



An
Bord
Pleanála

Inspector's Report

ABP-303692-19

Development	New set-back entrance including all site development works above and below ground. (Works proposed are located within the curtilage of a Protected Structure Kennycourt House (Ref B29-47)).
Location	Kennycourt, Brannockstown County Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	18332
Applicant	Brannockstown Farms Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	Ashley McDermott
Date of Site Inspection	13 th August 2019
Inspector	Una Crosse

1.0 Site Location and Description

1.1. The site comprises 0.0187 hectares of a landholding of c.102.43 hectares of agricultural land located in a rural area in the townland of Kennycourt close to Brannockstown which is the nearest settlement. It is outlined that due to changes in landownership this landholding has become landlocked with previous entrances to the lands now forming part of other landholdings. The entrance is proposed onto Local Road L6060 at a bend in this rural road which has a good surface. There are a number of large detached dwellings in the vicinity of the site accessed from this local road.

2.0 Proposed Development

- 2.1. The development as proposed provides for the removal of part of an existing boundary fence on local road L6060 and the construction of a new set-back entrance and gate for agricultural purposes to access the landholding. The applicant states in their documentation that they are willing to accept conditions attached to the previous grant of permission including facilitating the PA in providing proposed signage and road markings in the immediate area.
- 2.2. Further information was sought by the PA and the response received on 23 November 2018 revised the proposed alignment of the entrance arrangement slightly such that a setback 'x' of 4.5m is provided for the visibility splay.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of a decision to grant permission for the proposed development, subject to 12 conditions, was issued by the planning authority dated 22 January 2019.

3.2. Planning Authority Reports

3.2.1. Planning Reports

First Report

- Having regard to previous permission on the site for a proposed entrance, considered principle of development generally acceptable.

- Noted works have taken place to the site since 2015 with a recessed entrance space created, fence removed and temporary wooden fence installed, internal roadway provided for a considerable length and applicant should be requested to comment on the planning status of the lands. No detail on intended use of the landholding submitted and given extent of same considered prudent applicants intentions determined.
- Notwithstanding previous permission issues in relation to roads and traffic require revisions and further information is requested.

Further Information

Further information was requested on the following matters:

- Works on the holding undertaken since 2015.
- Clarification of position of JR on Ref.15/8.
- Stage 2 Road Safety Audit and revisions to design drawings incorporating changes;
- Comment on issues raised in observations.

Second Report

- Determined that response to FI was significant and was re-advertised.
- Clear from FI response that applicant believes works to date are minor temporary and exempted development including provision of roadway.
- Site has been disturbed since 2015, noted applicant refers to works being exempt under Class 16 of Schedule 2 and site subject of an Enforcement file with the issue of the roadway remaining outstanding until enforcement issue resolved.
- Principle of proposal acceptable.
- Principle issues relate to design and technical aspects of development with a conflict between applicant and third party in relation to sight lines and noted Road and Transportation section satisfied with applicant's response to FI.
- On foot of legal advice and notwithstanding that proposal is for same development as previously permitted, can make a decision on the application.
- Recommend permission granted subject to conditions.

3.2.2. Other Technical Reports

Area Engineer – Report dated 8 May 2018 indicates no objection to the proposed development subject to conditions.

Area Engineer Transportation - Initial report requests further information, dated 16 May 2018. Report dated 11 January 2019 (following receipt of additional information) indicates no objection to the proposed development subject to conditions.

Water Services – Report dated 16 May 2018 indicates no objection to the proposed development subject to conditions.

Irish Water – Report dated 16 May 2018 indicates no objection to the proposed development subject to conditions.

3.3. **Third Party Observations**

Three third party observations objecting to the proposed development were received by the planning authority. Grounds of objection include:

- Traffic hazard – proposed entrance on a bend in the road offering limited visibility. Sight distances do not comply with National Roads Authority (NRA) recommendations.
- Heavy agricultural vehicles exiting onto public carriageway.
- Traffic movement plan indicated in the submitted documentation is unworkable.
- Discrepancy in the submitted drawings.
- Land ownership issue in relation to the grass verge in front of the site (red line boundary). Lack of agreement with owner of the verge/unwillingness to provide such agreement. Application site is landlocked as a result of previous subdivision of the landholding.
- Legal and procedural matters.

4.0 **Planning History**

- 4.1. **Reg. Ref. 15/8 (ABP-PL09.245691)** – Planning permission granted by An Bord Pleanála (March 2016) to Bank of Scotland PLC for the removal of part of the existing boundary fence to the local road (L6060) and the construction of a new setback entrance and gate for agricultural use including all site development works above and below ground.

- 4.2. **Reg. Ref. 14/708** – Application lodged with the planning authority on 14th, August 2014 (by Receiver), but subsequently WITHDRAWN for the removal of part of the existing boundary fence to the local road (L6060) and the construction of a new setback entrance and gate for agricultural use.
- 4.3. **UD 7026** – Warning Letter served by the planning authority in respect of the removal of part of the existing boundary fence to the Local Road (L6060) and the construction of a new agricultural entrance and internal agricultural roadway and the storage of a caravan on lands relating to the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

The site is within open countryside and is not zoned within the Kildare County Development Plan 2017-2023. There are no relevant designations that affect the subject holding. Kennycourt House a protected structure (Ref. B29-47) is located to the west of the site and is within a separate landholding. Policies relating to agriculture are set out in Section 10.5.2 of the Plan. Development standards in respect of access onto public roads is addressed in Section 17.7.3.

5.2. **Natural Heritage Designations**

- 5.2.1. None of relevance.

5.3. **EIA Screening**

- 5.3.1. Having regard to the nature and scale of the proposed development and to the nature and scale of the receiving environment 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.

6.0 The Appeal

6.1. Grounds of Appeal

- Substantial number of issues raised in submissions to PA by appellant and others which have not been given adequate consideration.
- Sightlines were not in compliance with safety regulatory requirements and not properly corrected in FI.
- Issue regarding sub-divisions of lands.
- High court proceedings in relation to Ref. 15/8 for a similar entrance ongoing.
- Unauthorised development of roads constructed from the entrance to barns and warehouses not given proper consideration by the Council.
- Sightlines cannot be achieved without third party consent.
- Failed to remove hazardous materials at entrance gate and on unauthorised driveway/road.
- Sightlines obstructed by trees.
- Sightline not removed in revised plans and are inadequate and cause a potential danger.

6.2. Applicant Response to Appeal

A response from the applicant was received on 13 March 2019 and is summarised as follows:

- Board should dismiss appeal on grounds it is frivolous and vexatious as appellant and husband former owners of the site and using planning process to frustrate ongoing agricultural use of the land by subsequent owners.
- Proposal is an agricultural entrance to ensure sizable area of agricultural land can be used for agricultural purposes and noted that there was a previous entrance to the north of the site with reinstatement of entrance to the lands facilitating its use.
- Almost identical development permitted under Ref. 15/8, which is subject of judicial review taken by appellant's husband, and was considered acceptable in terms of road safety including sightlines.

- Appellant seeking to transfer appellant status onto other parties by including their submissions with the appeal and request Board discount contents of submissions received from third parties who did not appeal the decision.
- Grounds of appeal are a list of documents submitted with no context provided and considered that just because PA did not accept a third parties contention on a given matter that the PA did not properly consider same.
- If Board sees fit to consider the appeal will respond to matters.
- Proposed sightlines appropriate considering nature of proposed development, volume and speed of traffic and proposed signage.
- Design of entrance prepared by appropriately qualified persons based on survey of the area and in compliance with TII Guidance.
- Appellants argue that sightlines inadequate but no evidence provided that they have relevant qualifications with no dimensions provided on aerial photograph.
- Noted by third parties that shrubs/trees planted to east of proposed entrance on adjoining grassed verge in last couple of months and given existing established hedgerow bounding the adjoining field the secondary planting considered a deliberate attempt to impede sightlines from proposed entrance.
- Proposal does not provide for the subdivision of lands providing an agricultural entrance to lands with ownership not a planning matter.
- Case brought by Mr. E McDermott outlined with same having no bearing on current application and reference is made to Section 34(13) of the Planning and Development Act 2000, as amended.
- Reference to damage to boundaries not relevant to subject application.
- Reference to hazardous material and internal roadway with reference to fly tipping, material not being hazardous, absence of action by Kildare County Council in respect of enforcement of matters outlined.
- Once access available temporary road removed and land reinstated, internal road not part of the subject application and any issues relating to unauthorised development more appropriately dealt with by the PA and not as part of an appeal.

6.3. Planning Authority Response to Appeal

A response from the planning authority dated 11 March 2019 states:

- The third party appeal appears to reiterate much of the information previously dealt with by the planning authority.
- A Warning Letter in respect of ongoing unauthorised development at the site issued to the landowner/developer in December 2017 (Enforcement File UD7026).
- The planning authority sought and received legal advice (in relation to legal matters raised by the Applicant) to the effect that a decision could be made in respect of the current application.
- The proposed development is considered to be acceptable, subject to conditions.

A separate report from the Roads, Transport & Public Department section dated 6 March 2019 (attached to above) states:

- As set out in the report dated 11 January 2019 no objection to the proposed development subject to additional signage, road markings, Stone Mastic Asphalt (SMA) surfacing being installed at the recessed entrance and Roads Safety Audits (RSAs) Stages 2 & 3 being carried out on the access/egress and approaches along the main road (L6060) with the proposed signage and marking being installed.
- Sight lines at the entrance must comply with the requirements of the Design Manual for Roads and Bridges (DMRB). This can be conditioned.
- The Department (in their assessment of the application) took account of the design report from AECOM Consulting Engineers, relatively low traffic volumes on the L6060 road, the existing speed limit of 50kph and the 85th percentile speed (average) of 40kph indicated in the results of the speed survey carried out on site.

6.4. Response from Applicant to PA Response to Appeal

A response from the applicant was received on 27 March 2019 and is summarised as follows:

- SEE's report notes the information that informed the decision, the relevant conditions and the evidence provided in respect of the speed limit on the L6060 as well as the average speed of travel as per the survey carried out with the PA

standing over the decision to grant permission and request PA decision is confirmed.

6.5. Response from PA to Applicants Response to Appeal

A response from the PA to the applicant's response to the third party appeal, dated 16 April 2019, is summarised as follows:

- Planning Department have no further comments.
- Transportation and Public Safety Section state the main comments from Department outlined in Roads Report of 11 January 2019 where there was no objection to the proposal subject to additional signage etc.
- Lines of sight at the entrance have to be in accordance with the DMRB and has been conditioned.
- Also took into account the design report from AECOM Consulting Engineers the low volumes of traffic, existing speed limit and average speed.
- No further comments to add.

6.6. Response from Appellant to Applicants Response to the Appeal

A response from the appellant to the applicant's response to the third party appeal, received on 17 April 2019, is summarised as follows:

- Aerial photograph referenced was taken following setting out of the three points of the signage distance triangle by professional surveyors with three high viz jackets used as makers.
- No qualification required to see that the sight line traverses the adjoining owners land to the north east on which trees have been planted thus obstructing the sightline a fact that can be verified by the applicants agent by carrying out the same survey and drone photograph.
- View of appellant that it would be illegal to curtail the adjoining owners property rights so as to resolve a mistake of gross negligence by the original lending authority's legal advisers in obtaining a mortgage over landlocked property with this mistake not of the adjoining owners doing nor is it a reason to grant permission.
- PA cannot be expected to grant permission simply to resolve a negligent charge over the property.

- While roadway not part of application, appellants opinion that it is unauthorised as Heritage Department of KCC not informed about necessary works to the farm buildings, works were never itemised and no deadline given for complete removal of the roadway.

7.0 **Assessment**

7.1. There are a number of matters to address in this case which I consider as follows:

- Principle of Development and Extant Permission
- Sight lines
- Unauthorised Development
- Appropriate Assessment

7.2. **Principle of Development and Extant Permission**

7.2.1. Prior to addressing the current proposal it is pertinent to point out to the Board that permission was granted on appeal by the Board (Ref. PL15/8 – PL09.245691) for a similar proposal. As outlined in the letter supporting the application to the Planning Authority on behalf of the applicant (dated 18th March 2019) the rationale for the subject application, which was submitted as per the design of the previously permitted development, is to secure permission for the same development, an agricultural entrance to access agricultural lands, in the name of the new owner of the lands. This it is stated would obviate any legal concerns raised in the Judicial Review proceedings taken against the Boards decision. There is reference in a number of the documents submitted to the legal proceedings against the previous decision. I would note however that the legal proceedings referred to in the documentation have concluded with 2016/256 JR stated to have been struck out on 9th July 2019. Therefore the permission granted by the Board for the agricultural access stands and therefore the principle of the development has been established and is in fact extant. While the further information submitted amends the entrance arrangement slightly to the permitted arrangement, there is no material difference in my opinion. The subject proposal therefore is simply another application for the same development for which there is an existing extant permission.

7.3. **Sight Lines**

7.3.1. There is much contention in the appeal documentation regarding the availability of appropriate sightlines for the proposed agricultural entrance. Firstly, as I note above,

permission has already been granted for the proposed development. I would also note that the extant permission provides for a setback 'x' distance of 2.4m which I note is less than the 4.5m proposed in the current application as provided for in the response to the further information. I would also note as referenced by the applicants agents that TII Standards (Table 5.4 of DN-GEO-03060) require a set-back 'x' distance of 3m and that for robustness a set-back 'x' distance of 4.5m is proposed in the further information response. From the latest drawing submitted at FI stage I would contend that the recent planting undertaken by a third party would not impede the visibility splay for the necessary setback. I have considered the revised access arrangement as submitted in response to the further information and together with the requirements of the Roads Departments in terms of signage I consider it is appropriate.

7.4. Unauthorised Development

- 7.4.1. Concerns have been expressed about a number of matters which the appellants state comprise unauthorised development. I would note that the Board has no role in enforcement matters and is solely concerned with the development to which the application relates which in this case is an agricultural entrance onto the public road. In this regard the matter of the consideration or otherwise by the PA of matters related to unauthorised development is not a relevant factor for the Board in this instance.

7.5. Appropriate Assessment

- 7.5.1. Having regard to nature and scale of the proposal which seeks to provide an agricultural entrance to an agricultural holding, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1.1. Given that there has been no material change in respect of the planning matters arising since the determination by the Board of the extant permission, I recommend that permission is granted for the proposal subject to the conditions outlined below.

9.0 Reasons and Considerations

9.1. Having regard to the nature, scale and use of the proposed entrance, the road type, speed limit and existing geometry at the subject site, the proposed signage and road markings, it is considered that the proposed development, which is for agricultural use only, would not be a traffic hazard and would be in keeping 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, as amended by the further plans and particulars submitted on the 23rd day of November 2018, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The proposed entrance shall be for agricultural use only.

Reason: In the interest of traffic safety and orderly development

3. Details of the finishes to the proposed splay entrance shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

4. The developer shall facilitate the planning authority in providing the proposed signage and road markings in accordance with the requirements of the planning authority. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

5. The group water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

Una Crosse

Senior Planning Inspector

August 2019