



An
Bord
Pleanála

Inspector's Report ABP-303700-19

Development	Retain entrance as provided and associated site works.
Location	Stillbrook, Mountrath, Co.Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	18/596
Applicant(s)	Patrick and Margaret Murphy.
Type of Application	Retention Permission
Planning Authority Decision	Grant Retention Permission
Type of Appeal	Third Party v Decision.
Appellant(s)	Karina Broughan.
Observer(s)	None.
Date of Site Inspection	21 st May 2019
Inspector	Susan McHugh

1.0 Site Location and Description

- 1.1. The appeal site is located on the western edge of Mountrath town centre, in County Laois.
- 1.2. It is located at the end of a private lane serving a number of houses that terminates with a gateway. Lands to the west of the gateway are in agricultural use. The access laneway serves four no. residences including that of the appellants.
- 1.3. The appeal site includes a recently constructed house with recessed entrance and is defined along the northern boundary by hedging and a raised grass verge.
- 1.4. A ditch runs along the laneway to the north west of the appeal site before diverting along the north east towards the Mountrath GAA Club before discharging to the Mountrath River to the east. The Mountrath River forms part of the River Barrow and River Nore SAC.
- 1.5. The site has a stated area of 0.179 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of the vehicular entrance and associated site works.
- 2.2. It comprises timber fencing either side of two stone faced pillars.
- 2.3. The entrance as constructed is located in the north eastern corner of the site, rather than centred along the northern boundary as permitted.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to **grant** retention permission 16th January 2019 subject to 2 conditions. The condition of relevance includes the following;

Condition 2: *'A surface water gully shall be constructed and completed, as detailed on the submission of 20th December 2018, within 12 weeks of the final grant of permission. The Planning Authority shall be notified in writing, with appropriate photographic evidence once the gully has been completed.'*

Reason: In the interests of orderly development.'

3.2. Planning Authority Reports

3.2.1. Planning Reports (dated 22/11/18 and 15/01/2019)

The planners report is the basis for the planning authority decision. It includes:

- The initial report which notes that a number of issues raised in third party submissions are non-related planning matters, and that the laneway is a private laneway and not a public road. A request for further information in relation to surface water drainage was sought.
- The final report notes the proposal to install a roadside gully and recommends permission subject to conditions.

3.2.2. Other Technical Reports

- **Roads Section:** Report recommends no objection.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

There were a number of submissions received from residents located at Derrycouch, Stillbrook including the following parties;

- Colin and Lynn Wallis
- Fiona Wallis
- David Wallis
- Ann Curran
- Karina Broughan

Issues raised can be summarised as follows;

- Raised embankment area, restricts surface water run-off from road and causes flooding,
- Request that the grass verge is removed and returned to its condition pre-2009 as illustrated in Google photo attached,
- Non-compliance with previous conditions under P.A. Reg. Ref. 16/23,
- Loss of car parking space and lane is now too narrow for two-way traffic,
- Civil Matters relating to location of a post box and collection of refuse bins.

4.0 Planning History

4.1. *Appeal Site*

P.A. Reg. Ref. 16/23 Permission granted 22/01/2016 to demolish existing agricultural structure and the provision of a new dormer dwelling house, new entrance and all associated and ancillary site works. (File attached)

Condition 2: Irish Water requirements.

Condition 3: Surface water run-off requirements.

Condition 8: Boundary, sight splays, and planting requirements.

Specifically, condition no. 8 states '*All areas forward of the sight splays, excepting access way, shall be grassed up to the metalled edge of the road. No wall, excepting the wing walls for the access, shall be erected as part of the boundary....*'

4.2. *Enforcement*

UD Ref. No. 18/41 Warning letter issued 16/05/2018 in relation to non-compliance with Conditions 1, 2, 3 and 8 of P.A. Reg. Ref. 16/23 and failure to comply with any exempted development provisions.

5.0 Policy and Context

5.1. **Laois County Development Plan 2017-2023**

The appeal site which is located inside the development boundary of Mountrath and is zoned '**Residential 1 Established**' '*To protect and enhance the amenity of developed residential communities*'. (See map attached).

5.2. Natural Heritage Designations

There are 5 Natura 2000 sites within 5km of the site including:

Description	Designation	Site Code	Distance
River Barrow and River Nore	SAC	002162	100m E
River Nore	SPA	004233	2.3km SW
Slieve Bloom Mountains	SAC	000412	5km N
Slieve Bloom Mountains	SPA	004160	3.5km N
Knockacoller Bog	SAC	002333	4.6km SW

5.3. EIA Screening

- 5.3.1. Having regard to the nature of the proposed entrance to be retained, the nature of the receiving environment, and proximity to the nearest sensitive location, 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

- 6.1.1. The Third-Party appeal against the planning authority's decision to grant retention permission is lodged by Karina Broughan, Derrycouch, Stillbrook, Mountrath, and was accompanied by the following;

- copy of Warning Letter issued to applicant;

- correspondence from the P.A. in relation to taking in charge;
- letters from residents not authorising any interference by the applicants of the common area;
- photographs of the subject lane and surface water run off;
- Engineers report prepared by Billy Kirwan Civil Engineer; and
- copies of submissions to the P.A.

6.1.2. The main grounds can be summarised as follows; (may need to expand here)

- *Condition No. 2* - The P.A. does not have the jurisdiction to attach a condition to which it does not have a charge over.
- The condition attached to the retention application does not address the flooding/pooling/ponding of water that currently occurs on the road and the adjoining property.
- A reasonable cost-effective proposal put forward to remove the top soil dumped by the applicants has not been given appropriate weight in considering a planning resolution to the matter.
- The verge area and/or the matter referred to as civil matters by the P.A. are part of the planning application due to the condition suggested by the P.A. Whilst matters can be resolved through civil procedures they can also be resolved through planning applications, as it was through unauthorised developments that the issue arose in the first place.
- The P.A. has a duty of care to the common ground users with easement rights to the pull in area and to road users. The acts of the P.A. in imposing a condition to develop a gully area and its omission to direct the removal of topsoil creates that duty of care.

6.2. Applicant Response

A response to the appeal was lodged by Kilmartin Design Services on behalf of the applicant, which can be summarised as follows;

- The subject laneway is a common area with no legally registered owners. Provision of topsoil to an area, which has always been a grass margin does not inhibit or restrict the use of same. Reference to other prohibitive measures provided by some of the other dwelling owners along the laneway to restrict/prevent traffic from driving on the grass margins not referenced by the appellants.
- Proposal to provide a storm water gulley as per response to further information is the most effective way to remove surface water from this area and was acceptable to the P.A.
- Surface water ponding has historically been an issue in this general area.
- Disputes that the provision of topsoil to the grass margin inhibits vehicles using this area as a 'lay-by'.
- Disputes that a health and safety issue arise from refuse bin collection, with the area inside the gate formerly used for bin collection.
- Asserts that the previous location of the post box in itself restricts the use of the area as a lay by for traffic to pass.
- Contend that many of the issues raised are no relevant to the current application and are unrelated to planning matters.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

7.0 **Assessment**

- 7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings;

- Surface Water Drainage/Flooding
- Traffic Safety
- Other Matters
- Appropriate Assessment

- 7.1.1. I refer the Boards attention to the previous history on the site under P.A. Reg. Ref. 16/23, whereby permission was granted for a dwelling house and vehicular entrance from the laneway. The current application for retention relates to the retention of a vehicular entrance in a revised location to that permitted and was consequently subject to enforcement for non-compliance with conditions of the permitted development.
- 7.1.2. My assessment therefore, will focus on the current proposal for retention on its own merits.

7.2. Surface Water Drainage/Flooding

- 7.2.1. The appellant has raised concern in relation to surface water run off along the lane and specifically to condition no. 2 of the grant of permission for retention of the revised entrance which refers to the construction of a surface water gully.
- 7.2.2. The appellants note that there have been issues in relation to surface water ponding along the laneway and assert that the grass verge levels which was raised with topsoil has contributed to the problem. It is asserted that the removal of the topsoil will resolve the issue.
- 7.2.3. The issue of surface water ponding/pooling was raised in submissions received by the P.A. which were accompanied by photographs illustrating the issue. The P.A. requested further information to address the matter.
- 7.2.4. In response Site Layout Plan Drawing No.15-86-001/18 dated 20th December 2018 was submitted which indicates the provision of a new road gully in the grass margin to road edge to collect surface water. This is located along the northern boundary of the site. It will comprise a 150mm diameter uPVC pipe to discharge water from the collection gully to the existing watercourse/stream adjacent to the existing gateway.

- 7.2.5. The Roads section of the P.A. notes that the road in question has not been taken in charge by the planning authority and has no objections to the proposal.
- 7.2.6. On the day of my site inspection I noted the location of the existing drainage ditch which runs along the laneway to the north west of the appeal site. As already noted this drainage ditch then diverts along the north east towards the Mountrath GAA Club before discharging to the Mountrath River to the east. Having reviewed the OPW flood risk maps, the subject site is not located within an area identified at risk of flooding.
- 7.2.7. I am satisfied that the attachment of condition No. 2 which requires certain works to be carried out with a specific time period is a reasonable solution and sufficient in addressing the concerns of the appellants.
- 7.2.8. I see no necessity in requiring the applicant to lower the site levels of the grass verge along the northern boundary of the site as requested by the appellants on the basis that the grass verge is substantially in compliance with condition no. 8 of the permitted development under P.A. Reg. Ref. 16/23. In my opinion the changes in levels are relatively minor.
- 7.2.9. I also note that the area within which the grass verge is located is included within the red line boundary of the site subject of the previous and current application, and in my opinion it is entirely appropriate therefore, to attach conditions relating to this area.
- 7.2.10. I am satisfied therefore, that the proposals in relation to surface water drainage are acceptable and that the appeal should not be upheld in relation to the issue of inadequate drainage.

7.3. Traffic Safety

- 7.3.1. The appellant has raised concern in relation to traffic safety along the lane and notes that four houses west of the gateway includes two working farms and an emergency on call vet. They also refer to the narrow width of the laneway for two cars to pass.
- 7.3.2. I note that the vehicular entrance subject of the current application for retention is located further away from the gate across the laneway than that permitted in the

previous permission. The Roads section of the P.A. has no objections to the proposal.

- 7.3.3. I also note that each house along the private laneway includes a driveway and parking area. There is also a grass verge on either side of the gateway which allows room for vehicles to pull in if and when necessary.
- 7.3.4. I am satisfied therefore, that the location and design of the vehicular entrance to be retained is acceptable and that the appeal should not be upheld in relation to the issue of traffic safety.

7.4. **Other Matters**

- 7.4.1. *Enforcement/non-compliance with conditions* – I would note that the Board has no role in relation to enforcement matters.
- 7.4.2. *Civil Matters* - A number of issues raised in the appeal relating to the location of the post box and the storage of refuse bins are considered either non-material or non-planning related matters.

7.5. **Appropriate Assessment**

- 7.5.1. Having regard to the nature and scale of development proposed for retention and to the nature of the receiving environment, namely a fully serviced location, no appropriate assessment issues arise, and it is not considered that the development proposed for retention 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 **granted** for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the location and zoning objectives pertaining to the site of the development, the pattern of development in the area, the design and layout of the

development proposed for retention, it is considered that, subject to compliance with the conditions set out below, the development for which retention is sought would not seriously injure the amenities of the area or of property in the vicinity, would not lead to a risk of flooding, and would, therefore, not be contrary to the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 20th December 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 particular

Reason: In the interest of clarity.

2. A surface water gully shall be constructed and completed, as detailed on the submission of 20th December 2018, within 12 weeks of the final grant of permission. The Planning Authority shall be notified in writing, with appropriate photographic evidence once the gully has been completed.'

Reason: To prevent flooding and to protect the amenities of adjoining properties.

Susan McHugh
Planning Inspectorate

10th May 2019