



An  
Bord  
Pleanála

## Inspector's Report ABP304232-19

---

<b>Development</b>	Relocate entrance to house including the drainage pipe beneath.
<b>Location</b>	Coolreagh, Bodyke, County Clare.
<b>Planning Authority</b>	Clare County Council.
<b>Planning Authority Reg. Ref.</b>	P18-860.
<b>Applicants</b>	Damien and Rebecca Nash.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellant</b>	John Hill.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	12 <sup>th</sup> June, 2019.
<b>Inspector</b>	Paul Caprani.

## Contents

1.0 Introduction .....	3
2.0 Site Location and Description .....	3
3.0 Proposed Development .....	4
4.0 Planning Authority's Decision .....	4
4.1. Documentation Submitted with the Planning Application .....	4
4.2. Additional Information Request .....	4
4.3. Further Information Request .....	5
4.4. Response to Request for Further Information .....	5
4.5. Further Assessment by Planning Authority .....	6
5.0 Planning History.....	6
6.0 Grounds of Appeal.....	6
7.0 Appeal Responses.....	7
7.2. Applicants Response to the Grounds of Appeal.....	8
8.0 Development Plan Provision.....	8
9.0 EIA Screening Assessment .....	8
10.0 Planning Assessment.....	8
11.0 Appropriate Assessment .....	11
12.0 Decision .....	11
13.0 Reasons and Considerations .....	11
14.0 Conditions .....	11

## 1.0 Introduction

ABP304232-19 relates to a third-party appeal against the decision of Clare County Council to issue notification to grant planning permission for the relocation of an entrance to a house including the incorporation of a drainage pipe under the entrance. The grounds of appeal argue that part of the appellant's existing driveway/entrance is located on third party lands. Also, it is argued that the applicants' driveway traverses a drain which is impeding flow in the channel and could give rise to flooding.

## 2.0 Site Location and Description

- 2.1. The site which is the subject of the appeal is located in a rural area in central Clare north of the R352 which links the small village of Bodyke to the west with the villages of Tuamgraney and Scarrif in the east of the County. The subject site is located on the western side of local rural road which runs northwards from the R352. The subject site is located approximately 400 metres north of the junction between the local road and the R352. The proposed access serves a recently constructed dwellinghouse which is located close to the southern boundary of the site. An old stone single-storey cottage together with a number of small farm buildings, the gable ends of which are located adjacent to the roadside boundary are located to the south of the site. On the opposite side of the road near the southern boundary of the site, a small rural laneway runs westwards from the road serving a dwellinghouse and a number of farm buildings. The roadside boundary within the vicinity of the site is characterised by mature hedgerows and trees. As such, the applicants' dwelling is not readily visible from public vantage points along the roadway. An entrance serving the house has already been constructed and is located at the north-eastern boundary of the site approximately 70 metres to the north of the applicants' house. The new access comprises of a new gravel driveway from the public road which traverses a culverted stream/ditch which runs along the roadside boundary of the site and to the applicants' house. Two wooden posts together with two outward opening wooden gates are located at the access.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought to slightly relocate the existing entrance at the north-eastern corner of the site. The drawings submitted indicate that the existing entrance is to be relocated slightly southwards, by approximately 10 metres. The new proposed entrance is indicated on the landscaping plan drawings (indicated as Appendix A and Appendix B on the map submitted. The new revised layout is superimposed on the drawings submitted using a yellow/green marker). As part of the proposed works the existing culvert pipe running beneath the entrance (shaded blue on the drawings submitted) will be removed and a proposed new pipe will be laid beneath the revised entrance (indicated in red on the drawings submitted). It is proposed to relocate the existing timber post fence to the relocated entrance.

### **4.0 Planning Authority's Decision**

Clare County Council issued notification to grant planning permission on the 21<sup>st</sup> March subject to two conditions. Condition No. 2 required that the new pipe under the relocated entrance shall incorporate a diameter of 600 millimetres in order to prevent flooding on the public roadway.

#### **4.1. Documentation Submitted with the Planning Application**

- 4.1.1. The planning application was accompanied by a planning fee, a completed planning application form, public notices and drawings.
- 4.1.2. An observation from the current appellant was submitted objecting to the proposed development. The contents of this observation have been read and noted.

#### **4.2. Additional Information Request**

- 4.2.1. The planner's report prepared on foot of the application sets out details of development plan policy before assessing the proposed application. With regard to the principle of development it is noted that the proposal seeks to move the entrance slightly to the south in order to address ownership issues. The Planning Authority are satisfied that the application with the alterations to the south boundary are within the applicants' ownership.

4.2.2. The planning report notes that the Area Engineer has reviewed the application and states that the existing pipeline installed at the original entrance will need to be replaced and increased in volume due to minor flooding issues in the area in the interest of flood relief. In terms of traffic, it is noted that moving the entrance slightly to the south is considered acceptable and adequate sightlines are available. While there is no objection in principle to the proposed development, concerns are expressed in relation to the proposed drainage pipe and therefore further information is requested.

#### 4.3. Further Information Request

4.3.1. On the 19<sup>th</sup> December, 2018 Clare County Council requested the following further information.

1. The Planning Authority has no objection in principle to the relocation of the entrance. However, the Planning Authority consider that the size of the drainage pipe as proposed is not sufficient to cater for surface water flows and as such a larger pipe is required having regard to the flow rate within the drain of the existing drainage network. You are advised to liaise with the Area Engineer, Scarrif Area Office in relation to this, to determine the most appropriate pipe size and to ensure the proposal is compatible with the nearby drainage pipe culverted under the road. Please submit your proposals in this regard and clearly indicate the location of same on a revised site layout plan.

#### 4.4. Response to Request for Further Information

4.4.1. A response was received on 25<sup>th</sup> February, 2019. It states the following:

We note your comments regarding the size of the drainage pipe. The applicant and his families have lived here for a number of generations and have never known the drainage pipe to be full and therefore are of the opinion that the proposed pipe which is equal in size to the pipe downstream under the public road. Thus increasing the size of the pipe under the proposed entrance will not result in any increase in capacity of the drain for the surface water run-off without the pipe under the road and others pipes downstream also being increased. Notwithstanding the above opinion

the applicant is agreeable to increase the size of the pipe to 600 millimetres in order to satisfy the Planning Authority's concerns.

#### **4.5. Further Assessment by Planning Authority**

- 4.5.1. A further planner's report dated 21<sup>st</sup> March, 2019 notes the further information response and states that the response was discussed with the Area Engineer who was satisfied that the 600 millimetre pipe as proposed would allow for the continuous flow of surface water at this location and would be acceptable on the grounds of public health. It is therefore recommended that planning permission be granted for the proposed development.

### **5.0 Planning History**

- 5.1. No history files are attached. The local authority's planner's report makes reference to Reg. Ref. 07/2439 where planning permission was granted to the applicant to erect a dwellinghouse, garage and entrance and install an effluent wastewater treatment system and soil polishing filter.

### **6.0 Grounds of Appeal**

- 6.1. The decision was appealed by Mr. John Hill of Coolreagh, Bodyke an adjoining landowner. The grounds of appeal are set out below.

It is argued that the entirety of the site which is the subject of the current application is not within the applicants' ownership. It is stated that the plans submitted by the applicants are inconsistent and show sites of different sizes. The various inconsistencies alleged by the appellant are set out in the grounds of appeal and references are made to various maps and dimensions shown on the maps in question.

It is also argued that Condition No. 2 attached to the Planning Authority's permission is unclear and should specify that:

- (a) The applicant should remove the existing 450-millimetre pipe in its entirety from the roadside drain
- (b) That a larger capacity pipe be installed in the roadside drain and

(c) that the length of the pipe that the applicants are entitled to install should be specifically stated. Any condition associated with the Planning Authority should be clearly understood in relation to what size of pipes to be installed and the length of the said pipe.

6.2. Furthermore, there has been no analysis set out by the applicant or the Council Engineers which shows that a 600-millimetre pipe would be sufficient to prevent flooding on the appellant's lands. It is stated that a number of other farms also discharge into this drain as does a Clare County Council drain. It is stated that a significantly larger pipe is required given the number of drains that empty into this drain and the volume of water which is required to pass through any pipe installed by the applicants.

6.3. It is also stated that the applicants' site layout plan does not show the removal of the existing 450 millimetre pipe. This should be required. The length of any concrete pipe should be limited to a maximum length of 6 metres as otherwise if the pipe is to become blocked it will not be possible to free the blockage. A maximum length of a pipe of 6 metres would be sufficient to allow for any driveway onto their own lands. It is also stated that the roadside ditch would also need to be reinstated.

## **7.0 Appeal Responses**

### **7.1. Clare County Council Response to the Grounds of Appeal**

7.1.1. A submission from Clare County Council dated 16<sup>th</sup> May, 2019 states the following:

- The Area Engineer is satisfied that the 600-millimetre pipe as proposed will connect to the Council pipe. The diameter as proposed should allow for the continual flow of surface water at this location and would be acceptable on the grounds of public health.
- The development proposed relates to works inside the site edged red.
- The planning system is not designed as a mechanism for resolving disputes about title to lands or rights over same. In this regard reference is made to Section 34(13) of the Planning Act.
- The council respectively request that An Bord Pleanála uphold its decision to grant planning permission.

## **7.2. Applicants Response to the Grounds of Appeal**

7.2.1. It appears that the applicant has not submitted a response to the grounds of appeal.

## **8.0 Development Plan Provision**

8.1. The site is governed by the policies and provisions contained in the Clare County Development Plan 2017-2023. The site is not governed by any land use zoning objective. The site is not located within a designated heritage landscape nor is it located along a designated scenic route.

## **8.2. National Flood Hazard Mapping**

The OPW website does to designate the roadway within the vicinity of the subject site as an area liable to flooding.

## **9.0 EIA Screening Assessment**

The proposed development is not of a class for which an environmental impact assessment is required.

## **10.0 Planning Assessment**

10.1. I have read the entire contents of the file, visited the site and its surroundings and have had particular regard to the issues raised in the grounds of appeal. Having inspected the site I consider that the relocation of the entrance slightly to the south has no material impact on sightlines and therefore does not in any way exacerbate or accentuate the road safety risk associated with the entrance. With this in mind I consider that the Board can generally restrict its deliberations to the issues raised in the grounds of appeal namely:

- Land Ownership Issues
- The Capacity of the Culvert underlying the Proposed New Entrance

10.2. In relation to the first issue the grounds of appeal suggest that not all the lands associated with the current application and appeal are owned by the applicant. Reference is made to various drawings and alleged discrepancies in the drawings which it is contended supports the appellant's arguments that the lands in question



are not entirely in the applicants' ownership and that some of the lands are under the ownership of the appellant. It is not the function of the Board to settle disputes over landownership and this point is clearly indicated in the Development Management Guidelines for Planning Authorities. Section 5.13 of the said Guidelines relate to landownership issues. The Guidelines clearly and unambiguously state "*that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land, these are ultimately matters for resolution in the Court*". The Guidelines also make reference to Section 34(13) of the Planning Act which states that a person is not entitled solely by reason of a permission to carry out a development. It is clear therefore that land ownership issues are not a matter for An Bord Pleanála to determine by way of appeal.

- 10.3. In relation to the second issue, the grounds of appeal suggest that a culvert with a 600 millimetre diameter is not sufficient in terms of size to accommodate flow within the stream along the front boundary of the site. Any restrictions in flows it is argued results in flooding upstream of the subject site and of adjoining lands including the appellant's lands. It is also suggested in the grounds of appeal that Clare County Council have not demonstrated that a culvert with a 600 millimetre diameter is of sufficient size to cater for the flows in question.
- 10.4. In relation to the issue of drainage I noted at the time of my site inspection that water levels within the stream/roadside boundary ditch were very low and there was ample capacity both within the channel and within the pipe to cater for the flows in question. I do fully accept however that my site inspection took place in mid-summer where flows are likely to be at their lowest.
- 10.5. I further note that the OPW Flood Hazard Maps do not indicate any historic flooding events along this roadway or in the vicinity of the subject site. I do however acknowledge that such information should be treated with caution in accordance with Circular PL2/2014. While the local authority area engineer makes reference to "minor flooding issues in the area" the applicant in his response to the additional information request state that his families have lived for a number of generations in the area and have never known the drainage pipe to be full.
- 10.6. While there is conflicting information on file in respect of flooding, I would consider it appropriate that the Board would exercise a precautionary approach as suggested

by Clare County Council and increase the volume of the culvert proposed to be laid underneath the driveway. The Board will note that the increase in the diameter to 600 millimetres from 450 millimetres represents a considerable increase in capacity of the pipe. A 450 millimetre pipe can convey 0.159 cubic metres of water at any given time. An increase in diameter to 600 millimetres increases the capacity of the pipe to 0.28 cubic metres at any given time thus the increase in diameter from 450 millimetres to 600 millimetres will result in almost doubling the capacity of the pipe in question.

- 10.7. Even in the case where minor flooding has occurred as suggested by the Area Engineer the significant increase in capacity arising from the increase in diameter from 450 millimetres to 600 millimetres, should in my opinion allay any concerns in relation to flooding particularly as the OPW website does not suggest a history of flooding events in the immediate area.
- 10.8. The grounds of appeal also suggest that the length of the individual pipe should be restricted to 6 metres in order to address any potential concerns in relation to blockages. I would recommend that the Board include a condition requiring that details of the proposed culvert arrangements beneath the access should be agreed in writing with the Planning Authority prior to commencement of development. Drawings submitted by the applicant indicate that the total length of piping may be in the region of 20 metres assuming that the piping serving the existing entrance to the immediate north would also be replaced with piping of a larger diameter of 600 millimetres. I consider that the detailed engineering considerations in relation to the laying of pipe can be agreed in writing with Clare County Council's Area Engineer, as a specific detail in relation to the overall development, prior to commencement of development of works.
- 10.9. Arising from the assessment above therefore I consider that the Board should uphold the decision of the Planning Authority in this instance and grant planning permission for the relocated entrance based on the reasons and considerations set out below.

## **11.0 Appropriate Assessment**

The nearest Natura 2000 site to the subject site is the Slieve Bernagh Bog SAC located approximately 2.5 kilometres to the south of the site. The bog is located at a significantly higher elevation than the subject site. There is therefore no potential for any works being carried out as part of the proposed relocation of the driveway to impact on the Natura 2000 site in question either in hydrological terms or otherwise and therefore it is reasonable to conclude having regard to the nature and scale of the proposed development and the nature of the receiving environment together with the proximity to the nearest European site that 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.

## **12.0 Decision**

Grant planning permission for the proposed development in accordance with the plans and particulars lodged based on the reasons and considerations set out below.

## **13.0 Reasons and Considerations**

It is considered that the proposed relocation of the entrance subject to conditions set out below would not seriously injure the amenities of the area or of property in the vicinity, would not exacerbate flooding in the area and would generally be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **14.0 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 information submitted to the planning authority on the 25<sup>th</sup> day of February,

2019, 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 the 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 existing piping under the said entrance together with new proposed piping under the relocated entrance granted under this order shall be increased from 450 millimetres in diameter to 600 millimetres in diameter. The laying of the new pipe and the sizing of the length of pipe shall be laid in a manner to permit the continued free flow of water beneath the entrance. Details of the laying of the pipe shall be the subject of written agreement with the planning authority prior to commencement of development.

**Reason:** To prevent flooding.

3. Details of any reinstatement of the channel associated with the stream/ditch running along the front boundary of the site shall be agreed in writing with the planning authority prior to commencement of development.

**Reason:** In the interest of orderly development.

---

Paul Caprani,  
Senior Planning Inspector.

29th July, 2019.