



An  
Bord  
Pleanála

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## Inspector's Report

### ABP-304528-19

<b>Development</b>	Construction of a house, garage, site entrance and all associated site works
<b>Location</b>	Derevald, Durrow Townparks, Durrow, Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	1954
<b>Applicants</b>	C. Finnegan & E. O'Gorman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	David & Gemma Shaughnessy
<b>Date of Site Inspection</b>	14 <sup>th</sup> , August 2019
<b>Inspector</b>	Paddy Keogh

## **1.0 Site Location and Description**

- 1.1. The site of the proposed development which has a stated area of 0.44 hectares is located on the western side of the town of Durrow. The site is to the rear of a family landholding that fronts onto the R639 (the main Durrow/Cork Road). The subject site consists of an open grassed field. The balance (northern portion) of the family landholding is in residential and commercial use connected with the operation of a road haulage business. With the exception of the family road haulage business the lands in the vicinity of the site are predominantly in residential use with a combination of detached houses on large individual sites to the north of the site and a small housing estate (Derevald) to the east of the site and a larger housing estate (Old Oak Grove) to the west of the site.
- 1.2. The site is enclosed by a combination of boundary hedgerows and fences. Levels across the site rise gently in a southerly direction. Land to the south of the site is predominantly in agricultural use.

## **2.0 Proposed Development**

- 2.1. The proposed development involves the construction of a single storey house with a stated floor area of 188 sq.m. together with a detached single storey garage with a stated floor area of 49 sq. m. and all ancillary site works.
- 2.2. The proposed dwelling will be accessed via the internal cul-de-sac road serving the 7 houses (5 detached and a pair of semi-detached dwellings) within the Derevald estate.
- 2.3. The Derevald estate connects with the R639 via Scot's Lane. This is a short, narrow road that serves the Derevald estate, a coach operator and agricultural lands.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Notification of a decision to grant planning permission for the proposed development subject to 12 conditions issued by the planning authority per Order dated 9<sup>th</sup>, May 2019.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

A report from the planning authority Senior Executive Planner dated 8<sup>th</sup>, May 2019, following receipt of further information and clarification of further information submitted by the applicant, includes the following:

- The site is located outside the confines of the critical Flood Zones A and B indicated in the Strategic Flood Risk Assessment of the Plan.
- The design of the proposed dwelling is deemed to be acceptable.
- Correspondence from Irish Water submitted on behalf of the applicant indicates that the proposed development can, subject to conditions, be facilitated.
- It has been submitted on behalf of the applicant that, at this time, there are no plans for future development on the balance of the site.
- The applicant enjoys the benefit of a right of way through the Derevald estate.
- A revised site layout plan has been submitted by the applicant showing modifications to the mouth of the entrance to prevent conflict with the use of existing car parking spaces serving houses on the Derevald estate.
- The applicant has confirmed that it is not feasible to provide access to the site via an alternative route to the Derevald estate.

The Senior Executive Planner recommended that planning permission for the proposed development be granted subject to conditions. The planning authority decision reflects the recommendation of the Senior Executive Planner.

### 3.2.2. Other Technical Reports

### 3.2.3. **Irish Water** - Report dated 13<sup>th</sup>, February 2019 indicates a number of items of further information in relation to both water supply and foul sewer drainage that are required in respect of the proposed development.

[A letter dated 16<sup>th</sup>, April 2019 from Irish Water, which accompanied the applicant's response to clarification of further information requested by the planning authority,

confirms that the applicant has been issued with a ‘Confirmation of Feasibility’ in respect of the proposed development].

### **3.3. Third Party Observations**

- 3.3.1. Submissions from three third parties (residents of Derevald estate) were received by the planning authority. The issues raised in these submissions are essentially repeated in the submitted grounds of appeal.

## **4.0 Planning History**

I note the following planning history on the adjoining site at Derevald housing development:

Reg. Ref. 04/952 – Planning permission for 6 houses was granted by the planning authority to Ned O’Flanagan

Reg. Ref. 06/422 - Planning permission for an additional house (pair of semi-detached houses in place of detached house permitted per Reg. Ref. 04/952) was granted by the planning authority to Denis Phelan.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.2. The site of the proposed development is located within an area zoned ‘Residential 2’ in the Durrow Town Plan contained within Volume No. 2 of the Laois County Development Plan 2017-2023.

### **5.3. Natural Heritage Designations**

- 5.3.1. The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162) is located c. 1 km north-east of the site.
- 5.3.2. The River Nore Special Protection Area (SPA) is located c. 1.1 km north-east of the site.

#### **5.4. EIA Screening – Preliminary Examination**

- 5.4.1. Having regard to the existing pattern of development in the vicinity of the site, the nature and scale of the proposed 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.

#### **5.5. Appropriate Assessment Screening**

- 5.5.1. Having regard to the nature and scale of development proposed, to the location of the site within a built up area of the town, the availability of public water supply and foul sewer drainage and to the 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.

### **6.0 The Appeal**

#### **6.1. Grounds of Appeal**

- 6.1.1. The submitted grounds of appeal include:
- Laois Co. Council has confirmed that the Derevald estate has been taken in charge by the local authority. Thus, the road through the estate can be considered to be a public road. Scot's Lane (linking the Derevald estate with the Cork Road) has not been taken in charge.
  - Scot's Lane must be regarded as a private road.
  - The submitted application is invalid in circumstances where no public notice was erected at the junction of Scot's Lane and the Cork road (public carriageway).
  - The applicants have not demonstrated that they have the necessary right-of-way over Scot's Lane to facilitate the proposed development.

- There are precedent cases (quoted by the appellant) where Laois Co. Council have demanded written proof of the possession of adequate right of way from applicant's prior to permitted proposed developments. The appellants are astonished that this has not happened in the current instant.
- Scot's Lane is only 3.690 m wide at its narrowest point. Cars cannot pass each other on the lane.
- A report from the planning authority Roads Design Office dated 13<sup>th</sup>, September 2004 in relation to the parent planning permission under which 6 houses were permitted (Reg. Ref. 04/952) states that due to the narrow access to the site no more than 6 houses will be permitted at this location. The report also states that future access to further sites through this development will not be acceptable to Roads Design office.
- Notwithstanding the report from the Roads Design office cited above, planning permission for a 7<sup>th</sup> house at the Derevald estate (replacement of a permitted detached house with a pair of semi-detached houses) was permitted under Reg. Ref.06/422. The current proposal will result in an 8<sup>th</sup> house at the Derevald estate.
- Traffic movements along Scot's Lane are currently saturated as a consequence of the combination of traffic from the Derevald estate, the bus operator located at the bottom of the lane and agricultural machinery using the laneway to access agricultural land at the bottom of the laneway.
- The proposed development is out of character with the existing development at Derevald estate. The proposed development is contrary to the concept of integration, opting instead for segregation providing for a gated development behind a high wall.
- The applicants have failed to substantiate their claim that there are no more suitable accesses available to the site (despite a request by the planning authority in their request for further information for this claim to be substantiated).
- The arrangement of existing car parking spaces in the Derevald estate is such that cars existing car parking spaces will be forced to reverse in front of the

proposed entrance to the proposed house. This will have implications in terms of traffic safety.

## 6.2. Applicant's Response

A submission from the applicant's agent per letter dated 18<sup>th</sup>, June 2019, in response to the submitted grounds of appeal, includes the following:

- Copy of letter from Brophy & Martin Solicitors stating that Mr. Denis Phelan is the owner of 2 folios of land relating to the site upon which the Derevald estate was built. The solicitor's letter further states that Mr. Denis Phelan has a long established right of way from the R639 to the said development via the laneway known locally as Scot's Lane. Mr. Phelan has given permission to the applicants (Mr. E. Finnegan & Ms. C. O'Gorman) to access their land via his property.
- The local authority has deemed the location of the public site notice to be acceptable.
- Notwithstanding the narrow width of Scot's Lane it has served 7 houses, a bus operator and an infrequently used agricultural field entrance for many years without incident.
- The proposed dwelling will be located in an area characterised by a range of house type designs including bungalow, dormer bungalows and two storey house types. The design of the proposed dwelling will not be out of character with the established pattern of development.
- The applicant explored the possibility of alternative access to serve the proposed development. However, this would have involved crossing third party owned lands (in the ownership of the local authority) and severing existing lands currently in commercial use. This option was deemed to be unacceptable to the planning authority at early pre-planning meetings.

## 6.3. Planning Authority Response

### 6.3.1. None

## 7.0 Assessment

7.1.1. I consider that the key issues to be addressed in the context of the current appeal are as follows:

- (1) Right of Way
- (2) Access, Roads & Traffic
- (3) Design
- (4) Procedural Matter

### (1) Right of Way

The submitted grounds of appeal argue that Scot's Lane over which the applicant must pass in order to access the appeal site via the Derevald estate is a private laneway which has not been taken in charge by the local authority. It is submitted that the applicants have not demonstrated that they have adequate legal right to pass over the laneway.

The applicants, in response, state that they have submitted evidence demonstrating that they have the requisite legal entitlement to pass over Scot's Lane.

I note from the documentation on file, that the applicants have submitted a copy of a letter from Brophy & Martin Solicitors stating that Mr. Denis Phelan is the owner of 2 folios of land relating to the land on which the Derevald estate was built. The letter states that Mr. Denis Phelan has a long standing right of way over Scot's Lane and that he has granted the applicants the requisite permission to pass over the laneway.

On balance, I consider that the applicants have provided sufficient evidence of right of way to pass over Scot's Lane in order to permit the making of a valid planning application and for the determination of this appeal by the Board. I consider that any further dispute in relation to right of way (viz. the nature of the right of way initially granted to Mr. Phelan and any restrictions on his power to further grant a right of way to other parties) constitutes a civil matter between the parties and is not a matter that falls within the scope of planning and development legislation for determination.



## (2) Access, Roads & Traffic

The submitted grounds of appeal argue that the access road to the site via Scot's Lane (c. 3.6m at its narrowest point) is inadequate in width to accommodate additional traffic movements. In this regard, the grounds of appeal highlight that a planning authority Roads Department report in respect of the planning permission under which the original 6 houses at Derevald estate were permitted (Reg. Ref. 04/952) stipulated that no more than 6 houses would be permitted at this location due to the narrowness of Scot's Lane. It is submitted that traffic movements along Scot's Lane are already at saturation point due to vehicle movements associated with the existing houses at Derevald estate together with vehicle movements associated with the bus operator and the agricultural entrance at the bottom of the laneway.

Notwithstanding the contents of the Roads Department report in relation to Reg. Ref. 04/952, I note that the planning authority have clearly revised their opinion in relation to the capacity of Scot's Lane in circumstances where they subsequently granted planning permission for an additional house in the Derevald estate (Reg. Ref. 06/422) and have permitted the proposed house now under appeal

It has been submitted by the applicant that Scot's Lane has been in use carrying current volumes of traffic for many years without incident.

In my opinion, the narrowness and substandard nature of Scot's Lane serves as a traffic calming device. The laneway itself is relatively short. Vehicles cannot gain significant speed when travelling along this short section of laneway and are forced by reason of its character and width to proceed at a slow pace and with caution. Sightlines at both the junction of Scot's Lane and at the entrance to the Derevald estate are adequate. In these circumstances, I consider that the marginal increase in traffic movements that would be generated by the proposed development can be accommodated without creating a traffic hazard or adversely impact on the safety of other road users.

The submitted grounds of appeal argue that the proposed development will result in conflict in vehicle turning movements as a consequence of inadequate sightlines at the new entrance to the proposed house from the bottom of the existing cul-de-sac of the estate road serving the houses in Derevald estate – conflict between cars

exiting the proposed house and cars reversing out of an existing car parking space at the bottom of the cul-de-sac. I note that the layout of the proposed development as originally proposed to the planning authority provided for a high boundary wall containing a high solid wooden gate at the proposed entrance. However, the design of the proposed entrance was subsequently revised to provide for a splayed wall to a maximum height of 1.2m at the proposed entrance. I consider that such a modification will address any problem in respect of inter-visibility of sightlines at this location. The matter can be addressed by the attachment of an appropriately worded condition to any grant of planning permission that may issue from the Board.

### (3) Design

The submitted grounds of appeal argue that the design of the proposed dwelling is unacceptable in that it is out of character with the established pattern of development in the Derevald estate.

I note that the design of the proposed dwelling does not mirror the design and style of the existing dwellings in the Derevald estate. However, the proposed dwelling will occupy a larger site than individual houses in the Derevald estate. In such circumstances, I consider that there is scope for a bespoke design on the appeal site.

The proposed design is in keeping with the character and style of houses in the wider surrounding area. I consider that the proposed house design is acceptable.

I agree with the appellant's argument that the proposed house should not be segregated from the rest of the Derevald estate behind a high wall and gate.

However,

I consider that this matter can be adequately addressed by way of the attachment of an appropriately worded condition to any grant of planning permission that may issue from the Board.

#### (4) Procedural Matters

The submitted grounds of appeal argue that the public notice erected at the entrance to Derevald estate fails to comply with the requirements of the *Planning and Development Regulations, 2001* insofar as the notice was erected at the entrance from a private laneway (Scot's Lane) rather than at the entrance from the public road (junction of Scot's Lane and the Cork Road).

It has been pointed out on behalf of the applicant, in response, that the location of the public notice was deemed to be satisfactory by the planning authority.

I consider that no evidence has been presented to suggest that any party to the appeal

or other members of the public were prejudiced as a consequence of the location at which the site notice was located. On the basis of the documentation on file I am satisfied that the objectors to the proposed development have been afforded adequate

opportunity to state their objections to the proposed development to both the local authority and to the Board. Notwithstanding the status of the laneway as a private road

it is nonetheless a route along which members of the public including visitors to the Derevald estate have unrestricted access. In any event, the planning application was

validated by the planning authority. The Board have no role in relation to the validation process.

## 8.0 Recommendation

I recommend that planning permission for the proposed development be granted for the reasons and considerations and subject to the conditions as set out below.

## 9.0 Reasons and Considerations

Having regard to the residential zoning of the site in the Durrow Town Plan contained within the Laois County Development Plan 2017-2023, the design, nature and scale of the proposed development and to the established character and pattern of development in the vicinity of the site it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of houses in the vicinity of the site or other amenities of the area, would be acceptable in terms of traffic safety and convenience 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 2<sup>nd</sup> day of April 2019 and on 18<sup>th</sup> day of April 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 developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

- (3) Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In order to safeguard the residential amenities of property in the vicinity.

- (4) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

- (5) Details of the materials, colours and textures of all the external finishes to the proposed dwelling and garage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** In the interest of visual amenity.

- (6) Construction waste shall be managed in accordance with a construction waste management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July 2006

**Reason:** In the interest of sustainable waste management.

- (7) Save for that which needs to be removed in order to create and maintain adequate site distances at the proposed entrance, all remaining boundary screening and mature trees shall be retained and not removed save with the written consent of the planning authority

A scheme of supplementary landscaping using only indigenous deciduous trees and hedging species shall be provided. The landscaping scheme shall include the establishment of a hedgerow along all side and rear boundaries of the site. Details of the proposed scheme shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Any plants which die, are removed or become seriously damaged or diseased, within a period of 12 months from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding area, in the interest of visual amenity.

- (8) (a) The entrance to the site shall be recessed 4.3m behind the new fence line with wing walls and which shall not exceed 1.2m in height splayed at an angle of 45 degrees. Wing walls shall be capped and plastered on their public facades.

(b) All areas forward of the sight splays, with exception of the access way, shall be grassed up to the metalled edge of the road. Notwithstanding the provisions of the *Planning and Development Regulations, 2001*, as amended, no wall, with the exception of the wing wall for the access, shall be erected as part of the boundary.

**Reason:** In order to provide for the safe movement of vehicles within the Derevald estate.

**Note:** *The applicant is advised of the provision under Section 34(13) of the Planning and Development Act, 2000 which stipulates that a person shall not be entitled solely by reason of a planning permission to carry out any development.*

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Paddy Keogh  
Planning Inspector

30<sup>th</sup>, October 2019