



An  
Bord  
Pleanála

## Inspector's Report ABP300357-17

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<b>Development</b>	To construct a new agricultural entrance/exit gateway to replace the existing agricultural entrance which will be blocked-up together with ancillary works.
<b>Location</b>	Quarter, Dunmore, County Galway.
<b>Planning Authority</b>	Galway County Council.
<b>Planning Authority Reg. Ref.</b>	17/1097.
<b>Applicant</b>	Jimmy Coen.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party -v- Refusal.
<b>Appellant</b>	Jimmy Coen.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	March 7 <sup>th</sup> 2018
<b>Inspector</b>	Paul Caprani.

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## 1.0 Introduction

ABP300357-17 concerns a first party appeal against the decision of Galway County Council to issue notification to refuse planning permission to construct a new agricultural entrance/exit gateway to replace an existing agricultural entrance which will be blocked-up together with ancillary site works. Permission was refused for three reasons relating to (a) the provision of access onto national secondary route which is contrary to National Road Guidelines and specific policies contained in the development plan, (b) it has not been adequately demonstrated that the existing entrance to be blocked up is authorised and under the applicant's ownership, (c) sufficient evidence has not been submitted to indicate that requisite sightlines can be achieved and that the proposal could result in a significant segment of linear vegetation being removed in order to achieve requisite sightlines.

## 2.0 Site Location and Description

The subject site is located approximately 1 kilometre to the south of the village of Dunmore and approximately 13 kilometres north of the town of Tuam in North Galway. The subject site is located on the eastern side of the N83 opposite a large cemetery on the western side of the road. The N83 in the vicinity of the subject site incorporates a relatively straight alignment with a hard shoulder on the western side of the road contiguous to the cemetery and a hard shoulder/grass verge on the eastern side of the road in the vicinity of the lands relating to the subject development. The applicant owns an existing farm shed and farmyard to the rear of an existing house which is set back from the N83 approximately 50 metres from the N83. Currently this farmyard/shed is accessed via a track which runs southwards parallel to the N83 and accesses on to the N83 approximately 150 metres south of the shed between the applicant's house and the applicant's sister-in-law's house. The existing access comprises of a gateway between two pillars and a stone wall runs along the front of the applicant's house to the immediate north of the existing gateway which provides access to the shed in question. The 100 kilometre speed limit applies along this section of the N83.

### **3.0 Proposed Development**

Under the current application it is sought to construct a new access and gateway onto the N83 approximately 150 metres to the north of the existing access to provide direct access to the existing farm shed. An existing old concrete post and wire fence is located along this section of the roadway boundary. It is located on top of a small embankment. There are a number of bushes and hedgerows set along the northern vision line of the proposed access. There is also an entrance approximately 30 metres to the north of the proposed access. This entrance provides access to the existing house and shed located to the front of the applicant's shed. Sightlines to the south of the proposed access are relatively unrestricted with the exception of planted hedgerows around the perimeter of the applicant's house approximately 150 metres further south.

### **4.0 Planning Authority Decision**

4.1. Galway County Council issued notification to refuse planning permission for the three reasons set out below.

1. Having regard to the location of the proposed development along the N83, National Secondary Road, where the maximum speed limit applies, in conjunction with the DoECLG Spatial Planning and National Road Guidelines for Planning Authorities (2012), Objective TI6 and DM Standard 20 of the Galway County Development Plan 2015 – 2021, it is considered that the proposed development, by itself or by the precedent which the grant of planning permission for it would set, would adversely affect the operation and safety of this national strategic road network, would endanger public safety by reason of a traffic hazard and obstruction to road users due to the movement of the extra traffic generated, would be at variance with national policy in relation to control of frontage development on national roads, would contravene materially a policy and develop a management standard contained in the county development plan, and therefore would be contrary to the proper planning and sustainable development of the area.

2. The applicant has not submitted sufficient evidence to date regarding the following:

- That the existing access that is proposed to be closed-up as part of the overall works is encompassed within his ownership.
- That the existing entrance that is proposed to be closed-up is actually planning legitimate.
- That the minimum site distance for this type of road (215 metres) can be achieved in both directions at the proposed access.

It is therefore considered that the proposed development, if permitted, in the absence of the above would result in the proliferation of accesses onto the national carriageway at a point where the maximum speed limit applies thereby endangering public safety by reason of a traffic hazard or obstruction to road users or otherwise and would be contrary to DM Standard 20 of the County Development Plan 2015 – 2021.

3. In the absence of sufficient details in relation to the integrativeness of the proposed new access arrangements into its surrounds in the form of a lack of a detail in relation to material to be utilised to cordon off the existing access arrangements and the potential loss of a significant segment of linear vegetation to facilitate for sight visibility, it is considered that the proposed development would constitute a visually intrusive feature on the landscape, would seriously injure the amenities, or depreciate the value, of property in the vicinity, and would set an undesirable precedent for similar developments in the area. If permitted as proposed, the development would also materially contravene Objective RHO9 of the Galway County Development Plan 2015 – 2021 and therefore would be contrary to the proper planning and sustainable development of the area.

#### 4.2. **Planning Authority Assessment of Application**

4.2.1. The planning application was lodged on 24<sup>th</sup> July, 2017.

4.2.2. An observation from **Transport Infrastructure Ireland** states that the proposed development is at variance with official policy in relation to the control of

development on/affecting national roads. It is recommended that a road safety audit should be carried out in accordance with the NRA DMRB. Any recommendations arising shall be incorporated into the proposed development by amendment to the existing planning application or as conditions on the permission if granted. Any additional works required as a result of the RSA should be funded by the developer.

- 4.2.3. The applicant submitted **unsolicited additional information** on the 24<sup>th</sup> August, 2017. A covering letter from Sean Maloney and Associates, Building and Planning Consultants states that the applicant lives to the south of the proposed new entrance gate and often finds it difficult to negotiate on the roadway for many reasons. The existing entrance which he intends to block up is located directly across from a minor road which runs adjacent to the cemetery. Cars turning right onto this access road results in cars using the hard shoulder to pass them out on the inside in order to proceed southwards towards Tuam. This has resulted in a lot of damage to the hard shoulder outside the existing entrance. (Photographs attached). The applicant therefore wishes to relocate the entrance gate to a new location, block up the existing entrance and therefore will not have to negotiate these dangerous actions by other road users. The existing gravel track leading to the shed will be cultivated back into agricultural use. The adjoining landowners have indicated that they will give him permission to cut back necessary vegetation to allow him achieve maximum sight distance.
- 4.2.4. A large number of land registry maps were also submitted. Also submitted is a letter from the adjoining landowner to the north which states that he has not objection to the applicant keeping the ditch clear from vegetation adjoining his proposed agricultural entrance in order for him to achieve maximum sight distance as indicated in the site layout plans submitted. Furthermore, there is no objection to him keeping trees trimmed back in order to achieve the maximum sight distance.
- 4.2.5. Also submitted is a letter from Caroline Coen the applicant's sister-in-law who resides in the house to the immediate south. It states that the existing entrance gate which is proposed to be closed-up is contained within her property.
- 4.2.6. Further additional information was received by the Planning Authority on 2<sup>nd</sup> November, 2017. It appears to be in response to an additional information request from the Planning Authority which does not appear to be on file.

- 4.2.7. It states that the applicant has met with the Roads Department of Galway County Council and it is contended that the Roads Department of Galway County Council have no objection to this application. In fact, it is contended that the Roads Department will submit a strong report in favour of the application.
- 4.2.8. The applicant has furnished a folio of file plans which indicate that the current ownership of the location of the existing entrance is under the ownership of the applicant's sister-in-law. It is also stated that the applicant is in the process of transferring the farm over to his son. The applicant's sister-in-law wants the gate to be closed up in order for her to regain her privacy and independence before the farm is transferred.
- 4.2.9. It is stated that the existing planning entrance is legitimate as planning permission was obtained for this gate in 1992. It is stated that photographs have previously been submitted with the original application showing that a sight distance of 215 metres is available in both directions. Finally, it is stated that the applicant does not consider that the proposal will set a precedent as each application is taken on a case by case basis.
- 4.2.10. The planner's report sets out details of the proposed development and the planning history relating to the site. In terms of sightlines the report notes that the Roads and Transportation Unit has no objection to the development as submitted on the grounds that the nature of traffic and use of the gateway remains the same and a replacement is proposed in this instance. It is considered that the level of risk to road safety will not change (the Board will note that this report does not appear on file).
- 4.2.11. The planner's report considers that the additional information submitted on the 2<sup>nd</sup> November, 2017 have not been adequately addressed and it is therefore recommended that the reasons for refusal set out in the planning report dated 12<sup>th</sup> September, 2017 (not contained on file) remains. Galway County Council therefore refused planning permission for the three reasons set out above.

## 5.0 Planning History

There are no history files attached nor are there any details of planning applications contained on file. However, the planner's report does make reference to a planning history associated with the site and this is briefly summarised below:

Under Reg. Ref. 15/266 an application to permit the construction of a new agricultural entrance/exit gateway to replace the existing agricultural entrance was withdrawn.

Under Reg. Ref. 16/64 permission to construct a new agricultural entrance/exit gateway to replace the existing entrance was deemed to be an incomplete application.

Under Reg. Ref. 16/534 another application to construct a new agricultural entrance/exit gateway to replace the existing agricultural entrance was withdrawn.

## 6.0 Grounds of Appeal

- 6.1. The decision of Galway County Council to issue notification to refuse planning permission was appealed on behalf of the applicant by Sean Moloney and Associates, Building and Planning Consultant. The reason behind the proposed development is for the applicant to access his land as the current entrance is not in his ownership and is being informed that it is the intention of his sister-in-law to close-up the existing access permanently. The applicant met with the Roads Department of Galway County Council and it is contended in the grounds of appeal that the Roads Department have no objection to this application. Indeed, the grounds of appeal suggest that the Roads Department have strong support for the application.
- 6.2. It is suggested that closing the existing gateway and replacing it further away from the existing road junction would be a safer traffic solution. Currently the existing gateway is adjacent to a T junction. When motorists are turning westwards often cars behind will pass on the inside which is located at the hard shoulder directly outside the applicant's current entrance. This is a traffic concern and if the entrance was relocated further north as proposed this issue would be alleviated.



- 6.3. It is stated that the applicant's niece obtained planning permission (under Reg. Ref. 01/1741 – copy attached) to construct a dwellinghouse. The entrance to this dwellinghouse was situated at the same location for the current access which is being refused. Reference is also made to another planning application (granted in 1990) approximately 3.5 miles away where planning permission was granted for an agricultural entrance.
- 6.4. In relation to the second reason for refusal details of various land registry maps and property folios are submitted. It is stated that the existing access is owned by the now deceased applicant's brother and his wife. His wife wants the gate closed in order to regain her privacy and independence prior to the transfer of the farm to the applicant's brother.
- 6.5. It is also argued that the existing entrance is planning legitimate. Planning permission was obtained for this gate under planning Ref. No. 661199 in 1992 (details are attached). It was obtained under an application where permission was granted for the retention of a golf driving range and facilities.
- 6.6. Photographs have been submitted showing that sight distances of 215 metres is achievable in both directions. A letter from the applicant's neighbour was also submitted given the applicant permission to trim back trees in order to achieve requisite sightlines. This will have a lesser impact on the landscape than removing the trees.
- 6.7. Revised drawings have been submitted with the grounds of appeal which provide details of the materials to be used together with landscaping at the proposed new entrance. This includes proposed plastered blockwork, spleen wall on either side of a 5-metre-wide entrance. The wall is to rise to a height of 1.4 metres with the pillars rising to 1.65 metres. It is considered that the proposed new entrance will have better sightline visibility, will assimilate into the area more appropriately and will make the transfer of the farm to his son much easier. It is argued that the proposal will not set a precedent as each application is taken on a case by case basis.
- 6.8. Details of various planning applications referred to in the grounds of appeal together with property registry maps and photographs are attached to the grounds of appeal.

## 7.0 Appeal Responses

Galway County Council have not submitted a response to the grounds of appeal.

## 8.0 Development Plan Provision

- 8.1. The site is governed by the policies and provisions contained in the Galway County Council Development Plan 2015 – 2021. The subject site is not zoned for development.
- 8.2. Section 13.8 of the Plan sets out guidelines for transportation, roads, parking, loading and storage. It states that in general, commercial and industrial development shall be prohibited outside the 50 to 60kph speed limits on national roads. Consideration will be given to substantiate cases for extensions and intensification of existing establishments and to the provision of park and ride facilities. All existing and proposed national roads are included under the Class 1 Control Roads Designation. The sight distance required for 100kph is 215 metres in each direction.
- 8.3. In terms of objectives; Objective TI6 seeks the protection of national routes and strategically important regional road networks. It states that it is the objective of the Council to protect the capacity and safety of the national road network and strategically important regional route network in the county to ensure compliance with the Spatial Planning and National Roads Planning Guidelines. Galway County Council will not normally permit development proposals for future development that include direct access or intensification of traffic from the existing access onto any national, primary or secondary road outside the 50 to 60kph speed limit zones for towns and villages.
- 8.4. Objective TI10 relates to Traffic and Transport Assessment (TTA) and Road Safety Audits (RSA). All proposed significant development proposals should be accompanied by a TTA and RSA carried out by suitably competent consultants.

## 8.5. **Spatial Planning and National Road Planning Guidelines (2012)**

Section 2.5 sets out required development plan policy on access to national roads. On lands adjoining national roads to which speed limits greater than 60kmh apply, the policy of the Planning Authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which the speed limits greater than 60kmh apply. This provision applies to all categories of development including individual houses in rural areas regardless of the housing circumstances of the applicant. Notwithstanding the provisions of Section 2.5 above the Planning Authority may identify stretches of national roads where less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA.

In considering whether or not exceptional circumstances arise the Planning Authority and the NRA should take the following matters into account (inter alia).

- The nature of the proposed development and the volume of traffic to be generated by it.
- Any implications for the safety capacity and efficient operation of national roads.
- The suitability of the location compared to alternative locations.
- The pattern of existing development in the area.

The guidelines also state that a less restrictive approach may also apply to areas where additional development may require new accesses to certain lightly traffic at sections of national secondary routes. Such areas will be confined to lightly trafficked national secondary roads serving structurally weak and remote communities where a balance needs to be struck between the important transport functions of such roads and supporting the social and economic development of these areas.

## 9.0 **Planning Assessment**

I have read the entire contents of the file, have had particular regard to the reasons for refusal cited by the Planning Authority and the grounds of appeal contesting

these reasons. I have also visited the site in question and I consider the following issues to be pertinent in assessing the current application and appeal before the Board.

- Policy, Traffic Safety and Sightline Considerations.
- Ownership Issues.
- Planning Legitimacy of Existing Entrance.
- Details of the Design of the Proposed Access.

### 9.1. **Policy, Traffic Safety and Sightline Considerations**

9.1.1. The first reason for refusal cited by the Planning Authority states that the proposal is contrary to Spatial Planning and National Roads – Guidelines for Planning Authorities and is also contrary to a number of policy statements contained in the Galway County Development Plan. The policy statements contained in the development plan essentially reflect the policy statements contained in the Spatial Planning and National Roads document. Policies therein seek to discourage new development which would result in a proliferation of entrances or intensification of use which would adversely affect the operation and safety of the national strategic road network. This is a laudable and appropriate strategic objective and should be adhered to other than in exceptional circumstances.

9.1.2. It is my view that exceptional circumstances may be applicable in this instance as, what is proposed is in essence in this instance, is a relocation of an existing entrance. Furthermore, the entrance in question is not intensively used but merely serves a single agricultural shed which would generate very modest traffic volumes. In addition, the relocation of the entrance in this instance would not result in any further intensification of use. The grounds of appeal point out that the land in which the shed and entrance serve are currently being transferred from father to son. There is nothing to suggest that the level of farming activity will intensify going forward. The proposed development in this instance will not result in an additional or proliferation of entrances along this stretch of national secondary route.

9.1.3. The Spatial Planning and National Road Guidelines also state that exceptional circumstances may include “the suitability of the location compared to other locations”. Having inspected the site, I consider that the proposed location is perhaps

slightly better and certainly no worse than the current location in terms of affording requisite sightlines. The proposed entrance location is located at the brow of a hill which affords better sightlines particularly in an northerly direction. I am satisfied that both locations facilitate sightlines in excess of 215 metres. Both the existing and proposed entrance are located on a section of road that incorporates a straight alignment which afford generous vision splays in both directions. The presence of a hard shoulder/grass verge on the eastern side of the road further facilitate good sightlines at a setback from the public road. Therefore, the relocation of the entrance in my view would not result in any more restricted sightlines than that currently experienced at the current location.

9.1.4. The proposed development in this instance would however have the added advantage in my view of relocating the entrance away from the junction. This I would argue is beneficial in terms of road safety. It would obviate the need for southbound traffic to pass on the inside (left hand side) of the carriageway when traffic is queuing in the middle of the road in order to take a right hand turn. The arrangement of having an entrance on a section of hard shoulder which is used by traffic to overtake on the inside is in my view very problematic in road safety terms. Relocating the entrance further north as proposed would have the added advantage of placing the agricultural entrance away from a junction which in turn would reduce the amount of traffic turning movements at the junction thus alleviating the potential for accidents. It is also clear from my photo's attached that the section of roadway outside the existing entrance has deteriorated as a result of the entrance and traffic passing on the inside of the lane.

9.1.5. In conclusion therefore, I consider that exceptional circumstances have been demonstrated in this instance on the grounds that the proposal would not result in an intensification of use, will not result in the provision of an additional access but will merely result in the relocation of an agricultural access to a more suitable location in traffic safety terms when compared with existing arrangements.

## 9.2. **Ownership Issues**

The second reason for refusal states that the existing access which is proposed to be closed, is not encompassed within the applicant's ownership. While the Acts and the Regulations do not expressly limit the class of persons who may apply for

planning permission it is clear from numerous case law (Frascati Estates Limited versus Marie Walker) that the applicant in this instance has demonstrated that he has the authority of the owner of the lands to close-up the existing agricultural entrance. It is clear from the letters contained on file that Ms. Caroline Coen is the owner of the lands in question and wishes to have the access permanently closed. In my view this infers consent on the applicant (property owner's brother-in-law) to make the application in question. The applicant therefore has sufficient legal interest in the lands to carry out such works.

### **9.3. Planning Legitimacy of Existing Entrance**

- 9.3.1. A second point raised in the Planning Authority's second reason for refusal questions the planning legitimacy of the existing entrance. The applicant in response argues that the existing entrance has the benefit of planning permission on the grounds that retention of planning permission was granted for a golf driving range at the subject site. I have examined the documentation in respect of this application it appears that permission was granted on 14<sup>th</sup> May, 1992 for the retention of the golf driving range and the drawings submitted indicate that the entrance to the driving range coincided with the current entrance on site.
- 9.3.2. Notwithstanding this, if the Planning Authority have any concerns in relation to the legitimacy of the entrance in planning terms, it might be more advantageous to have a potentially unauthorised entrance closed and replaced with an entrance that has the benefit of planning permission at a location which is deemed safer in traffic terms.
- 9.3.3. The third reason for refusal states that there is an absence of sufficient details with regard to the proposed new access arrangements and there is a further lack of details in relation to materials to be used to cordon off the existing access arrangements. As such the proposal will constitute a visually intrusive feature on the landscape.
- 9.3.4. The applicant has submitted full details of the proposed entrance with the grounds of appeal. The overall design on the agricultural entrance is considered to be acceptable and typical of most agricultural entrances onto public roads. It comprises of a metal gate located between splayed plaster render walls with pillars. The aesthetics of the design of the entrance is appropriate in my opinion and will not in

any way detract from the visual amenities of the area or depreciate the value of property in the vicinity as referred to in the Planning Authority's decision. With regard to the materials to be utilised to cordon off the existing access arrangements, I consider this issue could be appropriately and adequately dealt with by way of condition.

#### **9.4. Details of the Design of the Proposed Access**

The third reason for refusal makes reference to the potential loss of a significant segment of linear vegetation to facilitate site visibility and that the loss of this linear vegetation would constitute a visually intrusive feature of the landscape. It is apparent from both my site inspection and the grounds of appeal that it is not intended to remove any hedging/hedgerow in order to facilitate the proposed development. What is required is the trimming back of a hedgerow to the immediate north of the proposed entrance. The applicant has obtained permission from the adjoining landowner to trim back the hedgerow in question and has given an undertaking to carry out such trimming on an annual basis. It should also be borne in mind that the existing entrance is also located in close proximity to hedging associated with the adjoining houses, albeit to a lesser extent.

#### **10.0 Conclusions and Recommendation**

Arising from my assessment above therefore I consider that the Board should overturn the decision of the Planning Authority and grant planning permission for the relocation of the proposed entrance as it would not result in the provision of an additional entrance onto a secondary route nor would it result in an intensification of use of an entrance. Furthermore, I consider that the proposed relocation of the entrance is more suitable in terms of traffic safety. I therefore recommend that planning permission be granted for the proposed development.

#### **11.0 Appropriate Assessment**

Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site,

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.

## 12.0 Decision

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

## 13.0 Reasons and Considerations

It is considered that the proposed relocation of the agricultural entrance subject to conditions set out below would not seriously injure the visual amenities of the area or property in the vicinity and would generally be acceptable in terms of traffic safety and convenience. The proposed development is therefore in accordance with the proper planning and sustainable development of the area.

## 14.0 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 plans and particulars received by the planning authority on 24<sup>th</sup> day of July 2017, the 24<sup>th</sup> day of August, 2017 and the 2<sup>nd</sup> day of November, 2017 and by the further plans and particulars received by An Bord Pleanála on the 1<sup>st</sup> day of December 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 the 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 proposed new access shall serve the existing agricultural shed within the boundary of the subject site and shall not provide access/egress to any other buildings in the vicinity.

**Reason:** In the interest of traffic safety and comply with Spatial Planning and National Roads Guidelines for Planning Authorities prepared by the Department of Environment, Community and Local Government (January 2012).

3. The proposed agricultural entrance shall be setback not less than 6 metres from the edge of the public road. Wing walls forming the entrance shall be splayed at an angle of not less than 45 degrees and shall not exceed more than 1.5 metres in height with the exception of pillars. Full details shall be the subject of written agreement prior to the commencement of development.

**Reason:** In the interest of traffic safety.

4. The existing agricultural entrance shall be cordoned off and blocked and shall not be used as an entrance for vehicular traffic. The entrance shall be cordoned off and the boundary shall be reinstated in accordance with the requirements of the planning authority. Details of the reinstatement shall be the subject of written agreement with the planning authority prior to the commencement of development.

**Reason:** In the interest of traffic safety and to comply with the Spatial Planning and National Roads Guidelines for Planning Authorities prepared by the Department of the Environment, Community and Local Government (January 2012).

5. The owner/occupier of the farm shall give a written undertaking to the planning authority that he/she will cut back/trim the hedging/planting to the north of the proposed entrance in order to achieve and maintain adequate sightlines in a northerly direction. The trimming/cutting back of hedgerows shall take place at a very minimum on an annual basis.

**Reason:** In the interest of traffic safety.

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Paul Caprani,  
Senior Planning Inspector.

13th March, 2018.