



An  
Bord  
Pleanála

## Inspector's Report ABP 303835-19.

---

<b>Development</b>	Retention of existing agricultural entrance and permission for alteration to and widening of entrance.
<b>Location</b>	Kiltrellig, Kilbaha, Kilrush, Co. Clare.
<b>Planning Authority</b>	Clare County Council
<b>P. A. Reg. Ref.</b>	189 78
<b>Applicant(s)</b>	Eoin Gibson
<b>Type of Application</b>	Permission for Retention and Permission.
<b>Decision</b>	Grant Permission for Retention and Permission.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Margaret and Henry Kennaugh.
<b>Date of Site Inspection</b>	May, 2019.
<b>Inspector</b>	Jane Dennehy

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	4
3.1. Decision .....	4
3.2. Planning Authority Reports .....	4
3.4. Third Party Observations .....	4
4.0 Planning History.....	4
5.0 Policy Context.....	6
5.1. Development Plan.....	6
6.0 The Appeal .....	7
6.1. Grounds of Appeal .....	7
6.2. Applicant Response .....	9
6.3. Planning Authority Response.....	10
6.4. Observations.....	10
7.0 Assessment.....	11
8.0 Recommendation.....	<b>Error! Bookmark not defined.</b>
9.0 Reasons and Considerations.....	<b>Error! Bookmark not defined.</b>
10.0 Conditions .....	<b>Error! Bookmark not defined.</b>

## 1.0 Site Location and Description

- 1.1. The site is located to the south of the R487 a short distance from Kilbaha on the Loop Head peninsula in south west County Clare.
- 1.1.1. There is a dwelling located at the road frontage, to the rear of which there is hardstanding and agricultural buildings and sheds. The area in use as the yard in which buildings and sheds and storage are located appears to have been extended into the adjoining farmlands over time.
- 1.1.2. The entrance, the retention and completion of which is subject of the application and appeal is to the south west side of the original main entrance in which opens onto the farmyard. There is a farm track and entrance at the north eastern end of the farmyard frontage, a gated entrance to the south west side of the dwelling to the front of which there is a 'pull in' area at the side of the road.
- 1.1.3. A single storey dwelling, a farmyard and sheds are also located opposite, on the other side of the R487 to which there is direct access from the road frontage.
- 1.1.4. The landscape is an open rural coastal landscape which is relatively flat. Along the R487 as far as Kilkee there are farm buildings, cottages and single road frontage one and two storey dwellings of relatively recent construction. From the area in which the site is located there are views towards Kilbaha Bay.

## 2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposal for permission for retention of the existing entrance, which according to the application was opened circa fifteen years ago and proposals for permission to upgrade and widen it. It is stated in the application that the proposed development is more suitable from a safety perspective for all road users and as an entrance to the farmyard. The proposal includes provision for new splayed stone walls to each side and a gate.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated, 31<sup>st</sup> January, 2019 the planning authority decided to grant permission for the proposed development on grounds that it would not be injurious to amenities in the area and would be acceptable in terms of traffic safety.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planning officer indicated satisfaction with the proposed development based on the reasoning attached to the decision to grant permission.

Under condition No 2 (a) there is a requirement for modification proposed for the boundary wall on the north east side to be implemented within three months of the date of the (final) grant of permission.

#### 3.2.2. Other Technical Reports

The report of the **Area Engineer** indicates acceptance of the proposed development along with confirmation that sightlines of sufficient distance can be achieved subject to removal of shrubs in front of the stone wall along the frontage. It is also stated that the section of the road where the entrance is located is lightly trafficked.

#### 3.2.3. Third Party Observations

In the submission from the Observer Party objections include remarks on the original entrance, and concerns about nature and intensification of use, deficiencies in the alignment of the public road and sightlines in either direction at the entrance, visual impact on the designated scenic route and, potential precedent for further similar development. Fuller details are available under The Appeal (Section 6 below.)

## 4.0 Planning History

4.1. **P. A. Reg. Ref. 189/77 / PL 303845:** There is a concurrent application and third-party appeal, (against a decision to grant permission) in respect of a proposal for retention of an agricultural storage shed which is before the Board at present.

- 4.2. **P. A. Reg. Ref. 15/501/ PL 245604:** The planning authority decision to grant permission for retention of a steel frame and timber purlins for an agricultural storage shed and permission for completion was overturned following third party appeal based on the following reason:

*“The subject site is located within a sensitive, open and exposed landscape, on a designated scenic route on the Loop Head peninsula, and adjacent to a designated Heritage landscape. It is considered that the agricultural need for the scale and extent of the development proposed to be retained and completed has not been demonstrated in terms of serving this landholding, and having regard to its height, bulk and mass, it is therefore considered that in the absence of such justification the development would seriously injure the visual amenities of this area, would interfere with the character of the landscape which it is necessary to preserve, and accordingly would contravene Objective 16.6 (scenic routes) of the Clare County Development Plan 2011 – 2017, as varied, which seeks to protect sensitive areas from inappropriate development. The development proposed to be retained and completed would, therefore, be contrary to the proper planning and development of the area.”*

- 4.3. **RL 3513/ P. A. Reg. Ref. 16 73:** Further to Referral of a Section 5 Declaration issued by the planning authority, the Board determined that (a) the construction of an agricultural shed in excess of 300 square metres (in area), located on a sensitive open and exposed landscape on a designated scenic route on the Loop Head peninsula and adjacent to a designated Heritage Landscape is development is not exempted development and, (b) the said access to the shed via an entrance from the R 487 at Kiltrellig, Kilbaha is development is and is not exempt development.
- 4.4. There are prior successful applications for permission for livestock housing, details of which are in the planning officer’s report. ( P. A. Reg. Refs 08/1197, 02/1183 and 97/163 refer.)
- 4.5. The planning officer in his report also notes an application by Peter Gibson for an agricultural slatted cubicle unit on lands circa fifty metres to the north of the application site at an existing farmyard complex. (P. A. Reg. Ref. 19/27 refers)

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. The operative development plan is the Clare County Development Plan, 2017-2023.

5.1.2. The site location is within an a “Settled Landscape” and according to Objective 13.2, it is the policy of the planning authority to permit development in ‘settled landscapes’;

- that sustain and enhance quality of life and residential amenity and which promotes economic activity subject to conformity with the CDP provisions,
- that has appropriate site selection with regard to landscape, minimisation of visual impacts and avoidance of intrusion on scenic routes, ridges or shore lines.
- that demonstrates avoidance of selection of prominent site locations, to avail of existing topography and vegetation in reducing viability from walking trails, water bodies and public amenities and roads and
- that has design that reduces visual impact by careful choice of form finishes and colours and involves site works that reduces visual impact.

5.1.3. The R 487 is a designated Scenic Route (No7) According to Objective 13.7 it is an objective of Clare County Council:

- a) To protect sensitive areas from inappropriate development while providing for development and change that will benefit the rural community;
- b) To ensure that proposed developments take into consideration their effects on views from the public road towards scenic features or areas and are designed and located to minimise their impact;
- c) To ensure that appropriate standards of location, siting, design, finishing and landscaping are achieved.

5.1.4. Guidance and standards for development proposals for provision for sightlines at entrances are provided in Appendix 1. (A1 1.9.2) Guidance and standards for agricultural development are provided in Appendix 1 A1.11 Guidance and standards for development proposals on designated for Scenic Routes are in Appendix 5.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

An appeal was received from Downey Planning on behalf of the appellant on 27<sup>th</sup> February, 2019. The appellant party's property is to the west of the application site, but the main place of residence is on the Ilse of Mann. The appeal is considerable in length and includes copies of folio documentation, and a copy of a statement prepared and technical drawings to indicate obstruction of sightlines from setbacks of 2.4 and 2 metres at the entrance by NRB Consulting Engineers in connection with the current application, with reference to the prior Section 5 Declaration request under P. A. Reg. Ref. 16 -73 / RL3513.

According to the appeal:

- The applicant failed to provide a letter of consent from the rightful owners of the land, so the application should have been invalidated. (Folio documentation is provided.) The landownership details are dubious.
- Given the enforcement history, the planning authority should have pursued a conviction as a matter of urgency.
- The application lacks details of sightlines and consent to the provision of sight lines, evidence that turning at the entrance can be achieved and of quantum of movements which it is contended are significant.
- The increase in use of the entrance, stated to have been opened circa fifteen years ago has occurred over the last four years and has arisen due to unauthorised use of an agricultural shed for commercial purposes. The R487 is relative narrow and of single vehicle width. Traffic is not light on the R487 and is increasing significantly owing to the Wild Atlantic Way designation and the route to the Loop Pead Lighthouse and peninsula.
- The planning authority's assessment for the Section 5 declaration indicates serious concern about inadequate turning movements for large vehicles and concluded that it endangers public reason by reason of traffic hazard and obstruction of other road users. It is clearly an unauthorised access and it has continued in existence in spite of a first Warning letter being used four years

ago. A more appropriate location for an entrance involving the current intensity of use is to the east of the farmyard.

- The application lacks an assessment of the impact on oncoming traffic and impact on traffic in the vicinity. Traffic exiting the entrance cannot turn right so it turns at a location to the other side of the appellant's property. The assessment by NRB consulting engineers indicates the necessity for large vehicles to reverse onto the road whereas the application provides no details of capacity for turning or of sightlines that can be achieved.
- Another application for a slatted cubic unit fifty metres to north east in the name of Peter Gibson appears to relate to the same farmlands and entrance (P. A. Reg. Ref. 19/27 refers) If permitted, this development will increase the intensity of use.
- The required sightlines at the entrance cannot be achieved as is demonstrated in the documents provided by NRB consultants. It is not clear from the application if the site layout plan provides for a 2.4 metre setback in creating the envelope of visibility to either side of the centre line of the entrance. It is also not clear what proportion of the stone wall needs to be removed.
- Required sightlines according to Appendix A 1.9.2 of the CDP provides for a formula for the required sight distance of 160 metres for the location within the 80 kph maximum speed with the *Design Manual for Roads and Bridges* providing standard criteria for visibility splays. The survey provided with the appeal shows that sightlines are not available, with two different "X" distances, (2.4 and 2 metres) although the minimum is three metres for a minor access on all road types.
- The reduced two metres setback is not appropriate given the nature of vehicles using the entrance. There is a utility pole, boundary wall and building blocking the sightline in both horizontal and vertical planes. The entrance is also essentially a double entrance adjacent to an adjoining landholding exacerbating safety concerns. (Some photographs are provided in the submission.) The Council's Area Engineer's report does not include measurements or details of required minimum distances and the applicant



does not have the permission to remove the shrubs and bushes referred to in the report which would be required.

- The need, and justification for a second entrance for a “small dairy farm” has not been demonstrated. The need is to serve a contracting operation that is not connected with the dairy farm and this is further proven by the application under P. A. Reg. Ref. 19/27 in the name of the applicant’s brother.
- The proposed development including the wide steel cantilever gate is an intrusion on scenic routes designated in the CDP with the objective for protection and conservation of views of high amenity value the entrance being an additional entrance to two existing entrances on the farm. The elevation of the gate in the application is misleading and a contiguous elevation is required. The R487 is designated Scenic Route 17.

## 6.2. Applicant Response

6.2.1. A submission was received from HRA Planning on behalf the applicant on 1<sup>st</sup> April, 2019 according to which there are inaccuracies in the appeal. According to the submission:

- The appellant is relying on a Section 5 Referral determination which does not represent previous assessment of the development. The details in the current application are materially different differ from the details subject of the Section 5 Declaration.
- The proposed development accords with the provisions of the CDP.
- The proposed development is essential to the operation and improvement of the existing established farm operation. The existing entrance is inadequate, and the proposed entrance will provide for easier vehicular access for the milk collection tanker accessing the milk storage facility and farm machinery. The improvements will enhance safety of movement of livestock, facilitate discontinuation of parking on the roadside of milk tankers and farm vehicles and prevent negative interaction with the increased traffic, including tourist traffic. The proposed development therefore reduces rather than, as

contended in the appeal, increases serious traffic hazard and provides for an improved traffic safety arrangement on the public road.

- The adjoining field access to the west side is infrequently used.
- The vertical and horizontal alignment at the entrance facilities clear unobstructed vision in excess of 150 metres in each direction along the Regional Route.
- The traffic assessment undertaken by the local authority confirms that minimum sight distances are achievable, and it accepted the proposal for alterations and setback of the front boundary.
- The proposed development is not in conflict with the development plan's policy objective 13.7 (Scenic Routes) as there is no immediate feature of viewpoint of landscape sensitivity in front of the site. The proposed development has no likely visual effect on the quality and character of the landscape or the scenic route having regard to the established activity, landscape capacity and landscape character and categorisation (Settled Landscape.)

6.2.2. It is also stated that the contentions in the appeal as to inaccurate application details and as to legal interest are rejected.

### 6.3. **Planning Authority Response**

6.3.1. A submission was received from the planning authority on 28th March, 2019 in which it is confirmed that the proposed development is considered acceptable by the planning authority.

### 6.4. **Observations**

6.4.1. An observation was lodged by the appellant party and the concerns raised in the submission are similar to those outlined under para. 6.1 below. "The Appeal".

## 7.0 Assessment

7.1. There appeals against the decisions to grant permission and permission for retention for the current application and concurrent application relating to the proposed entrance under P. A. Reg. 18977/PL 303835 are clearly distinct but there is some overlap in the issues raised.

7.2. The contentions in the appeal about validity, and unauthorised development are briefly addressed first below under “Ownership and Title” and “Unauthorised Development”. The planning issues raised in the appeal central to the determination of the decision on the proposed retention and completion of the entrance on the R487 are then considered which are followed by environmental impact assessment and appropriate assessment considerations. They are:

Traffic Safety and design and layout of proposed entrance.

Impact on the Designated Scenic Route, R487.

Impact on residential amenities.

Environmental Impact Assessment

Appropriate Assessment

### 7.3. Ownership and Title.

7.3.1. The appellant asserts that the applicant does not have the legal interest that entitles him to lodge the application and that the application is therefore invalid. It is claimed that Mary and John Gibson who submitted the prior application and section 5 Declaration request and are the Title holders. It is noted that the planning authority is satisfied as to the validity of the application, that the landholding is a family landholding and, that the applicant’s parents and siblings reside in the immediate vicinity. A grant of permission, as provided for under section 34.13 of the Planning and Development Act, 2000, as amended, does not provide for entitlement to implement a grant of permission. It would be open to the appellant party to seek resolution of the matter through the legal system.

### 7.4. Unauthorised Use.

7.4.1. There is considerable emphasis within the appeal on the contention that the nature of use at the application site is not confined to use related to agriculture and that the

site and the entrance subject of the application are also in unauthorised commercial use, the commercial use contributing turning movements by commercial vehicles in and out of the entrance. Follow-up on contentions as to unauthorised commercial use unrelated to the farm holding and possible investigation would be a matter for the planning authority within its remit relating to enforcement.

#### **7.5. Traffic Safety and design and layout of proposed entrance.**

- 7.5.1. Whereas vision in each direction along the R487 in each direction is relatively unobstructed due to good alignment, the carriageway width is restricted, there being a single unbroken white line along the centre. In addition to the entrance subject of the application, there is the original entrance which is stated to be unused and a further entrance at the northern end of the site frontage and a pull in space in front of the dwelling. There is also an entrance to the dwelling and to the farmyard buildings opposite the site and another minor road directly opposite the entrance subject of the concurrent application. Thus, there are several entrances within a short distance.
- 7.5.2. It is agreed with the Appellant that frequent use of the entrance subject of the application by large vehicles of a commercial or industrial nature, if reliant on the public road space for turning, is unacceptable for reasons of intensity of use and obstruction of the safe and free flow of traffic on the regional route and vehicular and pedestrian safety. However, it is agreed with the applicant and planning officer that, subject to use of the entrance being in connection with the agricultural use of the farmyard, the completion of the construction of the entrance to acceptable technical standards leading to significant improvements facilitating large vehicle manoeuvres thus addressing vehicular safety and avoidance of obstruction of traffic on the R487 can be achieved.
- 7.5.3. However, it is also considered advisable, that use of the other entrances for access/egress from the farmyard onto the R487 should be discontinued and blocked up so that use of more than one entrance can be avoided this facilitating the improved traffic conditions that would be provided for by the entrance proposed for retention and completion. In this regard, it should be noted that there is concern about the entrance at the north eastern end of the site frontage, not shown on the site layout plan that provides access to the applicant's lands adjacent to the northern side of the farmyard in addition to the existing cottage entrance and farm gate

entrance the retention of which is indicated on the plans which is to the south side of the proposed entrance. Should the proposed development be considered favourably, it may be advisable to ascertain the applicant's willingness by way of a section 131 notification to agree to close up the existing entrances so that all movements are directed through the proposed entrance.

7.5.4. The appellant has correctly drawn attention to a telecommunications pole to the south west of the entrance but, having regard to the design for the proposed entrance, it is not considered that vision to the south west would be unduly obstructed by it. The appellant's concerns that the height of the stone walls is a potential obstruction can be addressed by condition.

#### **7.6. Impact on the Designated Scenic Route, R487.**

7.6.1. The appellant party's concerns as to the visual impact of the proposed entrance on the scenic route and landscape which is an open, exposed landscape is noted. It is considered that the proposed entrance, given the width in conjunction with the gate, as well as its design, and loss of original boundary treatment incurs loss of road frontage that is a characteristic feature in the rural coastal landscape. Nevertheless, the adverse negative impact and is visible at a low height from a very confined area within the public realm along the R487, the designated 'scenic route' but it is recommended, in order to minimise the visual impact, the gate should be in black in colour. This can be provided for by condition. While undesirable in terms of visual impact, in the views from within the immediate environs, it does not adversely impact on views over the coastal landscape southwards.

#### **7.7. Impact on residential amenities.**

7.7.1. The appellant party's property is located a short distance to the south west of the site of the proposed development. It is apparent that the farmyard space has expanded and overlapped into adjoining fields to which the proposed shed for retention is a further addition. The use of machinery, storage and existing slatted shed as animal housing may impact somewhat on the amenities of the appellant's property but it is not accepted that the use of the entrance, if suitably completed to provide adequate access for all vehicles related to the agriculture and the use of the farmyard would cause a significant increase in adverse impact. It is not reasonable the extent and

scope for protection of residential amenities should be comparable to those which might be expected for dwellings within residential areas in urban locations.

#### **7.8. Environmental Impact Assessment.**

- 7.8.1. Having regard to the nature of the proposed development and its brownfield, serviced town centre location removed from any sensitive locations or features, there is no real likelihood of significant adverse effects on the environment. The need for environmental impact assessment can therefore be excluded at preliminary examination and a screening determination is not required.

#### **7.9. Appropriate Assessment.**

- 7.9.1. Having regard to the scale and nature of the proposed development and to the brownfield, serviced town centre location removed from any European Sites no Appropriate Assessment issues arise. The proposed development would not 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. In view of the foregoing, it is recommended that permission for retention be granted and that the appeal be rejected. Draft reasons and considerations and conditions which include under Condition 2(e) a requirement for permanent closure of the other entrances which provide for access to the farmyard as discussed in para 7.5.3 above.

### **9.0 Reasons and Considerations**

- 9.1. Having regard to the rural coastal location within the Loop Head peninsula in an area designated as “settled landscape” and, the designation of the R487 as a scenic landscape within the Clare County Development Plan, 2017-.2023; to the design and configuration of the entrance to the farmyard proposed for retention and completion, and to the proposed use for access and egress in connection with the agricultural use of the farmyard, it is considered that the proposed development would not unduly obstruct vehicular pedestrian movement on the R487 and endanger public safety by reason of traffic hazard would not be visually intrusive in the landscape, or

interfere with the protected views from the R 487, would not seriously injure the residential amenities of adjoining properties or the amenities of the area and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application on 29<sup>th</sup> November, 2018 except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The completion of the construction of the entrance shall be carried out within three months of the date of the grant of permission and shall incorporate the following requirements.
  - (a) The road frontage boundary shall be modified in accordance with the details shown on the site layout plan submitted to the planning authority on 29<sup>th</sup> November, 2018.
  - (b) The splay walls shall be finished in local natural stone on the side facing toward the public road.
  - (c) The colour for the gate to be installed at the entrance shall be black and shall maintained in good condition.
  - (d) The gate to be installed at the entrance shall be a siding gate or inward opening only.
  - (e) The existing entrance to the farm track and farm holding to the north east side of the existing dwelling shall be not be used and shall be closed up on a permanent basis.

Prior to the commencement of the development the applicant shall submit and agree in writing, fully annotated plan, section and elevation drawings

with the planning authority. Within three months of the date of the order, the applicant shall submit photographs of the completed development to the planning authority.

**Reason:** In the interest of clarity and orderly development, and the visual and rural and residential amenities of the area.

3. All surface water generated shall be collected and disposed of within the curtilage of the site. No surface water from paved areas or otherwise shall discharge onto the public road or adjoining properties.

**Reason.** In the interest of clarity and orderly development and the amenities of the area.

**Jane Dennehy**

**Senior Planning Inspector**

**6<sup>th</sup> June, 2019.**