



An
Bord
Pleanála

Inspector's Report 304640-19

Development	Retention of alterations to site boundaries and gateway onto entrance
Location	Carrokeale, Mountshannon, Lisnagry, Co. Limerick
Planning Authority	Limerick City and County Council
Planning Authority Reg. Ref.	19/313
Applicant(s)	Martin Berkery
Type of Application	Planning permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party
Appellant(s)	Martin Berkery
Observer(s)	None
Date of Site Inspection	23 rd August 2019
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1. The site is located near Junction 28 of the M7. This is the Castletroy exit which leads onto the R445, which travels in to Limerick City via Annacotty and Newcastle. The site is located c.100m southwest of the motorway roundabout junction on the northern side of the R445. It is situated opposite Finnegan's Pub, which is a large, busy pub with a car park to the west of the building. The appeal site forms part of a larger site which contains a recently constructed house. There is a further house to the immediate northeast
- 1.2. The site area is given as 0.176ha. It consists of an agricultural field and adjoins a residential site in the same ownership. The site of the current appeal previously formed part of the application site for which permission was granted by the P.A. for a single dwelling house on the larger site. A large semi-circular entrance area comprising a hard-standing concrete area, which is bounded by a rendered concrete wall of c. 1.2m with several pillars inset into the wall. The entrance to the existing residence is located at the northern end of the semi-circular area (bell-mouth shape) and is gated (between two of the pillars). A new entrance was created to the appeal site (between two further pillars) and is currently barricaded by a makeshift barrier.

2.0 Proposed Development

- 2.1. It is proposed to retain alterations to the site boundaries and a gateway onto the entrance. In effect, this means that it is proposed to retain the additional entrance which has been inserted into the southern part of the original bell-mouth site entrance and to redraw the boundaries of the site to subdivide the original 4000sq.m site forming a new separate site to the south of the residence with an area of 1760sq.m and its own separate entrance.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for 2 reasons. The first related to traffic hazard due to restricted sightlines at the entrance and the interference with

the safety and free flow of traffic on the public road. The second reason was material contravention of conditions 1 and 3 attached to the parent permission 15/575. These conditions were firstly to comply with the plans and particulars submitted with that application and secondly, to liaise with and comply with P.A. requirements in respect of sightlines.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report (22/05/19) noted the planning history. Reference was made to previous planning permission on the site, (15/575) which related inter alia, to permission for a replacement house on a site where the original cottage had been fire damaged. Reference was made to the Development Plan policies relating to the Limerick Northern Distributor Road, (as the site lies within the study area for LNDR), to national policy regarding access to national roads and to signage on national roads. It was noted that the site is located outside the Castletroy LAP area and is in an area under strong urban pressure (as defined in the CDP).

Concerns were raised regarding the lack of any justification for the proposed development or its intended use, and the fact that the proposals represents non-compliance with the parent permission and with conditions attached to same. The sightlines were considered to be deficient. It was noted that permission had been granted in this area under strong urban pressure as the original house had been fire damaged and it was an existing residence. The vehicular access had been granted as agreed and was for one domestic dwelling only. It was pointed out that unauthorised signage had been placed on the site which indicated that the site was a potential development site for residential use. However, no mention of the unauthorised signage had been made by the applicant.

3.2.2. Other Technical Reports

Operations section Roads - (17/05/19) – it was noted that at the time that 15/575 was under consideration, the Roads Engineer had requested that the boundary should be set back by 2m to achieve sightlines. Thus, the current application is for the adjustment of the permitted entrance and for a shared entrance. It was pointed out that the R445 carries in excess of 10,000 vehicles a day at this point and that

there are many traffic movements occurring at the location of the entrance. The sightlines to the west were considered to be severely restricted due to the proximity of the boundary wall and the lamp post, and it was requested that unobstructed 90m sightlines be achieved in this direction, from a point 3m back from road edge. The sightlines to the east were not of any particular concern as 120m could be achieved.

3.3. Prescribed Bodies

- 3.3.1 **Transport Infrastructure Ireland (30/4/19)** – The Authority requested that the P.A. has regard to the provisions of Chapter 3 of the DoECLG Spatial Planning and National Roads Guidelines in the assessment and determination of the application.

3.4. Third party observations

None received. However, a submission was made by Elected Representatives Barry Maguire and Gene Mathews. It was noted that the issues raised in the recently issued enforcement notice submitted to the P.A. have not been addressed in the application.

4.0 Planning History

- 4.1. The following planning decision relating to the site is relevant.

15/575 – Permission granted by P.A. for the demolition of existing fire damaged dwelling and the construction of a replacement storey and a half type dwelling and an effluent treatment/septic tank system. Permission was granted subject to 13 conditions which were generally of a standard type. It is noted that the site area of the original site was given as 0.4ha.

5.0 Policy Context

5.1. Limerick County Development Plan 2010-2016 (as extended)

- 5.1.1. The site is outside the Castletroy LAP boundary and is designated as a rural area Under Strong Rural Influence. Chapter 3 contains the policies and objectives relating to settlement strategy and rural housing.

Objective RS01 seeks to permit single houses in the areas under strong urban influence to facilitate those with a genuine rural housing need in the area. In order to demonstrate this, certain criteria are applied. These include long term landowners and/or their children; persons working on the family farm or engaged in essential rural activities; and persons who have spent a substantial period of time (10 years) in the local rural area and wish to reside there for family or work-related reasons.

Objective RS05 facilitates the refurbishment/replacement of a traditional rural dwelling, with retention and refurbishment the preferred option. Replacement is permissible where the original dwelling is not capable of being made structurally sound or otherwise improved and is not of architectural merit. In these circumstances, the normal rural housing need criteria will not be applied.

- 5.1.2.** Chapter 8 Transport and Infrastructure contains policies relating to the preservation of the safety and capacity of public roads and the Limerick Northern Distributor Road.

Objective IN P7 seeks to improve the safety and capacity of existing roads by minimising traffic hazards, preventing the creation of additional or new traffic hazards in the road network and securing appropriate signage.

Objective IN O10 seeks to ensure that any development that seeks a new access to a public road or the intensification of use of an existing access that would compromise the safety and capacity of the road network will not be permitted unless the new/existing access meets the appropriate design standards.

Objective IN O14 supports the Limerick Northern Distributor Road which will connect the Coonagh to Knockalisheen Scheme to the existing R445 to the east of Limerick City.

Policies IN P9 and **IN P10** are also relevant as is **Objective IN O17**. These relate to the safeguarding of the capacity of the national road network, protection of corridors and route alignments and the avoidance of new development which would require access from a national road, except in exceptional circumstances. Objective IN O21 is also of relevance as it seeks to protect the capacity of interchanges and junctions on the national primary and secondary roads.

- 5.1.3.** Chapter 10 contains Development Management Standards, including the following:-

- 10.5.4 Criteria for development of single houses in the countryside.
- 10.11.1 Considerations to be taken into account in order to minimise impact on public roads including the nature of the proposed development, the volume of traffic likely to be generated, the design of the access and visibility, the speed and carrying capacity of the public road.
- 10.12 Flooding – need to avoid the risk of flooding of proposed development or of lands elsewhere.

5.2. Natural Heritage Designations

Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) lie approx. 600m and 6km to the west.

6.0 The Appeal

6.1. Grounds of Appeal

The first-party appeal was submitted by an agent acting for the developer and was accompanied by a letter from the developer setting out the background to the case and other supporting documentation comprising mainly correspondence with the planning authority in relation to the parent permission 15/575. The main points raised may be summarised as follows:

- **Background** – The developer had previously owned the site of the current application/appeal and the site of the adjoining dwelling to the east, which he developed and sold to a third party. He had purchased the land and obtained planning permission to replace a fire damaged dwelling. The developer had originally tried to sell the entire site associated with the dwelling (as permitted under 15/575) but the purchaser did not want to buy the whole site. The dwelling was sold with half an acre (approx. half the site), leaving the developer with a landlocked property. The developer subsequently opened a gate in the existing entrance to facilitate access to his property. The P.A. served a Warning Notice on him, which resulted in the current application/appeal.

- **Traffic hazard** – the current entrance, the subject of the application and appeal, is located within an existing horseshoe type entrance which serves the adjoining dwelling. This entrance was permitted under 15/575 with no requirement for alteration of the horseshoe entrance. This implies that the P.A. were satisfied with the design of the entrance and associated sightlines. It is therefore illogical and inconsistent for the P.A. to now state that the sightlines are restricted as there has been no material change to the roadway or footway since the grant of permission.
- **Condition 1 of 15/575** – This condition requires implementation in accordance with the plans and particulars lodged with the application. The proposed subdivision of this property in no way reduces the “clarity” of P15/575 as all works pertaining to the dwelling are still located within the revised curtilage of the dwelling. It is also outside the scope of the Planning and Development Act and contrary to the Constitution to restrict the sale of private land (save for compulsory purchase orders).
- **Condition 3 of 15/575** – This condition required the developer to liaise with the P.A. Engineer and to agree the necessary sight lines in order to carry out the proposed works. Notification of this agreement was required to have been submitted to the P.A. for written agreement prior to the commencement of the development. The appellant states that he had tried several times to contact the Engineer but without success. Evidence of correspondence to this effect is included with the grounds of appeal. It is stated that a sightline calculation drawing was sent to the P.A. on 15/04/16 and no response was received. As there was no further recommended alteration to the sightlines, it was assumed that the P.A. was satisfied with the drawing showing the proposed sightlines.
- **Material contravention of permission 15/575** - The appellant believes that it would be erroneous for the P.A. to state that the new sub-divided site boundaries and the new gateway would be a material contravention of this permission.

6.2. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

7.0 Assessment

It is considered that the main issues arising from the appeal are as follows:-

- Principle of development and compliance with Condition 1 of 15/575
- Traffic hazard and impact on capacity of road network

7.1. Principle of development and compliance with Condition 1 of 15/575

7.1.1. The proposed development seeks to regularise the unauthorised changes to the boundary, which effectively subdivided the site into two plots, and the unauthorised second entrance to the site from the R445. The planning authority considered that the retention of these elements would materially contravene conditions 1 and 3 of the parent permission (15/575). Condition 1 required compliance with the lodged plans and particulars and condition 3 related to sightlines at the entrance. The parent permission was granted for a replacement dwelling on the basis that the original house on the site had been fire damaged and could not be repaired. The plans and particulars include a site layout plan showing a 4,000sq.m site with one site entrance serving one dwelling. There was no indication in the submitted plans and documents that the developer had intended to subdivide the site or to create a second entrance.

7.1.2. The site is located within a rural area "Under Strong Urban Influence". The County Development Plan (3.6.1) states that urban influence development in such areas is driven by cities and larger towns and this should take place within the built-up areas or in areas identified for such development through the planning process. The site is located outside the Castletroy LAP development boundary. Development within this rural area type involving new houses is strictly curtailed and the CDP seeks to facilitate the genuine rural housing needs of the local community. The criteria for such housing needs are set out clearly in RS01 of the Development Plan. The developer did not comply with the criteria. The P.A. has stated that the justification for making an exception in the case of 15/575 was due to the fact that the original house had been damaged beyond repair by fire. It is clear from the decision that the

P.A. had concerns regarding traffic impact and the nature and scale of the development would, therefore, have been a factor in the determination of that case.

7.1.3. The developer has not specified the proposed use of the site. The P.A. has made reference to signage which had been placed on the site inferring that it would have potential for development as a single dwelling house. There was no evidence of such signage when I inspected the site and the appellant has not clarified the intended use of the site. This information is potentially significant in terms of the creation of an additional access as it will influence the nature, volume and frequency of traffic to be generated, the appropriateness of the design of the access and the likely impact on the capacity of the road network. It is considered that should the Board be minded to grant permission for the retention of the revised boundaries with a separate, second entrance, it would result in the creation of a second planning unit, which could either be used for agricultural purposes or could become the subject of a further planning application for a residential development, (or other development), which may be difficult to refuse in principle. This would give rise to an intensification of the use of the lands and of the entrance onto the road network.

7.1.4. In light of the foregoing, it is considered that the proposed development would materially contravene Condition 1 of permission 15/575, which governs the use of the site, as it would intensify the use of the site and the entrance and would be contrary to the terms of the original permission.

7.2. Traffic hazard and impact on capacity of road network

7.2.1. The site is located with frontage onto the R445, and is approx. 100m from the Mackey Roundabout junction with the M7 motorway. The site location is also notable as it is situated directly opposite a large public house which has a substantial car park. The P.A. Engineer has stated that the road is very busy with 10,000 vehicles per day passing the site. There is a yellow box outside the site entrance and there are right-turning lanes on either side of the box, with a traffic island. Thus, effectively, there are potentially three lanes of traffic immediately adjacent to the entrance, with two lanes leading to the motorway. The stretch of road leading from the motorway roundabout is long and straight, and the stretch of road leading from the city side is also long and straight with few access points. These circumstances, together with the entrance and exit points to the busy pub opposite, provide for a complex range of

turning movements and create the potential for hazardous traffic conditions. This is a material consideration in the assessment of the appropriateness of a second entrance at this location.

- 7.2.2.** The P.A. Engineer has pointed out that the submitted site layout plan does not include sightlines, and that the sightlines in a westerly direction are severely restricted due to the proximity of the boundary wall. I would agree with this observation, but it is further considered that the sightlines in an easterly direction are also restricted by the high boundary wall, particularly when exiting the revised site boundary and relocated entrance of the permitted dwelling. Given that the appellant has advised that he has since sold the existing dwelling (with associated subdivided northern section of site), it is not clear whether there would be sufficient legal interest to carry out any required alterations to the wall to improve sightlines. It is further noted that the P.A. Area Engineer had stated that unobstructed sightlines must be achieved from a point 3.0m back from the road edge and that as such, it will not be sufficient to proposed lowering of the existing boundary walls.
- 7.2.3.** In light of the above, it is not clear whether adequate sightlines can be achieved. It is noted that the appellant had sought to obtain confirmation on the matter from the P.A as required by condition 3 of 15/575, but had not secured such confirmation prior to commencement of the development. It is noted that a plan which it is stated was submitted to the P.A. which indicates sightlines available was included with the grounds of appeal, but the quality of the drawing is so poor that it is difficult to read the detailed information. It is furthermore unclear whether the existing development is deemed to be in compliance with the terms of Condition 3, notwithstanding the appellant's assumption that compliance has been achieved.
- 7.2.4.** In addition to the issue of sightlines, the matter of the impact of a second entrance at this location on the safety and carrying capacity of the road network needs to be addressed, as required by both national and local policy. The TII Spatial Planning and National Roads Guidelines 2012 (Section 2.5), state that in the case of lands adjoining national roads to which speed limits of greater than 60kph apply, additional accesses or the generation of increased traffic from existing accesses should be avoided. The appeal site is located in a zone with a speed limit of 80kph.

- 7.2.5.** There are several policies and objectives in the Limerick County Development Plan, such as Policies IN P7, IN O10, IN P9, IN P10 and Objectives IN O17 and IN O21, (as summarised in 5.1.2 above), which seek to avoid the introduction of new entrances and/or the intensification of existing entrances whereby the capacity and/or safety of the national road network would be compromised.
- 7.2.6.** It is considered that the proposed development, which would introduce a new entrance gateway in an existing bell mouth recessed entrance with an existing entrance gateway to a single house, is likely to further increase the level of traffic generation associated with the site at a location where there is heavy passing traffic, a busy junction with a commercial premises opposite the site and within 100m of a major junction with the M7 motorway. The additional traffic turning movements at this location would be likely to interfere with the safety and free flow of traffic on the road. It is considered that the intensification of the access to the site at this location would undermine the capacity, investment value and safety of the national road and would be contrary to the objectives of the Government policy on National Roads and to the policies and objectives of the Limerick County Development Plan. In addition, the restricted sightlines available at the entrance would give rise to a further traffic hazard at this location.

7.3. Environmental Impact Assessment

Having regard to the nature, size and location of the proposed development, 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.

7.4. Appropriate Assessment

Lower River Shannon SAC (002165) and River Shannon and River Fergus Estuaries SPA (004077) lie approx. 600m and 6km to the west, respectively. There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

8.1 It is recommended that permission be refused for the reasons and considerations set out below.

9.0 Reasons and Considerations

1. The development, which it is proposed to retain, would by reason of the intensification of the use of the lands and of an existing entrance, contravene materially a condition attached to an existing permission granted by the planning authority on the 1st day of February 2016 under planning register reference number 15/575.
2. It is considered that the development that it is proposed to retain, which would intensify the use of an existing entrance where sightlines are restricted, would endanger public safety by reason of traffic hazard because the site is located alongside the heavily trafficked R445 at a point where a speed limit of 80 km/h applies, and is situated within 100 metres of a major motorway junction and opposite an entrance to a busy commercial premises, 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 the objectives of the planning authority, which are considered reasonable, to preserve the level of service and carrying capacity of the road at this location and to protect the public investment in the national road network. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Mary Kennelly
Senior Planning Inspector

18th September 2019