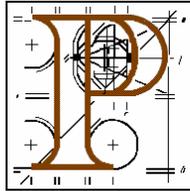


An Bord Pleanála



Inspector's Report

PL09.238718

Relocation of a previously entrance onto R403 Road, erection of new entrance and retention of partially constructed existing driveway with associated site works at Baybush, Staffan, Co. Kildare

PLANNING APPLICATION

Planning Authority: Kildare County Council

Planning Authority Reg. No: 11/25

Applicant: Brian and Janelle Peacock

Planning Authority Decision: REFUSE

APPEAL

Appellants: Brian and Janelle Peacock

Type of Appeal: First Party – V- Decision

DATE OF SITE INSPECTION: 19th of July 2011

1.0

The subject site is only 2 kms from the Barberstown Cross Road between Celbridge and Clane in Co. Kildare. It is a rural area with a high concentration of rural housing along the road frontages. The subject site is 0.2Ha with a dormer bungalow on it. There are two houses either of side of it (one of which is currently under construction) and a dwelling to the rear (which is owned by family members and is relevant to this appeal). The site contains a detached dwellings which has road frontage onto the R403, with an access off the R403.

2.0 THE PLANNING APPLICATION

2.1 PROPOSED DEVELOPMENT

The development consists of

- (a) Relocation of previously granted entrance (Ref. 042420) onto R403 and the erection of new entrance with double gates, piers and associated site works
- (b) Retention of Partially constructed existing driveway

to a domestic dwelling house.

2.2 PLANNING AUTHORITY'S REPORTS

Roads Design Office

A refusal is recommended for two reasons:

1. Contrary to policy 15.2.7 of the CDP
2. Entrance does not comply with the provisions of the parent permission, 04/2420

Planning Report

The development was granted in 2004 and it was backland to another dwelling which fronts onto a county road L-5048.. The applicants have constructed an entrance onto R403. There has been no justification for not constructing the entrance in accordance with the permitted permission. The R403 is heavily trafficked. The proposal is contrary to policy PR1 of the CDP, and would undermine the function and regional status of the road. A refusal is recommended.

2.3 PLANNING AUTHORITY'S DECISION

The development was refused for two reasons:

1. Non-compliance with Policy PR1 in Section 3.1.4.4 and Section 15.2.7 of the current County development Plan 2005-2011
2. The proposal would contravene condition No. 18 of PI 04/2420.

2.0 THE APPEAL

2.1 THE GROUNDS OF APPEAL

David Mulcahy Planning Consultants have taken the appeal on behalf of the applicants. Some of the content of the appeal letter is a repetition of items included in this report. Therefore, I will not repeat previously stated material.

Subject Site

Under planning reference 04/2420 planning permission was granted for a dwelling with access to the south-east onto a local road (L5048), with Condition No. 18 specifying that the entrance is to form a double recessed entrance with the adjacent site.

Adjoining Site

Under 08/1838 outline permission was granted for 3No. dwellings on the adjoining site to the immediate west, and access to the 3No. dwellings is directly off the R403.

Under reference 10/1017 permission was granted for 3No. dwellings on the adjoining site to the immediate west, again the Road Design report states there is no objection to the development.

The recent granting of permission for the 3 dwellings with direct access onto the R403 contrasts with the approach taken with the current application.

Proposed Development

The applicant is no longer in a position to avail of the right of way through Janelle's parent's land. This leaves the family in a difficult position as they have no way of securing access to their dwelling.

The retention aspect consists of a partially constructed driveway from the R403, where is it proposed to build new piers, a double gateway and a timber fence along the front boundary.

Grounds of Appeal

The applicant's have provided genuine reason why they do not have the right of way through third party lands to their dwelling anymore. The second reason for opting for the R403 access is safety. The sightlines onto the L5048 are very poor.

The planning report has not quoted section 3.1.4.4. of the CDP in full, omitting a critical element. The applicants comply with exception no. 1 in that they comply with Rural housing policy 6.6.2 and cannot provide access to their dwelling from a county road. They need access onto the regional Road.

The site has the benefit of an agricultural access, and the proposed development is merely replacing the entrance with a more formal entrance. The applicants have clearly no other land available to them.

The Roads Department of the planning authority had no objection to the proposal, therefore, it is difficult to understand how the development is considered to be a traffic hazard. There is no logic for it's inclusion in the reason for refusal.

The R403 operates within its capacity and there is no threat to the road, as the proposal will not materially impact on the functionality of the road. The planners' report refers to the proliferation of accesses onto the regional road, and they are the ones that granted the entrances, with a recent permission for 3No. houses off the road. The Planning Authority is being wholly inconsistent in terms of existing granted permissions along the road and refusing the development contrary to the Roads Report.

It is acknowledged that the development contravenes Condition No. 18 04/2420. However under this new planning application the Board can grant the development. The proposal would not have any safety implications, and it would not contribute to the premature obsolescence of the regional road and is not an undesirable precedent.

3.0 PLANNING HISTORY

08/1269

Permission refused to the applicants for 1) construction of a dormer style, two bedroom granny flat extension to the dwelling house.

04/2420

Permission sought by current applicants for 2No. dwellings. One dormer dwelling was granted with Condition no. 18 specifying that the entrance shall be part of a combined double entrance serving the adjacent site.

4.0 STATUTORY FRAMEWORK

Rural Housing Guidelines 2005

Kildare County Development Plan 2005

Section 3.1.4.4 Regional Roads

It is policy to restrict new accesses onto roads where the 100km per hour speed limit currently applies. Exceptions will be considered on their merits in the following circumstances:

1. In the case of one-off housing development in the rural countryside, where a landowner or a member of his/ her immediate family cannot provide access onto a nearby county road and therefore need access onto a Regional Route.
2. Developments of a Strategic Importance where there would be a significant gain to the county in terms of employment or other economic benefits.
3. Where it is proposed to demolish an existing dwelling and replace it with a new dwelling.

5.0 ASSESSMENT

- 5.1 The dwelling house on the site is a dormer bungalow, which was granted planning permission under permitted under planning reference 04/2420, and it was considered to be backland development to a dwelling house accessed off the county road running to the south of the Regional Road (R403). Access to the dormer was permitted off the county road from the L-5048, i.e. a right of way was to run along the side of existing dwelling located immediately southeast of the subject site. From my reading of the file, the applicants did not implement this element of the permission, and instead constructed an access directly off the Regional Road to the north, the R403. According to the file, the adjoining house to the south east is owned by one of the applicant's parents and there has been a change in family circumstances, consequently the applicant's cannot consent or a right-of-way through their property.
- 5.2 The planning authority were not satisfied that the applicants had demonstrated justifiable reasons as to why the access was not carried out in accordance with 04/2420. The current proposal materially contravenes the original permission. In addition, section

15.2.7 of the County Kildare Development Plan is cited were it is policy to discourage a proliferation of entrances onto the Regional Road. The Roads Department report of 17th of February 2011, supports the planning authority's decision to refuse.

- 5.3 On appeal, the applicant's states that when the permission was originally permitted that the owners/ occupiers of the abutting dwelling to the south gave their consent for the entrance to the proposed dwelling to pass through their property from the county road. However, since that time, circumstances have changed and the applicants cannot pursue this option, and they have to find an alternative arrangement to gain access to their dwelling which is via the Regional Road. In defence of the County Development Plan policy regarding prevention of a proliferation of entrances onto the regional road network, the applicant states the entrance always existed as an agricultural entrance, and the current proposal merely formalises the entrance. According to the appeal, the applicant's have no alternative entrance to their dwelling available to them. According to the applicant, the provision of a single entrance is not going to impact on the functionality of the road and the accesses onto the road have been permitted by the planning authority, including a new entrance to serve three dwellings on the adjoining site. The planning authority is not been consistent. The Board is still in a position to grant the entrance despite the fact it materially contravenes a condition of an existing permission.
- 5.5 In my opinion the first reason to refuse the development based on planning policy .i.e. to discourage a proliferation of entrances onto the Regional Road, is not consistent with the planning authority's decision to grant planning permission on the abutting site for 3No. dwellings, under planning registration 08/1838. Both decisions were made under the umbrella of the same County Development Plan. Despite the fact this inconsistency was highlighted in the grounds of the appeal, the planning authority did not respond to to the appeal. The number of individual entrances onto the Regional Road in the general vicinity of the subject site is significant. Therefore having regard to the fact the number of permitted entrances onto the Regional Road in the general vicinity of the site and the recently permitted abutting entrance onto the Regional Road to cater for three dwellings, I regard the first reason for refusal unreasonable and should be dismissed by the Board.
- 5.6 In terms of the second reason for refusal, which states the proposed access contravenes Condition no. 18 of the parent permission for the dwelling 04/2420, the applicant's state that due to family circumstances it is not possible for the applicant to access their dwelling from the right of way via the property to the south-east. I agree with the applicant in that the Board is not bound by the parent permission. In the first instance the revised layout for both dwellings is improved by having their own individual accesses given that one dwelling addresses the county road and the other dwelling addresses the regional road. My concern is whether the proposed entrance would have been permitted in the first instance in 2004 with access onto the Regional Road. In my opinion, the sightlines to the east at the entrance are inadequate for a Regional road. There is a continuous white line fronting the site. On approaching the site from the east, there is a bend in the road which inhibits the sightline at the entrance. Having examined the sightline, alterations would have to be carried out to the adjoining third party property in order to provide an adequate sightline. Given the level of traffic which is high along this road and the national speed limit applies, I believe the proposal should be refused on lack of adequate sightlines in an easterly direction. The sightlines are sufficient to the west. It is my opinion, that the lack of sightlines to the east may have been a significant factor in assessing the parent permission and one of the issues resulting in the access coming off the county road via the parents property. Furthermore, The case was assessed on it's merits under the parent permission 04/2420, and the development was considered to be backland development at the time, and catering for a member of the family. Therefore, a 'change in family' circumstance '

is insufficient ground to materially altered the terms and conditions of the parent permission. Therefore, I believe the second reason for refusal should stand.

6.0 RECOMMENDATION

I recommend the development be refused for the following reasons and considerations.

REASONS AND CONSIDERATIONS

1. It is considered that the proposed development would endanger public safety by reason of a traffic hazard because the entrance is located alongside a heavily trafficked Regional Road (R403) at a point where the national speed limit applies and the sightlines at the proposed entrance are substandard in an easterly direction and would involve alterations to an adjoining roadside boundary, which would require the relevant third party consent. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The proposed development contravenes materially Condition no. 18 of the parent permission, planning reference number 04/2420, and there is insufficient justification to warrant such a material alteration to the development, and therefore the proposed development is contrary to the proper planning and sustainable development of the area. .

Caryn Coogan
Inspector

22nd of July 2011