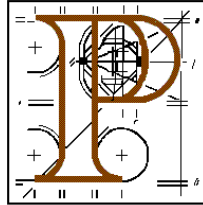


An Bord Pleanála



Inspector's Report

Development: Remove Part of Boundary Fence to Local road to erect setback entrance and gate for Agricultural Use at Kennycourt House (Protected Structure), Kennycourt, Brannockstown, Co. Kildare.

Planning Application

Planning Authority: Kildare County Council
Planning Authority Reg. 15/8
Applicant: Bank of Scotland
Type of Application: Permission
Planning Authority Decision: Grant with Conditions

Planning Appeal

Appellant(s): 1. Dennis Harvey
2. Eugene McDermott
Type of Appeal: 3rd Parties – V- Decision
Observers: None

Date of Site Inspection: 01/02/2016

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site area of c.102.43Ha agricultural land which is bound by a local road to the north and agricultural lands to the east, south and west. The site is located within an agricultural area and the nearest settlement is Brannockstown, which is 4Km to the northwest.
- 1.2 The local road fronting the lands is a narrow rural road, and there is a ninety degree bend in the road where the proposed access is positioned. The site area is a well maintained triangular setback from the road.

2.0 PROPOSED DEVELOPMENT

- 2.1 The removal of part of existing boundary fence to the local road (L6060) and the construction of a new set back entrance and gate for agricultural use including all site development works above and below ground. The works proposed are located within the curtilage of the protected Structure, Kennycourt House (Ref. B29-47).
- 2.2 There was an agricultural entrance at the northern boundary of the lands very close to the proposed new entrance. The entrance was closed after 2008 and the lands were then served by the existing vehicular entrance to the east. Due to a change in land ownership, the subject lands are now landlocked and the reinstatement of a new agricultural entrance will ensure the lands will continue to be farmed.

3.0 SUBMISSIONS RECIEVED

The third party appellants made similar objections to the planning application as on appeal.

4.0 TECHNICAL REPORTS

The Roads Departments, Area Engineer, Water Services asked for additional information in terms of visibility splays.

The Conservation Officer had no objections to the proposal.

Planning Report:

The first report recommended further information be requested.

The second report recommended permission be granted in line with the planning authority's decision.

5.0 FURTHER INFORMATION

Further Information was requested regarding sightlines, amount of hedgerow to be removed and proposals to upgrade proposed existing watermain traversing the entrance.

A detailed response was received on 17th of September 2015.

1. An agricultural entrance generates very few traffic movements throughout the year. There is adequate visibility to the right and left exiting the entrance. The sightline issue is related to approaching traffic to the bend in the road where there would be vehicles turning into the site, in particular traffic from the west. There would be good visibility over the roadside bank from a tractor due to its height. In a worst case scenario there would be visibility on the western part of the bend that the rear brake light would be visible from 70metres from the vehicle.
2. There is a 7% gradient rise on approach from the west over 70metre approach from the west which will slow traffic.
3. There will be no impact on the existing mature trees to the west of the access or the remnants of rubble stone wall which forms part of the curtilage of the protected structure which does not extend across the area of the proposed access.
4. The boundary wall, trees and banking to the west and banking/ hedging to the north of the proposed access will have no impact on exit sightlines from the proposed access.
5. Letter from Gormanstown group Water Scheme stating no objection to the proposal.

6.0 PLANNING AUTHORITY'S DECISION

Kildare Co. Co. granted the proposed agricultural entrance subject to 13No. conditions.

7.0 APPEAL GROUNDS

7.1 Eugene McDermott, Kennycourt Stud, Brannockstown

Mr. McDermott is the registered owner of the land for which access is been sought. His permission for the entrance was neither sought nor was it given.

The NRA recommends sightlines for farm entrances have to be 75m x 4.5m x 1.05m for roads such as L6060. The setback is very important for safety as the farm machinery is elongated. A 2.4metre setback is insufficient.

There were road signage proposals submitted as further information by the applicant. This suggests the entrance is located in a dangerous location and poses a dangerous traffic hazard.

Some of the safety measures proposed by the applicant have been removed by the imposition of Condition No. 13 of the grant of permission.

7.2 Denis Hevey, Hariston, Kennycourt, Brnannocktown, Co. Kildare.

Mr. Hevey owns the land immediately abutting the land to which the entrance is being sought. There is a triangular piece of grass between the proposed entrance and the public road. Mr. Hevey is the owner of the triangular piece of land and he has been maintaining it for 15 years. He has erected a fence and planted trees along the subject boundary. No permission has been sought by the applicant to erect the entrance. The applicant has no control over the required area.

8.0 RESPONSES

8.1 The planning authority confirms its decision and had no further comment.

8.2 Applicant's Response

Tom Philips & Assoc. has made a detailed response to the appeal by the third parties on behalf of the applicant.

In terms of Mr. Hevey's claims regarding land ownership, they are made without basis. These claims were made during the planning application assessment, and the planning authority did not seek to query this aspect of the application. The planning authority was satisfied the applicant has sufficient legal interest to make the planning application as required.

The applicant made this application as a Mortgage Holder, the legal owner of the lands is Eugene McDermott and the Equity Banks Limited. Mr. Hevey has submitted no legal evidence to back up his claims.

Technical details regarding the access have been supplied by Stephen Reid Consulting Traffic and Transportation Limited. The submission made by Mr. McDermott has incorrectly referenced and misinterpreted the applicable road design standard. The sight distance is in line with standard NRA DMRB TD41-42/11 having regard to the use, road type, speed and geometry of L6060 at this subject location.

There is no evidence to back up the misleading statement of collisions in the area.

The road markings and signage proposed by SRC are appropriate in terms of road safety enhancement on approach to a bend in a rural road where traffic speeds will be limited.

8.3 The applicant Bank of Scotland has passed on any interest they had in the land to Ennis Property Finance Limited. Bank of Scotland did not seek or obtain permission from the legal landowner to submit the planning application and the applicant is acting illegally. The Board is being misled.

as the applicant has not disclose it has passed on its interest in these lands.

The previous landowner Mr. McDermott confirms there was no entrance to the landholding in 2008. The masonry wall has been knocked down due to a number of collisions which took place during the years. Assuming there was an entrance as stated, why would it have been closed up.

An agricultural entrance on a 90 degree bend in the road is a dangerous access, and the safety of the road cannot be relaxed to accommodate this proposal. There are no proposals for the attenuation of water. As the entrance requires road safety markings and signage, demonstrates how dangerous the entrance is and in the event these safety measures are not maintained, the responsibility of road safety will not rest with the applicant.

9.0 PLANNING HISTORY

- 9.1 In 2014 a planning application, 14/708, for a similar development was withdrawn. Previous to that there was an incomplete planning application submitted regarding the same development.

10.0 DEVELOPMENT PLAN

Kildare County Development Plan 2011-2017

The site is located within a rural are whereby zoning is not applicable.

Brannockstown house is a protected structure to the west of the landholding. There are no works proposed to the protected structure which is owned by a different landowner.

11.0 ASSESSMENT

- 11.1 The proposed development is to provide an agricultural entrance to a landlocked landholding. According to the appeal file, due to changes in landownership circa 2008, the subject lands are now landlocked and there is a new entrance required to ensure the lands are farmed.
- 11.2 There is a dispute within the appeal submissions over the ownership of the land. The third parties claim the applicant's legal entitlement to the lands has been passed on to another party. Firstly the third party appellant, Mr. Denis Hevey was unable to demonstrate alleged ownership to the triangular piece of land referred to in his appeal. Secondly on the 22nd of December 2015, the applicant, the Bank of Scotland, submitted relevant title deeds to the property at Brannockstown including land registry details and a certified copy folio. I am satisfied the applicant has demonstrated sufficient legal interest in the subject lands. The third parties should familiarise themselves with article Section 34(13) of the planning and Development Act 2000 which states:

A person shall not be entitled solely by reason of a permission under this section to carry out any development.

In the event the third parties wish to pursue the issue of land ownership and entitlement it is a civil matter, as I believe the ownership issue in this instance, is beyond the remit of the Board.

- 11.3 Regarding the issue of the traffic safety at the proposed entrance, I do accept the proposed entrance is positioned on a 90 degree bend on a local road. Unfortunately due to the sale of lands a few years previous, within an original landholding, there was a residual area of 102.43hectares left landlocked and inaccessible from the public road to be farmed. The subject site area is 0.0187Ha of a 102.43Ha landholding whereby access will be realized from the local road network. The public notices describe the access as for '**agricultural use**', which is limited use. I noted from my inspection the subject site is a well maintained triangular setback from the narrow county road, which ascends from west to north.
- 11.4 The third party appellants claim the proposed entrance is a traffic hazard due to the lack of visibility at the entrance, there have been traffic accidents on the ninety degree bend where the entrance is proposed, and that the proposed entrance does not meet with the NRA Guidelines in terms of junction safety. The appellants state the 'difficult circumstances' of this proposal should not be confused with dangerous conditions. There should be no relaxation in traffic safety measures to accommodate the proposed entrance. It is submitted the extent and scale of the signage and proposed road markings is an indicator how unsafe the proposed entrance is.
- 11.5 The Board should note the Transportation Office and the Area Engineer within the planning authority had no objection to the proposed entrance subject to a number of amendments to the setback and visibility splays. The further information response date stamped 17th of September 2015, Drawing No. SK100, details the proposed road markings, entrance and junction.
- 11.6 The third party appellants have submitted no technical evidence regarding alleged collisions at this subject location. I note the detailed reports prepared by Stephen Reid Consulting Traffic and Transportation Limited on behalf of the applicant. The proposed entrance, road markings and signage were designed in consultation with the relevant engineers from Kildare Co. Co. following a site visit. The entrance was granted permission having regard to the type of road L6060, the speed of traffic using the road and the type of vehicles using the proposed access.
- 11.7 There is a relaxation of the 3metres setback required along single lane roads to 2.4metres for lightly trafficked accesses having regard to the NRA DMRB 41-42/11, although the Kildare County Development Plan references the 2009 version. Both documents allow for a 3.0metres setback relaxed to a 2.4metre setback on local roads. I examined the sightlines in both directions at the proposed entrance, and they provide clear visibility downslope to the west and upwards to the north as the entrance is on the lefthand side coming from this approach and requires no crossing over the road. I do not envisage any traffic difficulties with traffic turning into and out of the site from the northern direction. I do believe there is a hindrance of visibility for

vehicles coming from the west along the county road and turning into the site across the ninety degree curvature in the road. This is the only cause for concern I noted on my inspection.

- 11.8 Regarding turning movements into the site from the approach from the west, the Board should be mindful the proposal is a field entrance only. The proposed signage on the approach from the west will slow traffic and will reduce the speed of traffic. In fact with the sloping gradient on the approach to the bend (7% over 70metre), traffic naturally slows down. Most likely the vehicles using the proposed entrance will be tractors and four wheel drive vehicles and they will have partial view across roadside boundary towards on-coming traffic. There is clear views north at the proposed entrance and all oncoming traffic will be visible prior to any traffic turning into the site. Furthermore the tail lights and indicators on any farm vehicles turning into the site will be clearly visible to coming or approaching cars from the west if the vehicle is stopped on the road. Having regard to the fact this is an agricultural entrance only, I do not consider the concerns expressed by the third parties to be significant. There is a substantial gain from granting the proposal, in that over 100Ha of farm land will be accessible and can be utilised.

12.0 RECOMMENDATION

I recommend the permission be granted for the following reasons and considerations.

REASONS AND CONSIDERATIONS

Having regard to the nature, scale and use of the proposed entrance, the road type, speed limit and existing geometry at the subject site, the proposed signage and road markings, it is considered the proposed development, which is for agricultural use only, would not be a traffic hazard and would be in keeping with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by the planning authority on the 17th of September 2015, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The proposed entrance is for agricultural use only.

Reason: In the interest of traffic safety and orderly development.

3. Details of the proposed finishes to the proposed splay entrance shall be submitted to an agreed in writing with the planning authority prior to the commencement of the development.

Reason: In the interest of visual amenity.

4. The developer shall facilitate the planning authority in providing the proposed signage and road markings in accordance with the requirements of the planning authority. This shall be agreed in writing with the planning authority prior to the commencement of the development.

Reason: In the interest of traffic safety.

5. The group water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

Caryn Coogan

Planning Inspector

12/02/2016