



An
Bord
Pleanála

Inspector's Report PL.06F.249414.

Development	New agricultural entrance from R132.
Location	Coney Hill, Balbriggan, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F17A/0283.
Applicant(s)	Stephen Tennant & Nicholas O'Dwyer.
Type of Application	Permission.
Planning Authority Decision	Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Robert Carolan.
Observer(s)	John Walls.
Date of Site Inspection	18 th January 2018.
Inspector	Karen Kenny.

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1.0 Site Location and Description

1.1. The site is located in Coney Hill, Balbriggan a rural area located c. 2 kilometres north of Balbriggan Town Centre. The site comprises agricultural fields with frontage onto the western edge of the R132 Regional Road.

2.0 Proposed Development

2.1. Permission is sought for the creation of a new vehicular access onto the R132 to include the following:

- The provision of new piers and entrance gates,
- The removal of existing hedgerow and tree planting, and
- A new lattice timber fence and hedgerow planting and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Grant Permission subject to conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- Following an initial assessment further information was requested in relation to the need for a new access onto the R132, sightlines and the design of the entrance.
- Following the submission of further information, the Planning Officer's Report concludes that the applicant has adequately addressed the issues raised in the request for further information.

3.2.2. Other Technical Reports

Water Services: No objection.

Transportation Planning: No objection.

3.3. Prescribed Bodies

Irish Water: No objection.

DAHRRGA: No objection.

3.4. Third Party Observations

Two third party observations were received and considered by the Planning Authority. The issues raised are similar to the issues raised in the grounds of appeal set out in Section 6 below.

4.0 Planning History

None.

5.0 Policy Context

5.1. Development Plan

5.1.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The following provisions are considered relevant:

- The appeal site is zoned 'GB-Greenbelt', with an objective to 'protect and provide for a Greenbelt'.
- Objective DMS 126: Restrict unnecessary new accesses directly off Regional Roads. Ensure premature obsolescence of all county / local roads does not occur by avoiding excessive levels of individual entrances. Ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazard.
- Objective NH27: Protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character and ensure that proper provision is made for their protection and management.

5.2. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- Details submitted with application are factually incorrect.
- Lands have not changed ownership and applicants are not the owners of the lands.
- Owner of the lands did not give consent to the making of the subject application.
- The speed limit on the R132 at this location is 80 kph. There is a single white line along the entire frontage of the site. The provision of additional turning movements will give rise to a traffic hazard and will set a precedent for similar accesses along this busy road which would cause further obstructions and delays.
- The development would require the removal of approximately 100 metres of trees and hedgerow. Objective NH27 of the Development Plan seeks to protect existing woodlands / trees / hedgerow.
- It is not possible to fully assess tree removal as individual trees are not shown on the submitted drawings. The trees along this section of the R132 are some of a small number of trees remaining between Balbriggan and Gormanstown Bridge.

6.2. Applicant Response

6.2.1. The applicant's response to the grounds of appeal can be summarised as follows:

- Rational for proposed development is to provide a direct road access into the agricultural lands. Lands were formally in the ownership of the occupants of the dwelling located immediately south of the site. The lands and dwelling are now in two different ownerships, meaning that the former has no direct road access. In order to enable ongoing agricultural use of the lands a new vehicular access is proposed.

- The applicants were appointed as joint receivers and managers of Folio 4173. As receivers' and managers they are the de facto landowners and have full rights in relation to the lands including the making of a planning application. A copy of the Deed of Appointment is included with the appeal response.
- Details of sightlines, visibility envelop, trees and hedgerows etc., were agreed with the Transportation Planning Section of the Council. The Road Safety Authority's website details only one collision in Coney Hill in the period 2005-2013. Applicants do not believe that the vehicular entrance with sightlines of 145 metres in both directions will have any adverse impact on number of collisions / result in any traffic hazard.
- Applicant will ensure that conditions of the permission are adhered to during construction.

6.3. Planning Authority Response

- PA is cognisant of relevant Development Plan objectives to limit new entrances onto regional roads and to preserve hedgerows.
- Response to request for further information was considered to have demonstrated a reasonable basis on which to permit the new road entrance given that it will facilitate access to private property, where such access is not guaranteed.
- Proposed access arrangements are considered acceptable on engineering grounds.
- Boundary treatment considered appropriate in terms of its visual impact, which would be sympathetic to and in keeping with the rural environment.

6.4. Observation

An observation has been received from J.T. Flynn & Co Solicitors on behalf of Mr. John Wall. Issues raised in the submission, that are relevant to the appeal, can be as follows:

- A copy of Folio and map DN4173 is enclosed, which proves that our client is the registered owner of the lands.

- The application has not been accompanied by the written consent of our client under the Planning and Development Regulations 2001, Art. 22 (2) (e).
- The applicants have no right whatsoever to make any application on our client's lands. The mortgage deed under which their appointment arose is currently subject to ongoing proceedings in the High Court.
- Statement that "the rationale for the proposed new vehicle entrance is resultant from a recent change in ownership of the lands in question" is false and misleading.

7.0 Assessment

7.1.1. I consider that the key issues in determining the appeal is as follows:

- Principle of development.
- Sightlines and Traffic Safety
- Procedural Matters
- Appropriate Assessment

7.2. Principle of development

7.2.1. The Fingal County Development 2017-2023 is the relevant statutory plan. The appeal site is zoned 'GB-Greenbelt' in the Fingal Development Plan with an objective to 'Protect and provide for a Greenbelt'. Objective DMS126 of the Development Plan seeks inter alia to restrict unnecessary new accesses directly off Regional Roads. The revised details received by the Planning Authority at further information stage states that the agricultural lands included within the site boundary were previously accessed from a vehicular entrance serving the dwelling immediately to the south. New access is required as the house and agricultural lands are now split into two separate properties and the agricultural lands have no direct access. Right of way access is not guaranteed.

7.2.2. On the basis of the case presented I am satisfied that the provision of a new agricultural access is acceptable in principle and would not be in conflict with

Objective DMS126 of the Development Plan. The issue of legal estate or interest is discussed in Section 7.4 below.

7.3. Sightlines and Traffic Safety

- 7.3.1. Permission is sought to construct a new vehicular entrance onto the R132 at a point where the 80 kph speed limit applies and where there is a continuous white line. The grounds of appeal argue that the proposed vehicular access will result in a traffic hazard and create a precedent for similar accesses along a busy road which would cause further obstruction and delays. The appellant also expresses concern in relation to the removal of trees and hedgerow and the level of details provided in respect of same. The appellant refers to Objective NH27 of the Development Plan which seeks to protect existing trees and hedgerows.
- 7.3.2. Revised details received by the Planning Authority at further information stage detail sightlines of 145 meters in both directions from a proposed entrance. It is proposed to set back the existing roadside boundary to achieve the sightlines and to provide a timber fence and replacement beech hedgerow where hedgerow is removed.
- 7.3.3. The proposed development relates to the use of agricultural lands along the R132. I consider that the vehicular entrance is designed to an acceptable standard with adequate sightlines in both directions and that the development would not result in a significant increase the number of traffic turning movements at this location. On this basis I consider that the proposed development is acceptable and that it would not result in the obstruction of road users or endanger public safety by reason of traffic hazard. I would also concur with the applicant's response to the appeal, which states that the loss of a relatively small section of trees and hedgerow will be negligible in terms of impact on amenity, landscape and visual character.

7.4. Procedural Matters

- 7.4.1. The appellant and observer argue that the information submitted with the application is incorrect. The submissions argue that the applicants are not the registered owners of the lands and that the owner did not consent to the making of the application, contrary to the terms of Article 22 of the Planning and Development Regulations. A copy of Folio 4173 is submitted. While no Folio Map was submitted

with the observation I would note that none of the parties dispute the fact that the site is part of Folio 4173.

- 7.4.2. On the basis of the submitted Folio document it is clear that the applicants are not the registered owners of the site. The applicant's response to the appeal states that they were appointed as joint receivers and managers of Folio 4173 and that on this basis they are the de facto landowners with full rights in relation to the lands. A copy of the "Deed of Appointment of Joint Receivers and Managers" relating to "all of the lands comprised in Folio 4173" is included with the appeal response. There is also a letter on the file from Launceston Property Finance DAC (owner of a registered burden on the Folio) consenting to the application.
- 7.4.3. On the basis of the submitted documentation, in particular the "Deed of Appointment of Joint Receivers and Managers" relating to "all of the lands comprised in Folio 4173" I am satisfied that the application has been made by persons who have sufficient legal estate or interest in the lands to make the application.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of the proposed development, which relates to the construction of an agricultural entrance at a location that is not in close proximity of a Natura 2000 site, I am satisfied that 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.

8.0 **Recommendation**

- 8.1.1. Having regard to the 'GB' zoning of the site and the pattern of existing development in the area, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the amenities of the area, result in a traffic hazard, or conflict with the objectives of the Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

8.1.2. I recommend that permission should be granted for the reason set out below.

9.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 4th day of September 2017, 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. The landscaping works detailed on Drawing No. AI.01, as submitted to the planning authority on the 4th day of September, 2017 shall be carried out within the first planting season following substantial completion of the construction works. All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of residential and visual amenity.

3. Drainage arrangements, for the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

4. The vehicular entrance shall comply with the detailed standards of the planning authority for such road works to include the following

requirements.

(a) The gradient of the access shall not exceed 2.5% over the last 6 metres of its approach to the public road.

(b) The vehicle entry / splay shall be constructed in a bound road material.

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

Karen Kenny

Senior Planning Inspector

30th January 2018