



An  
Bord  
Pleanála

## Inspector's Report ABP 301739-18

---

<b>Development</b>	Retain agricultural machinery and storage shed
<b>Location</b>	Ardmore, Sneem, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/231
<b>Applicant</b>	Diarmuid Breen
<b>Type of Application</b>	Retention permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party against refusal
<b>Appellant</b>	Diarmuid Breen
<b>Observer</b>	None
<b>Date of Site Inspection</b>	26/07/18
<b>Inspector</b>	Pauline Fitzpatrick

## 1.0 Site Location and Description

The site, which has a stated area of 0.501 hectares, is in the townland of Ardmore, accessed from the N70 National Secondary Road between Sneem and Castlecove in west County Kerry. It is square in shape and is lower than the road. The Bunnow River bounds the site to the east.

The shed, which is the subject of the retention application, is positioned in the centre of the site with the surrounding area under a hard surface.

The site is served by a splayed, gated entrance off the N70. The national secondary road in the vicinity of the site is governed by a central broken white line and does not have the benefit of hard shoulders. The 100km/h speed limit applies.

## 2.0 Proposed Development

Retention permission is being sought for an agricultural shed used for storage and machinery. It has a stated floor area of 448.2 sq.m and ridge height of 7.308 metres. It is finished in dark green metal cladding. Landscaping is proposed.

The applicant has a farm stated to be 70 acres in area located to the south-west on the opposite side of the N70.

The location has the benefit of 3 phase power.

An existing gated entrance was erected by the County Council during road realignment works. The gateway will be reduced in width to that of the original gateway.

Photomontages accompany the application.

## 3.0 Planning Authority Decision

### 3.1. Decision

Retention permission refused for the following reason:

It is considered that the proposed development would contravene the policy of the Planning Authority, as set out under Section 7.2.1.2 of the Kerry County Development Plan 2015-21, that new accesses will be considered onto the N70 National Secondary Route Killorglin-Caherciveen-Kenmare, only where there is no suitable non-national public road access available. Furthermore, the proposed development would be contrary to the Spatial Planning and National Roads Guidelines (January 2012) and would be contrary to the proper planning and sustainable development of the area.

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

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

The Planning Report notes that the previous applications on the site were in the name of James Breen who was stated as responsible for the shed's construction. During the assessment of application ref. 15/85 a landholding of 81 hectares was noted with access onto a local road. The current application, in the name of Diarmuid Breen, is accompanied by details of a 29.82 hectare landholding with access onto the N70, only. When the shed was built it contravened the Development Plan policy regarding access onto National Secondary Roadways in that an alternative, non-national public road access was available. A refusal of permission for one reason is recommended.

The report has undertaken a sub threshold EIA screening and AA Screening.

#### **3.2.2. Other Technical Reports**

A/S.E.E Operations, Health and Safety considered the sight lines at the entrance are in accordance with the NRA Design Manual for Roads and Bridges. No objection to the proposal.

South and West Kerry MD Engineer notes that the sight lines are adequate but that the development is at variance with the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

County Archaeologist has no objection.

### **3.3. Prescribed Bodies**

Transport Infrastructure Ireland in a letter dated 29/03/18 considers the proposal to be at variance with official policy in relation to the control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.

An Taisce in a letter dated 11/04/18 notes the previous refusal for the development. An evaluation is required that demonstrates that all the issues have been resolved. Development should not hinder or obstruct views along the Ring of Kerry National Secondary tourist route. The site is within an area zoned Secondary Special Amenity and is sensitive to development. Development must be designed so as to minimise the effect on the landscape.

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

15/85 - Permission to retain the shed was refused for two reasons relating to access onto the national primary road and absence of effluent disposal proposals.

16/297 – permission to retain the access was refused.

## **5.0 Policy Context**

### **5.1. Spatial Planning and National Roads – Guidelines for Planning Authorities, 2012**

Section 2.5 states that the policy of the PA 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 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.

Section 2.6 states that the PA may identify stretches of national roads where a 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 and having followed the approach as detailed including lightly trafficked sections of national secondary routes.

## 5.2. Kerry County Development Plan 2015

Section 3.3.2.2 - The site is within an area zoned Rural Secondary Special Amenity.

Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on an applicant to avoid obtrusive locations.

Existing site features including trees and hedgerows should be retained to screen the development.

Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.

### Section 7.2.1.2 – Access onto National Routes

The creation of an access or the intensification of usage of an existing access onto a National Road shall only be considered where it is in compliance with Spatial Planning and National Roads Planning Guidelines (DoECLG January 2012).

In compliance with Section 2.6 of the Guidelines the following 'exceptional circumstances' as agreed with the NRA shall pertain in County Kerry whereby new accesses or the intensification of existing accesses will be considered along the following sections of the National Secondary Network

N70 Killorglin-Cahersiveen-Kenmare.

#### Criteria

- There is no suitable alternative non national public road access available.
- The development otherwise accords with the Development Plan.
- Safety issues and considerations can be adequately addressed in accordance with the NRA's design manual for roads and bridges.

Objective RD -17 – protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance

with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic and Transport Assessment Guidelines (2007).

### 5.3. **Natural Heritage Designations**

None in the immediate vicinity.

## 6.0 **The Appeal**

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

The 1<sup>st</sup> party appeal against the planning authority's notification of decision to refuse permission, which is accompanied by supporting detail, can be summarised as follows:

- The family landholding in the applicant's parents name was spread over the townlands of Bohogram, Glanlough and Ardmore. A minor road connected Bohogram to the N70. Some of the holding touches this local road (L-11612-0). The applicant's parents have committed the lands in lots to their children.
- The applicant has ownership of Folio KY68088F which has access onto the N70, only. There are no other lands with access onto the local road available due to commitments made to other family members.
- Clarification of the landownership issue has changed the dynamic of the application relative to the previous applications.
- As the applicant lives abroad he relied on his father to plan and construct the shed. The applicant's father was not familiar with planning procedures and the details provided on previous planning applications has added to the confusion as to the applicant's landholding and access.
- The applicant intends to return home and work the lands and involve himself in agricultural contracting with particular emphasis on forestry. The shed is important to his future operations. It will be used to store and maintain agricultural machinery and equipment.
- He was advised by the local authority that the sight distances were inadequate at every point along the frontage of folio KY68088F onto the N70.

He was also advised that the shed would have been very prominent on any location within the folio as the land rises to the north from the N70.

- The location was chosen due to its convenience to his holding to the south-west and the available sight distances. 3 phase power supply exists on the site. The site is more suitable than any site within folio KY68088F.
- Provision is made in the Development Plan for accesses onto the N70 in exceptional circumstances under Section 7.2.1.2. The applicant meets the criteria to be met in that there is no suitable, alternative non-national public road access available, the development otherwise accords with the development plan and adequate sight lines are available in accordance with the NRA's design manual for roads and bridges.
- The shed can be well integrated into the landscape and will be screened from the N70.
- The Municipal Engineer did not state that the development is at variance with the Spatial Planning and National Roads Guidelines for Planning Authorities.
- There was an existing entrance on the site. No new entrance is required for the development.
- The Development Plan seeks to promote and support the sustainable growth of agriculture.
- Initially the shed was planned to be less than 300 sq.m. and would have constituted exempted development.

The appeal is accompanied by a Solicitor's letter confirming the applicant's parent's intention to convey the lands to the applicant with the remainder of the farm to be conveyed to other family members. A summary of the planning history on the site is also given.

## **6.2. Planning Authority Response**

None

### 6.3. **Observations**

None

## 7.0 **Assessment**

I consider that the issues arising in the case can be assessed under the following headings:

1. Acceptability of access
2. Miscellaneous Issues
3. Appropriate Assessment

### 7.1. **Acceptability of Access**

This constitutes the 3<sup>rd</sup> application seeking permission to retain an agricultural machinery and storage shed on the site. The planning authority has been consistent in its refusal on the grounds of contravention of the Kerry County Development Plan in relation to access onto National Roads and the Spatial Planning and National Roads Guidelines 2012.

The site is on the eastern side of the N70 National Secondary Road at a point which is relatively straight with adequate sight lines available in both directions. The 100kph speed limit applies.

I consider that a brief synopsis of the planning history on the site is beneficial in setting the context and assists in the assessment of the proposal before the Board.

The applicant of the 1<sup>st</sup> retention permission application under reg.ref. 15/85 was stated to be James Breen with an initial delineated landholding of 12.705 hectares (largely to the rear and south of the application). The purpose of the shed was so as to serve his agricultural needs. By way of further information the applicant stated that it was to house his farm animals during the winter season and to store his agricultural machinery. It was confirmed it was not to be used for any form of commercial/business use. The extent of the landholding was also amended and enlarged to c.81 hectares. It was stated that the area of the total landholding as



given in the initial application documentation was misinterpreted. I note that the expanded holding had access onto a local road to the north-west of the appeal site.

The 2<sup>nd</sup> application for retention of the structure under ref. 16/414 was, again, in the name of James Breen with the landholding stated to be 81 hectares with the structure to be used for purposes ancillary to his agricultural land. In support of this application it was stated that the site was served by an agricultural gate prior to existing access and this was retained by the NRA when it was carrying out adjoining upgrade works on the road.

The current application is now made in the name of Diarmuid Breen, James Breen's son, who currently lives abroad and requires the structure to store and maintain agricultural and forestry machinery and equipment to be used in agricultural contracting. It is stated that the overall landholding of 81 hectares as delineated in the previous applications has been divided between the landowner's children and that the applicant has been given Folio Number KY68088F, which equates to approx. 27.93 hectares and which is to the south-east of the appeal site. The folio has access onto the N70 only. It is stated that there are no suitable sites within the said folio which are not unduly prominent or which could provide for adequate sight lines. As yet the folio has not been transferred into the applicant's name

Notwithstanding the fact that the development plan in section 7.2.1.2 states that the planning authority agreed with the TII that the N70 is an '*exceptional circumstance*' where access could be considered where certain criteria are met in accordance with the Guidelines for Spatial Planning and National Roads, the TII has, as in the first application for the proposal under ref. 15/85, expressed its opposition to the proposal considering it to be at variance with the policy as outlined in the guidelines and would, by itself, or the precedent set adversely affect the operation and safety of the national road.

From an assessment of the documentation that accompanies the current application relative to that which was submitted in support of the previous applications it could reasonably be surmised that, in attempting to secure the necessary permission, details of the landholding, purpose of the development and availability of alternative access options have been amended and revised so as to retrospectively 'fit' with the relevant Development Plan provisions in terms of access onto the N70 National

Secondary Road as set out in Table 7.3. The fact that the applicant's father was not familiar with the planning process is not, in my opinion, an adequate explanation for the material changes between the first two applications and the current proposal. The fact remains that the shed, when erected, contravened the relevant development plan policy in that alternative access from a non-national road was available on the larger landholding as applied at that time. I also note that the current stated purpose of the large shed is so as to provide a storage facility for a contracting business which could have the potential to generate vehicular movements materially in excess of those which would be associated with the original agricultural purpose.

I consider that a high bar needs to be set in the assessment of development which avails of the provisions set out in Table 7.3 so as not to undermine the capacity and safety of the national secondary road which is an objective of the development plan to protect (RD-17). On balance I do not believe that the applicant has met this requirement in this instance and I recommend a refusal of permission comparable to that as set out by the planning authority.

## **7.2. Miscellaneous Issues**

Reference to the fact that were the floor area of the shed to be reduced to 300 sq.m. it could avail of the exempted development provisions of Class 9 of the Planning and Development Regulations, 2001, as amended, is noted, but in my opinion is academic. The subject shed has a stated floor area of 448 sq.m. and is subject of an application on which an adjudication is required.

The site is within an area designated as Rural Secondary Special Amenity in which development must be designed and sited so as to ensure that it is unduly obtrusive. The shed is located on lands which are lower than the road and subject to appropriate planting along the roadside boundaries would not impinge on the amenities of the area.

I draw the Board's attention to the fact that the Local Authority Planner's Report on this case includes a formal EIA Screening. In my view such a screening exercise (formal EIA determination) is not warranted. The proposal for a storage shed, as

described, on a site of 0.501 hectares in a rural area, is not a class of development for EIA and, therefore, cannot constitute sub-threshold development.

### **7.3. Appropriate Assessment**

The site is c. 1.3km to the west of Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365). There is no hydrological connection between the sites with the N70 national secondary road in-between.

The site is c. 1.5 metres to the north of Kenmare River SAC (site code 002158). The Bunnow River which bounds the site to the east flows into the SAC with a hydrologic distance of approx. 2.3 km. There are no effluent disposal facilities within the shed with roof water to be discharged to the adjacent drain. In view of the small scale nature and extent of the development and the separation distance from the SAC I consider that no appropriate assessment issues arise and it is not considered that the 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**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

### **9.0 Reasons and Considerations**

Having regard to the location of the development to be retained with access onto the N70 National Secondary Road, at a location where the maximum speed limit of 100 km/h applies the Board is not satisfied, on the basis of the submissions made with the planning application and the appeal, that the proposal constitutes an exceptional circumstance or meets the criteria for which an access onto the said road can be considered as per section 7.2.1.2 of the current Kerry County Development Plan. It is considered that the proposed development by itself or by the precedent it would set for other development, would endanger public safety by reason of traffic hazard and obstruction of road users, would contravene national policy in relation to the control of development on national roads as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities issued by the Department of the

Environment, Community and Local Government in January, 2012, which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially objective RD-17 of the Kerry County Development Plan to preserve the level of services and carrying capacity of the National Secondary Road. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

---

**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**September, 2018**