



An
Bord
Pleanála

Inspector's Report ABP-304140-19

Development	Construction of a dwelling, the installation of a waste water treatment plant and all associated site works
Location	Ballyknock , Kilnamona , Ennis, Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	18948
Applicant(s)	James & Eileen Breen
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Transport Infrastructure Ireland
Observer(s)	None
Date of Site Inspection	03/06/2109
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site refers to an undeveloped field to the east of an existing two storey detached dwelling. The existing house and field are south of the N85, which runs from Ennistymon in the north-west to Ennis in the south-east. Access to the dwelling is via a private road which serves the existing dwelling and a further family dwelling.

2.0 Proposed Development

- 2.1. On the 23rd November 2018 planning permission was sought for the construction of a dwelling (138sq.m.), two car parking spaces and a waste water treatment plant on a site of 0.2ha. The application form states that the dwelling is sought in order to transfer the applicants existing dwelling to their son and his family. The application was accompanied by a site characterisation report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 12th March 2019 the Planning Authority issued a notification of their intention to grant permission subject to 10 no. conditions. Condition no, 2 requires that the subject dwelling be the place of permanent occupation of the applicant for a minimum of seven years. Condition no.s 3,4 and 6 refer to the design of the dwelling and landscaping of the site.

3.2. Planning Authority Reports

- 3.2.1. **Senior Engineer:** Realignment of a 3km section of the N85 in Kilnamona will result in this section of the road becoming a local access road. No intensification of use as access is to family lands only.
- 3.2.2. **Road Design Office:** This section of the N85 has a speed limit of 80kph and therefore sight distances of 160m are required. Applicant is required to demonstrate compliance.
- 3.2.3. **Planning Report:** Subject site is within an area under strong urban pressure. Proposed development would not result in an intensification of traffic as applicant and family already live in the existing house. Applicant does not indicate that he or his son are actively engaged in agriculture. Planning officer does not agree with submission of TII that the proposed development would endanger public safety. No

objection on grounds of public health or visual and residential amenities. Further information required regarding sight-lines of 160m.

3.3. **Further information**

- 3.3.1. On the 24th January 2019, the Planning Authority requested the applicant to demonstrate compliance with the required 160m sight distance.
- 3.3.2. On the 5th February 2019 the applicant responded to the FI request with drawing no.s PLA011 and PLA012. A cover letter states that the speed limit is 60kph at this location and therefore sight distances of 120 only are required. The letter notes that the road will become a local access road once the realignment of the N85 is complete.

3.4. **Reports on File following submission of FI**

- 3.4.1. **Special Projects Office:** There is a reduced speed limit in place. The road will be downgraded to a local road. Given that the access is for a family currently in residence there will be no significant intensification of use. No difficulty with permission being granted.
- 3.4.2. **Road Design Office:** Existing access will not intensify use. Temporary speed limit of 60kph. Given the curvature of the road it is recommended that this limit be retained following completion of N85 and downgrading of this road to local access. Sight distances demonstrated comply with 60kph speed limit. Sight distance in the vertical plane was not demonstrated. Based on site visit, sight distance is achievable to the east across the verge and the side slope area in the vertical and horizontal and also to the west. Contribution required for vegetation clearance works to ensure visibility is not impeded.
- 3.4.3. **Planning Report:** Notes the reports and is satisfied that applicant has demonstrated sufficient sight distance. Recommendation to grant permission.

3.5. **Prescribed Bodies**

- 3.5.1. **Transport Infrastructure Ireland:** Considers the proposed development to be at variance with policy in relation to control of development on / affecting national roads DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities. Section 2.5 of the Guidelines states that the policy of the Planning Authority will be to avoid the creation of any additional access points from new development or the

generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kph apply. The proposed development would endanger public safety by reasons of traffic hazard due to its scale and distraction of drivers.

3.6. **Third Party Observations**

3.6.1. None on file.

4.0 **Planning History**

4.1.1. None on file.

5.0 **Policy and Context**

5.1. **Spatial Planning and National Roads Guidelines for Planning Authorities 2012**

5.1.1. The guidelines set out planning policy considerations relating to development affecting national roads (including motorways, national primary and national secondary roads) outside the 50/60 kph speed limit zones for cities, towns and villages.

5.1.2. **Section 1.4** refers to need to ensure the strategic traffic function of national road network is maintained. **Section 1.5** states that the creation of new accesses to and intensification of existing accesses to national roads gives rise to the generation of additional turning movements that introduce additional safety risks¹ to road users. Therefore, from a road safety perspective, planning authorities, the NRA, road authorities and the Road Safety Authority must guard against a proliferation of roadside developments accessing national roads to which speed limits greater than 50-60 kmh apply as part of the overall effort to reduce road fatalities and injuries.

5.1.3. **Section 2.5** of the Guidelines states that with regard to access to national roads, all development plans and any relevant local area plans must implement the policy approaches outlined below. Of relevance to the subject appeal is : Lands adjoining National Roads to which speed limits greater than 60 kmh apply: The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

5.1.4. **Section 2.6** provides that planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and taken on board the advice of the NRA and having followed the approach outlined below. (1) Developments of National and Regional Strategic Importance and (2) Lightly-trafficked sections of National Secondary Routes.

5.2. **Clare County Development Plan 2017 – 2023**

5.2.1. Of relevance to the subject appeal are the following:

5.2.2. **Section 8.2.3.3** Access onto National Roads: In retaining the safety, efficiency and carrying capacity of national primary and secondary roads within the County, development proposals involving access onto national roads will be assessed by the Council having regard to ‘Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)’. Lands adjoining National Roads to which Speed Limits of Greater than 60km/h apply The policy of the Planning Authority will be to avoid the creation of any additional access points from new developments or the generation of increased traffic from existing accesses to national roads to which speed limits of greater than 60km/h apply in accordance with ‘Spatial Planning and National Roads – Guidelines for Planning Authorities (2012)’, subject to the exceptional circumstances as set out below. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

5.2.3. **Section 8.2.3.3** of the development plan provides for exceptional circumstances. Of relevance to the subject appeal is the following: Existing Accesses onto National Secondary Roads. A less restrictive approach will be applied to existing accesses onto national secondary roads where a balance needs to be struck between the important transport function of such roads and the social and economic development of these areas. The Council will give consideration to developments utilising existing accesses onto national secondary roads for farmers and their sons and daughters who are actively engaged in farming the land, wishing to build a dwellinghouse for their own permanent residence on family land. It must be clearly demonstrated that there is a genuine need for the dwelling proposed and that there are no other alternative sites available with access off a regional or local road. The development

shall fully comply with the objectives set out in Chapter 3 of this Plan- Urban and Rural Settlement Strategy and must also demonstrate that use of an existing entrance to serve the proposed development will not result in the creation of a traffic hazard.

- 5.2.4. **Policy CDP8.4:** Development Plan Objective: Direct Access onto National Roads. It is an objective of Clare County Council: To safeguard the safety, efficiency and carrying capacity of national primary and secondary roads within the County in line with national policy; To assess development proposals requiring direct access onto the national road network having regard to the criteria set out in Section 8.2.3.3 above.

5.3. **Natural Heritage Designations**

- 5.3.1. The subject site is located 3.7km from Toonagh Estate SAC, 5km from Ballyallia Lough SAC and 5.4km from the Lower River Shannon SAC.

5.4. **EIA Screening**

- 5.4.1. Having regard to nature and scale of the development and the location of the site 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. A third-party appeal against the decision of the Planning Authority to grant permission has been submitted by Transport Infrastructure Ireland. The grounds of the appeal can be summarised as follows:

- The N85 is an important road providing direct connection between Ennis and Ennistymon, and onward to the N67, M18 and N19.
- The Clare County Development Plan identifies the N85 as providing access to the Wild Atlantic Way and part of the road is designated as a Scenic Route.

- It is submitted that care needs to be taken regarding development management and addressing any safety risks.
- This section of the N85 has been designated as a high collision location (HD15) under the Authority's Network Safety Ranking (ref. TII publication GE-STY-01022).
- In order to address safety concerns Clare County Council, following approval from TII, reduced the speed limit at this section of road to 60kph pending the delivery of a road safety works scheme. The order providing for this temporary reduction runs from 11/2/2019 to 13/5/2019 and cannot be in place longer than 12 months.
- The prescribed speed limit remains 80kph. As such, permitting direct access for an additional house to access this section of the road, already the subject of a temporary speed limit intervention, is capable of setting an undesirable precedent.
- The necessary upgrade of this road has not occurred. Only ground investigation works have commenced.
- The upgraded road, speed limits and associated reclassification of the extant road are not in place currently.
- The proposed development has not demonstrated compliance with the FI request for sightlines for an 80kph road.
- It is submitted that there remain significant road safety considerations and that the proposed development is at variance with official policy.
- It is submitted that the proposed development has the potential to compromise the safety and efficiency of the national road network, represents an unacceptable road safety risk and has the potential to set an undesirable precedent for similar development.
- It is submitted that the above matters require resolution in the interest of safeguarding the operation of the N85 and the safety of all road users.

6.2. Applicant Response

6.2.1. None on file.

6.3. Planning Authority Response

- 6.3.1. The Board is requested to note that the Planning Authority had regard to the use of an existing access on to the N85 which serves two other dwelling that the N85 will become a local road after realignment of the N85 and the reports from the Roads Design Office and the Capital Projects Office.

6.4. Observations

- 6.4.1. None on file.

6.5. Further Responses

- 6.5.1. None on file.

7.0 Assessment

- 7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the single issue to be assessed is Traffic and the impact of the proposed development on the national road network.

7.2. Traffic

- 7.2.1. The central core of the applicant and the Planning Authority's position is that there will be no intensification of use of the existing junction and no additional traffic generated as the access already serves the applicants dwelling plus two other families. The applicant states that they intend to move into the proposed dwelling and transfer their existing dwelling to their son and his family who currently live with them.
- 7.2.2. In assessing the impact of a proposed development on a national road, however, the Board must have regard to the fact that circumstances can change. The creation of an additional dwelling allows the potential of additional traffic. That the applicants state this will not be the case, cannot be held accountable in the future. It remains the case that an additional two-bedroom house with the proposed two car parking spaces has the potential to add two vehicles and all associated vehicular movements to the existing access. I do not accept that the proposed development does not represent an intensification of use of the existing access.

- 7.2.3. From that point, one must address the safety of the existing access. The appellant's case is that the road is already compromised, as evidenced by Clare County Councils application for a speed limit reduction. They further state that the required sightlines were not demonstrated. In response, the applicant and the Planning Authority's position is that when the N85 is realigned, this section of road will become a local access road and therefore speed limits and traffic volumes will reduce.
- 7.2.4. The applicant, in their response to the request for further information stated that as the road had a speed limit of 60kph, sightlines of only 120m were required. This however does not address the fact that the 60kph speed limit is a temporary measure and now that the order granted by TII has elapsed, the official speed limit is 80kph. I note the report of the RDO that it is the intention of the Council to maintain the lower speed limit until the N85 realignment works are complete. However, no evidence has been submitted that the Planning Authority have submitted a request for such an order under section 10 of the Road Traffic Act. I further note that such an order can only be in place for a maximum of 12 months.
- 7.2.5. I am not satisfied that compliance with the required 160m sight distance is possible at this junction. I note that the drawings submitted as FI (drawing no. PLA011) show sight lines through and across bends in the road and roadside boundaries to both the east and the west. It is considered that the vertical alignment of the road at this existing junction is not capable of providing sight distances of 160m in both directions. I note that the RDO report to the Planning department also acknowledge that sight distances in the vertical plane were not demonstrated. I note the submission of the TII that this section of the N85 has been designated as a 'high collision location'.
- 7.2.6. The second issue to be considered is the downgrading of this section of the N85 to a local access road following realignment of the N85. As noted by the appellant, this realignment is some way off, with only ground investigations commenced. It is considered that making a decision based on this future development is premature, given the variables associated with projects of this nature.
- 7.2.7. I note section 8.2.3.3 of the development plan that provides for a deviation from the Councils policy to prohibit additional access points on to national roads where

exceptional circumstances exist. The criteria are that the children of the farmer must be actively engaged in farming the land, that no alternative access exists, that a genuine rural housing need exists and that the proposed development will not result in the creation of a traffic hazard. It is considered that it has been clearly demonstrated that the proposed development will result in a traffic hazard at this location and therefore the exceptional circumstances do not apply. The Board will note that the exceptional circumstance of an “existing entrance” is not provided for in the national guidance which states that planning authorities may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan, having consulted and taken on board the advice of the NRA and for developments of National and Regional Strategic Importance and Lightly-trafficked sections of National Secondary Routes. The subject development does not fall within such criteria.

7.3. Appropriate Assessment

- 7.3.1. The subject site is located 3.7km from Toonagh Estate SAC (002247), 5km from Ballyallia Lough SAC (000014) and SPA (004041) and 5.4km from the Lower River Shannon SAC (002165). To immediate east of the subject site lies a tributary of the Ballygrifty river which discharges to the Ballyallia Lake SAC.
- 7.3.2. Ballyallia Lake is a relatively small, shallow lake situated on the River Fergus approximately 4 km north of Ennis, Co. Clare. It is a naturally eutrophic lake, a habitat listed on Annex I of the E.U. Habitats Directive. The lake, which is base-rich with relatively clear water, is set amongst heavily farmed land to the north and south, with a low-lying floodplain of wet grassland and rough grazing to the west. The qualifying interest for the site is [3150] Natural Eutrophic Lakes. The conservation objective for the site is to maintain the favourable conservation condition of Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation in Ballyallia Lake SAC. One of the targets of relevance to the proposed development is water quality, wherein the conservation objective seeks to maintain the concentration of nutrients in the water column at sufficiently low levels to support the habitat and its typical species.
- 7.3.3. Possible risk to the conservation objectives and / or the qualifying interests of the SAC arises from the possibility of contaminated waste or surface water from the

subject site – either during construction or occupation of the dwelling, entering the watercourse and making its way to the SAC via this direct hydrological link.

- 7.3.4. On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 000014, or any other European site, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission. I note however, that this has not been raised by the Planning Authority or the appellant and therefore represents a new issue.

8.0 Recommendation

- 8.1. I recommend permission be REFUSED for the following reasons and considerations:

- 1 It is considered that the proposed development would endanger public safety by reason of traffic hazard because the site is located alongside the heavily-trafficked National Primary Road N85 at a point where a speed limit of 80km/h applies and the traffic turning movements generated by the development would interfere with the safety and free flow of traffic on the public road.

The proposed development would also contravene Policy CDP8.4 of the Clare County Development Plan 2017 -2023 (which is considered reasonable) to preserve the level of service and carrying capacity of the National Primary Road and to protect the public investment in the road.

Gillian Kane
Senior Planning Inspector

13 June 2019