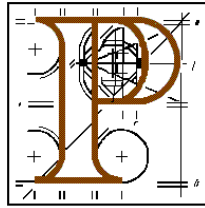


An Bord Pleanála



Inspector's Report

PL 61 245833

DEVELOPMENT: Construction of a new vehicular entrance from City East Business Park Road and associated works.

LOCATION: Ballybrit Business Park, Galway City.

PLANNING APPLICATION

Planning Authority: Galway City Council.

P. A. Reg. Ref: 15/191

Applicant: Fleetglade Ltd.,

Decision: Grant Permission.

APPEAL

Third Party Appellant: William and Kathleen Greaney,

Observers: None.

Inspector: Jane Dennehy.

Date of Inspection: 12th February, 2016.

1.0 INTRODUCTION

- 1.1 This file contains a third party appeal by William and Kathleen Greaney against against the decision of the planning authority to refuse permission for the construction of a vehicular entrance from City East Business Park Road, Ballybrit, Galway for Fleetglade Ltd.

2.0 SITE LOCATION AND DESCRIPTION

- 2.1 The site of the proposed development has a stated area of 1,163 square metres and is at the boundary of the Hewlett Packard campus on the north side of City East Business Park which is off Bothar Na dTreabh at Ballybrit. There is an existing two way access point at the southern end of the building and an exit only entrance at the northern end. Surface carparks and some soft landscaping and an internal roadway are located to the front of the buildings.

3. PLANNING HISTORY:

- 3.1 **P. A. Reg. Ref. 12/355:** Permission was granted for a three storey office building (for the Hewlett Packard campus) and site works including parking a new vehicular entrance via the existing internal Ballybrit Estate Road and a new entrance off the City East Business Park Road along with pedestrian and bus facilities subject to fifty two conditions.
- 3.1 **P. A. Reg. Ref. 15/156:** Permission was granted for construction of a new vehicular entrance and associated site works at the same premises but at a location a short distance to the east on the frontage onto City East Business Park Road, subject to twelve conditions.

4.0 DEVELOPMENT PLAN.

- 4.1 The operative development plan is the Galway City Development Plan, 2011-2017 according to which the site location is within an area subject to the zoning objective: *“I: to provide for Enterprise, Industry and related uses”*.

5. THE PLANNING APPLICATION.

- 5.1 The application lodged with the planning authority indicates proposals for a new entrance and egress access point further to the recent redevelopment at the Hewlett Packard campus onto East Business Park Road. The proposals include two (RUS 027) “Stop” signs on new posts and directional signs at the entrance route. An auto track analysis inclusive of sightline details, a traffic impact assessment report and a road safety audit are included.

- 5.2 A submission from the adjoining landowner in which ownership of a strip of land between the proposed entrance and the public road is claimed was lodged with the planning authority. The submission is accompanied by copies of folio documents and a photograph. It is advised in the submission that consent to the use of the land will not be given.
- 5.3 The application was lodged concurrently with the application for the development permitted under P. A. Reg. Ref. 15/156.
- 5.4 A submission was received by the planning authority in response to a request for further information in connection with the concurrent application and the land ownership on 11th September, 2015. It is submitted that the ownership of the strip of land adjacent to the roadway is in the ownership of Galway City Council along with a letter from the Director of Services and City Engineer dated 25th September, 2001. and a letter relating to taking in charge of the road and water supply dated July, 2012. According to the submission the application under P. A. Reg. Ref. 15/156 is to be confined to HGV use.
- 5.5 In a clarification of information request issued on 5th October, 2015 it is stated that the grass verge between the footpath and site boundary had not been taken in charge by the City Council and further evidence of legal entitlement to include this land in the application is requested. In the response received on 12th October, 2015 it is stated that it is the applicant's understanding that the grass margin area is in the charge of the city council. Copies of correspondence attached include a map of the road a statement that the road and water supply have been taken in charge but that foul and surface water drainage have not been taken in charge by the City Council. A further submission by the observer party gives confirmation of the claim of ownership of the land including the footpath and grassed surface between the road and the site.
- 5.6 Further hand written notes with multiple dates of City Council documentation there are conflicting notes as to whether the lands between the north of the road and the boundary of the site has or has not been taken in charge.
- 5.7 The report of Transportation Infrastructure, Ireland (TII) indicates a recommendation for reliance of the recommendations in DOECLG "*Spatial Planning and National Roads: Guidelines for Planning Authorities 2012*" The Transportation Department report indicates no objection subject to a number of conditions of a standard technical nature. The Drainage Division indicates no objection to the proposed development.
6. **DECISION OF THE PLANNING AUTHORITY.**
- 6.1 By order dated, 5th November, 2015, the planning authority decided to grant permission subject to thirteen conditions most of which are of a

standard nature. Condition No. 12 contains a requirement that the entrance is not be made operational, “*until such time as the eastern access is constructed and operational*” for reasons of traffic safety. Condition No 13 contains a requirement for submission of a Mobility Management Plan to be prepared and submitted to the planning authority for written agreement.

6.2 The planning officer was satisfied that that ownership and sufficient legal interest issues had been sufficiently addressed and resolved. The provisions of section 34 (3) of the Planning and Development Acts 2000-2015 were noted in the report.

7. THE APPEAL.

7.1 An appeal was received from Hanniffy and Associates on behalf of the appellant party, William and Kathleen Greaney on 2nd December, 2015 attached to which are copies of three folio references and Manager’s Order relating to taking in Charge in 2001 by the city council and correspondence between the applicant’s agent and the City Council of 26th August, 2015.

7.2 An outline summary of the appeal grounds follows:

- The appellants hold absolute legal title to a strip of land, (a grass margin) between the roadway and the applicant seeks to develop. The appellants were not approach by the applicant to seek consent to the application and they are not willing to give such consent. When the Council made an order in 2001 taking in charge road, footpaths and public lighting and associated services there was no footpath on the north side of the road. Part of this space is covered by a footpath and a grassed surface. There was no reference in the order (of 2001) to the grassed area inside the footpath over which the appellants claim ownership. The appellants laid the footpath on the north side of the road and planted and maintained the grass area for the past fourteen years. It is part of the open space of the surrounding estate developed by the appellants. The applicants have no legal right to exit over the strip of land to the public road.
- The applicants previously applied for permission to exit over an adjacent strip under P. A. Re. Ref. 12/355. Further to objection over ownership issues by the appellants, the proposed exit was omitted from the application.
- The current proposal is for permission to cross over the appellants land without consent. The grant of permission is unlawful and an attack on property rights. The appellants have no option but to erect a fence to protect their property should the development proceed.

- The position of the entrance is such that extreme problems of traffic movement would occur.

8. RESPONSE TO THE APPEAL BY THE PLANNING AUTHORITY

- 8.1 There is no submission from the planning authority on file.

9. EVALUATION

- 9.1 The issue central to the appeal submission and to the dispute between the parties is about legal title to a strip of land located along the southern side of the road serving the proposed entrance. Documents including copies of folio references and accompanying maps have been furnished along with copies of correspondence issued by Galway City Council. There is uncertainty and confusion as to the dates and the extent of lands and as to if and when elements of the road network serving the campus and other services have been taken in charge by the City Council. The lands subject of the dispute, a grass verge are on the opposite, southern side of the access road serving the Hewlett Packard campus. The appellant party claims that their ownership of has been retained and they have provided legal documentation with the application and appeal to support the claim.
- 9.2 It is not possible to confirm the extent and precise details regarding the lands taken in charge by way of examination of the copies of the documents on file in connection with the application provided by the planning authority due to their poor quality. This dispute over legal entitlement has not been resolved and is a matter that the Parties could have addressed through the legal system as it does not come within the scope of the remit of An Bord Pleanála. It is therefore recommended that the resolution of matters relating to legal title should be disregarded.
- 9.3 However, it is recommended that the appeal should not be dismissed because a claim that the proposed development has adverse impact on traffic flow and safety has also been made and this is a substantive planning issue.
- 9.4 The submitted Traffic Impact Assessment report which indicates an overall improvements to road and traffic conditions at the entrance and in the immediate local road network. It is established that sufficient capacity would be available at the new junction and HGV traffic has the benefit of a more direct route and greater separation from other traffic in the vicinity and within the campus. The applicant has submitted a satisfactory response to the in the road safety audit issues relating to HGV traffic and road and junction design to which there is a satisfactory response from the applicant. There is no evidence among the submission as to additional intensity of development or vehicular circulation and movements that directly give rise to potential conflict and

hazard. The separation of commercial/HGV traffic from private/ staff traffic is and improvement both in terms of convenience and safety.

9.5 It is noted that the Planning and Transportation Department has indicated that it is fully satisfied with proposed development subject to conditions of a standard nature and there are no planning matters relating the development to be addressed.

9.6. **Appropriate Assessment Screening.** Having regard to the nature and scale of the proposed development and the likely emissions from it, the nature of the receiving environment and proximity to the nearest European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on European sites.

10. CONCLUSION AND RECOMMENDATION:

10.1 In view of the foregoing, it is recommended that the planning authority decision be upheld. It is recommended that notification of the provisions of section 34 (13) of Planning and Development Acts, 2000-2015 should be included in the order.

10.2 A draft order is set out overleaf.

DECISION

Grant Permission on the Basis of the Reasons and Considerations and subject to the Conditions set out below:

REASONS AND CONSIDERATIONS

Having regard to the planning history, the nature of existing development to be served by the proposed entrance and to the layout for parking and vehicular circulation within the site it is considered that that the proposed development would not lead to endangerment of public safety by reason of traffic hazard, would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on 11th September, 2015 and on 12th October, 2015 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall provide for and adhere to the following requirements:

The proposed entrance shall not be used unless the entrance to the east permitted under P. A. Reg. Ref. 15/156 has been constructed and brought into operation.

The sightlines and visibility envelope of the proposed entrance shall be kept clear of vegetation.

Any alterations to public services or utilities required during construction shall be carried out further to the written agreement or the planning authority having been obtained and at the applicant's own expense.

Reason: In the interest of clarity and traffic safety and convenience.

3. Prior to the commencement of the development, a Mobility Management Plan shall be prepared in consultation with and submitted to and agreed in writing with the planning authority. The plan shall include details of measures to be taken to achieve modal shift to sustainable transport modes, and agreed time periods for the measurement of the modal shift.

Reason: To encourage the use of sustainable modes of transport.

Notes:

- (i) The Board is satisfied that it is not within the scope of its remit to take matters relating to land ownership and legal rights of way which are legal matters into consideration.*
- (ii) The applicant is advised of the provisions of section 34 (13) of the Planning and Development Acts, 2000-2015 according to which a person shall not be entitled solely by reason of a grant of planning permission to carry out a development.*

JANE DENNEHY
Senior Planning Inspector.
23rd February, 2016.