the planning history associated with the subject land and note that permission has been refused for a dwelling on the appeal site twice.

7.3.2 I note the planning history on the appeal site and adjoining sites. Almost 23 years have passed since the most recent refusal of permission on the subject land and planning policies have changed within the intervening time (including national, regional, and local policy) and EPA Guidelines in relation to Domestic Wastewater Treatment 2021 and this application must be considered on its merits in light of this. Notwithstanding this, the planning history suggests that flooding issues and wastewater treatment issues which the application material would have to demonstrate could be successfully mitigated.

7.4 Flooding

7.4.1 The grounds of appeal have outlined concerns that the appeal site is prone to flooding and that the applicant's mitigation measures including a French drain would not be sufficient as the proposed drain would be below the high-water level and as such would not have anywhere to discharge.

7.4.2 In response to a Clarification of Further Information request dated 9th April 2024 the applicant submitted a Site-Specific Flood Risk Assessment prepared by Geoenvironmental Environmental Consultants. The Site-Specific Flood Risk Assessment notes that the soil type underlying, and subsoil comprise of cut peat. It is noted that the soil type would be expected to drain poorly. In addition to this, the subsoil is classified as having moderate permeability.

- 7.4.3 The report notes that periodic pluvial flooding arising from a combination of high rainfall events and the poorly drained soils would pose an intermittent risk. A GPS survey of the land did not identify any significant depressions or low areas which would, if present, increase the risk of pluvial flooding across the site. Notwithstanding this, the finding of the site suitability assessment indicated a high seasonal water table and a marginally drained peaty topsoil which could be susceptible to ponding during times of heavy rainfall. In this regard it was noted that ponding was observed by staff of the Environment / Water Services section of Offaly County Council during their site visit.
- 7.4.4 To mitigate against any potential pluvial flood risk and reduce the high-water table levels across the site a French drain measuring 0.6m deep and 0.6m wide is proposed to be installed around the perimeter of the site. In addition to this, an overflow is proposed from each of the sub-surface storm water soakaways to the open drain located to the west of the appeal site. There report does not provide any information in relation to the capacity of the open drain to the west of the appeal site.
- 7.4.5 The report concludes that using the 2011 OPW PFRA Map No.218 there is a possible risk of pluvial flooding to the east of the site but did not show the subject land at risk. The latest OPW CFRAMS map viewer both identify a 1:1000-year low fluvial risk on lands located to the east of the site but that the areas delineated to be at risk does not include the appeal site.
- 7.4.6 In addition to this, the development does not increase the risk of flooding to any adjoining or nearby area. The stormwater will be discharged to ground and that an overflow from each of the two soakaways is proposed, the overflow will only become active when or if the soakaways are at full capacity.
- 7.4.7 References to fluvial flooding or groundwater related flooding provides evidence of impeded drainage within the soils. While I note that the application includes a French Drain to mitigate any potential ponding, I am unsure as to the benefits of this proposed mitigation, ponded waters on the site observed by Local Authority staff are largely due to the poor permeability of the parent material, the likely characteristic leading to the risk of surface water ponding. It is not evident that the drain would specifically relieve this or reduce the risk of flooding elsewhere in the absence of information relating to the capacity of the open drain.

7.5 Wastewater Management

- 7.5.1 The grounds of appeal highlight concerns that is unsuitable for development as it cannot be safely serviced by a wastewater treatment facility.
- 7.5.2 It is proposed to install an effluent treatment system and associated percolation area on site and therefore it is in order to consider if the site is suitable for the proposed disposal of treated effluent to ground. I refer the Bord to the Site Characterisation Form. The form shows that subsoil is a brown / grey clay with no bedrock encountered. In addition to this the water table was found at 1.8m below ground. The percolation tests yielded T values of 57.3 which would comply with the standards set out in the EPA Code of Practice.
- 7.5.3 As previously outlined the Local Authority outlined concerns in relation to the existing ground water levels and requested, by way of clarification of Further Information that the applicant provide an updated site specific DWWTS design which takes account of 2021 EPA code and the findings of the site-specific flood assessment report. In response to this the applicant stated that it is proposed to increase the unsaturated soil under the trench by a further 550mm (up to 1450mm) from the seasonal water encountered at -.550 below ground level (the trench invert would be 900mm above ground level). This would allow for a buffer area of 550mm to allow for any increase in ground water levels.
- 7.5.4 With regard to the separation distance of the proposed wastewater treatment plant from watercourses I refer the Bord to Table 6.2 of the EPA Code of Practice. The setback for a septic tank system from a watercourse / stream or drainage ditch is 10m as set out in Table 6.2. The proposed effluent treatment system and percolation area would be set back far in excess of 10m from the drainage ditch to the west of the property. I am satisfied that the effluent treatment system and percolation area is compliant with the setbacks set out in Table 6.2 of the EPA Code of Practice. 7.5.5
- 7.5.5 Having considered the site characterisation form, I note that the site is located on the margin of an area of poor permeability and moderate permeability, and given the colouration observed in the trial hole log and percolation values attained via the modified method would appear to show a poor permeability.
- 7.5.6 In this regard, the rial hole log records mottling or winter water table at 550mm below existing ground level, however colouration is also recorded as brown/grey up to a

depth of 200mm below existing ground level, which given the percolation values, and the use of the modified method to attain a percolation value would indicate a higher level of mottling or winter water table. The plasticity showing threads and ribbons would also be indicative of clay material generally of impeded drainage. Based on this observation in its own right I would be of the opinion that <500mm of unsaturated material (soil/subsoil) exists, on the site as such the site is not suitable for a groundwater discharge.

- 7.5.7 The subsurface and surface percolation tests were carried out essentially with a depth difference of 100mm, in essence they both assessed mostly the same soils layers. A shallow subsurface test being carried out given the mottling presence may be indicative of the likely inability to get a subsurface percolation value at the required depth of 800mm below existing ground level.
- 7.5.8 There appears to be no mention of a drain at the roadside boundary and the depth of presence of water in same. There is mention of a drain within a 250-metre radius with the presence of water at 900mm below ground level, it is assumed this is what the assessor is referencing.
- 7.5.9 Having considered all the foregoing, I am not satisfied that the site is suitable for a groundwater discharge and therefore refusal is recommended as the proposal would be prejudicial to public health.

7.6 Traffic Safety

- 7.6.1 The Area Engineer recommended the applicant be requested to provide further information in relation to design details of the site entrance and in relation to the treatment of roadside open drains / the provision of gullies at the entrance to the site.
- 7.6.2 The drawings submitted by way of response to a Further Information request show that the proposed development would be accessed by way of an entrance of 3.5m in width Gullies to the existing open drain are also shown and it is proposed to retain this drain in place. The drawings submitted show sightlines of 80m in both a northern and southern direction. While it is noted that the access to the site would be via a lane, it is noted that policy **DMS-97** of the *Offaly County Development Plan 2021-2027* provides sets out safe sight distances for development. The most applicable to the subject land would be for local tertiary roads where a figure of 60 metres is given. The proposal would achieve sight line in excess of this figure.

7.6.3 Having considered the drawing submitted to Offaly County Council and policy **DMS-97** of the *Offaly County Development Plan 2021-2027* and having been on site, I am satisfied that the proposal would not endanger pedestrian or vehicular traffic and would not constitute a traffic hazard.

7.7 Property Issues

7.7.1 The grounds of appeal highlight concerns relating to the applicant making a planning application without seeking permission for a right of way to the site from the lane, which is private property.

7.7.2 The applicants state that they own the land in question and has a legal right of way on the laneway.

7.7.3 With regard to legal interest, rights of way etc. these issues are essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation and a matter on which I do not propose to adjudicate. In this regard I would refer the Board to Section 34(13) of the Planning and Development Act 2000 (as amended), as amended as follows: *“A person shall not be entitled solely by reason of a permission under this section to carry out any development.”*. I further note Section 5.13 of the *Development Management Guidelines for Planning Authorities* which state that *‘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.’*

8 AA Screening

8.1 I have considered the proposed development in light of the requirements of S177U the Planning and Development Act 2000 as amended. The proposed development is located in a rural area of County Offaly, c. 3km to the east of Portarlington. The proposal comprises of the construction of a new dwelling, separate garage, septic tank and percolation area, vehicular access, and all associated site works.

8.2 The subject land is not directly adjacent to a European site. The closest such site to the appeal site is the River Barrow and River Nore SAC which is located c. 1.02km to the south of the site. The Slieve Bloom Mountains SPA is located c.18.9km to the southwest of the site. it is noted that there is no hydrological connection between the site the River Barrow and Rive Nore SAC or the Slieve Bloom Mountains SPA.

8.3 Having considered the nature, scale, and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:

- The relatively small scale of the proposal.
- The location of the development and its distance from the closest European Site

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

9 Recommendation

9.1 I recommend that planning permission be refused.

10 Reasons and Considerations

1. Having regard to the soil conditions and high-water table and risk of surface water pooling, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that effluent from the development can be satisfactorily disposed of on site, notwithstanding the proposed use of a proprietary wastewater treatment system and a French drain to alleviate ponding. The proposed development would, therefore, be prejudicial to public health.

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.

Ronan Murphy
Planning Inspector

18 December 2024

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-320260-24		
Proposed Development Summary	Construction of a dwelling house, domestic shed, and all associated site works.		
Development Address	Treascon, Portarlinton, 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)		Yes	X
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			Proceed to Q3.
No	X		
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed relevant quantity, area or other limit specified [sub-threshold development]?			
No			
Yes	x	Class 10 (b) (i) Construction of more than 500 dwelling units.	Proceed to Q4

4. Has Schedule 7A information been submitted?		
No	x	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-320260-24	
Proposed Development Summary	Construction of a dwelling house, domestic shed, and all associated site works.	
Development Address	Treascon, Portarlinton, Co. Offaly.	
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size, or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development. Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions, or pollutants?</p>	<p>The proposal is for the construction of a dwelling house, domestic shed, and all associated site works in a rural area. This is not an exceptional type of development in this rural area.</p> <p>The development involves treatment and disposal of effluent to ground. Subject to compliance with the relevant standards this will not result in pollution. Disposal of storm water to onsite soakpit will not result in significant pollution. Emissions from cars will not be significant.</p> <p>Therefore, the development will not result in the production of significant waste, emissions, or pollutants.</p>	No
<p>Size of the Development Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and / or permitted projects?</p>	<p>The proposal comprises of a single storey dwelling with a floor area of c. 93m² and maximum height of c.6.7m.</p> <p>The proposal also includes a single storey detached garage which has a maximum height of c.5.0m.</p>	No

	<p>This is a relatively small development in this rural context.</p> <p>There is no real likelihood of significant cumulative effects with other permitted developments.</p>	
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</p>	<p>There are no significant ecological sensitivities on the site. There is an existing hedgerow along the western boundary of the site and a tree plantation along the southern boundary of the site. The development will not significantly impact on existing hedgerows or tree plantation.</p> <p>There is no information to show that the development will impact on any protected species.</p> <p>The River Barrow is c 1.9km from the site. Having regard to the separation distance and lack of hydrological or ecological pathways between the development and the river, the development does not have potential to significantly affect the river.</p>	No
Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA is not required.</p>		

