



An
Bord
Pleanála

Inspector's Report ABP-303033-18

Development	Permission for revised entrance to enable access to existing agri - business storage building.
Location	Knock Cross, Balrothery, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0504
Applicant(s)	
Type of Application	Permission
Planning Authority Decision	To grant Permission
Type of Appeal	Third Party
Appellant(s)	Anne Dooley's Estate
Observer(s)	None
Date of Site Inspection	6 th of February 2019
Inspector	Angela Brereton

1.0 Site Location and Description

1.1. The application site is located proximate to Knock Cross to the south of the village of Balrothery, Co. Dublin and north of junction 5 of the M1. It is located on a bend on the north side of the local road L5465 c.160m from the junction with the R132 regional road Swords/Balbriggan. The site has a stated area of 0.3196ha and is situated on the northern side of a local access road. The site accommodates 2no. shed type buildings and an extensive area of hardstanding. The roadside boundary of the site is formed by a stone wall with a security type fence on top. There is currently a double gated entrance to the site and trucks/HGVs are stored in the yard area. There is also an entrance gate to the rear of the dwelling house to the north which is accessed via the same recessed area. The adjoining area is predominantly rural in character with hedgerows along the roadside boundaries.

2.0 Proposed Development

- 2.1. This proposal is for a Revised Entrance to enable access to the existing agri-business storage building together with associated site works.
- 2.2. The application form provides that the area of site to which the application relates is 0.3196ha.
- 2.3. Details have been submitted describing the rationale for the proposed development. Drawings including a Site Layout Plan have also been submitted.

3.0 Planning Authority Decision

3.1. Decision

On the 26th of October, 2018, Fingal County Council granted permission for the proposed development subject to 4no. conditions. These conditions relate to infrastructural issues regarding the construction and operation of the access.

3.2. Planning Authority Reports

3.2.1. Planner's Report

This had regard to the locational context of the site, planning history and policy and to the inter-departmental reports, including Transportation and the Submissions made. The Planner noted that the current proposal differs to that previously proposed/refused under Reg.Ref. F17A/0777. They concluded that the current proposal overcomes the previous reason for refusal as it has been relocated to a position further to the south-east. This change has the effect of directing vehicles to a more central position, thereby allowing better visibility. The PA considers that the proposed development by virtue of its nature, scale and design would not unduly impact on the amenities of the receiving area. They recommended permission subject to conditions.

3.3. Other Technical Reports

Transportation Planning Section

They have regard to the proposed development and concluded that there is no intensification of use associated with the proposed works. Also, that the modifications to the existing entrance would provide the required sightlines. They have no objection subject to recommended conditions.

Irish Water

They have no objections to the proposed development.

3.4. Third Party Observations

Submissions from local residents have been noted and as they raise issues that are broadly similar to those raised in the context of the third party grounds of appeal, they are considered further in this context below.

4.0 Planning History

- 4.1.1. The Planner's Report provided details of the extensive planning history of the site. This includes regard to the agri-storage buildings and their extension and refurbishment. Copies of these including previous Board decisions are included in the History Appendix to this Report. The following recent application is of particular relevance to the entrance and the subject application:

- Reg.Ref. F17A/0777 – Permission refused by the Council for a new entrance with associated site works to existing agri-business storage building. This was refused for the following reason:

The proposed vehicular entrance has restricted sightlines in a northerly direction and the proposed development would therefore endanger public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

As shown on Sheet 4 of the CDP the site is within the 'RB' land use zoning. The objective seeks: *To provide for and facilitate rural-related business which has a demonstrated need for a rural location.* It is adjacent to Greenbelt 'GB' land use zoning where the objective seeks: *To protect and provide for a Greenbelt.* The land to the south of the opposite side of the road is shown 'RU' Rural where the objective seeks: *To protect and promote in a balanced way, the development of agricultural and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.* Table 6.3 of the CDP provides the Economic Zoning to be updated as per re-zonings.

Chapter 6 -Economic Development provides: *The purpose of the Rural Business (RB) zoning is to facilitate enterprise opportunities associated with rural-related businesses requiring a rural location. Within the Development Plan, there are over 92 ha of lands zoned for RB purposes located in locations such as Lusk, Rush, Ward Lower, and Blake's Cross. Policy relating to the location of rural business enterprises is outlined in greater detail in Chapter 5 Rural Fingal.*

Chapter 5 refers to Rural Development and includes Objective RF24 relative to access in Layout and Design in Rural Clusters. In relation to entrances this seeks to: *Minimise the number of new entrances to sites within a rural cluster with a preference for sharing accesses with existing dwellings or using existing entrances. New entrances will only be considered where the potential for sharing is not possible. Any removal of hedgerows, trees and walls or other distinctive boundary*

treatment required to accommodate sight lines must be limited in extent and must be replaced with the same type of boundary. The use of native species for replacement planting shall be used where appropriate.

Objective RF25 is also of note and seeks to: *Allow for small scale home-based economic activity and local services at a level commensurate with the size, scale and character of the Rural Cluster.*

Section 5.3 refers to the Rural Economy and Enterprise. Objectives RF70 – RF73 refer.

Chapter 7 provides for Movement and Infrastructure and this includes a Section on Roads and Road Safety. This includes: *The intensification of use of an existing access is normally preferable to the creation of a new access onto a rural road.*

This is re-iterated in Chapter 12 – Development Management Standards.

Objective DMS126 seeks to: *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 hazards.*

Appendix 4 provides the Technical Guidance Notes for Use Classes and includes regard to a definition of Agribusiness: *A business that is directly related to the agricultural or horticultural sector involving the processing of produce of which a significant portion is sourced locally. It may also include support services for the agriculture or horticulture sector.*

5.2. Natural Heritage Designations

There are no relevant natural heritage areas within the vicinity of the site.

6.0 The Appeal

6.1. Grounds of Appeal

Fingal Planning Consultants have submitted a Third Party Appeal on behalf of Anne Dooley's Estate, the landowner of the site adjacent. The grounds of appeal include the following:

- This planning application is almost identical to that previously refused – Reg. Ref. F17A/0777. They are at a loss as to how this application can be granted when the previous application was so comprehensively refused permission.
- This was a traffic hazard then and it is a traffic hazard now.
- They do not agree with the Planner’s Report that changes have been made and note that the quoted sightlines in both applications are identical. They include site layout drawings.
- The applicant’s site is not ‘land locked’, there is currently independent access to the site & vehicular access could be provided via the existing gates to the site, subject to agreement.
- This is a new user and it is logical that there will be an intensification of use and activity on the site.
- They have regard to the Transportation Planning Section Report and Manager’s Order in the previous refusal (Reg.Ref. F17A/0777 refers) and note that sightlines were then considered inadequate and a traffic hazard.
- The actual sightline to the north is c.10m and not 80m as quoted on the planning application drawings and certainly not the 145m required for safe access.
- The sightlines haven’t improved since the previous decision and a site visit will verify the inadequate sightlines.
- There are numerous dwellings in the vicinity with numerous children walking and cycling on the road. This proposal will increase traffic and therefore the risk to those living close by.
- They also include a copy of their submission to the Council which notes that this proposal will result in 3 separate entrances (under 3 separate ownerships) adjacent to each other.
- They request the Board to overturn the Council’s grant of permission in this case and maintain consistent planning decisions in the area.

6.2. Applicant Response

A First Party Submission has been made by Future Analytics on behalf of the Applicant in Response to the Third-Party Appeal. This includes the following:

Access to the Site

- The existing gate and entrance area is not owned by the Applicant, but is owned by the Appellant, whose only access to the subject site is limited to a small gap (as shown on Fig. 2.3 submitted).
- The Applicants highly restricted access to her lands has had severe consequences for the previous economic activity on the site. They provide details relative to the background to the ownership of the access.
- Detrimental consequences to the use of the subject site are solely due to the inhibited access to the lands, which has been implemented by the Appellant.
- Fig.2.4 provides a photo showing the existing fence and wall at the subject site, taken from the inside, where the proposed gate to provide a dedicated separate entrance is to be constructed. Figs. 3.11 and 3.12 also relate.
- They note the Rural Business 'RB' zoning of the site is the only zoned land with this zoning designation in the area to the south of Balrothery village. They have regard to the importance of the agri-business in the area.
- The absence of a formal access agreement and continuously restricted access implemented by the Appellant, effectively 'landlocks' the Applicant's site.
- The proposed access will improve the Applicant's access to her lands providing a dedicated entrance similar to the existing entrance gates to the east of the site and in accordance with road safety and design standards.

Similarity to previous application

- The current application has been significantly revised in order to overcome the reason for refusal of the previous application.
- The revisions to the entrance currently proposed improve visibility and sightlines, in comparison to the entrance previously refused.

Sightlines

- They have regard to the Transport Planning Section Report, and to the bends in the road, and proximity to a junction, relative to a reduction in road speeds.
- Photographs are included showing visibility/sightlines at the entrance.
- The most frequent type of traffic which will occur at the site will be vans, which position the driver higher up in the vehicle, allowing clearer sightlines when exiting the site.

Entrance and Road Safety

- They include aerial photographs to show that the entrance to the site has been relocated during the past two decades. The proposed entrance gate will be located at approximately the same location as the original gate.
- The Applicant is surprised by the objection of the Appellant as it will not burden the Appellant. The current proposal represents a safe and appropriate solution to enable the Applicant gain direct access to land in her control, while having no impact on the adjoining property landowner.
- There have been no incidents, difficulties or collisions at the location of the subject site, according to the Road Safety Authority (RSA).

Intensification of use and increase in traffic

- The property on the site had been vacant for almost two years which is a direct result from denied access to the site by the Appellant.
- The Applicant is keen to re-activate the use of the units on site with the proposed development, which will be compliant with the land use designation and land use classed on site.
- The proposed works are essential in order to create sustainable future land uses on the subject site which will contribute positively to the employment opportunities in the area and the rural economic development of County Fingal.
- The layout and proposal have been confirmed by the Council's TPS to meet traffic safety requirements. There is therefore, no additional intensification of

use associated with the proposed works but the effective use of the lands adhering to the zoning objective as designated by FCC.

- They conclude that the development has been revised in order to overcome the previous reasons for refusal of Reg.Ref. F17A/0777 and has been confirmed to be acceptable by the TPS of Fingal County Council and subsequently granted permission. They request the Board to uphold the Council's decision to grant.

6.3. Planning Authority Response

Fingal County Council's response includes the following:

- This is an application for permission for a revised entrance to enable access to existing agri-business storage building together with associated site works.
- The issues raised in the Third Party appeal generally reiterate the issues raised in the submissions made and have been addressed in the Planner's Report on file.
- It remains the opinion of the PA that the overall development is considered acceptable subject to the conditions attached. They request the Board to uphold their decision.
- In the event of the appeal being successful, they provide that provision should be made for a financial contribution in accordance with the Council's Section 48 Development Contributions Scheme.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. The Fingal County Development Plan 2017-2023 is the pertinent plan. The site is within the 'RB'- Rural Business land use zoning where the objective seeks: *To provide for and facilitate rural related business which has a demonstrated need for a rural location*'. The vision for the 'RB' zoning seeks to: *Provide a location for the development of business within the rural area which is directly related to the rural location and to the agricultural or horticultural sectors. Such business involves either*

the processing of produce of which a significant portion is sourced locally or support services for the local agricultural or horticultural sector. Provide a balance between the need for competitiveness and efficiency within the agricultural and horticultural sectors and the need to protect and promote the values of the rural area.

- 7.1.2. The general area appears rural and lands to the north are zoned Greenbelt and those to the south are zoned Rural. It was noted on the day of the site inspection that the Rural Business use was not in operation, the units appear vacant and the site is being used primarily for truck/HGV parking on the hard-standing area. However, it is noted that the principle of the Agri-Business in this location, has been established and regard is had to the previous planning history of the site.
- 7.1.3. The First Party provide that the proposed development will facilitate and secure reliable access to the vacant property on site, enabling the Applicant to meet the designated zoning objective and vision which is essential in order to support the development of the rural economy of the County. They provide that the proposed development will not result in an intensification of use and activity at the site, but will simply aid the delivery of the zoning objective by restoring access to the use of the lands and property.
- 7.1.4. Therefore, the issue is whether the current application would provide for safe access to the site and would addresses and over-ride the previous reason for refusal relative to the entrance for this site.

7.2. Regard to Planning History and Rationale for Proposed Development

- 7.2.1. As noted in the Planning History Section above, permission was refused for the previous similar type application relative to the entrance on this site, Reg.Ref.F17A/0777 refers. It is noted that the Planner's Report then provided that the proposal entailed an 8.2m wide opening in the existing roadside boundary (wing wall) of the site and provision of a set of inward facing swing gates (2.7m high) to match the appearance of the gate serving the adjacent site. The Transportation Planning Section then noted that the Site Layout Drawing submitted was incorrect in that while it was stated there was 80m available sightline visibility to the north and 145m to the south, the achievable sightlines to the north are 10m, being impeded by the boundary wall and hedge of the adjoining property. They then stated that the

required sightlines to the north of 145m cannot be achieved and recommended that permission be refused on the grounds of traffic hazard.

- 7.2.2. The proposed development comprises revisions to an existing splayed vehicular entrance to include the insertion of a vehicular entrance alongside an existing entrance. The proposal comprises a 4.5m wide opening in the existing roadside boundary (wing wall) of the site and the provision of an inward opening 'swing gate' (2.7m in height). This differs from the access previously refused with showed double security gates with the opening width in excess of 8m. In the current proposal it is proposed to modify this and retain c.4m of the front boundary wall, thereby the proposed entrance would be narrower. The single inward opening gate, renders a single access point further south-east to improve visibility at the access. The revised drawing of the proposal indicates the right of way and the proposed entrance set back a minimum of 6m. It is of note that sightlines are similarly shown as 80m to the north and 145m available to the south.
- 7.2.3. A letter of support has been submitted with the current application which provides that following the transportation issues raised in the previous refusal by the Council, consultations were held with the relevant section of the Council and a revised layout was prepared and agreed in principal to surmount the issues raised in the previous refusal. The proposed entrance gate is similar in terms of scale, design and material finishes to the existing entrance gates to the east of the site. This and regard to road safety and design standards seeks to ensure that there are no undue impacts on the residential amenity of dwellings in the vicinity.
- 7.2.4. It is also provided that prior to the purchase of the site the existing entrance to the east of the site was the sole access to the agri-business storage building to the rear of the site; however, the applicant now finds that this access is outside of her control for various reasons and therefore now has to apply for a new access as outlined on the submitted drawings.
- 7.2.5. They note issues restricting their use of the existing entrance and that the site is now vacant. This proposal aims to re-instate an efficient use of the lands in line with the previous activity on site (agri-business), which will include infrequent traffic entering and exiting the site and will thereby have little effect on the accessibility of vehicles to the adjacent sites.

7.3. Right of Way/Legal issues

- 7.3.1. The Site Layout and the drawing showing the detail of the proposed entrance indicate a 'wayleave/right-way' shown hatched in yellow in the forecourt area in front of the proposed recessed gated entrance. The Third Party is concerned that the applicant has provided no evidence of a right of way claimed on the planning drawings, or of a legal right to access the subject site at the proposed location. They provide that the applicant's site is not 'land locked' and note that there is currently independent access to the site and vehicular access could be provided via the existing gates subject to agreement.
- 7.3.2. The First Party response provides that the existing gate and entrance area is an amendment to a previous access arrangement to the site and is not in the ownership of the Applicant, but is owned and controlled by the Appellant, Anne Dooley's Estate. They provide that the Appellant is in ownership of the existing gate and entrance area, restricting the Applicant's access to her lands by a narrow walkway. The restricted access has also limited the Applicant in facilitating proper property maintenance and security on her lands. This has had a detrimental effect on the economic land of these lands. They noted that the proposed new gate will be in full control of the Applicant, thus ensuring reliable access and enabling new business to occupy the vacant lands and property.
- 7.3.3. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*"

7.4. Regard to Proposed Access

- 7.4.1. The works involve the provision of a revised vehicular entrance onto the L5465. The First Party notes that the proposed entrance gate is to provide a dedicated separate

access to the property on site and to be similar in terms of scale, design and material finishes to the existing entrance gates to the east of the site, thus resulting in no undue impacts on the residential amenity of dwellings in the vicinity. They provide that it will not result in an intensification of use, but a reactivation of lands currently vacant in order to adhere to the land zoning objective as designated by Fingal County Council.

- 7.4.2. There is concern that the sightlines haven't improved since the previous refusal. Also, that the sightlines quoted on the submitted drawings cannot be achieved on site. This includes that a truck leaving the site will have to transverse the public road in order to see any oncoming traffic, which the third party provides is extremely dangerous to both the user of the site and the general public. Therefore, that this proposal will result in an increase of truck (artic) traffic on a substandard road.
- 7.4.3. The Third Parties provide that the applicant has access to the site currently. There is concern that this proposal will lead to three separate entrances (under 3 separate ownerships) immediately adjacent to each other. That this would result in conflict of traffic movements when entering/exiting these properties and increase traffic in the area. It is noted that there are a number of dwellings in this location and regard needs to be had to cyclists and pedestrians.
- 7.4.4. The First Party provide that the proposed development has been revised and overcomes the previous reason for refusal by relocating the entrance further south-east and thereby improving the angle of the sightline in northerly direction. They provide that this change has the effect of directing vehicles to a more central position, thereby allowing better visibility.
- 7.4.5. The Council's Transportation Planning Section note that the proposed development is located in an 80km/hr speed limit. The works involve modification of an existing vehicular entrance on to the L5465. The modification would provide a dedicated separate access to an existing Agri-business site. In accordance with current TII Standards a 145m sightline is required in both directions for 80km/hr speed limit. It is noted that as shown on the submitted Site Layout drawing, there are 80m sightlines to the north and 145m to the south taken 2.4m from the edge of the road. The Transportation Report notes that the ambient speed of traffic approaching from the north is less than the posted speed limit. The subject site is located 160m from the

junction with the R132 and there is a series of bends in the road on the approach from the north of the proposed entrance which they provide would reduce the speed of vehicles. They provide that the proposed modifications to the entrance would direct vehicles exiting the site to a similar position to the existing arrangement and that the sightlines from the proposed entrance are acceptable. They note that there is no intensification of use associated with the proposed works and that the modifications to the existing entrance would provide the required sightlines. They conclude that they have no objection subject to recommended conditions, which are included in Condition no.2 of the Council's permission. It is recommended that if the Board decide to permit that it be conditioned that works to facilitate the proposed access comply with such recommendations.

7.4.6. On my site visit I noted that there is currently a double entrance gate adjoining which serves the site, which was open and in use for truck/HGV parking on the day of the site visit. There is also a rear entrance gate to the house to the north that adjoins the site. Therefore, this proposal will mean that there will be 3no. gated accesses for separate uses in a limited and restricted site frontage area. The site frontage is recessed but the visibility in both directions and particularly to the north is restricted by roadside hedgerows not within the subject landholding. The site is in an area where 80km/h speed restrictions apply, however, the road is narrow and undulating and this may serve to reduce speeds in this location.

7.4.7. While on site I observed this to be a fast and relatively busy local road close to the junction with the R132, where visibility from the entrance is restricted. There are no roadside verges so walking along the road is hazardous. Having seen the proposal on site and noting the visibility restrictions caused by hedgerows (not in the ownership of the applicant) and the series of bends aforementioned (Figs 3.4 and 3.5 of the First Party submission refer) on this narrow undulating road, I would be concerned that the proposed development would as has been noted in the Transportation Section Report not be in accordance with current standards and guidelines. I would have concerns that an additional entrance in this location would impact on traffic safety and result in traffic hazard. I would consider that the existing access arrangements to the site, with one centrally located access to serve the site would appear to be preferable. In this regard I would also consider the proposal would lead to an excessive number of entrances in this restricted area and would be

contrary to Objective DMS126 of the Fingal CDP (as quoted in the Policy Section above). In view of these issues I would therefore recommend that this proposal be refused.

7.5. Environmental Impact Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.6. Appropriate Assessment (AA)

- 7.6.1. Having regard to the nature and scale of the proposed development, the nature of the receiving environment and distance to the nearest Natura 2000 sites. 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. I recommend that planning permission should be Refused for the Reasons and Considerations below.

9.0 Reasons and Considerations

1. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard road at a point where sightlines are restricted in a northerly direction. The proposed development would create an excessive number of entrances in this restricted site entrance area and would therefore be contrary to Objective DMS126 of the Fingal County Development Plan 2017-2023 and to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

8th of February 2019