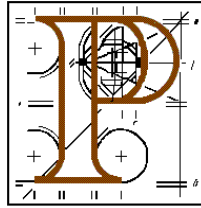


## An Bord Pleanála



### Inspector's Report

**Appeal Reference No.** PL05.246122

**Development:** Provision of new vehicular entrance and all associated site works at Roxborough Glebe, Kilcar, Co. Donegal

#### Planning Application

Planning Authority: Donegal County Council  
Planning Authority Reg. Ref.: 15/51345  
Applicant: Kieran Cummins  
Planning Authority Decision: Grant

#### Planning Appeal

Appellant(s): Kieran Cummins  
Type of Appeal: 1<sup>st</sup> Party  
Observers: None  
Date of Site Inspection: 11/04/2016  
**Inspector:** L. Dockery

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.1 The subject site, which has a stated area of approximately 0.545 hectares, is located in the townland of Roxborough Glebe, Kilcar, Co. Donegal. The site currently contains a detached dwelling, accessed from a right of way over a residential site to the south-west. Evidence on site shows where a second entrance existed, which has been closed up.

## **2.0 PROPOSED DEVELOPMENT**

- 2.1 The proposed development comprises the provision of a new vehicular entrance onto the county road to serve an existing property and all associated site works.

## **3.0 PLANNING AUTHORITY'S DECISION**

- 3.1 Permission GRANTED, subject to 4 no. conditions

Condition No. 2 stipulates that:

'Prior to commencement of development the Developer shall submit a detailed proposal for the full and permanent closure of the existing right of way entrance into the site and upon receipt of written agreement from the Planning Authority the Developer shall close the existing right of way access in accordance with the agreed proposals within one month of the new entrance having become operational

Reason: To define the permission'

- 3.2 Further Information was requested by the planning authority in relation to provision of vision splays and proposal for closure of existing right of way.

## **4.0 TECHNICAL REPORTS**

### Planner's Report

The Planner's Report reflects the decision of the Planning Authority

## **5.0 APPEAL GROUNDS**

5.1 The grounds of the first party appeal may be summarised as follows:

- Appeal against Condition No. 2 only
- At time of purchase of house in 2004, the house was serviced by an official right of way across the vendor's property- also rear entrance to east of site, which was in place greater than 7 years- by moving entrance about 15 metres to the east of its previous location would provide excellent sightlines
- Second entrance was sealed off and plans submitted for new entrance
- To close off main entrance to property would not make sense and would devalue property
- No stated policy in Donegal County Development Plan 2012 against having a second entrance
- Submits photographic survey of houses in vicinity which have second entrance- his is greater need as he has right of way issues
- Legal position was not considered by planning authority
- Failed to deal with fact that there has been a second entrance from early 1990s

- Local contractors do not want to use right of way access due to generation of muck- splitting of loads would not address this issue- not appropriate for tractors to use tarmacked right of way
- Tractors were able to enter site using rear entrance previously- need more top soil at rear of house is an horticulturist and depend on this access for growing of substrate
- Exempted development for entrances opening onto roadway 4 metres or less, under Planning Regulations 2001 as amended- roadway is only 4.2 metres wide
- Second entrance would be convenient
- Requests that Section 145 of Planning and Development Act 2000 be invoked to compensate appellant for additional expense of lodging appeal against decision
- Includes letter from Daniel J. Reilly & Co Solicitors, dated 10/12/2015) stating that the closing off the entrance to the property would adversely affect the marketability of the property and advising to resist any application to reduce the value of the property or its marketability

## **6.0 RESPONSES**

6.1 None

## **7.0 OBSERVATIONS**

7.1 None

## **8.0 PLANNING HISTORY**

It would appear that permission was granted for the subject dwelling, as a self-catering tourism cottage, with septic tank under Ref. 95/136.

Retention and completion works to same were permitted under Ref. 08/20397

## **9.0 DEVELOPMENT PLAN**

The Donegal County Development Plan 2012-2018 is the operative County Development Plan for the area.

## **10.0 ASSESSMENT**

10.0.1 This is an appeal against Condition No. 2 of the decision to grant permission which issued from the planning authority. Condition No. 2 reads as follows:

‘Prior to commencement of development the Developer shall submit a detailed proposal for the full and permanent closure of the existing right of way entrance into the site and upon receipt of written agreement from the Planning Authority the Developer shall close the existing right of way access in accordance with the agreed proposals within one month of the new entrance having become operational

Reason: To define the permission’

10.0.2 The Planning Authority considered that it is generally not acceptable for there to be two vehicular entrances to a single residential property. They considered that heavy loads wishing to enter the site could be split off site onto smaller vehicles. They did however consider that the proposed entrance would be acceptable subject to the existing entrance being closed off.

10.0.3 The appellant contends that he is a horticulturalist by profession and requires heavy loads of topsoil to facilitate his business. He states that it is not appropriate to bring these loads through the existing access as it is causing mud drops on the existing tarmacked entrance and is not in the interests of good neighbourly relations. It is not the size of the

loads per se that is the problem, more the amount of dirt and mud on any such vehicles entering the site. Therefore it would appear to me that it is proposed to use the existing entrance for personal access and use the proposed access in association with his business requirements.

10.0.4 I would concur with the planning authority that in general two accesses are not normally required, or desired to a single residential property. Such proliferation of accesses to single residential properties can have traffic safety implications and can lead to undesirable precedents for similar type developments in an area. I also note that the appellant has submitted photographs of properties with two entrances onto the public road in the vicinity. I have no information before me as to whether these entrances are authorised, or otherwise. In any event, each application is considered on its own merits. However, in this instance I consider that an unusual set of circumstances appear to exist. The issue of the right of way providing access over neighbouring property to this residential property is not commonplace. I can acknowledge the issue that this may cause if heavy vehicles are traversing over the right of way detracting from the amenity of the residents of the adjoining property. To this end, I can see the requirement for an additional entrance.

10.0.5 I note that there would appear to have historically been a second entrance to this site, which is stated to have been closed off recently in order to provide a superior access with better sightlines. In addition, this is a local roadway that appears to be very lightly trafficked. Adequate sightlines can be provided to the proposed new entrance. A right of way exists to the dwelling at the present time that would also appear to be lightly trafficked with just two properties utilising it. The amount of traffic being generated by the existing dwelling on this site for personal use is anticipated to be minimal. Even if the existing entrance to the site were closed up, the entrance onto the public roadway would still exist as it would continue to be used by the property the south-west.

10.0.6 Having regard to the all of the circumstances outlines above, I consider that an unusual case exists in this instance and therefore I consider that the removal of the existing entrance to the site is not necessary. I consider that due to the unusual circumstances of the site, this would not set a precedent for further similar developments in the vicinity.

## **10.1 OTHER ISSUES**

10.1.1 I note the appellant in his submission requests that Section 145 of the Planning and Development Act 2000, as amended by invoked to compensate him for additional expenses incurred as a result of having to lodge this appeal, which he feels he should have not been put to. Section 145 of the Planning and Development Act 2000, as amended can require the local authority to pay the appellant for the expenses of the appeal. However, I consider that this would not be appropriate in this instance. The issues raised by the planning authority were valid planning concerns and I have no information before me to believe that there was any intention of delaying the development or securing a monetary gain. In addition, I have no information before me to consider that the planning authority did not adequately assess the proposed development. I note that issues relating to rights of way are legal matters, outside the remit of this planning appeal.

## **11.0 CONCLUSIONS AND RECOMMENDATIONS**

11.1 I recommend that the decision of the planning authority be AMENDED and that Condition No. 2 be OMITTED from the decision to grant permission

## REASONS AND CONSIDERATIONS

Having regard to the nature and scale of the development proposed, together with the particular circumstances pertaining to this site, and the fact that this is a lightly trafficked local road, it is considered that the proposed development would not lead to the creation of a traffic hazard or obstruction of road users and would not lead to the creation of an undesirable precedent for further similar developments in the vicinity. The proposed development is therefore considered to be in compliance with the proper planning and sustainable development of the area.

L. Dockery

Planning Inspector

28<sup>th</sup> April 2016