



An  
Bord  
Pleanála

## Inspector's Report PL92.248371.

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<b>Development</b>	Fit out commercial unit previously granted under 15600454 including changes to 1 <sup>st</sup> floor offices and new roof.
<b>Location</b>	Ballyartella, Ballycommon, County Tipperary.
<b>Planning Authority</b>	Tipperary County Council.
<b>Planning Authority Reg. Ref.</b>	16601062.
<b>Applicant(s)</b>	Sean Kelly
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Permission with conditions.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Sean Kelly.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	29 <sup>th</sup> June 2017.
<b>Inspector</b>	Derek Daly.

## 1.0 Site Location and Description

- 1.1. The site is located in the townland of Ballyartella, a rural area 3 kilometres northwest of the town of Nenagh and 1 kilometre northwest of the village of Ballycommon in County Tipperary. The site fronts onto a local road located off the R495 linking the Nenagh and Dromineer. This road defines the site's northern boundary. To the west is a house and its site and remaining boundaries adjoin open land. The road and general area is characterised by a relatively high level of residential development.
- 1.2. On the site is a dwelling located centrally on the site and towards the front of the site and is served by an access. There is also an agricultural shed/commercial unit/ located on the site to the rear of the dwelling in close proximity to the western boundary. In addition to the entrance located centrally on the appeal site there is an entrance with security control located at the northwestern corner of the site. There is also an additional entrance located at the northeastern corner of the site also providing access to the shed at the rear of the site. All three entrances serve the appeal site.

## 2.0 Proposed Development

- 2.1. The proposed development as submitted to the planning authority on the 17<sup>th</sup> November 2016 was for the fitting out of a commercial unit previously granted planning permission under 15600454 and also including changes to the elevations; the construction of a first floor area over the commercial storage area to provide for the provision of offices with a stated floor area of 47.82m<sup>2</sup> and for a new roof modification to an existing agricultural shed and an extension to the shed with a stated area of 99m<sup>2</sup>.
- 2.2. The development provides for the use of part of an agricultural shed as a commercial use over two floors with a lobby and console storage at ground floor level and an admin and accounts area at first floor level. The remainder of the building including the extended area of 99m<sup>2</sup> will be for agricultural use. The commercial section of the shed is associated with a shredding enterprise operated by the family who reside in the dwelling and the office use in the shed will be a transfer of floor area currently operated in the dwelling as part of the business into the shed.

2.3. Further information was submitted to the planning authority on the 8<sup>th</sup> February 2017 indicating,

- No increase in business activities, traffic and effluent loading.
- The development is not additional in relation to traffic and usage to what was previously permitted under 15/600454.
- The raising of the roof in the agricultural section of the building is to facilitate access for high machinery and there is no increase in the floor area of the agricultural shed.

2.4. Further details were submitted to the planning authority on the 8<sup>th</sup> March 2017 by way of clarification.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The decision of the planning authority was to grant planning permission subject to 8 conditions. Among the conditions of note

- Condition no. 2 requires the permanent removal of entrance B.
- Condition nos 3 and 4 refer to the permitted uses and hours of operation.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The planning report dated the 19<sup>th</sup> January 2017 refers to the

- Site history;
- Planning policy in particular policy ED9 enterprise in the open countryside and ED10 non conforming uses.
- An appraisal of the development applied for indicating the development is acceptable in principle but concerns are raised in relation to intensification.
- Non compliance with conditions of permission

- A further planning report dated the 13<sup>th</sup> of October 2016 by the SEP dated the 19<sup>th</sup> January 2017 refers to the planning history and the increased level of commercial use proposed and clarification was needed.
- Further information was requested in relation to non-compliance on the site in relation to conditions of a previous permission; that the development/ commercial enterprise appears to have expanded beyond the permitted use which was on the basis of a family based enterprise and the impact of such development in the context of the area. On this basis details were requested in relation to the business, traffic generation, parking, effluent disposal and as to whether the business would be more appropriate in a different location.

The planning report dated 30<sup>th</sup> of March 2017 refers to the further information submitted; that the requirements of a previous permission 15/600454 in condition 3(e) required the closure of an entrance identified as entrance B; no additional employment arises and the report recommends permission.

#### 4.0 **Planning History**

The site has a planning history

**P.A. Ref. No. 13/10734 also referred to as 5110734**

Permission granted for a dwelling and septic tank.

**P.A. Ref. No. 14/51/0385**

Application for permission for a change of use of part of an agricultural building for use as a commercial building; for the modification of existing boundary and construction of a driveway and modify existing agricultural entrance and associated works was withdrawn.

**P.A. Ref. No. 15600454**

Permission granted for a change of use of part of an agricultural building for use as a commercial building; for the modification of existing boundary; modify existing agricultural entrance and construct driveway; retain existing domestic garage and upgrade existing septic tank and associated works.

Condition no 3 (e) of the permission required that entrance B in front of the dwelling be permanently closed by the removal of the gates and the construction of stone faced wall to match the existing roadside boundary wall.

## 5.0 Policy Context

- 5.1. The relevant plan is the North Tipperary County Development Plan 2010-2016 adopted in July 2010. The plan has had its lifetimes extended (11A Planning and Development Act 2000, (as amended)), and will remain in effect until a new Regional Spatial and Economic Strategy is made by the Southern Regional Assembly, thereafter a new Tipperary County Development Plan will be made.
- 5.2. Chapter 5 of the plan refers to Economic Development. and section 5.6.2 specifically refers to Enterprise in the Open Countryside and in relation to such enterprise activities it is indicated, that commercial and industrial activities are normally located in towns and villages that have good transport linkages and access to services and that the Council will seek to promote and direct such activities to these centres.
- 5.3. There is recognition that viability of start-up enterprises is often dependent on the use of a home base and the plan on a case-by case basis, will facilitate enterprise developments, which have the purpose to facilitate a start up entrepreneur in accessing appropriate sites. Proposals will be balanced with the need to protect the residential amenities of adjoining landowners and the visual amenities of the area.
- 5.4. Policy ED9 in relation to Enterprise in the Open Countryside indicates,
- 5.5. *"It is the policy of the Council to support and facilitate the provision and/or expansion of appropriate small scale rural enterprise in the open countryside within residential sites and invacant or derelict buildings. Development proposals will be required to meet the following criteria:*
  - a) The development shall not have an adverse impact on the residential, environmental and rural amenity of the area;*
  - b) Any new structure shall be of a scale appropriate to the size of the site, and be sited and designed to ensure it does not detract from the rural setting and landscape character of the area.*

*c) The development shall comply with the development management standards set out in Chapter 10.*

*Where the enterprise or activity develops to a scale that is inappropriate by virtue of activity or size in its rural context, the Council will seek to encourage its re-location to a more suitable location on zoned land within towns and villages”.*

5.6. In relation to Non Conforming Uses the plan indicates its position on this in 5.6.3 and that there are cases where authorised commercial activities operate at locations which are not compatible with current planning objectives. It is desirable to protect existing employment uses and allow appropriate expansion of such facilities where this does not result in conflict with adjoining uses and be detriment to the environment, visual amenity or traffic.

5.7. Policy ED10 restates this position indicating

*“It is the policy of the Council, where commercial/industrial enterprises exist as nonconforming but long established uses, to support their continued operation and expansion provided such does not result in; loss of amenity to adjoining properties, adverse impact on the environment, visual detriment to the character of the area or creation of a traffic hazard”.*

5.8. Chapter 10 of the plan outlines development management standards in relation to roads and entrances onto public roads.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The first party appellant in the grounds of appeal indicates that the appeal is in relation to condition no. 2 of the planning authority’s decision to grant planning permission and requests the Board to amend the condition to retain the existing entrance as it provides access to the front of the house to allow for an ambulance/ fire tender emergency use and allows pedestrian access to the house.

6.1.2. Reference is made to exempted development and to Class 5 of Part 1 of schedule 2 of the planning and development regulations 2001 in this regard.

- 6.1.3. Reference is made to the planning history of the site where permission was granted under P.A. Ref. 15600454 for change of use of part of an agricultural shed to a commercial storage area.
- 6.1.4. Reference is made to the current application, which it is indicated causes no new or greater contravention or intensification to the existing agricultural work, commercial activity or loading to the septic tank.
- 6.1.5. The current application divides the site into defined private and commercial areas as required under P.A. Ref. 15600454.
- 6.1.6. There have been historically 3 entrances defined on submitted drawing SK-16-02 AS A, B and C. A is located at the northwestern corner of the site and is used by family generated private traffic for 30 years to enter the rear of the house. B is the front entrance to the family home and used for 30 years. C is to provide access to the commercial and agricultural shed and will be upgraded to accommodate the commercial traffic generated by the family shredding business.
- 6.1.7. The Board is requested to amend condition no. 2

## 6.2. Responses to appeal

### 6.2.1. The planning authority response.

The planning authority in a submission consider matters were fully addressed in the assessment of the application. The planning authority consider the conditions applied to be appropriate and request the Board uphold its decision.

## 7.0 Assessment

- 7.1. The first party appeal in sin relation to condition no. 2 of the decision to grant planning permission which requires entrance B to be permanently closed by the removal of the gates and replacement by a stone faced wall.
- 7.2. The proposed development as submitted to the planning authority on the 17<sup>th</sup> November 2016 was for the fitting out of a commercial unit previously granted under 15600454. The amendments largely relate to changes to the elevations; the construction of a first floor area over the commercial storage area to provide for the provision of offices with a stated floor area of 47.82m<sup>2</sup> and for a new roof modification to an existing agricultural shed and an extension to the shed with a

stated area of 99m<sup>2</sup>. In effect the commercial area within the agricultural shed will extend over two floors with a lobby and console storage at ground floor level and an admin and accounts area at first floor level. The remainder of the building including the extended area of 99m<sup>2</sup> will be for agricultural use.

- 7.3. The principle of the commercial use was established under 15600454 and in the review of the current proposal the planning authority are satisfied that it is a rationalisation of the use of floor space and no intensification arises.
- 7.4. In relation to the modifications proposed in the current development I am satisfied with the overall proposal in relation to scale and layout of an already permitted use and that it complies with the provisions of the county development plan.
- 7.5. In relation to this appeal, the issue centres on the entrances for the development. The site is and will in effect by the addition of / the upgrading of the agricultural entrance, which is referred to as entrance C, is and will be, therefore, served by three entrances. The planning authority by condition wish to limit the number of entrances to two A and C with the elimination of entrance B.

The appellant in the grounds of appeal indicates that the appeal is in relation to condition no. 2 of the planning authority's decision to grant planning permission and requests the Board to amend the condition to retain the existing entrance, entrance B, as it provides access to the front of the house to allow for an ambulance/ fire tender emergency use and allows pedestrian access to the house.

Reference is made to exempted development and to Class 5 of Part 1 of schedule 2 of the planning and development regulations 2001 in this regard and also reference is made to the planning history of the site where permission was granted under P.A. Ref. 15600454 for change of use of part of an agricultural shed to a commercial storage area. It is indicated that the current application which it is indicated causes no new or greater contravention or intensification to the existing agricultural work, commercial activity or loading to the septic tank.

In effect the appellant contends the current application divides the site into defined private and commercial areas as required under P.A. Ref. 15600454 and that there have been historically 3 entrances defined on submitted drawing SK-16-02 AS A, B and C. A as located at the northwestern corner of the site and is used by family generated private traffic for 30 years to enter the rear of the house. B is the front



entrance to the family home and used for 30 years. C is to provide access to the commercial and agricultural shed and will be upgraded to accommodate the commercial traffic generated by the family shredding business.

- 7.6. The planning authority in response have requested the condition be upheld.
- 7.7. I have examined the documentation relating to P.A. Ref. No. 15600454 and when permission was granted for a change of use of part of an agricultural building for use as a commercial building and other matters there was a condition, condition no 3 (e) which required that entrance B in front of the dwelling be permanently closed by the removal of the gates and the construction of stone faced wall to match the existing roadside boundary wall.

The applicant in correspondence was aware of the planning authority's concern in relation to the number of entrances during the consideration of 15600454 and the applicant indicated in correspondence dated 6<sup>th</sup> October 2015 to the planning authority that entrance C was to be closed and used only for emergency access. I believe C was used in error and it refers to entrance B. The planning report dated the 13<sup>th</sup> November 2015 noted the correspondence but considered entrance B should be permanently closed and this was included as a condition.

- 7.8. There are exemptions as stated in Class 5 of Part 1 of Schedule 2 of the construction, erection or alteration of a gate, gateway railing wall etc. within the curtilage of a house but this provision relates to the construction of a gate or other structure on the boundary and not the laying out of an entrance. I would also note that there are also restrictions on exemption as outlined in article 9 (1) *development to which article 6 relates shall not be exempted development for the purposes of the Act—*

*(a) if the carrying out of such development would—*

*(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

*(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width*

- 7.9. The applicant applied for permission and the planning authority can regulate the development and apply conditions including if considered necessary the de-exemption of exempted development.
- 7.10. The issue, therefore, is whether permitting 3 entrances is reasonable, in accordance with the proper planning and sustainable development of the area and traffic safety.
- 7.11. The provision of additional entrances onto the public road increases the risk to road users and the risk of traffic hazard and therefore it is reasonable and desirable to minimise entrances onto the public road network. The current and previous proposal was to rationalise development on the site, to separate residential use from non-residential use and regulate and rationalise the flow of traffic within the site in the interest of the safe movement of pedestrians and vehicles. In this context it is reasonable to re-evaluate entrance arrangements onto the public road network.
- 7.12. The dwelling has a vehicular entrance, entrance A which can serve the front and rear of the dwelling which questions therefore the need of an additional entrance at point B. There is a separation of the residential site from the non residential site by the provision of a fence indicated on drawing SK-16-02 and required by condition 3 c of 15600454. There is no reason why an internal driveway arrangement to the front of the dwelling cannot occur from entrance A and that the front of the house must be served by a separate entrance.
- 7.13. The planning authority have been consistent in relation to the number of entrances for the site. The applicant wishes to upgrade entrance C to serve the non residential aspect of the development. I have no objection to this but there is no reason on planning grounds or traffic grounds to permit the dwelling to be served by two vehicular entrances.
- 7.14. In this context I consider that condition no. 2 is reasonable and should be retained.

## 8.0 Recommendation

- 8.1. Having considered the submissions received in relation to this appeal I recommend that the appeal be determined under section 139 and that condition no 2 of the planning authority's decision be retained

## 9.0 Reasons and Considerations

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to retain condition number 2 and the reason therefor.

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Derek Daly  
Planning Inspector

20<sup>th</sup> July 2017