



An
Bord
Pleanála

Inspector's Report ABP-304252-19

Development	To construct 2 no. new car spaces at front of each dwelling and all ancillary site works.
Location	Nos. 3 & 4 Ross Court, Church St., Tarbert, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/91
Applicant(s)	Michael McElligott
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party -v- Decision
Appellant(s)	Michael McElligott
Observer(s)	Committee of Tarbert GAA
Date of Site Inspection	18 th July 2019
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in a back-land position that is adjacent to the centre of Tarbert. This site is of regular shape and it extends over an area of 0.26 hectares. The site has been developed to provide a pair of two-storey semi-detached dwelling houses, which are orientated on a north/south axis. Pedestrian access only to them is from the south off a lane that runs between Chapel Street (N69) and the car park to the local GAA grounds. The said lane provides vehicular access to a dormer bungalow on the western side of the site. It also provides access to a car park, which is continuous with it, and to the rear of several properties on Chapel Street.
- 1.2. The submitted site location map and completed application forms show that the applicant owns the lands to the north and to the east of the site, as well as the site itself. To the north, these lands have been developed to provide a pair of two-storey semi-detached dwelling houses, which front onto Church Street (N69). To the east is a recently constructed vehicular access off the national secondary road, which is accompanied by a pair of recessed gates. This access serves a parking area, which has been laid out to denote 2 no. parallel car parking spaces on its eastern side and 2 no. perpendicular car parking spaces towards its southern end. (The actual end has been laid out as a small landscaped area). On its eastern side is a two-storey detached dwelling house with a substantial garage/outbuilding at the foot of its rear garden.

2.0 Proposed Development

- 2.1. The proposal is to construct 2 no. new car parking spaces to the front of each of the 2 no. dwelling houses on the site. These spaces would be provided side-by-side in the front gardens to these dwelling houses, which are already paved.
- 2.2. The proposal would entail the retention of the existing pedestrian gates and pillars and the removal of the front boundary walls to facilitate access to the proposed car parking spaces. The resulting openings would remain ungated.

3.0 Planning Authority Decision

3.1. Decision

Refusal on the grounds that the proposal would:

- Materially contravene condition 12 attached to permitted application 08/493, and
- Resulting traffic movements would obstruct road users.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See reasons for refusal.

3.2.2. Other Technical Reports

- TII: No observations.
- Roads: Objects, see reasons for refusal.

4.0 Planning History

The site:

- 08/493: Pair of semi-detached dwelling houses: Under further information access switched from Chapel Street to Church Street: Permitted subject to conditions including the following one:

12. The 2 no. dwelling houses shall be erected and located on the site as outlined in the site layout received on the 13th of May 2008. Vehicular access to the dwelling house shall be from the Church Street entrance only and car parking shall be provided as shown on the site layout received by the Planning Authority on the 13th of May 2008.

Reason: To regulate and control the layout of the development.

- 15/167: Retain pair of semi-detached dwelling houses within revised boundaries + Permit 2 no. car parking spaces at front of each dwelling:

Refused for the same two reasons cited for the refusal of the current application.

- U118-15
- 16/1260: Construct 1 no. car parking space at front of each dwelling: Refused for the same two reasons cited for the refusal of the current application.

The adjoining site to the north:

- 04/3950: Construct 2 no. dwelling houses: Permitted.
- 05/1947: Construct 2 no. dwelling houses: Permitted, subject to conditions, including no. 10, which required the provision of a passageway and parking spaces on the eastern side of the site.

The adjoining site to the west:

- 06/1119: Construct a dormer bungalow: Permitted: Vehicular access off the lane from Chapel Street.

The adjacent site to the north east:

- 03/2202: Construct garage and retain entrance to rear of the site: Permitted.

5.0 Policy and Context

5.1. Development Plan

Under the Listowel – Ballybunion Functional Areas Local Area Plan 2013 – 2019 (LAP), the site is shown as lying within the development boundary around Tarbert.

5.2. Natural Heritage Designations

- Lower River Shannon SAC (site code 002165)
- River Shannon and River Fergus (site code 004077)
- Tarbert Bay pNHA (site code 001386)

5.3. EIA Screening

The proposal is not a development type that is subject to EIA.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant begins by outlining the impetus for the proposal: The existing car parking spaces, which serve the pair of semi-detached dwelling houses, lie along a lane to the north east that is physically separate from them. Consequently, the use of these spaces entails having to walk c. 200m between them and the said dwelling houses. This walk poses difficulties for families and the elderly. The proposal would overcome the resulting inconvenience. Furthermore, deliveries to these dwelling houses already occurs from the lane off Chapel Street, e.g. the post and domestic heating oil.

The applicant proceeds to draw attention to the existing use of the lane from Chapel Street: It serves as a primary access to 4 houses and a secondary one to 6 houses and it also affords access to Tarbert GAA.

The applicant appeals the refusal of the current application on the following grounds:

- His engineer has submitted a report which concludes that the use of the lane from Chapel Street would be significantly safer than the use of the access from Church Street.
- Given the existing usage of the lane from Chapel Street, the additional traffic that would arise under the proposal would not present a danger to other road users.
- Both lanes are accessed off national secondary roads and so to distinguish one from the other on policy grounds is contradictory.
- Attention is drawn to the following documents:
 - A circuit court order, which confirms that the applicant has a legal right of way to his property,
 - A letter from Tarbert GAA, dated 2004, which states that they have no issue with his use of the lane from Chapel Street, and

- Under application 03//2202, permission for a vehicular access to the site of the pair of semi-detached dwelling houses was granted: What has changed since then?

6.2. **Planning Authority Response**

Attention is drawn to the originally permitted car parking spaces: These have not been provided in accordance with permitted application 08/493, with consequent implications for the residents of the dwelling houses also permitted under this application.

6.3. **Observations**

- A historical map referred to by the applicant does not appear to be available.
- The existence of any historic vehicular access to the site from the lane off Chapel Street is questioned.
- The view is expressed that the applicant's discommodious arrangements could be overcome by creating an opening in the wall between the permitted car parking spaces and the rear boundary wall to the pair of semi-detached dwelling houses.
- The view is expressed that the Court Order in question does not confer a legal right of way upon the applicant.
- The concern is expressed that not only would the applicant use the lane off Chapel Street, but that he would park vehicles in the observer's car park.

6.4. **Further Responses**

None.

7.0 **Assessment**

- 7.1. I have reviewed the proposal in the light of the LAP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Planning history,
- (ii) Amenity, access, and parking, and
- (iii) Stage 1 Screening for AA.

(i) Planning history

- 7.2. The parent permission for the site was granted to application 08/493. During the course of this application, the proposed means of vehicular access to the 2 no. dwelling houses on this site was switched. Thus, originally a means of access from Chapel Street, in the west, via a one vehicle width lane, was proposed. This lane serves a dormer bungalow on the western side of the site, the rear of several properties on Chapel Street, and the local GAA grounds. As revised, vehicular access comprised the use of a new access and parking area off Church Street, to the north. This access and area were previously proposed under permitted application 05/1947 for 2 no. dwelling houses to the north of the site.
- 7.3. The Planning Authority requested the aforementioned switch as it had “grave concerns” about the increased use of the lane that would arise under the proposal. Under further information, the applicant accepted this switch and the subsequent permission was granted, subject to condition no. 12, which requires that the Church Street access and parking area only be used.
- 7.4. During my site visit, I observed that the said access and parking area off Church Street have been provided. A pair of gates has been installed in a recessed position in relation to the access point and 4 no. car parking spaces have been formally laid out, i.e. 2 no. parallel ones on the eastern side of the area and 2 no. perpendicular ones towards the southern end. (Under the permitted layout shown on the site layout plan received by the Planning Authority on 13th May 2008, 5 no. parallel spaces were to have been provided along the eastern side of the area).
- 7.5. During my site visit, I also observed that the parking area is walled on either side (apart from an opening on the eastern side into the rear garden of a detached two storey dwelling house) and that its southern end has been laid out as a small landscaped area. The wall to the rear of this area does not abut the car park to the front of the site, but the adjoining enclosed GAA grounds.

7.6. I conclude that the vehicular access from Church Street and associated car parking area have been provided in a manner that approximates to that which was conditioned under permitted application 08/493 for the site.

(ii) Amenity, access, and parking

7.7. The applicant has explained that the impetus for the proposal is the dis-amenity that presently arises from having car parking spaces that are relatively remote from the dwelling houses. Thus, pedestrian access to the site is from the lane off Chapel Street, while the dedicated parking area is off Church Street, and so to pass from one to the other involves walking through the centre of Tarbert, i.e. The Square, a distance of c. 200m. Clearly, this is discommodious.

7.8. During my site visit, I observed the two access points in question. Both are off the N69 at points where it is subject to a 50 kmph. Each is virtually the same distance from the 90 degree turn in this national secondary road as it passes between Church Street and The Square/Chapel Street. Sightlines are of similar utility in either case.

7.9. The rationale for the switch from the Chapel Street access to the Church Street access outlined under the first heading of my assessment is that the former access is accompanied by a straight stretch of lane (c. 40m) that is of single vehicular width, whereas the latter access is accompanied by a dedicated parking area of sufficient width to allow two vehicles to pass one another. Furthermore, the former access is used as a means of vehicular access to a dormer bungalow, the rear of at least 5 no. properties on Chapel Street, and the local GAA grounds, whereas the latter access is used for parking vehicles associated with the 2 no. dwelling houses on the site and the 2 no. dwelling houses to the north of the site. ("On the ground" there is an opening from the parking area to the rear garden/garage to a detached two-storey dwelling house to the east. This opening was not shown on the site layout plan received by the Planning Authority on 13th May 2008).

7.10. In the light of the foregoing paragraph, I consider that a comparison of the two accesses from traffic management and road safety perspectives indicates that the existing parking provision for the site is preferable to that which is now proposed. Thus, condition no. 12 not only remains valid, but applicable to the situation "on the ground".

- 7.11. I recognise the discommodity of the status quo for residents of the 2 no. dwelling houses on the site. I recognise, too, along with the observer that the opportunity to provide a pedestrian gate from the parking area to the more easterly of these two dwelling houses would exist. Such a gate would not address the presenting issue of discommodity for the more westerly of these two dwelling houses. However, as the applicant remains the owner of both dwelling houses, the opportunity may exist for a passageway to be formed along the foot of the rear garden of the nearer dwelling house to afford access to a pedestrian gate for the further away dwelling house, too.
- 7.12. I conclude that a comparison of the existing and proposed means of vehicular access to parking areas to serve the dwelling houses on the site indicates that the existing means are preferable from traffic management and road safety perspectives than the proposed one. I conclude, too, that the discommodity to pedestrians, attendant upon the continued use of the existing means of vehicular access, may be amenable to other solutions short of the current proposal.

(iii) Stage 1 Screening for AA

- 7.13. The site is not in or beside a Natura 2000 site. The nearest such sites pertain to the River Shannon to the north of Tarbert. Given that the proposal for the site would entail the provision of car parking spaces within existing residential curtilages by means of the removal of existing front walls only, it would not have any significant effects on the Conservation Objectives of these Natura 2000 sites.
- 7.14. Having regard to the nature and scale of the proposal, no Appropriate Assessment issues arise, and it is not considered that the proposal would be likely to have a significant effect individually or in combination with other plans or projects of a European site.

8.0 Recommendation

- 8.1. That the proposal be refused.

9.0 Reasons and Considerations

Having regard to the planning history of the site and principles of good traffic management and attendant road safety, the Board considers that the existing vehicular access and car parking provision for the dwelling houses on the site are preferable to the alternatives now proposed. Thus, to accede to the current proposal would entail an unwarranted material contravention of condition no. 12 attached to the permission granted to application 08/493, which requires that the existing vehicular access and car parking provision only be used by residents of these dwelling houses, and so it would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

2nd August 2019