



An
Bord
Pleanála

Inspector's Report ABP-306064-19

Development	Permission sought to revise site boundaries, as previously permitted under 18/6264, and to retain an existing vehicular entrance.
Location	Wallstown, Shanballymore, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	19/6226
Applicant(s)	Chris Hall
Type of Application	Permission & Permission for Retention
Planning Authority Decision	Grant, subject to 4 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	TII
Observer(s)	None
Date of Site Inspection	30 th January 2020
Inspector	Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located on the N73, at a point 7km to the SW of Kildorrery and 12km to the NE of Mallow and in an area of rolling countryside. The national secondary road passes the site to the east and it is subject to a speed limit of 100 kmph. This road is of meandering form as it passes the site and its vertical and horizontal alignments vary accordingly.
- 1.2. The site itself is of roughly regular shape and it extends over an area of 0.17 hectares. This site accommodates a two storey detached dwelling house (276.6 sqm) with an accompanying freestanding garage (29.8 sqm). At present, it is capable of being accessed by means of a shared access to the SE of the site and by an access in the NE corner of the site. The said access to the SE is shared with a single storey detached dwelling house to the south (hereafter referred to as the cottage), which the applicant owns. Former dedicated vehicular and pedestrian accesses to this dwelling house have been closed.

2.0 Proposed Development

- 2.1. The proposal is for the following two items:
 - Permission is sought for the retention of the dwelling house within revised boundaries, i.e. the same boundaries as previously permitted except for the exclusion of the SE corner, which coincides with the shared access, and
 - Retention permission is sought for the access in the NE corner of the site. This access would be used to serve the dwelling house, while the “shared” access would be used to serve the cottage. Thus, each dwelling would have a dedicated access exclusive to it.

3.0 Planning Authority Decision

3.1. Decision

Permission granted subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key paragraph in the case planner's report states, "While the concerns of the TII are noted, having regard to the report of the Area Engineer and the length of time the unauthorised entrance has been in use, over 12 years, the attempt to regularise the unauthorised works and ensure the provision of appropriate sightlines should be considered in this instance."

3.2.2. Other Technical Reports

- TII: Objects: The proposal would create an adverse impact on the N73 (100 kmph) and so would be at variance with policy in relation to control of frontage development on national roads set out in the Spatial Planning and National Roads Guidelines.
- Area Engineer: No objection, subject to conditions.

4.0 Planning History

- 06/8293: Dwelling: Permitted: Condition 9 required the blocking up of 2 existing accesses and the provision of a new access to serve both dwellings.
- 18/6264: Retention of dwelling (permitted under 06/8293) and garage: Permitted: Condition 6 attached to this permission requires that vehicular access be in accordance with the site plan submitted on 15th March 2019, i.e. a single access serving both dwellings. The accompanying reason stated, "To provide proper sight distance for emerging traffic in the interests of road safety."

5.0 Policy and Context

5.1. Development Plan

Under the Cork County Development Plan 2014 – 2020 (CDP), the site is shown as lying within a Stronger Rural Area and within a High Value Landscape. Policy

Objective TM 3-1 is entitled National Road Network and its following points are of relevance:

- (c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.*
- (d) Avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50 kph apply.*
- (e) Prevent the undermining of the strategic transport function of national roads and to protect the capacity of the interchanges in the County from locally generated traffic.*

5.2. Natural Heritage Designations

Blackwater River SAC (002170)

5.3. EIA Screening

The proposal would not come within the ambit of any of the types of development set out under Part 1 and 2 of Schedule 5 to Article 93 of the Planning and Development Regulations 2001 – 2018. Accordingly, the possibility of it being sub-threshold for the purposes of EIA does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

National Policy

- Section 2.5 of the Spatial Planning and National Roads Guidelines is cited. The proposed retention of an unauthorised access off the N73 to serve an individual dwelling house would contravene the advice set out in this Section.
- The planning history of the site is cited, wherein under permitted applications 06/8293 and 18/6264, access to the dwelling house in question was to be shared with that to an adjacent cottage and, under condition 6 attached to the latter permission, the subject access was to be closed.

- The Planning Authority's draft permission now contradicts its previous position.
- The appellant is concerned that an adverse precedent may be established, and, in this respect, attention is drawn to similar cases elsewhere in the County where the Planning Authority has failed to uphold the aforementioned Section 2.5 (19/5319 and 18/7328).

Road Safety Considerations

- Attention is drawn to the quest to improve road safety on the national road network. In this respect, the restriction of direct access onto this network has a role to play in reducing collisions/fatalities, by the avoidance of additional locations for turning movements.
- In the light of the foregoing considerations and in the light, too, of the character of the road, its 100 kph speed limit, and the high volumes of traffic carried, objection is raised to the current proposal.
- Specifically, the access in question is at a point where the N73 has a continuous white centre line and where sightlines appear restricted, particularly to the north.
- Unlike under application 18/6264, the Area Engineer does not acknowledge the dangerous bend in the N73 as it passes the site. Furthermore, the existing shared access lacks good sightlines and it is insufficiently defined.

Planning history

- Attention is drawn to a letter from the applicant in which he expressed his intention to comply with condition 9 attached to permitted application 06/8293, i.e. to close the subject access.
- Attention is also drawn to the omission of sightlines from the submitted plans, e.g. where a y distance of 215m would be required.

Local Development Plan Policy

- Policy Objective TM-3(c), (d) & (e) of the CDP is cited. The Planning Authority's draft permission would contravene this Policy Objective and yet no exceptional circumstances have been identified to warrant such a departure.

- Section 2.6 of the above cited Guidelines allows for a less restrictive approach on national secondary roads, but only where agreed with the TII. No such agreement applies to County Cork.

Precedence

- The risk of adverse precedent arises, especially as no exceptional circumstances have been identified.

Protecting Public Investment

- Under National Strategic Outcome 2 of the NPF and Section 5.2 of the NDP, investment in the national road network is not to be undermined by measures that would impede its carrying capacity and undermine its safe operation.

6.2. **Applicant Response**

None

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of national planning guidelines, the CDP, 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 policy and planning history,

(ii) Traffic, access, and road safety,

(iii) Water, and

(iv) Screening for Stage 1 AA.

(i) Planning policy and planning history

7.2. The proposal is essentially for the retention of the access in the NE corner of the site. The proposed revision of site boundaries to the dwelling house in question would simply be a corollary of such retention, i.e. this access would be a dedicated one to this dwelling house and the existing shared access would become a dedicated one to the applicant's cottage.

7.3. The appellant summarises the planning policy context that is of relevance to this proposal. Thus,

- Under Section 5.2 of the NPF, investment in the national road network is not to be undermined by measures that would impede its carrying capacity and undermine its safe operation.
- Under Section 2.5 of the Spatial Planning and National Roads Guidelines, the creation of any additional access point from new development of whatever description to a national road with a speed limit greater than 60 kmph is to be avoided. While under Section 2.6 exceptional circumstances are outlined, these do not apply to the subject site.
- Under Policy Objective TM 3-1 (c), (d) & (e) of the CDP, the above cited provisions of national planning policy are effectively reiterated for the local level.

7.4. The planning history of the site can be summarised as follows:

- Under 06/8293, permission was granted for a dwelling house on the current application site. Condition 9 attached to this permission states the following:

The two existing entrances shall be closed and a new single entrance shall be constructed with its centre at a location 25m from the Mitchelstown end of the road frontage of the overall property. This entrance shall provide access to both dwelling houses. This work shall be carried out prior to the commencement of construction of the dwelling house and shall be completed to the satisfaction of the Council's Area Engineer.

Reason: To provide proper sight distance for emerging traffic in the interests of road safety.

- Under 18/6264, retention permission was granted for the dwelling house and garage on the current application site. Condition 6 attached to this permission states the following:

Vehicular access shall be in accordance with the site plan submitted on 15/03/19. Vegetation or any structure shall not exceed 1m in height within the sight distance triangle. Full details of the proposed works to the roadside boundary and the entrance/access land shall be submitted to and agreed in writing with the Planning Authority within a period of one month from the date of grant of permission. All works shall be carried out to the Area Engineer's satisfaction within a period of two months of the date of grant of permission.

Reason: To provide proper sight distance for emerging traffic in the interests of road safety.

It was granted on 16th May 2019. The site plan cited shows the shared access and a driveway leading directly from this access to the dwelling house.

Notation reiterates the provisions of condition 9 with respect to the closure of the dedicated accesses to the cottage and to the dwelling house to the south and to the north of the shared access.

- 7.5. Notwithstanding the above planning history, the current proposal seeks to de-couple the access arrangements for the dwelling house and the cottage. Thus, instead of a single shared access, it proposes that the access in the NE corner of the site be retained and assigned to the dwelling house and the “shared access” be assigned to the cottage. Thus, under this scenario, instead of the two dwellings being jointly accessed by means of a single access point, separate access points would serve either dwelling and so sanction for an additional access from the N73 is being sought. While no increase in traffic movements is anticipated, the addition of an extra access of the N73 would be contrary to national and local planning policy, which seeks to ensure that the creation of such accesses is avoided.

I conclude that the proposal, which would entail the sanctioning of an additional access off the N73, would contravene national and local planning policy. It would also materially contravene condition 9 attached to the parent permission and it would establish an adverse precedent for the addition of an extra access in a situation

wherein new development was only authorised heretofore on the basis of a shared access.

(ii) Traffic, access, and road safety

- 7.6. Although a national secondary road, the N73 links Junction 12 of the M8 beside Mitchelstown with the N20 at Mallow and so it is a heavily trafficked cross route between these two more major roads. (To the west of Mallow it runs to Killarney and onto Killorglin).
- 7.7. During my site visit, I observed that the section of the N73, which passes the site, is of meandering and undulating form. Forward visibility in the vicinity of the sight is thus limited and a continuous central white line indicates that this section is unsuitable for overtaking. The speed limit is 100 kmph and, notwithstanding challenging road conditions, traffic tends towards this limit.
- 7.8. During my site visit, I also observed that the vehicular and indeed the pedestrian access points to the cottage have been permanently closed. The shared access was open and available for use, as was the access in the NE corner of the site, which is proposed for retention. A driveway connects the cottage to the shared access and it continues northward to connect with the driveway from the access to the NE. The alignment of this latter access does not coincide with that shown on the site plan authorised under condition 6 attached to permitted retention application 18/6264, i.e. this driveway provides a direct link from the said access rather than the shared access.
- 7.9. I was able to compare and contrast the sightlines available at the closed access to the cottage, the shared access, and the access proposed for retention.
- The first of these accesses is the closest to a bend in the N73 to the south and so the available southerly sightline of approaching traffic on the nearside lane is restricted.
 - The second of these accesses is further removed from the aforementioned bend and the available sightline to the north is influenced by the fact that a further bend is both away from the site and is accompanied by a low level mound to the verge and a sunken field beyond.

- The third of these accesses is the furthest removed from the bend to the south. The aforementioned available sightline to the north is restricted by vegetation in its immediate vicinity, which appears to be under the applicant's control. Thus, a fleeting blind spot would *prima facie* be capable of being remedied.

7.10. Clearly, the first of the above accesses is the least satisfactory/most dangerous and its closure is therefore welcome. The second has previously been authorised for use. If the above cited blind spot were to be remedied, the potential afforded by the third access to have a greater southerly sightline than the second could be realised. However, that is not the proposal before the Board. Instead the applicant seeks to continue using the second access in conjunction with the sanctioned use of the third.

7.11. I conclude that the proposed use of the access in the NE corner of the site would, in the absence of an improved northerly sightline, be inherently unsafe, and that its use would entail the introduction of an additional access, which itself would be contrary to proper traffic management and road safety on the N73.

(ii) Water

7.12. The driveway to the access proposed for retention slopes downwards towards the N73 and it has a gravel surface. Surface water run-off onto the national secondary road is thus likely to be limited. However, gravel could be washed onto the same and so the entrance between the gate posts should be fitted with a lip to retain gravel in the driveway. If the Board is minded to grant, then this matter could be conditioned.

7.13. The OPW's flood maps show the site as being the subject of no identified flood risk.

7.14. The proposal raises no direct water issues.

(iv) Screening for Stage 1 AA

7.15. The site is not in or near to any Natura 2000 site and I am not aware of any source/pathway/receptor route between this site and any such sites in the wider area.

7.16. Having regard to the nature and scale of the proposal, the nature of the receiving environment, and the proximity of the nearest European site, 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 on a European site.

8.0 Recommendation

8.1. That permission be refused.

9.0 Reasons and Considerations

Having regard to Section 5.2 of the National Planning Framework, Section 2.5 of the Spatial Planning and National Roads Guidelines, and Policy Objective TM 3-1 of the Cork County Development Plan 2014 – 2020, it is considered that the proposed retention of the vehicular access in the north-eastern corner of the site would entail the authorisation of an additional access from the N73, a national secondary road, which is heavily trafficked, which operates at the national speed limit, and which, due to its meandering and undulating form in the vicinity of the site, involves limited forward visibility and hence challenging driving conditions. The proposal would thus materially contravene the said national and local planning policies that seek to prevent the addition of accesses off the national road network in the interests of good traffic management and road safety. Furthermore, to accede to it would risk the establishment of an adverse precedent, which would make the upholding of these policies in the future more difficult to achieve.

Heretofore the dwelling house on the site has been permitted on the basis that it would share an access from the N73 with the cottage on the adjoining site to the south. The proposal would thus constitute a departure from this basis and so it would materially contravene conditions 9 and 6 attached to the permissions granted to applications reg. nos. 06/8293 and 18/6264, respectively, which require such joint usage.

In the light of the foregoing reasons and considerations, the proposal would be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

14th February 2020