



An
Bord
Pleanála

Inspector's Report ABP-306094-19

Development	The removal of vegetable topsoil over an area of c. 1600 sqm and the placing of a layer of open textured hardcore over this area to facilitate the parking of staff vehicles and surplus machines for hire.
Location	Newpark, Croagh, Co. Limerick
Planning Authority	Limerick City & County Council
Planning Authority Reg. Ref.	19/946
Applicant(s)	Niall Shorten
Type of Application	Permission
Planning Authority Decision	Grant, subject to 10 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Pat Shanahan
Observer(s)	None
Date of Site Inspection	12 th March 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located off the northern side of the N21 between Croagh, in the east, and Rathkeale, in the west. This site lies in a position whereby the said national primary road bounds it to the south and its former meandering alignment bounds it to the north. This former alignment has been reformed as a cul-de-sac and reclassified as a local road (L8092). It serves the applicant's existing plant and machinery hire business and his dwelling house and 3 other one-off dwelling houses. It also serves a laneway to the appellant's farm yard and dwelling house further to the north.
- 1.2. The site itself is of elongated form and it rises at a gentle gradient in a westerly direction. An existing gated entrance to this site is located in its northern boundary in a position opposite the gated entrance to the applicant's hire business. This entrance is formally laid out with pillars and splayed walls, which adjoin more extensive boundary walls on either side. Elsewhere, roadside boundaries are denoted by means of fencing, hedgerows and trees. The remaining western boundary is not denoted "on the ground".
- 1.3. During my site visit, there were two diggers and two trailers parked on the site and several mounds of stone. Accordingly, it was not in use as an agricultural field.

2.0 Proposed Development

- 2.1. The proposal would entail the removal of vegetable topsoil over an area of c. 1600 sqm and the placing of a layer of open textured hardcore over this area to facilitate the parking of staff vehicles and surplus machines for hire on it.
- 2.2. The proposal would entail the removal of an existing timber post and panel fence and gate, which mark the western boundary of the hard surfaced area previously permitted under retention application 11/802. A similar fence would be erected along the new western boundary between the site and the residual portion of the field to be retained for agricultural grazing further to the west.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 10 conditions, including the following one:

The proposed parking area shall only be used in conjunction with the machinery yard to the north. It shall be used for the parking of staff vehicles and to store surplus machines only. No sale of machinery or vehicles is permitted at this location. The site shall not be sold, let, otherwise conveyed or separated from the business across the road.

Reason: In the interests of traffic safety and proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See decision

3.2.2. Other Technical Reports

- TII – Defers to LCCC.
- Limerick City & County Council:
 - Mid-West NRDO – No observations.
 - Operations & Maintenance Services – Observations re. advance signage and the handling of surface water.

4.0 Planning History

Site

- 11/802: Retain hard cored area over eastern portion of current site: Permitted.

An accompanying letter from the applicant stated that the intended use of the site was “as a solid ground area for our children’s pony.”

5.0 Policy and Context

5.1. Development Plan

Under the Limerick County Development Plan 2010 – 2016 (CDP), the site is shown as lying within a rural area.

Under the CDP's Chapter on Economic Development the following commentary is provided: "Notwithstanding the overall policy of locating enterprise development in appropriately zoned lands in and adjacent to settlements, consideration will also be given to small-scale enterprise proposals in the countryside. These small-scale enterprises will generally be family owned and operated businesses and will need to satisfy traffic, public health and amenity and environmental requirements."

Under Objective ED 025 of this Chapter, the expansion of existing industrial or business enterprises in the countryside is addressed as follows:

It is the objective of the Council to normally permit development proposals for the expansion of existing industrial or business enterprises in the countryside where:

(a) The resultant development is of a size and scale which remains appropriate and which does not negatively impact on the character and amenity of the surrounding area, and

(b) The proposal demonstrates that it has taken into account traffic, public health, environmental and amenity considerations and is in accordance with the policies, requirements and guidance contained in this plan.

Under Section 10.6.3 of the Development Management Guidelines of this Plan, further guidance is set out on small scale home-based businesses in rural areas and, under Section 10.11.8, the following National Road Policy is set out:

The council will restrict:

(a) Frontage development onto national primary and secondary roads, and

(b) Development that would compromise the safety and levels of service of national roads...

5.2. Natural Heritage Designations

Askeaton Fen Complex SAC (002279)

5.3. EIA Screening

The proposal would facilitate the future parking of staff vehicles and surplus machines for hire on the site. Such usage would be ancillary to the applicant's plant and machinery hire business, which is undertaken on a site on the opposite side of the local road from the subject site. Thus, it would avail of the exemption cited under Item 10(a)(ii) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2019, and so the proposal would not come within the definition of a project for the purpose of EIA.

6.0 The Appeal

6.1. Grounds of Appeal

Pat Shanahan of Ballycannon owns the land adjoining the subject site to the NW, access to which passes between this site and the applicant's dwelling house and business centre, i.e. the L8092.

The following grounds of appeal are cited:

- Under the CDP, the site is zoned for agriculture and so the proposal would be inappropriate.
- The submitted plans are critiqued as being inadequate. Thus, there are no:
 - Existing and proposed finished site levels and accompanying cross sections,
 - Specification of type and size of hardcore,
 - Site layout for parking,
 - Landscaping,
 - Recognition of the business opposite, and
 - Surface water drainage arrangements.

The sightlines would be inadequate.

- The proposal itself is critiqued as follows:

- The commercialisation of a rural locality would ensue, and the appellant's property would be devalued,
- Attention is drawn to the corresponding entrances directly opposite each other on either side of the local road and the inherent hazard posed by vehicles passing to and fro to other road users,
- Attention is drawn to the poor condition of the local road and the increase in its deterioration that would result from an intensification of its use,
- The proposal would be unsightly,
- Buildings associated with the existing business and the use itself may still be unauthorised, notwithstanding their presence on site and its pursuit for in excess of 7 years,
- Hours of operation would be excessive at 06.00 to 23.00,
- Inadequate turning facilities exist, and
- Existing on-site waste water requirements need to be reviewed.
- The case planner's report is critiqued as follows:
 - The authorisation or otherwise of the existing business has not been addressed,
 - Questions relating to drainage and sightlines have not been properly answered in advance of the decision,
 - Staff parking has not been quantified and deliveries may continue to be made from the local road, and
 - How the existing business site would "mesh" with the subject site has not been explored.

6.2. Applicant Response

- With respect to road safety, the volume of traffic on the local road is very low and so its crossing in conjunction with the business would not be an issue. Only 2 staff cars would be parked on the subject site.
- With respect to increased traffic on the local road, this would not arise.

- With respect to visual amenity, the applicant's dwelling house overlooks the subject site and so it would be in his interests for it not to be unsightly. Furthermore, existing and proposed landscaping would screen this site.
- With respect to vehicles causing an obstruction, the applicant accepts that his business sometimes leads to roadside parking, but not such as would impeded other road users. Occasionally vehicular movements may entail other road users having to wait briefly, but that is a common place on country roads.
- With respect to turning movements, there is scope for this to happen at the entrance to the applicant's existing entrance and so his staff have no need to do so elsewhere on the local road.
- With respect to the nature of the applicant's business, this entails very few customers attending his site, as a small tool hire service is now based in Adare and the majority of large hire equipment is delivered by him to customer's sites. Business hours are 08.00 – 17.00 on weekdays and 09.00 – 12.00 on Saturdays.
- With respect to any stand alone concern, the draft permission addresses this and it forbids roadside parking.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legal and procedural matters,
- (ii) Land use, visual amenity, and road safety,
- (iii) Traffic, access, and parking,
- (iv) Water, and
- (v) Screening for Stage 1 AA.

(i) Legal and procedural matters

7.2. The appellant raises the question as to whether the applicant's existing business is an authorised use and whether all the buildings which service this use have been authorised. In this respect, he cites a permitted application 91/1356 for the erection of a domestic garage and storage area, i.e. a non-commercial scenario. He also alleges that two sheds were erected within the last 6 years.

7.3. Neither the applicant nor the Planning Authority have addressed this question of authorisation. Clearly, while matters of potential enforcement do not fall within the Board's remit, as the current proposal is for a commercial use of land ancillary to the applicant's existing business, it is important that the Board be assured that this business is indeed authorised. As such reassurance has not been forthcoming, I consider that it would be premature to grant permission to this proposal.

7.4. The appellant draws attention to the limited information that accompanies the current application. Specifically, he cites the omission of details with respect to site levels, the specification of hardcore, site layout, landscaping, site context, and surface water drainage arrangements.

7.5. Clearly, the Planning Authority exercised its remit in validating the submitted application. Notwithstanding the objector's critique of the information thus submitted, it did not request further information, but chose to rely on a condition precedent attached to the its draft permission to address surface water drainage arrangements and a further condition to address landscaping.

7.6. During my site visit, I observed that works were being undertaken to the eastern portion of the site and that diggers and trailers were in evidence therein. I am thus concerned that reliance upon conditions precedent may be misplaced to close the gaps in the submitted application. Specifically, I am concerned that, in the absence of details on site levels/layout/surface water drainage arrangements, optimal outcomes with respect to visual amenity, site efficiency, and the handling of surface water may not be obtained. I, thus, consider that inadequate information has been submitted to enable the details of the proposal to be properly assessed and so, in these circumstances and in the light of the circumstances pertaining on the ground, it would be premature to grant permission for this proposal.

7.7. I conclude that there are legal and in effect procedural impediments to the Board granting permission to the current proposal.

(ii) Land use, visual amenity, and road safety

7.8. The majority of the subject site is a field with the remaining fenced off portion to the east having been laid out previously as a hardcore area for a children's pony. Thus, the entire site has hitherto been in agricultural use.

7.9. The CDP expresses an openness to small scale businesses in rural areas that are run from family homes. Such businesses are envisaged as operating "adjacent to and/or within the curtilages" of such homes. The CDP also expresses an openness to the expansion of such businesses, provided negative impact can be avoided.

7.10. During my site visit, I observed that the applicant's existing plant and machinery hire business operates from sheds and a yard to the rear of his dwelling house. It is thus on land that adjoins the formerly laid out garden area to this dwelling house. Screening to the boundaries of this land ensures that its presence is discrete from the public road.

7.11. During my site visit, I also observed that the said yard is congested with plant and machinery and that to a degree the applicant relies on the local road in front of his dwelling house for supplementary parking and indeed the eastern portion of the subject site, too. Thus, his business is expanding, and its efficient operation would appear to require more space.

7.12. The stated area of the subject site is 1600 sqm, an area that is not too dissimilar to that of his existing business. Thus, while the proposal is described as being for the

parking of two staff vehicles and surplus machines for hire, it would constitute the addition of significant additional space for potentially a significant expansion in his business. Thus, the future use of this site would be likely to be ancillary only in the sense that it would not be a stand alone facility.

- 7.13. The subject site is sandwiched between the N21 to the south and the local road to the east and north. It is on the opposite side of this local road from the applicant's existing business and so it is separate from the same. This site maintains an 87.518m frontage to the national primary road (100 kmph), which is denoted by means of a hedgerow and a fine row of mature deciduous trees. This boundary treatment affords considerable screening during summer months, but lesser screening during winter months. The remaining local roadside boundaries are denoted by low-level hedgerows and walls.
- 7.14. Under agricultural use for grazing, the subject site within its boundaries has a rural character. Under the proposal, this would change to one of commercial character with the open parking/storage of vehicles/plant and machinery. Notwithstanding the screening afforded by the southern boundary, this commercial character would be visible from the national primary road, where it would be likely to be of potential distraction to passing road users. Such visibility would be heightened in the case of west bound road users who would be able to view the eastern portion of the site over the junction between the N21 and the L8092. Similarly, views from elsewhere on the local road would be available, although, insofar as this road would be subject to far lower usage and traffic speeds, such distraction would be less of an issue.
- 7.15. The submitted site layout plan shows that the remainder of the field to the west of the subject site would continue to be used for grazing. The area of this portion of the field is similar to that of the subject site. Thus, if in the future the business was to expand further, pressure may arise for it to be used for the same, too. Against the backdrop of the precedent afforded by the current proposal, such expansion would be difficult to resist.
- 7.16. I conclude that the proposal would lead to the commercialisation of the subject site, which, under agricultural use, has a rural character. A loss of visual amenity would thereby arise. I conclude, too, that, under this proposal, the visibility of this site from the N21 would lead to the risk of distraction to passing road users along a stretch of

this national primary road that includes its junction with the L8092. Consequently, road safety would be jeopardised.

(iii) Traffic, access, and parking

- 7.17. The application envisages that the subject site would be used for overflow parking and the open storage of plant and machinery. It does not refer to any increase in traffic generation. Indeed, at the appeal stage, the applicant draws attention to a reduction in traffic movements to his existing business, as small tools are now hired from a shop that he has opened in Adare.
- 7.18. The appellant expresses concern that the proposal would lead to an intensification of use of the local road, with adverse implications for its condition. While an increase in traffic has not been signalled by the applicant, the size of the subject site is such that an increase in light/heavy commercial vehicular movements could occur and certainly would occur were it to be fully used.
- 7.19. During my site visit, I observed that the sightlines and forward visibility available at the junction between the N21 and the L8092 are good, due to the straight and level alignment of the national primary road. I also observed the sightlines at the entrance/exit to the subject site: Due to the proximity of a bend in the L8092 to the east, the easterly sightline is short at 42m, whereas to the west it extends to 70m. Given the presence of the said junction and bend and the relative shortness of this local road, traffic speeds along it are low and so the proposal to rely on advanced warning signage does not appear to me to be misplaced.
- 7.20. The appellant draws attention to the correspondence across the local road that would arise between the entrance to the applicant's existing business to the north and the proposed entrance to the expansion of his business to the south. He expresses concern that traffic movements between these two entrances across this road would represent poor traffic management and a potential hazard to other road users.
- 7.21. The applicant has responded to the aforementioned concern by stating that it is a common place in the countryside that road users have to wait on occasion for traffic to pass and so exception should not be taken to his proposal.
- 7.22. I acknowledge that traffic levels on the local road are low and so the scope for disruption/hazard is correspondingly low, too. That said, if the subject site were to be

used to its full potential, then the number of traffic movements across the local road could rival those along it. Thus, under such a scenario, the public use of this road would become unduly privatised.

7.23. With respect to parking, the applicant has indicated at the appeal stage that only two staff vehicles would be parked on the subject site and so the main use of this site would, by deduction, be the open storage of plant and machinery.

7.24. I conclude that the subject site has the potential to generate a significant increase in light/heavy commercial vehicle movements and that, insofar as some such movements would cross the local road, this would represent poor traffic management and the creation of an otherwise avoidable cause of disruption/hazard to other road users.

(iv) Water

7.25. As discussed under the first heading of my assessment the applicant has not submitted details of how surface water would be handled on the subject site.

7.26. During my site visit, I observed that the lowest portion of the site is at its eastern end and that, following heavy rain, some ponding of water was occurring there.

7.27. The Planning Authority is concerned that surface water should be capable of being disposed of either to soak pits within the site or to adjacent watercourses. Any drainage scheme should thus be designed to these parameters.

7.28. The OPW's flood maps do not indicate that the site is subject to any identified flood risk.

7.29. I conclude that the proposal would need to be served by a surface water drainage system that utilises on-site soak pits and/or adjacent watercourses.

(v) Screening for Stage 1 AA

7.30. The site does not lie in or near to any Natura 2000 site and I am not aware of any source/pathway/receptor routes between this site and the nearest such sites.

7.31. Having regard to the nature and scale of the proposal and the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. That permission be refused.

9.0 Reasons and Considerations

1. Having regard to the ancillary nature of the proposal to the applicant's existing plant and machinery hire business, the applicant needs to demonstrate that the existing use of land for this business is authorised for planning purposes. Insofar as he has not done so, it would be premature for the Board to grant permission for the extension of this use onto another site.
2. Having regard to the lack of detail comprised in the submitted application, specifically with respect to site levels, site layout, and surface water drainage arrangements, the Board is not in a position to fully assess the proposal and so to grant permission for it in these circumstances would be premature.
3. Having regard to the rural character of the site, which has hitherto been in agricultural use, and having regard to its extensive frontage onto the N21, which is subject to the national speed limit, the proposal would lead to the undue commercialisation of the countryside, which, due to its inevitable visibility, would detract from the visual amenities of the area and risk distraction to passing road users, thereby jeopardising road safety close to the junction between the N21 and the L8092. Furthermore, the proposal would create an adverse precedent for the said commercialisation, which would mean that any future pressure to extend further to the west of the site would be difficult to resist. The proposal would thus have negative impacts upon the character and visual amenities of the area and upon road safety, impacts which would be underscored by any future extension westwards, and so it would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

31st March 2020