



An
Bord
Pleanála

Inspector's Report ABP-300706-18

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| Development | Retain and upgrade existing entrance and driveway and retention of agricultural buildings. |
| Location | Ballynahimmy, Clonaslee, Co. Laois |
| Planning Authority | Laois County Council |
| Planning Authority Reg. Ref. | 17/568 |
| Applicant(s) | Louise Doheny |
| Type of Application | Retention |
| Planning Authority Decision | Grant with conditions |
| Type of Appeal | Third Party |
| Appellant(s) | Tom Huthinson |
| Observer(s) | None. |
| Date of Site Inspection | 10 th of May 2018 |
| Inspector | Caryn Coogan |

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1.0 Site Location and Description

1.1. The subject site is located in a rural part of Co. Laois in the townland of Ballynahimmy which is 2km from the village of Clonaslee. The site includes equestrian facilities, and the associated lands are used for grazing horses. There is a dwelling associated with the premises on an adjoining site.

2.0 Proposed Development

2.1. The development is described in the public notices as to retain and upgrade existing entrances, to retain new post and rail fencing at roadside and reinstating of roadside hedge, retain driveway to yard, retain driveway culvert, retention of the following agricultural buildings:

- Retention of stables as built and permission for an extension to same
- Retention of Indoor sand arena
- Retention of outdoor sand arena
- Retention of horse lounge
- Retention of 4No. horse shelters
- Retention of dungstead
- Retention of haybarn

3.0 Planning Authority Decision

3.1. Decision

Laois Co. Co. granted planning permission for the development subject to 11No. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Recommendation to grant permission.

3.2.2. Other Technical Reports

Environment Section : No objections

3.3. Prescribed Bodies

There were no referrals made by the planning authority.

3.4. Third Party Observations

The third party appellant objected on the same grounds as his appeal, mainly associated with the removal of the indigenous hedgerow, replacement by a post and rail fence and the negative impact of same on his egress.

4.0 Planning History

No relevant planning history.

5.0 Policy Context

5.1. Development Plan

Laois County Development Plan 2017-2023

5.2. Natural Heritage Designations

A screening report was submitted with the application as the site is located in close proximity to Slieve Bloom Mountains SPA Site Code 004160.

6.0 The Appeal

6.1. Grounds of Appeal

This third party appeal was taken by Tom Hutchinson, who has submitted the following grounds of appeal:

- The applicant removed and historic road boundary hedge without any reference to the neighbour or local authority, and without making any ground line from where she removed the hedge.
- A post and rail fence was erected together with foundations, on lands that were not in her ownership. The lands are in public ownership.
- The consequence is that it has impacted on the safe and practical use of the road to access his house and farmyard. His property is directly opposite the works, and there was previously a significant margin and layby for him to turn into his property.
- The appellant cannot access his property with the same sized vehicles as normally used by him in his farming enterprise such as tractors, trailers, horse lorries. His property is trapped. The access has always facilitated a historic setback on the opposite side of the road which formed a layby. The layby has been removed by the applicant, and access to his property is severely compromised.
- Maps attached illustrating the line of the road which stepped inwards in front of his property allowing access. The map also shows the gable of his house and the bridge opposite, and how tight the access point is due to the immovable features.
- Photographs are included showing before and after the hedge removal, showing the grass verge and turning circle benefitting his property
- Photograph 2 shows the telegraph pole which is on the applicant's property, and how the hedge was close to the pole.

- Photograph 3 shows the hedge removed, the hard core surface, the post and rail fence erected on a straight line, metres from the pole and completely contrary to the historic line as shown on Map A.
- Photograph 4 shows the unauthorised line the fence has been erected on.

6.2. **Applicant Response**

JK Design has responded on behalf of the applicant. In short, the applicant did not invade or reduce lands not in her ownership. Folio maps are attached demonstrating that she is the owner. Googlemaps are submitted showing the hedge and road as it was previously, and it was a very narrow format. The new works increase the width of the road. Photographs are also submitted and drawings to support her case.

6.3. **Planning Authority Response**

There was no response to the appeal received from the planning authority.

6.4 **Appellant's Response**

A further submission came in from the third party appellant from Murray Architectural Services on his behalf. There were no new issues raised in the submission. It stated he had no objection to the agricultural structures. The submission includes letters from businesses that are struggling to gain access to his property as a result of the hedge removal and a new replacement fence. Vehicles turning into the yard find it difficult to access the yard, and both the new fence and the vehicles can be damaged because the fence is too close to the road's edge. A compromise situation would be for the applicant to realign 40metres of the post and rail fence 1metre from its current position as shown in photographs 5 and 5 to facilitate access to Mr. Hutchinson's yard by large vehicles.

7.0 **Assessment**

- 7.1. The planning application for retention included a number of equestrian structures (stables, sand arena, horse lounge) associated with the applicant's Slieve Bloom Stud, whereby young horses are trained for competitive purposes and a number of

foals are bred on an annual basis. The third party appeal relates solely to the post and rail fence along the roadside where an indigenous hedge originally existed.

- 7.2. The appellant claims that the original hedge was removed without consulting the local authority or the neighbours. He lives alongside the road opposite to where the hedge was, his vernacular dwelling is built alongside the road. It backs onto the road, and access is along the gable wall alongside the entrance to his property. I have taken photographs on site to demonstrate the relationship between his dwelling house and the replacement post and rail fence. The appellant also claims works were carried out on lands not in the ownership of the applicant. Consequently, he is unable to access his own property safely now, as a layby that once existed opposite his dwelling has been removed. Therefore, large vehicles cannot enter or exit his property, as originally a large grass verge facilitated turning movements into his property.
- 7.3. I noted from my inspection that the new post and rail fence is positioned a minimum of 2metres from the edge of the country road serving the area. The roadway is only approximately 3.3metres in width. There is a surface water drain also installed opposite the appellants property which clears surface water into the adjoining watercourse that flows through both the applicants and appellants property. Having examined the development on site, I do believe it is unfortunate for the visual and environmental amenities and values of the area, that a mature indigenous hedge was removed and replaced by a post and rail fence and gravel. However, the applicant has proposals to replace the hedge which should form part of the conditions. As stated the fence is setback circa 2metres from the road edge and the road is approximately 3.3metres. The constraints associated with his dwelling and access, i.e. its layout along the roadside, pre-existed the removal of the hedge. However, I do consider 5.3metres is very restrictive for large vehicular turning movements into and out of his property. I recommend a section of applicant's post and rail fence by set back a minimum of 3metres from the edge of the road for a distance of 20metres form the eastern roadside boundary extremity, to enable safe turning movements into the appellant's dwelling.

8.0 Recommendation

- 8.1. I recommend the planning authority's decision to grant planning permission is upheld by the planning authority.

9.0 Reasons and Considerations

Having regard to the provisions of the development plan regarding agricultural structures, it is considered subject to compliance with conditions set out below, the proposed development would not be prejudicial to public health, would be acceptable in terms of traffic safety and visual amenity, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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

Reason: In the interests of clarity.

2. The roadside fence shall be set back a minimum of 3metres from the edge of the road for a distance of 20metres from the eastern extremity of the road side boundary along the site boundary.

Reason :In order to facilitate safe traffic turning movements.

3. The external side and roof cladding of the sheds, shall be finished in a dark olive green colour throughout. No other colours shall be used.

Reason: In the interest of visual amenity and in order to integrate the development into the rural landscape.

4. (a) Proper provision shall be made to ensure that no surface water is diverted or allowed to flow onto the adjoining public road
- (b) Provision shall be made to ensure that no surface water is diverted or allowed to flow off the public road onto the site, as a result of this development.
- (c) The existing road drainage system shall not be obstructed by the development.

Reason: In the interest of road safety and to prevent damage to public road.

5. (a) All agricultural wastes, including slurry, farmyard manure, silage effluent and effluent arising from vegetable processing activities on site shall be collected and stored in tanks/pits with a minimum storage capacity of 18 weeks. Soiled water shall be collected and stored in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014 (S.I. Number 31 of 2014). All agricultural buildings/structures shall be designed and constructed to Department of Agriculture building specifications.
- (b) All buildings shall be provided with gutters and down-pipes and these shall be maintained in a satisfactory condition. Clean surface water run-off from roof areas of the development shall not be discharged onto soiled yard areas. Roof rainwater and clean yard waters shall be discharged separately in closed pipes to a suitable soak-pit system as indicated in the site layout plan submitted to the planning authority.
- (c) All surface water gullies shall be designed, maintained and managed to ensure that no polluting matter enters the surface water collection/drainage system or groundwater
- (d) Farmyard manure, slurry, silage effluent, soiled water and chemical fertilisers shall be land-spread in accordance with the requirements of the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (S.I. Number 31 of 2014).
- (e) Farmyard manure shall not be stored in open yard areas on site.

(f) Soiled yard areas shall be minimised in order to reduce the volumes of soiled water produced on site and to ensure the public road in proximity is maintained in a clean condition.

(g) There shall be no change in the approved method of agricultural waste storage and disposal on site and livestock numbers shall not be increased in a manner that results in the storage requirements as outlined in the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (S.I. Number 31 of 2014) being exceeded.

Reason: In the interests of public health and environmental protection.

6. Full details of proposals to plant a replacement indigenous hedge shall be submitted and agreed with the planning authority within three months of this decision. The hedge shall include indigenous planting and shall be provided in the first planting season following this decision. Any plants that died shall be replaced.

Reason: In the interests of visual amenity.

Caryn Coogan
Planning Inspector

17th of May 2018