



An  
Bord  
Pleanála

## Inspector's Report PL02.247563

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<b>Development</b>	Opening of a new entrance onto a public roadway (L66161-0) for agricultural use.
<b>Location</b>	Cartronfree, Kilcogy, Co.Cavan.
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	16/404
<b>Applicant(s)</b>	Thomas McBrien
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Michael O'Reilly
<b>Observers</b>	None
<b>Date of Site Inspection</b>	10 <sup>th</sup> January 2017
<b>Inspector</b>	Patricia Calleary

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## 1.0 Site Location and Description

1.1. The appeal site is located along a local road, L66161-0 which connects with the N55 at a junction c.600m south. The road which has a narrow carriageway and is located south west of Kilcogy village, close to the Longford border, in County Cavan. It is bounded on either side by agricultural lands. There is a double gate located further south along the road which currently provides access to the field on the east. The cul de sac ends immediately north of the site, where there is an existing gate serving a house and farmyard and there is a laneway to the west off the cul de sac.

## 2.0 Proposed Development

2.1. The proposed development would comprise the opening up of a new entrance onto the public roadway from the adjoining field to the east. It is stated that this is required to provide improved access to agricultural lands. As shown on the drawings submitted with the planning application, the proposed works would consist of the removal of the roadside hedge on the east side of the road over a length of 10 metres. A revised site layout received by the Board with the applicant's appeal response includes a proposal to remove an additional 15m of the roadside boundary hedge, i.e. 25m hedgerow removal in total.

2.2. The drawings on file also indicate the formation of a hardcore stoned access laneway in the field together with a timber post and wire fence alongside the southern boundary of that access laneway and the connection of a drain to the roadside gully. The new entrance would be graded back from the edge of the roadway. On the site layout plan which accompanied the planning application, it is shown that the existing access serving the field would be closed up.

## 3.0 Planning Authority Decision

3.1. The Planning Authority issued a decision to grant **permission** with three conditions attached, the following two of note:

- Condition 2 – Entrance to the south shall be splayed to achieve a 3 x 30 m sightlines and revised plans shall be submitted to the PA prior to commencement of the development;
- Condition 3 - Entrance and access shall only be used for agricultural purposes.

## 4.0 Planning Authority Reports

### 4.1. Planning Reports

- Notes agricultural policies set out in the CDP;
- Site not located within a Natura 2000 buffer zone;
- Third party concerns noted;
- New entrance proposed to gain access to agricultural lands;
- Narrow road with low traffic volumes and is a cul-de-sac;
- Refers to report from the Council's roads engineer requiring the entrance to be splayed to achieve sightlines.

The Planning officer concluded that the proposed development would be in compliance with the Cavan County Development Plan and put forward a recommendation to **grant** permission.

### 4.2. Other Technical Reports

- Email from Council's road engineer recommends that the entrance should be splayed to achieve sightlines.

### 4.3. Prescribed Bodies

- None

#### 4.4. **Third Party Observations**

A submission was received by the Planning Authority on 29<sup>th</sup> September 2016 from Connellan Solicitors acting on behalf of Michael O'Reilly which raised concerns regarding traffic safety. It is stated that Mr. O'Reilly's dwelling is occupied by a tenant who has medical issues and requires frequent visits and adequate access for emergency services.

The submission was accompanied by a letter from Mr. O'Reilly which raised matters of legal interest and considers the development is unnecessary as sufficient entrances already serve the applicant's lands. The submission was also accompanied by a Site Plan (Dwg 1601).

### 5.0 **Planning History**

#### 5.1. **Appeal site and Vicinity**

- None

### 6.0 **Policy Context**

#### 6.1. **Cavan County Development Plan 2014-2020:**

- **Chapter 3 – Agricultural Objectives;**
- **Policy EDP3** - To promote sustainable agricultural development whilst ensuring that development does not have an undue negative impact on the visual amenity of the countryside;
- **Objective ED06-** To recognise and support the role of farmers as custodians of the natural resources of the countryside and of rural landscapes which are valuable to existing and future generations. Ensure that development does not have undue negative impact on the visual or scenic amenity of the countryside. Protect soil, groundwater, wildlife habitats, conservation areas,

rural amenities and scenic views from adverse environmental impacts as a result of agricultural practices;

- **Chapter 10- Development Management Standards** including: **DMO23** -To ensure that all development accessing off the county's road network is at a location and carried out in a manner which would not endanger public safety by way of a traffic hazard and **DMO25** -To avoid the removal of existing roadside boundaries except to the extent that this is needed for a new entrance, and where required for traffic safety reasons;

## 6.2. Natural Heritage Designations

- None

## 7.0 The Appeal

### 7.1. Grounds of Third Party Appeal

7.1.1. An appeal was received from **Connellan Solicitors** representing the third parties, **Michael and Josephine O'Reilly**, against the decision made by the Planning Authority to grant planning permission. The following provides a summary of the planning issues raised.

- Use of access would necessitate the applicant encroaching onto third party's lands;
- Access would generate a traffic safety hazard;
- The proposed entrance across from where their son seeks to build a private home would mean the house could not proceed;
- Applicant already has three farm entrances serving the same field which is sufficient and development is entirely unnecessary;
- It is stated that Michael and Josephine O'Reilly have only one entrance to their own holding.

The appeal was accompanied by a supporting letter from Anthony O'Reilly (son of the appellants) and a letter from Michael and Josephine O'Reilly, as well as a

marked up map, a site layout plan (Dwg 1601) and photographs. It also includes a copy of a site layout plan for a proposed house for Mr. Anthony O'Reilly.

## **7.2. Applicant's Response**

7.2.1. The principal planning points put forward in the applicant's response are as follows:

- Proposed entrance is within lands in the ownership of the applicant and can be accessed from a public roadway (L66161-0) which is in the charge of Cavan County Council and which ends in a cul-de-sac;
- There is very little traffic on the roadway as it is only used by a limited number of landowners and lists 4 users;
- Permission is sought because access is required at certain times for farm machinery and movement of cattle and the proposed location at the end of the cul de sac would be preferable to current access because it would be safer;
- Existing access would be blocked up.

The appeal response was accompanied by a letter from Patrick McBrien, the applicant's brother in which it is stated that both he and his brother (the applicant) operate two separate farms and there is no connection between them. Maps and photographs have been included with the response to the appeal. A copy of drawing No.1601- Site Plan (as furnished by the appellant) was also included with added marked up comments by the applicant.

The appeal response was further accompanied by an updated A3 site layout plan which it is stated is to address condition 2 of the Council's planning decision regarding sightlines.

## **7.3. Planning Authority Response**

7.3.1. The Planning Authority stated that they had no further comments to make.

## **7.4. Appellant's further response**

7.4.1. A further response was received by the third party appellant and a summary of the principal planning points included is set out below.

- There is substantial traffic along the lane;
- Creation of an agricultural entrance on a narrow laneway immediately opposite the entrance to the dwelling would significantly impact on the enjoyment of that dwelling to the extent that it would render it intolerable;
- Entrance would give rise to health and safety issues;

Other matters regarding legal interest were also restated.

7.4.2. The response included a letter (with an accompanying map) from Cavan County Council which stated that a turning circle at Cartronfree is not in the control of Cavan County Council and that Cavan County Council have not previously carried out any works to that section of the roadway. The response also included a letter from Claire O'Neill O'Reilly Associates which outlined matters of legal interest and that Mr. O'Reilly widened the 'bog pass'<sup>1</sup> in 2007. A site layout of a house proposed for Mr. Anthony Reilly was attached.

7.4.3. In addition, the response included a letter from Michael and Josephine O'Reilly which includes an outline of their farming activities and the restated points previously made. Point 7 of that response refers to a letter from a solicitor, Cliadhna M.Sheridan but I note that there is no such letter on the Board's file.

## 7.5. **Planning Authority further response**

- The Planning Authority consider the issue of right of way and land ownership to be a civil matter;
- The roads engineer did not raise any traffic safety issues subject to compliance with conditions;
- Revised entrance layout submitted and received by the Planning Authority and An Bord Pleanála is considered acceptable;
- There is a current application for a dwelling under 16/442 on land adjacent to the appeal site which is out for further information.

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<sup>1</sup> The 'bog pass' is the laneway leading to the west at the end of the cul de sac.



## 8.0 Assessment

### 8.1. Introduction

8.1.1. I have read and considered the contents of the planning application, grounds of appeal, responses and relevant planning policy. I have also attended the site and environs. I consider the key issues in determining the application and appeal before the Board are as follows:

- Compliance with Development Plan Policy
- Traffic Safety
- Other

I consider each of the above issues as set out under the respective headings below.

### 8.2. Compliance with Development Plan Policy

8.2.1. It is stated that the proposed development is required in order to gain access to agricultural lands. The appellants argue that it is not necessary as there are sufficient existing entrances to the field. The applicant states that this is not so as apart from one entrance to the field further south (which is proposed to be blocked up), there is no other access to the field. Addressing the appellant's points that access may be available from adjacent lands, a letter is also on file from the applicant's brother stating that he operates a separate farm which does not link with or provide access to the applicant's land.

8.2.2. It is clear from my review of the information on file and from my site inspection that there is one direct access currently available to the field and based on the documentation on file, this access is proposed to be closed and replaced by the new access. This would result in one entrance serving the field which I consider acceptable. I am of the view that the existing access proposed to be closed should be done so with indigenous planting. The development of an agricultural access is supported by agricultural policies of the current Cavan Development Plan 2014-2020, particularly Policy EDP3 which promotes sustainable agricultural development whilst ensuring that development does not have an undue negative impact on the visual amenity of the countryside and Objective ED06 which seeks to recognise and

support the role of farmers as custodians of the natural resources of the countryside. Objective ED06 also seeks to ensure that development does not have an undue negative impact on the visual or scenic amenity of the countryside. The site is not located near any scenic route or scenic viewing point.

- 8.2.3. I am satisfied that the proposal to create a new access and to close up another in an agricultural area is a modest proposal, would not result in any unacceptable negative consequence on the visual or scenic amenity of the countryside and would be in compliance with the development plan policy for the county which supports farming activities.

### **8.3. Traffic Safety**

- 8.3.1. The road from which access would be taken is a local road in a rural area located close to the end of a cul de sac. It is evidently very lightly trafficked currently serving one house and agricultural lands. It is stated that the appellant's son also wishes to build a house proximate to the proposed access and has submitted a planning application to Cavan County Council. An email correspondence on the planning file from the roads engineer notes that no overtaking would be possible along the road and seeks improved sightlines and a splayed entrance. As part of the appeal response, the applicant submitted an amended drawing with improved sightlines in the south direction. The Planning Authority have stated that this is considered to comply with Condition No.2 of the decision to grant permission. I have some concerns with the proposal to remove c. 25m of the hedgerow to achieve the sightlines as shown on that drawing but I accept that a balance between improved road safety and environmental considerations can be achieved which would be acceptable and I consider it appropriate that this be dealt with by way of a condition. I also note that the location for the new entrance would be an improvement on the existing entrance in terms of traffic safety, having regard to turning manoeuvres required for modern agricultural machinery. I do not consider that the modest agricultural access would pose any significant negative impact on the enjoyment of a house in this rural area, as is put forward by the appellant in relation to a proposed house for his son.

8.3.2. Overall, I consider that the proposed development, when taken into conjunction with the proposal to close one entrance, would not endanger public safety by way of a traffic hazard.

#### 8.4. **Other**

##### 8.4.1. Appropriate Assessment

Having regard to the nature and scale of the development proposed, namely an agricultural entrance and to the nature of the receiving environment, an existing agricultural area, **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 a European site.

##### 8.4.2. Legal Interest

I have had regard to Section 34(13) of the Planning and Development Act 2000, as amended, whereby a person shall not be entitled solely by reason of a permission under this section to carry out any development. I am of the opinion that matters of legal interest which have been raised extensively in this appeal fall outside those which I am required to consider in the assessment of the planning merits of the development.

## 9.0 **Recommendation**

9.1. I recommend that **permission** should be **granted** for the reasons and considerations set out below.

## 10.0 **Reasons and Considerations**

10.1. Having regard to the objectives of the Planning Authority as set out in the Cavan Development Plan 2014-2020, which seek to promote agricultural development and to support the role of farmers, and also having regard to the nature and scale of the development proposed, namely the provision of a new agricultural access and ancillary works and the closing up of another in a rural location, it is considered that,

subject to compliance with the conditions set out below that the proposed development would not injure the visual amenities of the area or give rise to an unacceptable traffic hazard. The proposed development, would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and the additional information received on the 29<sup>th</sup> September 2016 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. Prior to commencement of the development, revised plans indicating sightlines and roadside boundary treatment at the proposed new entrance avoiding the removal of the existing roadside boundary save as is necessary for traffic safety reasons, shall be submitted to the Planning authority for approval.

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

3. The existing field entrance to the south of the proposed entrance shall be removed and closed over and shall be planted with indigenous hedging along the roadside boundary.

**Reason:** In the interest of orderly development.

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Patricia Calleary

Senior Planning Inspector

31<sup>st</sup> January 2017