



An  
Bord  
Pleanála

## Inspector's Report

### ABP-304990-19

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<b>Development</b>	Retention of farm access road on site and associated site works.
<b>Location</b>	Kilmeany, Kilmorna, Listowel. Co Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	19325
<b>Applicant(s)</b>	Reginald Foulds & Furong Hao
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Kerry Parents & Friends Association Bothar na gCrann Residents Association
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	25/10/2019
<b>Inspector</b>	Gillian Kane

## 1.0 Site Location and Description

- 1.1.1. The subject site is located on the northern side of a residential cul-de-sac, approx. 4km east of the north Kerry town of Listowel.
- 1.1.2. The subject site comprises a widened agricultural access and a rough surfaced lane within the site. The cul-de-sac is residential, with large dwellings on large plots.

## 2.0 Proposed Development

- 2.1.1. On the 29<sup>th</sup> March 2019 planning permission was sought for the retention of a access road of 190m long.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 16<sup>th</sup> July 2019, the Planning Authority issued a notification of their intention to GRANT permission subject to 5 no. conditions. Condition no. 5 states that the access road shall be used for agriculture purposes only.

### 3.2. Planning Authority Reports

- 3.2.1. **County Archaeologist:** No recorded monuments. No mitigation required.
- 3.2.2. **Biodiversity Officer:** No significant effects on the Lower Shannon cSAC identified.
- 3.2.3. **Planning Reports:** Description of development refers to a snail farm but no details of the proposed farm have been submitted. Visual impact of road is low. Sight lines are adequate. Further Information required regarding the extent of development proposed, that the existing road to be retained is incomplete and details of applicants right of way.

### 3.3. Third Party Observations

- 3.3.1. Representation by Michael J Healy-Rae TD requesting that permission be granted.
- 3.3.2. A number of submissions objected to the proposed development on the grounds that the development of a snail farm is unsuitable at this cul-de-sac location

### 3.4. Further Information

- 3.4.1. On the 29<sup>th</sup> May 2019 the applicant responded to the request for further information stating that the proposed development involves the road only, that the subject road is

as complete as it needs to be and that the right of way was subject to an application with the Land Registry.

- 3.4.2. The applicant was requested to re-advertise the development.
- 3.4.3. A number of third parties made submissions to the Planning Authority stating that their objections to the development remained.
- 3.4.4. **Second Planning Report:** Proposed road is acceptable.

## 4.0 Relevant Planning History

- 4.1.1. Planning Authority Reg. Ref. EX739: Section 5 referral declaring that the construction of a polytunnel and storage building for snail farming use of development and is exempted development and the existing access road is development and is not exempted development.
- 4.1.2. Planning Authority reg. ref. 19/164: Planning permission was sought for 10 no. greenhouses, two stores, three breeding houses and two incubation rooms. The application was withdrawn.

## 5.0 Policy Context

### 5.1. Kerry County Development Plan

- 5.1.1. The subject site is located in an unzoned rural area, classified as **Rural General**. These areas constitute the least sensitive landscapes throughout the County and from a visual impact point of view have the ability to absorb a moderate amount of development without significantly altering their character.
- 5.1.2. Chapter 12 deals specifically with Zoning and Landscape. Policy relating to areas zoned Rural General in Section 12.3.1 Rural (c) states that "*it is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development*". Policy ZL-1 states that "*it is policy to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives*".
- 5.1.3. Chapter 13 sets out the Development Management considerations.

## 5.2. **Natural Heritage Designations**

- 5.2.1. The subject site is located 0.1km away from the Lower River Shannon SAC and 0.6km from the Moanveanagh Bog SAC.

## 5.3. **EIA Screening**

- 5.3.1. Having regard to nature of the development and the urban 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

## 6.0 **The Appeal**

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

#### **Appeal of Kerry Parents & Friends Association**

- 6.1.1. A third-party appeal of the decision of the Planning Authority to grant permission has been submitted. The grounds of the appeal can be summarised as follows:
- The proposed development of a snail farm is a major commercial / industrial development which is not appropriate to this quiet, narrow cul-de-sac. This area was chosen by the appellants as a residence for people with intellectual disabilities.
  - The 14 no. houses on the road maintain this private cul-de-sac.
  - The road is not suitable for vehicular traffic of employees and goods. The road is wide enough for one vehicle only.
  - Permission was previously sought for 10 no. greenhouses, two stores, three breeding houses and two incubation rooms. It is feared this will reappear if the subject road is granted.
  - The proposed development would cause significant visual, lighting, noise and environmental damage to the residential road. It would create intolerable waste, effluent and smell pollution adjoining the appellants property. It would devalue the properties adjoining.

- The road was constructed before a right of way was established. The existing opening on the site was extended to twice its size. The appellants request that this be reinstated.
- Such enterprises have a high failure rate. Local communities are left with the clean-up operation or an environmental disaster.
- There could be a risk of pollution to the River Feale.
- The appellants operate a small respite service, next door to the subject site. the people accommodated require tranquillity and peace. It is submitted the proposed development will be a risk to the welfare from the odours, noise, access into the site, safety on the roadway and visual amenity being obscured.
- The Board is requested to refuse permission.
- The appeal is accompanied by a letter from an Engineering & Surveying company. The letter refers to the planning history on the site and queries the Section 5 declaration regarding the snail farm. It is submitted that the subject road is intended to serve the snail farm and therefore the road to be retained is for commercial not farm use. It is submitted that the application is misleading.

### **Appeal of Bothar na gCrann Residents Association**

6.1.2. A third-party appeal of the decision of the Planning Authority to grant permission has been submitted. The grounds of the appeal can be summarised as follows:

- The proposed development of a snail farm would be a major commercial undertaking which is unsuited to the private residential road. the development has been revised to be retention of the access road and one greenhouse. It is submitted that this is a strategic move to progress to a full-scale commercial development. The residents are equally opposed to even one polytunnel. The nature and character of the road is entirely residential, with no agriculture activity. The Board is requested to refuse permission for the doubling of the existing entrance gate and the roadway.
- The 13 no. private residences and care home maintain the road. The unauthorised work undertaken has caused significant subsidence under the railway bridge. The road is not suitable for a factory farm enterprise.

- The owners of the title of the adjoining roadway have refused to grant permission for the right of way on the grounds that the applicants are no longer residents. They have made clear to the Planning Authority that they do not grant permission to use the road.
- The proposed development would cause considerable damage in terms of visual lighting and noise. It would cause waste effluent and smell pollution on a site adjoining a HSE respite care service. There is no access to sewage facilities and therefore damage to watercourses would occur. This would be deleterious to the River Feale, one of Irelands greatest salmon fishing rivers. The proposed development would be an eyesore and would devalue adjoining properties.
- Such enterprises have a high failure rate. Local communities are left with the clean-up operation or an environmental disaster.
- The existing opening on the site was extended to twice its size. The appellants request that this be reinstated, that the access road and concrete base be removed, and that the site be restored.
- The appellants submitted a section 5 referral regarding the proposed development. The Planning Authority's report states that only one poly tunnel was deemed exempt but the appellants were not made aware of this. It is submitted that they have been denied their right to appeal the section 5 declaration and they request the Board to address this.
- The Board is requested to refuse permission for the retention of the road access and to refuse permission for any form of snail farm.
- The appeal is signed by the residents of 13 no. dwellings.

## 6.2. Applicant Response

6.2.1. The applicant responded to the third-party appeals as follows:

- The applicants were granted immigration under the entrepreneur Start Up programmes to develop a snail farm, having moved to Ireland in May 2018.
- The applicants were not aware of the neighbour's objection to the proposal.
- In March 2019 a decision not to proceed with the snail farm was made.

- The appellants objections relate mainly to the snail farm.
- The access road was built in November 2018 and permission to retain was made.
- A decision by the Planning Authority under 19/164 was nullified and a decision was made not to proceed.
- The original steel gate (material and size) is being replaced with the same wooden fence wings.
- The applicants have no intention of building a snail farm, have put the land up for sale and will return to Canada.

### 6.3. **Planning Authority Response**

6.3.1. None on file.

### 6.4. **Observations**

6.4.1. None on file.

## 7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the single issue is the principle of the proposed development.

### 7.2. **Principle of the Proposed Development**

7.2.1. For clarity, it must be stated that permission is being sought to retain an unsurfaced lane on the site, only. All references to a snail farm, incubation units or other are not within the remit of this appeal.

7.2.2. I note the applicant's willingness to restore the access to its original width and with original materials. This had not been done by the date of my site visit. As a stand-alone development, the existing widened farm entrance is acceptable. Sightlines to the east and west are available and traffic using the entrance will not cause a traffic hazard.

7.2.3. The unsurfaced track within the site appears to end abruptly. It comprises a winding track of hardcore or similar material. It could be easily reversed without undue

impact. As with the entrance point, as a stand-alone development it does not impact on the lane, the existing residences or the wider area.

## 8.0 Recommendation

- 8.1. That permission to retain be granted in accordance with the following reasons and considerations and subject to the following conditions:

## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the zoning objective of the area, the layout and scale of the development to be retained and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the development would not cause a traffic hazard and would not seriously injure the visual or residential amenities of the area or any property in the vicinity. The proposed development for which permission to retain is sought would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

- 1 The existing farm access track shall be retained in accordance with the plans and particulars lodged with the application, 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

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Gillian Kane  
Senior Planning Inspector

01 November 2019