



An
Bord
Pleanála

Inspector's Report ABP 304313-19

Development	Relocation of existing entrance and amendment of existing roadside boundary wall with associated site works.
Location	Kyletaun, Rathkeale, Co.Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	18/371
Applicant	James Muckell
Type of Application	
Planning Authority Decision	Refuse permission
Type of Appeal	1 st Party v. Refuse
Appellant	James Muckell
Observer(s)	None
Date of Site Inspection	22/07/19
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site subject of the appeal is located c.1km to the north-west of Rathkeale town accessed from regional road R518. The site is within the 50kph speed limit. The area is characterised by one off housing ribboning along the local road network.

The site is roughly rectangular in shape with a two storey dwelling side-on to the road in the north-western corner. The original roadside boundary has been removed with a partly constructed block wall faced in stone setback from the original line.

The site is bounded by a two storey dwelling to the south with its roadside boundary forward of that delineating the appeal site. A low wall at the northern most corner of this frontage hinders sightlines in a southerly direction along the appeal site's frontage.

2.0 Proposed Development

The application was lodged with the planning authority on the 18/04/18 with further plans and details submitted 07/03/19 following a request for further information dated 08/06/18.

Permission is sought for a new site entrance between splayed wing walls to be located in the south-western most corner of the site. The boundary wall is to be extended to the access and is to match same.

Realignment works are required to be carried out on the adjoining property to the south to achieve sightlines.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the above described development for two reasons which can be summarised as follows:

1. The proposal would endanger public safety by reason of traffic hazard arising from restricted sightlines.

2. The planning authority is not satisfied that the applicant has demonstrated sufficient legal interest to enable him to carry out the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The 1st Planner's report dated 08/06/18 notes that this is the 3rd application relating to the roadside boundary. The previous 2 applications were declared withdrawn. Sightlines are restricted on the site frontage at the location of the proposed entrance as the road is on a bend and there is a pillar on the adjoining site to the south that hinders sightlines. No letter of consent has been submitted from the adjoining landowner regarding the setback of the pier so as to achieve sightlines. Further information required on land registry details for the landholding, sightlines at proposed entrance and consent from adjoining landowner re. setting back of the pillar. An alternative access to the north of the dwelling to be considered. The 2nd report dated 27/03/19 following further information notes an internal report from Operations and Maintenance Services which notes that sightlines to the south do not meet the minimum required. Approval cannot be granted without setback of the property boundary to the south. It is noted that the applicant does not appear to be the registered owner of any of the folios submitted. The applicant has not demonstrated adequate legal consent to make the application. The applicant has not received the consent of the adjoining landowner to setback their boundary so as to achieve the necessary sightlines. A refusal of permission for two reasons recommended.

3.2.2. Other Technical Reports

An email from the Area Engineer states that it is difficult to definitively determine that relocating the site access to the north will achieve the sightline requirements.

3.3. Prescribed Bodies

None

3.4. **Third Party Observations**

None

4.0 **Planning History**

PL13.236837 (09/1441) – refers to the site immediately to the south. 1st party appeal against condition 3 requiring the closing up of the northern most entrance serving the site (adjacent to the appeal site boundary). The Board amended the condition requiring the closure of the entrance and alterations to the front boundary treatment.

5.0 **Policy Context**

5.1. **Development Plan**

The site is outside the development boundary of Rathkeale. The Limerick County Development Plan 2010, as extended, refers.

Objective IN - It is the objective of the Council to ensure that any development involving a new access to a public road or the intensification of use of an existing access onto a public road that would compromise the safety and capacity of the road network, will not be permitted unless the new or existing access meets the appropriate design standards.

R518 is identified as a Strategic Regional Road

Policy IN P8 - It shall be the policy of the Council to protect the investment in the Strategic Regional Road Network, prevent the premature obsolescence of this network and maintain and improve road safety and capacity.

Objective IN O16: It is an objective of the Council to prohibit development generating additional traffic and requiring direct access onto a strategic regional road. Direct access onto the regional roads shall accord with criteria specified below, and guidelines and standards referred to in the Development Management section of this plan and Department of Transport policy. These criteria include:

a) Developments in built up areas where access is deemed to be safe and where a 50kph speed limit applies.

5.2. **Natural Heritage Designations**

None in the vicinity

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The submission by Kildimo Planning Services on behalf of the 1st party can be summarised as follows:

6.1.1. ***Restricted Sightlines***

- The original roadside boundary/hedgerow and entrance was removed in 2010 by Limerick County Council with the applicant's consent so as to allow for road realignment. He was unaware that the rebuilding of the wall and entrance would require permission.
- Adequate sightlines could be achieved should the neighbour's pier be reduced in height.
- Correspondence has been had with the adjoining landowner regarding improvement of sightlines but no agreement has been secured. The applicant is, therefore, not in a position to make the necessary roadside improvements.
- The applicant is not in a position to move the entrance to the north as he is not the owner of the said property.
- It is queried whether the Enforcement Section of the County Council has sufficiently followed up on the amended condition imposed on the adjoining site under ref. PL13.236837 (09/1441).

Note: A summary of correspondence with the County Council dating back to July 2017 is set out in the submission.

6.1.2. **Legal Interest**

- A letter from the applicant's solicitor reaffirms his legal entitlement to seek planning permission on the site.

6.2. **Planning Authority Response**

None

6.3. **Observations**

None

7.0 **Assessment**

At the outset I note that the application refers to the provision of a new access and boundary wall to the site in question, only, and does not refer to any other works carried out on the site including the refurbishment of the dwelling and erection of internal fencing. I recommend that should the Board be disposed to a favourable decision a condition clarifying the nature and extent of the development to which the permission refers to be appropriate.

I consider that the issues arising in the case stem from the two reasons for refusal attached to the planning authority's decision and relate to traffic hazard and legal interest.

7.1. **Traffic Hazard**

The R518 is identified as a Strategic Regional Road in the current County Development Plan, the policy for which is to protect the investment in the Strategic Regional Road Network, prevent the premature obsolescence of this network and maintain and improve road safety and capacity. Objective IN O16 prohibits development generating additional traffic requiring direct access onto such a strategic regional road save where certain criteria are met, including development in built up areas where access is deemed to be safe and where a 50kph speed limit applies.

As can be extrapolated from the details accompanying the application and the appeal it would appear that the original roadside boundary was set back by the County Council when road improvement works were undertaken in 2010 with the applicant's approval. From the detail on file the local authority do not appear to contest this assertion. The subsequent works entailing a new boundary wall and entrance has been the subject of two previous applications, both of which were deemed to be withdrawn.

The substantive issue appears to be the inability to achieve the necessary sightlines to the south due to the projecting pier which would have been part of the front boundary wall of the property to the south. Under planning ref. PL13.236837 (09/1441) which refers to the said site to the south and for which permission was sought to extend the dwelling, the Board amended condition 3 requiring the closure of the northern most entrance serving the site and the reduction in the boundary stone wall and ground behind it to 500mm over road level for a depth of 2.5 metres. These works have been undertaken. It is contended by the agent for the applicant that the remaining projecting pier would have been part of the front boundary stone wall and therefore should be subject to the same setback/height requirements as the wall. Whilst this is noted and I consider that there is merit in this conclusion, the Board has no remit in terms of enforcement. This is a matter for the County Council.

The proposed location of the entrance subject of this appeal has restricted sight lines to the south as a consequence of the projecting pier. To remove/alter same to improve the sight lines as delineated on the site layout plan submitted by way of further information requires the consent of the adjoining landowner which has not been secured and, at this juncture, does not appear to be forthcoming.

Whilst I note the strategic nature of the regional road and the current development plan policies and objectives for same, I submit that it is not reasonable to assess the proposal from 1st principles in the context of the requirements of objective IN O1 on the basis that there has been a dwelling on the site for a significant period of time which was served by an entrance approx. 3 metres to the north of that now proposed. As to whether this is the position of the entrance which historically served the dwelling is not clear although from the 25" inch maps available for the area in addition to Ordnance Survey aerial photographs the entrance may have been further north and closer to the dwelling. The existing access appears to have been

constructed sometime between 2005 and 2012 and it is not unreasonable to suggest that it postdates the road improvement works of 2010. As noted on day of inspection the dwelling is small and is undergoing refurbishment. I could not identify any extension as referenced in the Planners' reports on file.

From my site inspection I submit that sight lines are restricted in a southerly direction along the road frontage due to the horizontal alignment. Originally the applicable speed limit was 80kph for which sight lines of 160 metres for new development would have been required as per the NRA's DMRB, TD 41 Table 2/1. The speed limit has been extended out and the site is now within the 50kph speed limit of the town. As per Table 2/1 sight lines of 70 metres would be required. These cannot be attained in a southerly direction at either the existing or proposed access location or at a point in the immediate vicinity of the dwelling.

In my opinion the retrospective application of minimum sight distances in accordance with current standards is not reasonable in this instance. The applicant has attempted to improve on the deficiencies as identified by the planning authority including engagement with the adjoining landowner to secure agreement regarding removal of the projecting pillar, albeit unsuccessfully.

In view of the long established use on the site with access onto the regional road I consider that a reasonable compromise is to allow for the existing access location to be re-established and the boundary line to be setback further than currently delineated in accordance with the details as given on the site layout plan submitted by way of further information. The boundary wall would be 0.9 metres high. These amendments would provide for a safer access arrangement than what previously existed. Revised plans and details with the necessary alterations shown thereon should be sought by way of condition.

7.2. Legal Interest

In response to the planning authority's 2nd reason for refusal the applicant's Solicitor confirms that the applicant has full legal entitlement and equitable entitlement to make the planning application. No objection has been recorded on these grounds. I consider that the applicant has provided sufficient detail to support his claim in this regard. Should the Board be disposed to a favourable decision I recommend that the applicant be advised of the provisions of Section 34(13) of the Planning and

Development Act 2000, as amended, which states that a person shall not be entitled solely by reason of a permission to carry out any development.

7.3. Other Issues

Appropriate Assessment

Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

8.0 Recommendation

I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

9.0 Reasons and Considerations

Having regard to the established use of the site for residential purposes served by an existing access and the location of the site within the 50 kph speed limit of Rathkeale town, it is considered that subject to the conditions set out below that the proposed development would not endanger public safety by reason of traffic hazard or obstruction of road users and would be in accordance with the proper planning and sustainable development of the area.

10.0 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 plans and particulars submitted on the 7th day of March, 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 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 development to which this permission relates is limited to the plans and details accompanying the planning application, only, and does not refer to any other works within the site.

Reason: In the interest of clarity

3. The site entrance shall be retained in its original position to the north of that proposed as delineated on the site layout plan received by the planning authority on the 7th day of March 2019.

A revised site layout plan with the site entrance shown thereon and the setback of the front boundary wall to a height of no greater than 0.9 metres high in accordance with the details given on the site layout plan received by the planning authority on the 7th day of March, 2019, shall be submitted for the written agreement of the planning authority prior to commencement of development.

Reason: In the interest of traffic safety

4. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety

Pauline Fitzpatrick
Senior Planning Inspector

July, 2019