



An
Bord
Pleanála

Inspector's Report ABP 303904 -19

Development	Retention of entrance constructed as an access to house constructed under P. A. Reg. Ref.08/293 and 07/2307.
Location	Park East, Co. Galway.
Planning Authority	Galway County Council.
P. A. Reg. Ref.	18/878.
Applicant	Seamus O'Ceidigh
Type of Application	Permission for Retention
Decision	Grant Permission for Retention.
Type of Appeal	Third Party
Appellant	Siobhain Ni Cheidigh
Date of Site Inspection	7 th May 2019.
Inspector	Jane Dennehy

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1.0 Site Location and Description

1.1. The application site at Park East for which permission for retention of the entrance as constructed is sought is located on the R336 a short distance to the west of Furbo and east of Spiddeal. There is a recently constructed dwelling on the site which it is stated in the application is in use as the applicant's family home. Another dwelling on the adjoining site to the west side of the site is the family home of the appellant party. The two properties have abutting entrances opening onto the road frontage of the R336 and there is a second vehicular entrance for the appellant's property at the eastern end of the site frontage to that property. At the time of inspection, it was noted that construction of the dwelling on the site was complete and there was no evidence of construction related vehicles at the site and the entrance.

2.0 Proposed Development

- 2.1. The application lodged with the planning authority indicates proposals for Permission for Retention of the entrance which was constructed as an access to house that has been constructed under grants of permission under P. A. Reg. Ref.08/293 and 07/2307 which do not include provision for creation of a new entrance.
- 2.2. The planning officer in his report recommends that a request for additional information be issued seeking a longitudinal section drawing through the site to show visibility distances and a photographic survey in order to establish if the sightline shown on the site layout map are achievable. A further information submission was lodged on 18th January, 2019 comprising photographs and a site layout plan with an accompanying statement from the applicant. It is stated that a maximum speed of 60 kph applies, that sightlines to the west at 86.0 metres, at 1.05 metres above the level at the access to the site level can be achieved with sightlines at 215 metres at 1.05 metres above the finished level of the entrance and set back by 2.4 metres is achievable.

3.0 Planning Authority Decision

3.1. Decision.

By order dated, 12th February, 2019 the planning authority decided to grant permission for retention subject to four conditions all of which are of a standard nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer indicated a recommendation that a request for additional information be issued having regard to the requirements of the Roads and Transportation Department the report of which is referred to below.

3.2.2. Other Technical Reports

The internal report of the Roads and Transportation Department indicates a recommendation for further information. According to the report:

“The applicant is requested to substantiate the achievability of the sight visibility distances demonstrated on the site layout map submitted by way of furnishing a photographic survey through the said visibility distances and longitudinal section through the sight visibility distances and to thereafter submit same for consideration on the planning authority.”

3.3. Prescribed Bodies

Transportation Infrastructure Ireland (TII) confirms in its submission that it has no observations on the application and appeal.

3.4. Third Party Observations

An observation was submitted to the planning authority by the appellant party who indicates concerns about the volume and range of vehicles using the proposed entrance and that this causes traffic hazard at the entrance to her adjoining property. which is adjacent to the entrance to her property

4.0 Planning History

- 4.1. Permission was granted to Mrs R. Keady for the dwelling house at the application site under P. A. Reg. Refs. 08/293 and 07/2307.

P. A. Reg. Ref. 17/780: This is a prior application for Permission for Retention of entrance constructed as an access to the house constructed under P. A. Reg. Ref.08/293 and 07/2307. A request for additional information was issued in connection with the location of the entrance and the application was subsequently withdrawn prior to determination of a decision.

5.0 Policy Context

5.1. Development Plan

The operative development plan is the Galway County Development Plan, 2015-2021

Policy Objective T1 6 provides for the protection of the capacity and safety of the national and strategically important regional road network and provides for ensuring the compliance with the 2012 Guidelines in this regard. The objective confirms that it will not normally permit development with direct access or intensification of traffic from existing accesses on the national primary and secondary roads outside the 50 to 60 kph zones of villages and towns.

6.0 The Appeal

6.1. Grounds of Appeal

An appeal was received from Siobhain Ni Cheidigh on her own behalf on 11th March, 2019 attached to which are photographs and a written statement dated, 23rd October, 2007 issued by Ms Ni Cheidigh to the applicant. Ms Ni Cheidigh states that she resides at the property adjoining the application site and that the entrance to her property and the entrance to the property on the application are side by side. She states that she withdraws her consent to the use of the entrance to her property that was provided for in the application for which permission was granted for the

development on the application site under P. A. Reg. Ref. 07/2307. According to the appeal:

- The proposed development has resulted in use of the entrance of the appellant's property being hazardous.
- As there is no degree of separation between the two entrances the proposed entrance is not in accordance with the standards in TII Geometric Design of Junction DN-GEO-03060 (2017) or the CDP. This is particularly important because traffic is generated at the proposed entrance which includes large vehicles and trailers involving 'blind spots' whereby a driver may be unaware of causing an accident. Sightlines are also compromised at the entrance to the appellant's property by the considerable amount of vehicles using the proposed entrance, some of which cross over the entrance area of the appellant's property. The use of the proposed entrance by many wide range of vehicles is causing major safety issues. In addition, the noise of this traffic affects the amenities of the appellant's property.
- Relocation of the entrance to the west by eight metres, (as recommended in the additional information request) would be feasible and would reduce the safety risk. It is requested that the applicant, be required by condition to relocate the entrance eight metres to the west.
- It is requested that the applicant also be required by condition to maintain hedging and shrubs at a minimum eight because vehicles accessing the appeal site pass along the side boundary and could sway dangerously possibly causing the loads to fall into the applicant's back garden.
- The appellant confirms in the submission that she has withdrawn consent (previously given, prior to the commencement of works by the applicant) to sharing the entrance to her property because of the safety concerns and other issues. Reference is also made to the Enforcement Notice issued to the applicant by the planning authority.

6.2. Applicant Response

A submission was received from Stephen Dowds on behalf of the applicant on 8th April, 2019. According to the submission:

- The dwelling occupied by the applicant was previously owned and occupied by Mrs Keady, to whom permission was granted under P. A. Reg. Ref. 07/2307. The applicant in respect of the current application is Mrs Keady's son and the Appellant is Mrs Keady's daughter. There was an agreement that the two properties be served by the entrance which serves the Appellant's property. Under Condition No 2 of the grant of permission under P. A. Reg. Ref. 07/2307 there is a requirement for layout and access arrangements to accord with a revised site layout map lodged in the further information submission. Documentary evidence and copies of the planning application documentation are attached to the appeal in appendices.
- The original grant of permission is therefore dependant on an "non-binding" agreement with the appellant and it is unfortunate that the appellant has now withdrawn the agreement.
- The appeal is vexatious, and it should be dismissed because:
 - The appellant's claim that the location of the entrance (subject of the application) is hazardous has resulted from her decision to create the problem by withdrawing from the original agreement on the shared access for the two properties.
 - The photographs provided with the appeal were taken at a time when the house was being built on the site, so construction traffic was on the site, a boat trailer owned and used by the applicant and stored at the site during winter being the exception. Parked cars in the photographs belonged to people attending a party at the house.
 - There are two vehicular entrances serving the appellant's property and available to the appellant for her use.
- The proposed entrance is at the position of a former agricultural access and it at the best location, nearest to the east on the site frontage because sight lines to the west are limited. It is not practicable to relocate the entrance eight

metres to the west as sought in the appeal and considered in connection with the prior, withdrawn application under P. A. Reg. Ref. 17/780.

- The contention in the appeal as to major increase in HGV traffic and hazard and noise and dust is rejected as the entrance is only used as a domestic entrance to the house.
- The references in the appeal to TII Geometric Design of Junctions DN-GEO-03060 (2017) and CDP as they contain no references to standard minimum distances between entrances, just some detail on access onto national routes.

It is stated in the submission that the applicant would have no objection to acceptance of a condition with a requirement for maintenance of hedges.

6.3. Planning Authority Response

There is no submission on file from the planning authority.

7.0 Assessment

7.1. Further to review of the documentation available in connection with the prior applications for the development of the dwelling for which permission was granted and taken up under P. A. Reg. Refs. 08/293 and 07/2307 it appears that the appellant is *estopped* from withdrawing her consent to the shared use of the existing entrance to her property adjoining the application site. The consent to the shared use of the entrance was pertinent in enabling the planning authority to permit the existing residential development on the application site and as such this agreement is material to the grant of permission and is applicable in perpetuity irrespective of any possible existing or future change of ownership and occupancy.

7.2. Therefore, the written statement addressed to Mr. Keady a copy of which is attached to the appeal dated 23rd October, 2007, (a copy of which is on file) should be disregarded. It was issued to the applicant after the date of the Final Grant of Permission for the development permitted under P A. Reg. Ref. 07/2307. It is noted that the commencement notice was issued to the planning authority on behalf of the applicant in 2012, after the written statement of withdrawal of the Consent to the shared use of the entrance to the Appellant's property was issued to the applicant.

However, the Appellant would be *estopped* from withdrawal of consent to the shared use of the existing entrance throughout a period during which a grant of permission is extant.

- 7.3. To this end, it can be concluded that the proposed retention of the development is in material contravention of the prior grants of permission under P. A. Reg. Refs. 08/293 and 07/2307. According to Condition No 2 of the grant of permission under P. A. Reg. Ref. 08/293: *“Access to the site shall be via the adjacent access to the east, as agreed under planning reference 07/2307 and as indicated on the site layout plan received by the planning authority on the 08/02/2008”*. According to Condition No 2 of the grant of permission under P. A. Reg. Ref. 07/2307. *“The site layout and access shall be in accordance with the revised site layout map received by the planning authority on the 27/07/2007”*. In view of the foregoing, it can be concluded that the proposed development is in material contravention of the prior grant of permission.
- 7.4. The site location is within a section of the R 336 at which the 60 kph maximum speed limit is applicable and as such the entrance is not precluded from consideration from a strategic policy perspective having regard to Objective T 16 of the CDP. Based on visual inspection it was noted vision in each direction from a point approximately 2 to 2.4 metres setback at the entrance to the edge of the carriageway is somewhat obstructed by existing entrance and boundary structures and vegetation in the applicant’s and third-party ownership. The applicant’s willingness to accept a condition with a requirement to maintain hedges is noted.
- 7.5. The use of the entrance and associated generation of turning movements onto and off the R336 can reasonably be assumed to be that solely generated by the residential use of a dwelling. At the time of inspection, it was apparent that the construction of the dwelling was complete and there was no evidence of construction or commercial vehicles at the site location although the appellant party’s assertions to the contrary are noted. A shared entrance with appropriately wide splays and unobstructed sightlines in each direction would be more appropriate from traffic and pedestrian safety perspective than the proposed entrance which abuts the entrance to the adjoining property. In this regard the R 336 which is included among the routes identified in the CDP as a strategic economic corridor carries significant volumes of traffic especially in high season. Obstruction by turning movements for

traffic accessing and egressing both properties are best managed by use of an existing authorised single access onto the regional route.

7.6. **Environmental Impact Assessment**

- 7.6.1. Having regard to the nature of the proposed development and its 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.

7.7. **Appropriate Assessment.**

- 7.7.1. Having regard to the scale and nature of the proposed development and to the 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 refused based on the draft reasons and considerations set out below.

9.0 **Reasons and Considerations**

The proposed entrance the retention of which is proposed materially contravenes the prior grants of permission under P. A. Reg. Ref. 08/293 and P. A. 07/2307 under Condition no 2 of which there is a requirement for, "... *the site layout and access to be in accordance with the revised site layout map received by the planning authority on the 27/07/2007*" in which it is indicated that access to and from the R 336 to the development is to be via the existing entrance to the adjoining development. The proposed development is therefore contrary to the proper planning and sustainable development of the area.

Jane Dennehy
Senior Planning Inspector
20th May, 2019.