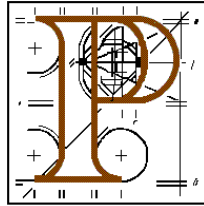

An Bord Pleanála



Inspector's Report

Appeal Reference No.: PL08. 246131

Development: Retain and complete an entrance and access track for the purpose of providing agricultural access only to a field.

Ballynasare, Ballyroe, Tralee, Co. Kerry.

PLANNING APPLICATION

Planning Authority: Kerry County Council

Planning Authority Ref.: 15/1005

Applicant: Patrick Griffin

Type of Application: Permission for Retention (and completion)

Planning Authority Decision: Refusal

APPEAL

Type of Appeal: First Party v. Decision

Observers: Eamon Feeley & Janet Lucas

Date of Site Inspection: 30th April, 2016

INSPECTOR: Robert Speer

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located in the rural townland of Ballynasare, Co. Kerry, approximately 5.0km northwest of Tralee town and 3.2km southeast of the village of Ardfert, along the western side of the R551 Regional Road and adjacent to a series of existing roadside dwelling houses. It has a stated site area of 0.404 hectares, is irregularly shaped and presently comprises a vacant plot of overgrown agricultural grassland / scrubland. The site itself effectively occupies a backland location situated to the rear of existing housing and is linked to the public roadway by way of a narrow passageway that extends eastwards between the adjacent residential properties to the immediate north and south.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development seeks to retain and complete a new site entrance with an associated accessway onto the R551 Regional Road for agricultural purposes.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 011482. Was refused on 19th July, 2001 refusing Breda Hurley permission to construct a dwelling house with wastewater treatment unit and entrance.

PA Ref. No. 031393. Was refused on 14th July, 2003 refusing Breda Hurley outline permission to build a house.

PA Ref. No. 041563. Was refused on 1st June, 2004 refusing Breda Hurley outline permission to build a house.

PA Ref. No. 052069. Was refused on 11th August, 2005 refusing Breda Hurley outline permission to build a house with effluent treatment system for the following reasons:

- The proposed erection of a dwelling to the rear of existing and permitted development would constitute disorderly backland development and would seriously injure the residential amenities of the property in the vicinity. The

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- proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- The proposed erection of a dwelling to the rear of existing and permitted development would constitute excessive density of development by virtue of its visual impact on the landscape which it is necessary to preserve in accordance with Objective ZL11-1 of the Kerry County Development Plan, 2003-2009 and would seriously injure the amenities and depreciate the value of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
 - It is considered that the proposed development would endanger public safety by reason of traffic hazard, because the site is located on the R551 Regional Road where sightlines are severely restricted to the north and because the traffic movements generated by this development would be likely to cause an obstruction to road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
 - Having regard to the lack of percolation test results and trial hole results in relation to wastewater treatment at the site, the Planning Authority is not satisfied that the effluent arising from the proposed development can be adequately treated on site. The proposed development would be prejudicial to public health and would be contrary to the proper planning and sustainable development of the area.

3.2 On Adjacent Sites:

PA Ref. No. 98803. Was granted on 6th July, 1998 permitting Thomas and William Crean permission to retain existing extension to dwelling house at Ballynasare, Tralee, Co. Kerry.

PA Ref. No. 98804. Was granted on 6th July, 1998 permitting Thomas and William Crean outline permission to erect a dwelling house with septic tank and percolation area and new entrance to public road at Ballynasare, Tralee, Co. Kerry.

PA Ref. No. 981126. Was granted on 17th August, 1998 permitting Maurice Harty outline permission to erect a dwelling house with septic tank and percolation area at Ballynasare, Tralee, Co. Kerry.

PA Ref. No. 002463. Was refused on 25th September, 2000 refusing Bob Rochfield & Violet Clarke permission to erect a dormer dwelling at Ballynasare, Ballyroe, Tralee, Co. Kerry.

PA Ref. No. 003855. Was granted on 7th May, 2001 permitting Bob Rochfield & Violet Clarke approval to build a single storey dwelling at Ballynasare, Ballyroe, Tralee, Co. Kerry.

PA Ref. No. 01835. Was granted on 5th November, 2001 permitting Maurice Harty permission to construct a dormer type dwelling house with septic tank, percolation area and a detached garage at Ballynasare, Tralee, Co. Kerry.

PA Ref. No. 032457. Was granted on 14th November, 2003 permitting Violet Clarke permission to construct a private single-storey dwelling house at Ballynasare, Ballyroe, Tralee, Co. Kerry.

PA Ref. No. 064792. Was granted on 14th March, 2007 permitting Eamonn Feeley & Janet Lucas permission to build a private single storey dwelling with attic development served with septic tank and percolation area at Ballynasare, Ballyroe, Tralee, Co. Kerry.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and Technical Reports:

4.1.1 Planner's Report: States that the proposed entrance will give rise to a traffic hazard by reason of the inadequacy of the sightlines available in a northerly direction onto the public road as supported by reference to a 'Roads Report' prepared in respect of a previous planning application on site (PA Ref. No. 052069) which asserted that the sight distances available did not accord with the requirements of the Design Manual for Roads & Bridges.

4.1.2 Capital Infrastructure Unit: States that as the proposed development site is located on the opposite side of the R551 Regional Road from the old railway line, it has no comments on the application.

4.1.3 Objections / Observations:

A total of 2 No. submissions were received from interested parties and the principle grounds of objection contained therein can be summarised as follows:

- The works in question constitute unauthorised development.

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- The applicant failed to comply with the enforcement action issued by the Planning Authority.
 - Encroachment of private property.
 - Interference with the existing surface water drainage network and the potential for flooding of adjacent property.
 - Inadequacy of the available sightlines / creation of a traffic hazard.
 - The questionable need for the entrance given the limited size and agricultural quality of the site in question which is also subject to frequent flood events.
 - The applicant is not a permanent resident of the area.

4.1.4 Prescribed Bodies / Other Consultees:

None.

4.2 Planning Authority Decision:

4.2.1 On 14th January, 2016 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following reason:

- It is considered that the proposed development would endanger public safety by reason of traffic hazard, because the site is located on the R551 Regional Road where sightlines are severely restricted to the north and because the traffic movements generated by this development would be likely to cause an obstruction to road users. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- By way of background, the Board is advised that the previous owner of the proposed development site was refused permission on several occasions under PA Ref. Nos. 03/1393, 04/1563 & 05/2069 to construct a dwelling house on same. The applicant subsequently purchased the site in 2013 for agricultural purposes, however, due to the level of neglect that had occurred during the intervening period between the aforementioned planning applications and the applicant's acquisition of the lands, the access track serving same had become overgrown and thus the decision was made to clear the track of briars and scrub in order to gain access to

the field. However, during the course of these clearance works in 2014 the applicant was served with an enforcement notice by the Planning Authority which required the removal of the unauthorised track and the gates at the site entrance. Therefore, the subject application has been lodged in order to regularise the situation.

- The existing field will be used for agricultural purposes and the proposed access will only be used by agricultural vehicles.
- The site entrance is accessed from the R551 Regional Road at a point where a speed limit of 80kph applies and in accordance with '*NRA TD41-42 Geometric Design of Major / Minor priority junctions and vehicular access to National Roads*' this type of access would be considered to constitute a '*Direct Access Layout 1: Field Access*' with less than 10 No. vehicular movements per week. At this location, the R551 Regional Road comprises a single lane roadway with an approximate carriageway width of 7m and verges in excess of 1m wide on either side of same and thus the proposed entrance junction would require a stopping sight distance of 160m measured from a point set back 2.4m from the near edge of the carriageway.

Having regard to the foregoing, it is submitted that there is a clear view from driver's eye level over the immediate area of the proposed junction with the R551 Regional Road and that there are full unobstructed sightlines available to the south in excess of the required 160m stopping sight distance. Furthermore, it is considered that the presence of the crest to the north of the junction actually serves to give the impression of poorer sightlines than those that exist.

- The drawings which accompanied the initial planning application serve to demonstrate that an object height of 1.15m is visible from (driver's) eye level at a distance of 170m away. Whilst it is acknowledged that this is slightly outside the relevant object height parameters, it should be noted that it nevertheless exceeds than the minimum sightline requirements.
- Both '*NRA TD41-42 Geometric Design of Major / Minor priority junctions and vehicular access to National Roads*' and '*NRA TD 9*' allow for a relaxation in the minimum stopping sight distance for individual field entrances. In this respect it is submitted that a relaxation of one step below the minimum desirable level would be acceptable in the case of the subject proposal.

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- The proposed access track will not be constructed from an impervious material and the existing surface treatment may be retained provided it is suitable for agricultural traffic.
 - The existing drainage ditch is overgrown and will be cleaned out in order to properly drain the access track thereby preventing surface water runoff into Mr Harty's property.
 - It is proposed to install an agricultural gate hanging in line with the adjacent (Mr. Harty's) front boundary wall.
 - Whilst Mr. Feeley disputes the location of his southern site boundary, it is the applicant's opinion that the trees / shrubs referenced in Item No. 2 of Mr. Feeley's submission are wholly within the applicant's lands as is the drainage ditch and the access track.
 - The applicant has no other means of accessing the proposed development site and if permission were to be refused for the subject proposal, the lands in question would therefore have to be left in an overgrown and unkempt condition which is not desirable.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

7.0 OBSERVATIONS

7.1 Eamon Feeley & Janet Lucas:

- The observers have been resident in their property since 2008 and assert that there is no evidence that there has ever been an access track at the location proposed.
- Prior to the applicant commencing works on the proposed access track, the site in question included a ditch which formed a natural boundary between it and the observer's property.
- The applicant has encroached onto the observer's property and removed trees and shrubs without permission.
- The applicant has failed to comply with previous enforcement orders issued by the Planning Authority.
- The applicant has previously indicated an intention to construct a dwelling house on the application site.
- There are concerns that any grant of permission for the proposed agricultural access could be used to accommodate the future development of the site for residential purposes.

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- The applicant has not given any indication of the type of agricultural activity to be carried out on site. Furthermore, given that the site comprises a small area of poor quality land which is subject to frequent flooding, it is unclear as to what form of farming activity could be carried out on site by the applicant.
 - The proposed development will give rise to a serious traffic hazard.

8.0 POLICY CONTEXT

Kerry County Development Plan, 2015-2021:-

Chapter 4: Economic Development & Employment:

Section 4.8: Rural Economy:

Section 4.8.1: Agriculture:

ES-32: Support the agricultural sector in meeting its Food Harvest 2020 targets in a manner that is sustainable and has due regard to the objectives, policies and standards of this Plan, particularly as they relate to the Natural Environment.

Chapter 7: Transport & Infrastructure:

Section 7.2.1.4: Regional and Local Roads:

RD-25: That applications for development shall comply with the standards (sight distances, boundary treatment, surface water etc.) specified in the Development Management, Standards and Guidelines section.

Chapter 13: Development Management – Standards & Guidelines:

Section 13.2: Development Standards / General: Access onto Public Roads:

All applications involving access onto public roads or the intensification of the usage of an existing access point will be assessed having regard to the following criteria:-

- the classification of the public road,
- the speed limit which applies at the point of access,
- the width and carrying capacity of the road,
- the nature, scale and layout of the development,
- the volume and nature of traffic likely to be generated by the development,
- the design of the access and the sight line visibility available,
- the number of access points in the vicinity,
- the level of parking required and the provision of on-site parking,
- lighting and advertising matter associated with the development,

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- footpaths and public lighting requirements,
 - access provisions for people with disabilities,
 - traffic calming measures.

On minor rural roads where road width is inadequate, the Council will consider the provision of well located and constructed passing lay-bys as an alternative to upgrading the entire road width, where the provision of such lay-bys will comply with road safety requirements and provide adequate capacity on the road. No new access onto National Primary and Secondary Roads will generally be permitted.

Exceptional circumstances may be considered if they comply with Section 2.6 of Spatial Planning and National Roads - Guidelines for Planning Authorities – Department of the Environment, Community and Local Government (January 2012) the exceptional circumstances, as agreed with the National Roads Authority are detailed in the Transport and Infrastructure chapter of this Plan.

9.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Traffic implications
- Impact on residential amenity
- Appropriate assessment

These are assessed as follows:

9.1 The Principle of the Proposed Development:

9.1.1 From a review of the available information, including the planning history of the application site, in addition to aerial photography of the wider area available from other publicly accessible sources such as Ordnance Survey Ireland, it is apparent that the proposed development site previously formed part of the larger agricultural field located to the immediate south and that the physical separation of the site from those lands would seem to have occurred some time after the year 2000 (with the site seemingly having been transferred to Ms. Breda Hurley as part of a settlement following her separation and from whom the current applicant acquired the property in 2013). Accordingly, the likelihood is that the

application site was historically accessed through the adjacent agricultural lands from which it has since been severed and that as a result of the multiple occasions on which planning permission was refused to Ms. Hurley for the development of a dwelling house, the scenario has now arisen that the site in question, having been separated from the original larger agricultural field / landholding both physically and in terms of land ownership, does not seemingly benefit from any authorised means of access. Whilst such a conclusion is based on the assumption that there was never any established alternative means of access to the site via the passageway that extends eastwards between the adjacent residential properties to the immediate north and south towards the public roadway, it is notable that the observation received from an adjoining property owner lends support to this position in asserting that there is no evidence of there ever having been an access track or entrance serving the site at the location proposed in the subject application. Therefore, on the basis of the foregoing, it would seem reasonable to conclude that the site in question is effectively inaccessible at present to vehicular traffic and thus the subject application has been lodged in order to address the situation. It would also appear that the need for the proposed site entrance has arisen as a direct result of the haphazard development of adjacent housing and those attempts by the previous landowner to obtain planning permission for a dwelling house in a backland location on site that in turn arose from the severance of the lands in question from the adjacent agricultural field.

9.1.2 Having established that the proposed development site would not appear to benefit from any existing means of direct access to the public road, I would concede that in order to accommodate the agricultural usage of the land it would be necessary to provide for a new site entrance onto the public roadway, however, in this respect I would suggest that in the absence of further details with regard to the applicant's specific intentions for the future usage of the site, the case for the entrance in question has not been definitively established. In this regard I would question the viability of the application site for agricultural purposes given its restricted size and configuration, particularly as the site would not appear to form part of a larger landholding within the applicant's ownership and thus effectively amounts to a standalone plot. In support of the foregoing, it is of further relevance to note that no details have been provided of the applicant's specific intentions with regard to the agricultural use of the land or indeed of the nature of the agricultural activities to be conducted on site and whether these will involve the use of heavy machinery / farming equipment etc.

9.1.3 Whilst I would acknowledge that there may be a legitimate requirement to provide a new entrance to the application site in order to accommodate vehicular traffic associated with the agricultural use of the land, in light of the planning history of the application site and its severance from the original landholding, I would have some reservations as regards the potential for the future development of same and the precedent any grant of permission could set. Therefore, I would suggest that there is an increased onus on the applicant to demonstrate the need for such an entrance by clarifying the specifics of the intended agricultural use of the land (*N.B.* The Board may wish to consider seeking further details in this regard).

9.1.4 In the event that the Board is amenable to a grant of permission for the site access as proposed, I would strongly recommend the inclusion of a condition which expressly limits the use of the entrance to agricultural purposes only.

9.2 Traffic Implications:

9.2.1 The proposed development involves the retention and completion of a new vehicular entrance onto the R551 Regional Road along a section of roadway which is subject to a speed limit of 80kph, is without public footpaths or lighting, and is defined by a continuous white centreline. In terms of traffic safety, I would further advise the Board that the proposed development site is located alongside a relatively straight stretch of roadway which is subject to notable traffic volumes and, as observed during the course of my site inspection, considerable traffic speeds. Accordingly, given the alignment of the roadway at this location, it would seem reasonable to anticipate increased traffic speeds and a heightened potential for overtaking manoeuvres and, therefore, the provision of adequate sightlines from the proposed entrance onto the public roadway is of particular importance.

9.2.2 Having reviewed the submitted drawings, whilst it would appear to be possible to achieve sightlines of c. 160m along the roadway in each direction from the proposed entrance, I would have some concerns as regards the veracity of the submitted drawings given that the scales and measurements represented on same do not appear to be accurate. In this respect I would advise the Board that Drg. No. 15/45/01: '*Site Layout*' as forwarded to the Board by the Planning Authority comprises an 'A4' page and that the scales shown on same are detailed as '1:1000@A3' and '1:500@A2' which therefore gives rise to difficulties in attempting to derive an accurate measurement from same. Furthermore, although the grounds of appeal have been accompanied by another copy of Drg. No. 15/45/01: '*Site Layout*' on an 'A3' page thus seemingly allowing for

measurement at a scale of 1:1000, measurement of the sight distance in a northerly direction from the drawing itself equates to c. 155m which conflicts with the reference to an available sight distance of 170m arrangement as shown on the drawing. In addition, given the scale of the submitted drawings, it is difficult to accurately determine the availability of the sightlines as shown due to the vertical alignment of the carriageway at this location. Therefore, I would have serious reservations as regards placing an undue reliance on the submitted drawings for the accurate measurement of the available sightlines. In this regard, I would further advise the Board that having conducted a site inspection, in my opinion, it is clear that the proposed site entrance is not visible at driver's eye level from the junction of the R551 Regional Road with the minor local road located c. 180m to the north, although it is visible to some extent from the junction of a private entrance with the R551 Regional Road situated approximately 130m north of the site. Accordingly, it is apparent that the crest in the carriageway at this point serves to limit forward visibility along the roadway as evidenced by the presence of the continuous white centreline and, therefore, I am not satisfied that the sightlines available from the proposed entrance would be sufficient to allow for safe traffic turning movements.

9.2.3 In addition to the foregoing, I would have further reservations as regards the wider traffic safety concerns arising from permitting another vehicular entrance at the location proposed given the multiplicity of individual entrances and associated traffic turning movements already present along this particular section of roadway where the forward visibility of traffic approaching same from the north is obstructed by the vertical alignment of the carriageway with the effect that traffic turning movements will be obscured from view.

9.2.4 In my opinion, given the aforementioned substandard sight distances, the traffic speeds along this section of roadway, the existing multiplicity of individual site accesses, and the vertical alignment of the roadway to the north of the site as evidenced by the presence of a continuous white centreline, on balance, I am inclined to conclude that the proposed entrance arrangement could give rise to a traffic hazard. Furthermore, in the absence of further details with regard to the specific intentions for the future usage of the application site, I would submit that the case for the entrance in question has not been definitively established.

9.2.5 Accordingly, I would recommend that the proposed development be refused permission on the grounds that it would endanger public safety by reason of traffic hazard.

9.3 Impact on Residential Amenity:

9.3.1 The proposed 'agricultural' entrance and associated access track will be positioned between two existing residential properties and I would suggest that whilst this arrangement would be amenable to the applicant, it is likely to detract from the level of residential amenity expected to be enjoyed by the adjacent properties. In this respect whilst the intermittent usage of the entrance for 'agricultural' purposes may be of limited significance, I would have concerns that in the absence of further details regarding the intended use of the wider site, the overall level of activity arising from the use of the proposed entrance would serve to detrimentally impact on the residential amenity of the adjacent properties.

9.3.2 With regard to the concerns raised pertaining to surface water drainage and the possible interference with an existing land drain, I would suggest that any such matters could be satisfactorily addressed by way of condition in the event of a grant of permission.

9.3.3 Finally, in relation to the issue of land ownership and possible encroachment / trespass of third party lands, I would suggest that any such disputes are essentially civil matters for resolution between the parties concerned and in this regard I would refer the Board to Section 34(13) of the Planning and Development Act, 2000, as amended, which states that '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'.

9.4 Appropriate Assessment:

9.4.1 Having regard to the nature and scale of the development in question, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

10.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be upheld in this instance and that permission for retention and completion be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. It is considered that the development proposed for retention and completion would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a road at a point where sightlines are restricted in a northerly direction.
2. Having regard to the intended use of the proposed entrance and access track for agricultural purposes, and their siting relative to adjacent dwelling houses, it is considered that the development proposed for retention and completion would be likely to give rise to an unacceptable level of disturbance, noise and nuisance which would seriously injure the amenities of adjoining residential property and would, therefore, be contrary to the proper planning and sustainable development of the area.

Signed: _____

Robert Speer
Inspectorate

Date: _____