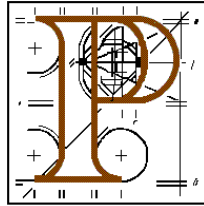

An Bord Pleanála



Inspector's Report

Ref.: PL08. 247428

Development: Provision of a new vehicular entrance, driveway and parking for dwelling.

Tyshe, Ardfert, Co. Kerry.

PLANNING APPLICATION

Planning Authority: Kerry County Council

Planning Authority Ref.: 16/397

Applicant: Ronan O'Connor

Type of Application: Permission

Planning Authority Decision: Refusal

APPEAL

Type of Appeal: First Party v. Decision

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 29th December, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The proposed development site is located in the village of Ardfert, Co. Kerry, approximately 180m east of the remains of St. Brendan's Cathedral and to the immediate southeast of Tyshe Bridge, where it occupies a position along a bend in the roadway which overlooks the River Tyshe to the north. It has a stated site area of 0.5584 hectares, is irregularly shaped and consists of two distinct elements in that the southernmost part of same is occupied by a contemporary two-storey dwelling house whilst the more northerly lands are characterised by undeveloped scrubland / wetland. It is of particular relevance to note that the roadside (western) site boundary is defined by a generally intact example of the attractive stone / masonry walls which are characteristic of Ardfert.

2.0 DESCRIPTION OF PROPOSED DEVELOPMENT

2.1 The proposed development involves the opening of a new vehicular splayed entrance arrangement onto a local roadway within the village of Ardfert (along a stretch of roadway which is subject to a speed limit of 50kph) and the associated construction of a new driveway and the provision of a parking area to serve an existing dwelling house.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 033086. Was granted on 16th January, 2004 permitting Justin and Kerry Horgan outline permission to construct a private dormer type dwelling house and separate double garage serviced by a biocycle treatment unit and percolation area.

PA Ref. No. 054238. Application by Justin and Kerry Horgan for permission consequent on a grant of outline permission to erect a dormer type dwelling house with separate double garage and ancillary site works including biocycle type sewage treatment unit and percolation area (PA Ref. No. 03/3086). This application was withdrawn.

PA Ref. No. 061273. Was granted on 23rd August, 2006 permitting Justin and Kerry Horgan permission to erect a dormer type dwelling house with separate double garage and ancillary site works including biocycle type sewage treatment unit and percolation area.

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- PA Ref. No. 0691273. Was granted on 28th October, 2010 permitting Eamon and Noreen Ferris an 'Extension of Duration' of PA Ref. No. 061273.

PA Ref. No. 0969. Application by Eamon and Noreen Ferris for permission to erect a new bungalow with attic development complete with mechanical aeration unit and sand polishing filter and for all ancillary site works associated with same including the formation of a new entrance and the erection of a private domestic garage. This application was withdrawn.

PA Ref. No. 11949. Was granted on 31st December, 2012 permitting Eamon Ferris permission to retain and complete dwelling house and garage as constructed on site complete with all ancillary site works associated with same.

4.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

4.1 Decision:

Following the receipt of a response to a request for further information, on 21st September, 2016 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following 2 No. reasons:

- Based on the information submitted with the application, the Planning Authority is not satisfied that adequate sightlines can be achieved at the proposed entrance. Therefore, the proposed development would endanger public safety by reason of traffic hazard.
- It is considered that the proposed development, which would involve the partial loss and alteration of the stone wall fronting the site, would seriously detract from the built heritage of the village and would materially conflict with the Council's stated development strategy for the village in the Ardfert Local Area Plan (Tralee Killarney Hub Functional Area Local Area Plan, 2013-2019) which seeks to protect the natural environment, architectural and archaeological heritage of the village from developments of an inappropriate nature and scale given that these attributes contribute greatly to the distinctive character of the village. The proposed development would materially contravene objective AH-2 of the said Local Area Plan to 'preserve and enhance existing stone walls'.

It is therefore considered that the proposed development, by itself and by its precedent, would therefore be contrary to the proper planning and sustainable development of the area.

4.2 Objections / Observations:

None.

4.3 Internal Reports:

County Archaeologist: States that there are no Recorded Monuments in the immediate vicinity of the proposed development and that the site has been previously disturbed. Accordingly, no mitigation is required.

Tralee Municipal District Office: Operations Department: An initial report recommended that further information be sought in respect of the sightlines available from the proposed entrance. It was also suggested that the existing entrance arrangement should be removed in the event of a grant of permission.

Following the receipt of a response to a request for further information, a final report was prepared which stated that sightlines from the proposed access could not be achieved in accordance with the requirements of the DMRB standards.

4.4 Prescribed Bodies / Other Consultees:

None.

5.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- The following 2 No. possible solutions to the proposed entrance were submitted to the Planning Authority:

1. *Standard Sightlines Attainment:*

The current height of the existing stone boundary wall (in addition to the trees located along the inner face of same) will not facilitate the attainment of clear sightlines onto the public roadway from the proposed splayed entrance. Therefore, the height of this wall will have to be decreased and all of the adjacent trees felled in order to achieve the required sightlines.

This approach would be far from desirable from either a privacy point of view or from an architectural conservation perspective.

2. *Alternative Proposal:*

If the existing boundary wall and trees are retained, the depth of the footpath at the mouth of the proposed new entrance will allow a vehicle to ease out and observe the traffic situation before exiting onto the public roadway.

Whilst it is conceded that there are some shortcomings with regard to this approach, it is considered that these are greatly outweighed when contrasted with the negative safety aspects of the current entrance arrangement – the use of which involves cutting across the public roadway at an acute bend when accessing the property from the Ardfert direction.

- The first proposal was ruled out by the Planning Authority on the grounds that decreasing the height of the stone wall would seriously detract from the built heritage of the village. Adequate sightlines could be achieved if this situation was adopted.
- The second proposal would not appear to have been given any consideration by the Planning Authority and whilst it is acknowledged that this proposition would have some limitations, it would nevertheless represent a considerable improvement over the existing entrance arrangement – the use of which involves cutting across the public roadway at an acute bend when accessing the property from the Ardfert direction.

The treacherous nature of the aforementioned bend is all too clearly evident in the accompanying photographs whilst the extreme vulnerability of motorcyclists to crossing traffic – especially if travelling at speed, when approaching the bend from the Tyshe direction, is also palpable.

- The accompanying photographs demonstrate that the proposed entrance on this 50kph section of road would be clearly visible from the sightline extremities in both directions.

6.0 RESPONSE TO GROUNDS OF APPEAL

6.1 Response of the Planning Authority:

None.

7.0 DEVELOPMENT PLAN

Kerry County Development Plan, 2015-2021:-

Relevant Sections / Polices:

Chapter 7: Transport & Infrastructure:

Section 7.2.1: Roads:

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

Section 13.3: Standards for Residential Developments in Urban Areas

Section 13.4: Standards for Residential Development in Rural and Non-Serviced Sites

Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019:-

Land Use Zoning:

The northern extent of the proposed development site is located in an area zoned as 'Passive Open Space Amenity' whereas the remainder of the site is not expressly zoned for any particular purpose.

Objectives:

- *AH-1:* Preserve the village's architectural heritage and encourage development to be designed in a manner that is in keeping with the scale and character of the existing village. New developments should respect local design features.

- *AH-2:* Preserve and enhance existing stone walls.

Other Relevant Sections / Polices:

Section 4b: Villages: Ardfert Local Area Plan.

Development Strategy:

- Protect the natural environment, architectural and archaeological heritage of the village from developments of an inappropriate nature and scale

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- given that these attributes contribute greatly to the distinctive character of the village.
- Protect and enhance the existing stone walls within the village.

8.0 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 built heritage considerations
- Appropriate assessment

These are assessed as follows:

8.1 The Principle of the Proposed Development:

8.1.1 The proposed development site is located within the development boundary of the village of Ardfert as identified in the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019 and whilst the curtilage of the existing dwelling house on site is not expressly zoned for any particular purpose, the proposed entrance arrangement and the associated driveway will extend through lands zoned as '*Passive Open Space Amenity*'. In this respect I would advise the Board that although the subject proposal only concerns the construction of a new vehicular entrance to serve the existing dwelling house previously permitted under PA Ref. No. 11949, the proposed development will also result in the consequential extension of the residential curtilage of the dwelling house which has not been expressly addressed in the submitted application. In this regard, I would have reservations as regards the compatibility of the proposed development with the applicable '*open space / amenity*' land use zoning on the basis that the grant of permission issued in respect of the existing dwelling house under PA Ref. No. 11949 necessitated a material contravention of the Tralee / Killarney Hub Settlements Local Area Plan, 2006 as that site was previously zoned as '*Amenity*' with the stated objective that '*This land is reserved for amenity use*'. Accordingly, I am inclined to suggest that there may be a case that the subject proposal similarly materially contravenes the '*Passive Open Space Amenity*' land use zoning objective on site in that it involves the effective expansion of the curtilage of a residential property into lands expressly zoned for open space / amenity purposes.

8.1.2 Furthermore, it is my opinion that the use of land as a private amenity / open space / garden area which is intended for the sole enjoyment of the occupants of a private residence, and which will in effect form an extension of the curtilage of that dwelling house, is materially different to the existing authorised use of the land for agricultural purposes (as can be established from a review of historical aerial photography of the area). In this respect I am satisfied that the change of use of an area of agricultural land to use as a private amenity area serving a private residence gives rise to a material change in the use of said land and thus constitutes development within the meaning of Section 3(1) of the Planning and Development Act, 2000, as amended. Furthermore, it is clear that such a change of use does not come within the exempted development provisions of the Planning and Development Act, 2000, as amended, or the regulations made thereunder and, therefore, it does not constitute exempted development and requires a grant of planning permission.

8.2 Traffic Implications:

8.2.1 The existing dwelling house on site is presently accessed via an entrance arrangement situated within the south-western corner of the site area which opens onto the outer apex of an approximate 90° bend in the public roadway. This access arrangement was approved under PA Ref. No. 11949 and it is notable that the *'Report on Material Contravention'* prepared in advance of the meeting of Kerry County Council on 19th November, 2012 (which subsequently culminated in a grant of permission for PA Ref. No. 11949) specifically stated that *'adequate sightlines are achievable at the proposed entrance given that the entrance is located within the 50kph speed limit zone'* whilst Condition No. 6 of that grant of permission required the following:

- a) *Vehicular access to the site shall be located as shown on the Site Layout Map received on 05/09/2012.*
- b) *The new wing walls shall be constructed in stone to match the roadside boundary wall. Wing walls forming the entrance shall be splayed at an angle of 45° to the line of the front fence.*

Reason: In the interest of visual amenity and traffic safety.

8.2.2 At this point I would advise the Board that the aforementioned entrance would not appear to have been completed to date in accordance with the terms and conditions of PA Ref. No. 11949.

8.2.3 The subject proposal seeks to develop a new access arrangement to serve the existing dwelling house which will involve the opening of a site entrance positioned further north along the western site boundary and forward of the northern elevation of the existing construction. The rationale for the provision of this new entrance as detailed in the grounds of appeal is that the existing site access poses a risk to public safety by reason of traffic hazard due to its siting at a bend in the public road with specific reference to the requirement to cut across the public roadway at the bend in the carriageway when accessing the property from the Ardfert direction and, in particular, the vulnerability of motorcyclists to crossing traffic – especially if travelling at speed and approaching the bend from the Tyshe direction.

8.2.4 Having reviewed the available information, whilst I would acknowledge the concerns raised by the applicant as regards the existing site access arrangement, it must be noted that the said entrance was previously approved by the Planning Authority on the basis that the sightlines available were considered to be adequate and thus it is questionable if a further entrance is warranted in this instance, particularly as there would appear to have been no change in the circumstances prevailing e.g. the roadway in question continues to be subject to a speed limit of 50kph.

8.2.5 Notwithstanding my reservations as regards the need for the proposed entrance, it is necessary to review the traffic safety implications associated with same and the adequacy of the sightlines available. In this respect I would advise the Board that the applicant submitted a revised site layout plan on 26th August, 2016 (a copy of which has accompanied the grounds of appeal) in response to a request for further information issued by the Planning Authority which indicates that sightlines of 70m and 75m will be available from the proposed entrance onto the public road to the north and south respectively (on measurement from a point set back 2.4m from the near edge of the carriageway), however, it has been acknowledged that the achievement of these sightlines will necessitate the lowering of the roadside boundary wall and the removal of those trees alongside same. With regard to the foregoing, the applicant has conceded that the requirement to lower the roadside boundary wall etc. is not desirable from either a privacy point of view or an architectural conservation perspective and thus an alternative proposal has been put forward whereby the existing wall and tree line will be retained with the depth of the public footpath at the mouth of the proposed entrance allowing a vehicle leaving the site to ease out and observe the traffic situation before exiting onto the public road.

8.2.6 In relation to the applicant's proposals to obtain adequate sightlines from the new entrance through the lowering of the roadside boundary wall, it is clear that due to the vertical alignment of the roadway at this location it will be necessary to lower the existing walling for a considerable distance and that this will have a significant detrimental visual impact on the built heritage value / historic character of the area which will be assessed in further detail elsewhere in this report. In the absence of these works the sightlines available from the proposed entrance would not comply with the accepted minimum standards and thus there would appear to be limited, if any, benefit arising from a traffic safety perspective when compared to the existing permitted access arrangement from which clear sightlines are available in both directions onto the public road.

8.2.7 In relation to the alternative proposal whereby the new entrance would be opened whilst retaining the roadside boundary walling at its existing height, I would reiterate that the available sightlines would be substandard and that any such compromise would appear to offer little overall benefit in terms of traffic safety when compared to the existing site entrance.

8.3 Impact on Built Heritage Considerations:

8.3.1 In order to achieve adequate sightlines in both directions from the proposed entrance arrangement onto the public road it will be necessary to lower a considerable extent of the existing roadside stone boundary wall and in this regard I would advise the Board that the wall in question is a generally intact example of the attractive stone / masonry walling which is characteristic of Ardfert. The contribution of this walling to the historical and built heritage value of the village of Ardfert is acknowledged in the Section 4b: 'Villages: Ardfert Local Area Plan' of the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019 which states that there are many structures within the village which are considered to be of considerable architectural and heritage value, with specific reference to *'the surviving estate walls which contribute to the character and identity of the village'*. Section 1.7 of the Ardfert Local Area Plan further emphasises the need to preserve and enhance those elements of the built environment which define the character of the village whilst the *'Development Strategy'* for Ardfert includes the following objectives:

- *Protect the natural environment, architectural and archaeological heritage of the village from developments of an inappropriate nature and scale given that these attributes contribute greatly to the distinctive character of the village.*

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- *Protect and enhance the existing stone walls within the village.*

8.3.2 The aforementioned provisions are given further expression in the land use zoning map set out in the Ardfert Local Area Plan which includes the following specific objectives:

- *AH-1: Preserve the village's architectural heritage and encourage development to be designed in a manner that is in keeping with the scale and character of the existing village. New developments should respect local design features.*
- *AH-2: Preserve and enhance existing stone walls.*

8.3.3 Having conducted a site inspection, and following a review of the available information, it is my opinion that the extensive loss / alteration of the roadside boundary walling consequent on the proposed development, both through the opening of the entrance itself and the associated lowering of the wall in order to achieve sightlines, would seriously detract from the built heritage and historic character of the village of Ardfert. In this respect the subject proposal would undermine the 'Development Strategy' set out in Ardfert Local Area Plan and would be in direct contravention of Objective Nos. AH-1 and AH-2 of that Plan.

8.3.4 On balance, I am inclined to conclude that the loss of walling consequent on the proposed development would have an unacceptable visual impact from a built heritage perspective whilst the provision of the new entrance in the absence of any associated lowering works to the existing boundary wall would seem to offer little overall benefit in terms of traffic safety when compared to the permitted access arrangement.

8.4 Appropriate Assessment:

8.4.1 Having regard to the nature and scale of the proposed development, 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.

9.0 RECOMMENDATION

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

Reasons and Considerations:

1. The proposed development, by reason of the partial removal and alteration of the existing roadside boundary wall, would seriously detract from the built heritage and historic character of the village of Ardfert and would materially conflict with the development strategy for the village as set out in the Ardfert Local Area Plan contained in the Tralee / Killarney Hub Functional Area Local Area Plan, 2013-2019, which seeks to protect the natural environment, architectural and archaeological heritage of the village from developments of an inappropriate nature and scale given that these attributes contribute greatly to the distinctive character of the village, and also to protect and enhance the existing stone walls within the village. The proposed development would further materially contravene Objective AH-2 of the said Local Area Plan which seeks to 'preserve and enhance existing stone walls'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. It is considered that the proposed development would endanger public safety by reason of traffic hazard, because of the inadequate sightlines available from the proposed entrance onto the public road at a point where a speed limit of 80 km/h applies.

Signed: _____

Robert Speer
Inspectorate

Date: _____