



An  
Bord  
Pleanála

## Inspector's Report ABP-306859-20

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<b>Development</b>	Retain an agricultural machinery storage shed.
<b>Location</b>	Ardmore, Sneem, Co. Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	191249
<b>Applicant(s)</b>	Diarmuid Breen
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Diarmuid Breen.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	5 <sup>th</sup> August 2020
<b>Inspector</b>	Irené McCormack

## 1.0 Site Location and Description

- 1.1. The site, which has a stated area of 1.18 hectares, is in the townland of Ardmore, accessed from the N70 National Secondary Road between Sneem and Castlecove in west County Kerry. It is square in shape and is lower than the road. The Bunnow River bounds the site to the east.
- 1.2. The shed, which is the subject of the retention application, is positioned in the south of the site with the surrounding area under a hard surface with a central landscaped mound to the west between the shed and the public road.
- 1.3. The site is served by a splayed, gated entrance off the N70. The national secondary road in the vicinity of the site is governed by a central broken white line and does not have the benefit of hard shoulders. The 80km/h speed limit applies.

## 2.0 Proposed Development

- 2.1. The development comprises:
  - Retention permission is being sought for an agricultural shed used for storage and machinery.
- 2.2. The stated floor area of the shed is 448.2 sq.m with a ridge height of 7.308 metres. It is finished in dark green metal cladding.
  - 2.2.1. Access to the shed is proposed via an existing splayed entrance gate. There is no effluent storage associated with the development. Surface drainage discharges to the adjoining Bunnow River to the east. Additional landscaping is proposed to the to assist in screening the shed.
- 2.3. A Road Safety Audit accompanied the planning application. A Traffic Impact assessment accompanied the appeal submission.

## 3.0 Planning Authority Decision

### 3.1. Decision

Retention permission refused for the following reason:

It is considered having regard to the location of the development for which retention is sought with access onto the N70 National Secondary Road, at a location where the speed limit of 80km/h applies, the Planning Authority is not satisfied, on the basis of the

submissions made with the planning application that the development for which retention is sought constitutes an exceptional circumstance or meets the criteria for which access onto this National Road can be considered as per Section 7.2.1.2 of the Kerry County Development Plan 2015-21. It is considered that the subject development, by itself or by the precedent it would set for other development, would be contrary to national policy in relation to the control of on national roads, as set out in the “Spatial Planning and National Roads Guidelines for Planning Authorities” issued by the Department of the Environment, Community and Local Government in January 2012, which seeks to secure the efficiency, capacity and safety of the national roads network, and would contravene materially objective RD-17 of the Kerry County Development Plan to preserve the level of services and carrying capacity of the National Secondary ROAD. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The Planning Report notes that the previous applications on the site, in particular, recent refusal for the retention of the shed under KCC18/231/ ABP 301739-18. The report sets out relevant policy objectives relating to development with access onto national roads and for agricultural development. It is set out that the TII state that the development is at variance with national policy, the Roads department consider sightlines acceptable. Objection and submission from An Taisce noted also. The report notes the extent of available alternative lands and when the shed was built it contravened the Development Plan policy regarding access onto National Secondary Roadways in that an alternative, non-national public road access was available. A refusal of permission for one reason is recommended

The report has undertaken a sub threshold EIA screening and AA Screening.

#### 3.2.2. Other Technical Reports

**Roads Department** - Report dated 5/5/2020 notes that following the making of a new Speed Limit Bye-law in 2019 the speed limit is now 80km/h and sightline distance available is now acceptable.

### 3.3. Prescribed Bodies

**TII** – Report dated 6/1/2020 sets out that the development would be at variance with official policy in relation to the control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.

**An Taisce** – Report dated 17/1/2020 notes that the site is the subject of An Enforcement Order. It is set out that the development would create a traffic hazard on a national road, part of the Ring of Kerry and nationally important scenic route with high volumes of traffic.

### 3.4. Third Party Observations

The planning authority received a letter of objection. The grounds for objection include the following:

- The shed is an unauthorised structure subject to An Enforcement Order
- Previous Board decision noted
- Visibility at the sight entrance restricted and will be further restricted by additional screening proposed.
- Entrance is directly on the N70
- Query regarding intended use

## 4.0 Planning History

### *Site*

**KCC Reg. Ref.18/231/ ABP 301739-18** -permission to retain the access was refused for the following reason:

Having regard to the location of the development for which retention is sought with access onto the N70 National Secondary Road, at a location where the maximum speed limit of 100 km/h applies, the Board is not satisfied, on the basis of the submissions made with the planning application and the appeal, that the development for which retention is sought constitutes an exceptional circumstance or

meets the criteria for which an access onto this National Road can be considered as per section 7.2.1.2 of the current Kerry County Development Plan. It is considered that the subject development, by itself or by the precedent it would set for other development, would endanger public safety by reason of traffic hazard and obstruction of road users, due to the nature of the traffic likely to be generated by the use of this shed for agricultural contracting, as proposed, would be contrary to national policy in relation to the control of development on national roads, as set out in the “Spatial Planning and National Roads Guidelines for Planning Authorities” issued by the Department of the Environment, Community and Local Government in January, 2012, which seeks to secure the efficiency, capacity and safety of the national road network, and would contravene materially objective RD-17 of the Kerry County Development Plan to preserve the level of services and carrying capacity of the National Secondary Road. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.

**KCC Reg. Ref. 16/297** – permission to retain the access was refused

**KCC Reg. Ref. 15/85** - Permission to retain the shed was refused for two reasons relating to access onto the national primary road and absence of effluent disposal proposals.

## 5.0 Policy Context

### 5.1. National Policy

Spatial Planning and National Roads – Guidelines for Planning Authorities, 2012

- Section 2.5 states that the policy of the PA will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.
- Section 2.6 states that the PA may identify stretches of national roads where a less restrictive approach may be applied, but only as part of the process of reviewing or varying the relevant development plan and having consulted and

taken on board the advice of the NRA and having followed the approach as detailed including lightly trafficked sections of national secondary routes

## 5.2. Kerry County Development Plan 2015

### 5.2.1. Section 3.3.2.2 - The site is within an area zoned Rural Secondary Special Amenity.

Any proposal must be designed and sited so as to ensure that it is not unduly obtrusive. The onus is, therefore, on an applicant to avoid obtrusive locations. Existing site features including trees and hedgerows should be retained to screen the development.

Any proposal will be subject to the Development Management requirements set out in this plan in relation to design, site size, drainage etc.

### 5.2.2. Section 7.2.1.2 – Access onto National Routes

The creation of an access or the intensification of usage of an existing access onto a National Road shall only be considered where it is in compliance with Spatial Planning and National Roads Planning Guidelines (DoECLG January 2012).

In compliance with Section 2.6 of the Guidelines the following ‘exceptional circumstances’ as agreed with the NRA shall pertain in County Kerry whereby new accesses or the intensification of existing accesses will be considered along the following sections of the National Secondary Network

#### N70 Killorglin-Cahersiveen-Kenmare

##### Table 7.3 Criteria

- There is no suitable alternative non-national public road access available.
- The development otherwise accords with the Development Plan.
- Safety issues and considerations can be adequately addressed in accordance with the NRA’s design manual for roads and bridges.

### 5.2.3. Objective RD -17 – protect the capacity and safety of the national road and strategically important regional road network in the County and ensure compliance with the Spatial Planning and National Roads Planning Guidelines (January 2012) and the NRA Traffic and Transport Assessment Guidelines (2007).

### 5.2.4. Section 4.8.1 Agriculture – It is an objective of the Council to support the sustainable development and diversification of the agricultural sector. There are also significant

opportunities in the areas of energy production, forestry and agritourism which are addressed elsewhere in the plan

Objective NR-9 – Encourage and support sustainable forestry development

Objective NR-11 – Sustainable expansion and diversification of the forestry sector

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

There are no European designated sites within the general vicinity of the site

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (000365) located 1.3Km west of the site
- Kenmare River SAC (002158) located 2.3km east of the site

### 5.4. **EIA Screening**

The proposed development is not of a class for the purpose of EIAR. The nature and scale of the development would not result in a real likelihood of significant effects on the environment

## 6.0 **The Appeal**

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

The 1st party appeal against the planning authority's notification of decision to refuse permission, which is accompanied by supporting detail, can be summarised as follows:

#### *Background*

- The family landholding was spread over the townlands of Bohogram, Glanlough and Ardmore. A minor road connected Bohogram to the N70. Some of the holding touches this local road (L-11612-0). The applicant's parents committed the lands in lots to their children.
- The applicant has ownership of Folio KY68088F which has access onto the N70, only. There are no other lands with access onto the local road available due to commitments made to other family members.
- Initially the shed was planned to be less than 300 sq.m. and would have constituted exempted development. The shed as constructed at ca. 420m leading to a planning application for retention.

- The submission sets out the planning history on the site for an agricultural shed, noting a total of four planning applications made dating back to 2015
- It is set out that the planning history reveals a confused understanding of the planning procedure and relevant criteria, in particular, the relevance of Section 7.2.1.2 of the CDP or the provisions of “exceptional circumstances” allowed for in Table 7.3 of the CDP.
- Clarification of the landownership issue has changed the dynamic of the application relative to the previous applications in so far as the applicant does not own lands with connection to the local road network. It is set out that in 2015 the applicant lived abroad and relied on his father to plan and construct the shed. The applicant’s father was not familiar with planning procedures and the details provided on previous planning applications has added to the confusion as to the applicant’s landholding and access. The landholding identified as part of reg. ref. 15/85 for the first retention application included all lands in family ownership both the applicant’s fathers and the applicants resulting in the planning authority querying the shed location in the context of the larger landholding.

*Basis for Appeal*

- The N70 speed limit has been reduced from 100km/h to 80km/h and sufficient weight has not been put on this fact noting the previous assessment by the Board.
- The first party has included a Road Safety Audit and a Traffic Impact Assessment demonstrating that the development will have no impact on safety and impact of capacity and level of service is negligible.
- A solicitor’s letter /declaration stating that the appellant does not have and never had access on the local road (L11612) appears to have been ignored as part of previous planning application assessment.
- It is set out that the appeal site has been increased in size to allow for additional landscaping.
- It is stated that sightlines are not achievable elsewhere on the appellant’s landholding

- Provision is made in the Development Plan for accesses onto the N70 in exceptional circumstances under Section 7.2.1.2. The applicant meets the criteria to be met in that there is no suitable, alternative non-national public road access available, the development otherwise accords with the development plan and adequate sight lines are available in accordance with the NRA's design manual for roads and bridges. It is argued that the appellant meets the "exceptional circumstances" criteria as set out the CDP.
- The Development Plan seeks to promote and support the sustainable growth of agriculture, farm diversification and forestry and the appellant must be able to mobilise these objectives because the appeal development will be used to expand, maintain and harvest sustainable forestry, creating employment for himself and locals.

## 6.2. **Planning Authority Response**

None

## 7.0 **Assessment**

Introduction

7.1.1. The applicant has submitted a Traffic Impact Assessment to the Board for consideration. The following assessment has regard to the Traffic Impact Assessment submitted.

7.1.2. The main issues in the assessment of the proposed development are as follows:

- Planning History, Justification and Acceptability of Access
- Other Matters
- Appropriate Assessment

## 7.2. **Planning History, Justification and Accessibility of Access**

7.2.1. The current applicant constitutes the 4th application seeking permission to retain an agricultural machinery and storage shed on the site. The planning authority has been consistent in its refusal on the grounds of contravention of the Kerry County Development Plan in relation to access onto National Roads and the Spatial Planning and National Roads Guidelines 2012. Furthermore, in 2018 under ABP 301739-18 planning permission was refused by the Board on the grounds of direct

access on a national secondary road and relevant national and local policy in this regard as set out in section 4.0 Planning History of this report.

- 7.2.2. The site is on the eastern side of the N70 National Secondary Road at a point which is relatively straight. Of note to the current appeal application is that the speed limit has been reduced from 100km/h to 80km/h following the implementation of a speed limit byelaw in 2019. No explanation has been offered as to why the speed limit was reduced. The speed limit reduction provides for a minimum sightline of 160m in both directions, the site layout plan submitted indicates 200m sightlines in both directions. I note the Roads section raised no concerns regarding sightlines at the entrance. Furthermore, sightlines were deemed acceptable under ABP 301739-18.
- 7.2.3. The appellant contends that the **planning history** reveals a confused understanding of the planning procedure and relevant criteria, in particular, the relevance of Section 7.2.1.2 of the CDP or the provisions of “exceptional circumstances” allowed for in Table 7.3 of the CDP.
- 7.2.4. The applicant of the 1<sup>st</sup> retention permission application under **Reg. Ref. 15/85** was stated to be James Breen with an initial delineated landholding of 12.705 hectares. The purpose of the shed was so as to serve his agricultural needs. By way of further information, the applicant stated that it was to house his farm animals during the winter season and to store his agricultural machinery. It was confirmed it was not to be used for any form of commercial/business use. The extent of the landholding was also amended and enlarged to c.81 hectares. It was stated that the area of the total landholding as given in the initial application documentation was misinterpreted. The expanded holding had access onto a local road to the north-west of the appeal site.
- 7.2.5. The 2<sup>nd</sup> application for retention of the structure under **Reg. Ref. 16/414** was, again, in the name of James Breen with the landholding stated to be 81 hectares with the structure to be used for purposes ancillary to his agricultural land. In support of this application it was stated that the site was served by an agricultural gate prior to existing access and this was retained by the NRA when it was carrying out adjoining upgrade works on the road.
- 7.2.6. The 3<sup>rd</sup> application **Reg. Ref.18/231/ ABP 301739-18** was made in the name of Diarmuid Breen, James Breen’s son, who at the time the application was made was living abroad and required the structure to store and maintain agricultural and

forestry machinery and equipment to be used in agricultural contracting. It was set out that the overall landholding of 81 hectares as delineated in the previous applications had been divided between the landowner's children and that the applicant has been given Folio Number KY68088F, which equates to approx. 27.93 hectares and which is to the south-east of the appeal site. The folio has access onto the N70 only. It is stated that there are no suitable sites within the said folio which are not unduly prominent, or which could provide for adequate sight lines.

- 7.3. It is the appellant's contention that the PA failed to take account of the legal declaration submitted with the current application setting out that the land transfer was initiated in 2012 and completed in 2018 and which leaves no doubt that the appellant does not have access to the local road L-11612. It is further argued that the speed limit reduction combined with the findings of the Stage 1 /2 Road Safety Audit submitted undermine and negate the sole reason for refusal issued by the Board under ABP 301739-18.
- 7.4. I have reviewed the Road Safety Audit and Traffic Impact Assessment submitted and whilst I note no concerns have been raised regarding sightlines on site, it is clear from the Traffic Impact Assessment that traffic volumes significantly increase during the summer months which coincides with the busiest period for agricultural contractors.
- 7.5. Furthermore, I do not agree with the appellants contention that the RSA and TIA negate the previous reason for refusal issued by the Board. The primary issue relates to direct access onto a national secondary road and the relevant national and local policy objectives to protect the carrying capacity of the national road network. This is reinforced in the TII submission which sets out that the development would be at variance with official policy in relation to the control of development on/affecting national roads as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the development by itself, or by the precedent which a grant of permission for it would set, would adversely affect the operation and safety of the national road network.
- 7.6. No details have been provided with regards the nature and type of agricultural equipment associated with the development and the nature and extent of any "forestry" development/activity proposed. The TIA states that "for the purpose of this

analysis, the volume of traffic generated by the completed works is quantified at four movements a day”. However, the appellants appeal submission states that the development will generate employment for the appellant and some locals by exploiting opportunities in the forestry sector which is supported in the development plan. In my opinion, it is unclear as to the full nature and extent of the development and the associated traffic generated, and, the use of the shed for a contracting business has the potential to generate vehicular movements materially in excess of those which would be associated with the original agricultural purpose and as assessed in the TIA submitted.

7.6.1. The appellants primary argument centres around the argument that the development complies Section 7.2.1.2 of the CDP and the provisions of “exceptional circumstances” allowed for in Table 7.3 of the CDP owing to the fact that his lands front the N70 only. It is further argued that the development is consistent with section 4.8.1 agriculture in terms of sustainable agricultural diversification and objective NR-9 and NR-11.

7.6.2. Under ABP 301739-18 the inspector noted that from an assessment of the documentation accompanying the application relative to that which was submitted in support of the previous applications, it could reasonably be surmised that, in attempting to secure the necessary permission, details of the landholding, purpose of the development and availability of alternative access options have been amended and revised so as to retrospectively ‘fit’ with the relevant Development Plan provisions in terms of access onto the N70 National Secondary Road as set out in Table 7.3 and relevant agriculture and forestry policy objectives. I agree with the previous assessment that the fact that the applicant’s father was not familiar with the planning process is not an adequate explanation for the material changes between the previous applications and the current proposal. The fact remains that the shed, when erected, contravened the relevant development plan policy in that alternative access from a non-national road was available on the larger landholding at the time the shed was originally constructed. The fact that the lands were subsequently divided is not a planning related issue.

Conclusion

7.6.3. The reduction in speed limit at this location is noted, however the provisions set out in Table 7.3 not to undermine the capacity and safety of the national secondary road which is an objective of the development plan to protect (RD-17) has not altered from the previous recommendation to refuse the retention of the shed as issued by the Board under ABP301739-18, I agree with the previous assessment that the development does not meet “exception circumstances” requirement in this instance and I recommend a refusal of permission in this regard.

## **7.7. Other Matters**

7.7.1. Reference to the fact that were the floor area of the shed constructed to 300 sq.m. it would constitute exempted development provisions of Class 9 of the Planning and Development Regulations, 2001, as amended, is noted, but in my opinion is not relevant to the current appeal to the Board.

## **7.8. Appropriate Assessment**

7.8.1. The site is c. 1.3km to the west of Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 00365). There is no hydrological connection between the sites with the N70 national secondary road in-between.

7.8.2. The site is c. 1.5 metres to the north of Kenmare River SAC (site code 002158). The Bunnow River which bounds the site to the east flows into the SAC with a hydrologic distance of approx. 2.3 km. There are no effluent disposal facilities within the shed with roof water to be discharged to the adjacent drain.

7.8.3. Having regard to the nature of the development, and the separation distance to any European site, 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**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

## 9.0 Reasons and Considerations

Having regard to the location of the development to be retained with access onto the N70 National Secondary Road, at a location where the speed limit of 80km/h applies, the Board is not satisfied, on the basis of the submissions made with the planning application and the appeal, that the proposal constitutes an exceptional circumstance or meets the criteria for which an access onto the said road can be considered as per section 7.2.1.2 of the current Kerry County Development Plan. It is considered that the proposed development by itself or by the precedent it would set for other development, would endanger public safety by reason of traffic hazard and obstruction of road users, would contravene national policy in relation to the control of development on national roads as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in January, 2012, which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially objective RD-17 of the Kerry County Development Plan to preserve the level of services and carrying capacity of the National Secondary Road. The proposed development would therefore be contrary to the proper planning and sustainable development of the area

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Irené McCormack  
Planning Inspector

12<sup>th</sup> August 2020