



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307378-20

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<b>Development</b>	Two forest entrances
<b>Location</b>	Moneenabrone Td, Glangevlin, Co. Cavan
<b>Planning Authority</b>	Cavan County Council
<b>Planning Authority Reg. Ref.</b>	19321
<b>Applicants</b>	Forestry Services Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	Owen McGovern & Others
<b>Date of Site Inspection</b>	11 <sup>th</sup> August 2020
<b>Inspector</b>	Dolores McCague

## 1.0 Site Location and Description

- 1.1.1. The site is located at Moneenabrone Td, Glangevlin, Co Cavan.
- 1.1.2. The site is to either side of Regional Road R200-2, linking the N87 (Cavan Enniskillen cross border road) to Dowra. The R200-2 is a designated scenic route running along the north of the Slieve Anerin mountains, with the closest part being Slievenakilla (1793ft). To the south of the regional road, a private road climbs south serving two dwellings, one a farm, and lands in use for agriculture and forestry. There is extensive forestry plantations in the general area. Plantations extend either side of the private road. A linear gap cuts through the plantation near the regional road where an overhead electrical transmission line follows a NE/SW orientation, similar to the ROW shown on the application documents submitted. The private road slopes steeply down to the regional road and a drain cut along the western side of the road had flowing water on the date of inspection. The regional road is a scenic route which crosses many rivers as they flow northwards from the mountains. The road is poorly aligned with frequent bends.
- 1.1.3. As required by Article 22 (2) of the Planning and Development Regulations, since the applicants are not the owners of the land, a letter of consent from the owners is required. The Church Commissioners for England is given as the land owner and a short letter from the Commissioners, giving their consent to an application for a forestry road, is provided, however the signature is difficult to decipher and not accompanied by a version of the signator's name in block capitals, neither is there a seal of the Church Commissioners or a contact address.
- 1.1.4. Site area given as 0.6715ha.
- 1.1.5. The lands outlined in blue comprise most of the townland of Moneenabrone and include the farm and dwelling to the south near the end of the private road, which would not be indicative of the forestry lands.

## 2.0 Proposed Development

- 2.1. The proposed development is described as the construction of 2 forest entrances along with connections to all site services and other associated site works. The proposed development involves the creation of a new entrance north of Regional

Road R202 and a second entrance to a private roadway near its junction south of the Regional Road R202. The private road is not gated and has the appearance of a public road, though not taken in charge by the County Council. The private status of this road is the subject of the appeal.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

The planning authority decided to grant permission in accordance with 7 conditions:

1. Compliance with plans and particulars
2. €5,000 bond for restoration and repair of any damage caused to the public road network.
3. Surface water treatment.
4. Signage
5. Services
6. Landscaping
7. Only for forestry activity.

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

##### **3.2.1. Planning Reports**

3.2.2. There are two planning reports on the file, the first recommending further information includes:

- Cavan County Development Plan S3.9 re. forestry is referenced.
- The observation/objection received is referred to.
- District Engineers report is quoted.
- Deficient sightlines are noted.
- The proposed new entrance is onto the Regional Road defined as Scenic Route SR1.

- Objective NHEO30 - To regulate development that would seriously obstruct and detract from views of high scenic value from designated Scenic Routes.
- Applicant should be required to demonstrate that there will be minimum damage to the trees/vegetation along this route and that the proposal to develop a new entrance onto the R2000 will be sympathetic to the rural setting and scenic route.
- Surface water is to be discharged directly onto the roadway.
- Issues raised by objector relate to the use of a private road which is outside the control of the County Council.
- 1.2km from designated European site.
- Recommendation – further information; which issued.

### 3.2.3. Other Technical Reports

Cavan Belturbet MD, district engineer – concerned regarding the eastbound sightlines at the junction directly on the R2020-2. At present the sight distance in the eastern direction towards Glangevlin is less than 50m. In the proposal submitted the applicant has indicated that works to achieve a 3x57m sightline will be carried out. This is a regional road with a designated speed limit of 80km/hr the recommended absolute limit for stopping sight distance of vehicles is 90m (table 3.1 TII rural link road design).

Further information – revised proposals that clearly demonstrate how the applicant plans to achieve the required unobstructed sightlines; 3 x 90 m required to nearside road edge in both directions; to include vertical profile demonstrating the clear sightline from a driver eye height of 1.05m to an object height of 1.15m. proposals shall include removal or relocation as appropriate of all existing roadside trees, hedges, walls, utility poles etc forward of the required sightline along the R-200-2 within the applicant's control.

### 3.3. Further Information

- 3.3.1. A further information request issued 16<sup>th</sup> October 2019, on 2 points: 1 re sightlines and 2 re visual impact.

### 3.4. Further Reports

- 3.4.1. The second planning report post further information, recommending permission, includes:
- 3.4.2. Response to item 1 – the proposed locations for the 2 no. forest entrances were considered carefully by the applicant. It was concluded that the current locations were the most suitable within the land ownership. The applicant liaised with the Roads Department of Cavan County Council and a meeting was held on the 18<sup>th</sup> February 2020 on site.
- It was concluded that one sightline from the proposed entrance to the regional road needed to be addressed.
  - A revised proposal has now been prepared to demonstrate the un-obstructed sightline of 3 x 90m, measured from the centreline of the road, from the proposed entrance onto the R200 shown on revised site plan drawing. A vertical section and photographs are also provided.
- 3.4.3. Response to item 2 - the proposal will involve modifications to the existing boundary along the regional road and are minor remedial siteworks that will have an overall positive impact to road users on the existing bend. It requires the cutting back of the existing boundary. The most significant boundary trees to the opposite side of the road will remain unaffected. The entrance is proposed in a natural gap therefore minimal effect on the landscape character. Existing views are already heavily constrained by significant tree and hedge cover which prevails along the north east boundary, such that residents or road users will not experience impacts associated with the proposed development. Photomontage provided.
- 3.4.4. Report from District Engineer – as agreed on site.

### 3.5. **Third Party Observations**

- 3.5.1. The third party observation on file has been read and noted. Issues raised include:
- Re entrance No 2.
  - Private cul-de-sac road is a private road of limited structural standard.
  - Forest entrance will have a detrimental affect on this substandard road impacting on the local residents.

- The road structure is not adequate to withstand the heavy loads and movements.
- There is adequate space and sightlines to locate entrance 2 on the public road R200 further west, not impacting on residents using the cul-de-sac.
- It will be unsightly and may lead to misuse.

## 4.0 Planning History

None given.

## 5.0 Policy Context

### 5.1. Development Plan

#### 5.1.1. Sec 3.9 Forestry

The Council recognises the contribution that forestry provides to the socio-economic well-being of the County.

The Council recognises the increasing importance that private forestry has to play and will ensure that its policies cater for the development of this sector. However, if it is inappropriately located it can have a detrimental effect on the environment, resulting in water and groundwater pollution, interfering with views and prospects and our built heritage.

The possible negative impacts associated with forestry include adverse impacts on;

- The landscape.
- Visual amenity.
- Water quality.
- Fish hatcheries.
- Road drainage.
- Biodiversity.
- Fire threats.

The extent of these impacts can be minimised through proper planning and good forestry management practices. In particular, the Council is conscious of the potential impact which forestry activities may have on public roads.

In relation to National Roads, the policy of the planning authority is 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.

#### Forestry Policies

EDP11 - To encourage the development of a well managed sustainable forestry sector, which is planted, managed and harvested in accordance with the 'Forest Service Guidelines for Landscape, Forest Harvesting and Environmental, Archaeology, Biodiversity and Water Quality.'

EDP11(a) - To encourage forestry and forestry related development, as a means of diversifying from traditional farming activity.

EDP13 - To promote forestry development of appropriate scale and character whilst ensuring that the development does not have a negative visual impact on the countryside or cause pollution or degradation to wildlife habitats, natural waters or areas of ecological importance.

EDP14 - To encourage the provision of public access to forests for walking routes, recreational areas and other similar facilities.

EDP15 - To retain existing right of way through forest lands.

#### Forestry Objectives

EDO27 - To promote and support the Forest Service in the preparation and adoption of the 'Indicative Forestry Strategy for County Cavan,' in order to plan sustainable forestry development.

EDO28 - To investigate, with Coillte, the potential to provide forest and countryside walks on lands in state ownership in County Cavan and in the promotion of a high level of environmental quality/protection.

EDO29 - To promote the planting of native deciduous trees and mixed forestry.

EDO30 - To resist forestry proposals which would unduly impact on protected views, sensitive upland areas, lands of wildlife interest and in the upper reaches of salmonid rivers which would affect biodiversity.

EDO31 - That existing Rights of Way and established walking routes are identified prior to any new planting and are maintained as Rights of Way/Walking Route.

EDO32 - To ensure forestry and forestry type development adheres to the 'Forestry and Water Quality Guidelines,' issued by the Forest Service, DAFF.

NHEO25 - To protect and enhance the visual integrity, distinctiveness, character, scenic value and visual quality of the sensitive and outstanding landscapes, scenic areas and High Amenity Areas from intrusive and/or unsympathetic developments. Protect sensitive areas from injurious development, while providing for development that will benefit rural community and visitors. Ensure that, where an overriding need is demonstrated for a particular development in the vicinity of sensitive landscape careful consideration is given to site selection.

#### 8.8.1 Special Landscape Policy Areas

##### Areas of High Landscape Value or Special Landscape Interest

There are four High Landscape Areas of which one is:

Upland Areas West Cavan - Area 1 Cuilcagh-Anierin Uplands, within which the site is located.

NHEO26 To maintain the scenic and recreation value of these areas by restricting all adverse uses and negative visual impacts.

##### Scenic Routes

There are three scenic routes in the County, Scenic Route number 1 is Regional Road 200-1 Dowra to Glangevlin to Blackrocks Cross (in Area 1 Cuilcagh-Anierin Uplands). along which the site is located. Both of the other scenic routes are also in the Glangevlin Dowra area.

NHEO30 To regulate development that would seriously obstruct and detract from views of high scenic value from designated Scenic Routes.

NHEO31 To maintain and protect the natural landscapes visual character which is recognised to be of an exceptional high amenity value.

## 5.2. Legislation

### 5.2.1. Planning and Development Act 2000 as amended:

Section 47.—(1) A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be



specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.

2) A planning authority in entering into an agreement under this section may join with any body which is a prescribed authority for the purposes of section 11 .

(3) An agreement made under this section with any person interested in land may be enforced by the planning authority, or any body joined with it, against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.

(4) Nothing in this section, or in any agreement made thereunder, shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Minister, the Board or the planning authority under this Act, so long as those powers are not exercised so as to contravene materially the provisions of the development plan, or as requiring the exercise of any such powers so as to contravene materially those provisions.

(5) Particulars of an agreement made under this section shall be entered in the register.

#### 5.2.2. Planning and Development (Amendment) Regulations

*\*Inserted by article 3 of S.I. No. 219/2013 – Planning and Development (Amendment) Regulations 2013*

Content of planning applications generally. An application shall be accompanied by:

Article 22 (2)

(g) where the applicant is not the legal owner of the land or structure concerned, the written consent of the owner to make the application,

Exempted development

Article 8G Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development.

### 5.3. Natural Heritage Designations

- 5.3.1. The nearest Natura site is Cuilcagh - Anierin Uplands SAC (site code 000584), located c 1km straight line distance, from the subject site.

### 5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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

- 6.1.1. An appeal against the planning authority's decision has been submitted by EM Hogan & Associates Architects & Development Consultants. The issues raised include:
- The appeal relates to entrance no. 2 which is a private cul-de-sac road is a private road of limited structural standard. The road structure will have difficulty withstanding the heavy loads and movements.
  - This private road is the only access to the McGovern dwelling. It also provides access to a holiday home owned by Michael McGovern and to a number of farmers and is used on a daily basis.
  - The McGovern family has contributed to the cost of maintenance of the roadway through the local Improvement Scheme Roads funding (LIS).
  - The road is of single carriageway width with soft margins and only suitable for cars and small vehicles. It is in good condition. When the McGovern family receives deliveries the loads are divided in order to protect and prevent damage to the road surface and its foundation.

- The cost of repairs was discussed with Cavan County Council following the notification of decision. Their response was that since this is a private road it is not within the council's remit. The contribution, condition no 2, relates to damage to the public road network only. Damage to the private road resulting from this development is the responsibility of persons using this roadway. The LIS representatives state that there is currently a backlog of road improvements under this scheme and Cavan Co Co have confirmed that is highly unlikely that when the road is damaged it will be repaired and due to fallout from Covid-19 it is extremely unlikely that any funding will become available in the long term future.
- The forestry lands belong to the Church Commissioners of England. Their representatives have failed to guarantee that this private road will be reinstated following the proposed works.
- The entrance is c 50m from the public road junction. Photographs are provided.
- The purpose of the proposed forestry entrance is to maintain the forest, necessitating the thinning, cutting and removal of wood, a process that will be ongoing for many years.
- Forestry lands abut the public road and there is potential to locate the second entrance on the public road where any damage can be addressed through a deposit or bond.
- Forest entrance will have a detrimental affect on this substandard road impacting on the local residents.
- The application did not consider that the holiday home is not part of the forestry lands or the right of way currently enjoyed by the McGovern family.
- Reinstatement of roads following damage due to harvesting operations is well documented. The question is who is responsible. The McGovern family have no other recourse.
- Due to the gradient and road junction the road surface requires to be suitable for safe driving with no loose gravel or damage to road surface.

- Photographs and maps are supplied.

## 6.2. Planning Authority Response

The planning authority have responded to the grounds of appeal. The response includes:

- The issues relate to proposed entrance no. 2 which is on a private cul-de-sac road.
- The provisions of the Cavan County Development Plan S3.9 forestry is referenced.
- The existing forestry plantation is required to be accessed by forestry vehicles for the purposes of felling trees.
- Part 2 Article 8 G of the Planning and Development Regulations 2001-2015 as amended is quoted:

Development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road), or works ancillary to such road development, where the road serves forests and woodlands, shall be exempted development.

## 7.0 Assessment

- 7.1.1. The issues which arise in relation to this appeal are: appropriate assessment, use of the entrances and land, suitability of siting of proposed entrances, impact on the private road and it's maintenance and other issues and the following assessment is dealt with under these headings.

### 7.2. Appropriate Assessment

- 7.2.1. Having regard to the nature and scale of the proposed development, I am satisfied that 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.

### **7.3. Use of the Land / Entrances and the suitability of Siting.**

- 7.3.1. The exact nature of the intended use of the proposed entrances is unclear; the type of vehicles intended to be used, their direction of travel and the frequency of use needs to be documented. The development description in the notices: two forest entrances along with connections to all site services and other associated site works; is not elaborated on in the application. The extent of the forestry in the control of the applicants, Forestry Services Ltd., has not been given, but it does not correspond with the area outlined in blue on the maps supplied, which includes property identified as a holiday home of the appellant's. Forestry is planted on the site and access is available at some unidentified location to these lands as it was when the planting was carried out.
- 7.3.2. It is not clear what relationship, if any, the proposed accesses have with one another; from their siting, on either side of the regional road, they appear to be related. If it is proposed to cross the regional road from one area of forestry to the other, the purpose of such crossing, the type of vehicles intended to be used to cross the regional road, the likely frequency of such crossings and the safety measures (if any) which will be put in place for other road users; all need to be addressed.
- 7.3.3. It is noted that on-site discussions took place with the District Engineer and his subsequent report found the proposal acceptable. However no details of that meeting are available.
- 7.3.4. It appears that the proposed access arrangements are significantly below the standards required for the provision of a safe access on a regional road. The justification given, that it is needed and has been discussed on site, is not sufficient. There is no indication of the location of the existing accesses. There are no existing accesses at the locations proposed. There are no details of the extent of the landholding which will be served by the proposed accesses. The proposed entrance locations may be the best available, but if acceptable standards cannot be met, detailed mitigation is required for the safety and convenience of other road users; on-site discussions are not sufficient in that regard.

#### **7.4. Impact on and Maintenance of the Private Road**

- 7.4.1. The main concern of the appellants relates to the likelihood of impact on the structure of the private road and the cost of its repair and maintenance. They are concerned that as the road is of limited structural standard it will have difficulty withstanding the heavy loads and movements. No details of the road structure are available in the application documents, on which to base an assessment. It is worth noting that the proposed entrance is close to the end of the local road and therefore would have less impact, than if located farther along the private road. As the appellants point out, due to the gradient and proximity to the road junction, the road surface requires to be suitable for safe driving with no loose gravel or damage to road surface.
- 7.4.2. In my opinion their concerns regarding the potential impact on the structure of the private road is reasonable.
- 7.4.3. They are concerned that damage to the private road may not be repaired. They point to its good condition at present and that a Local Improvement Scheme funding has been used in the past, towards its maintenance; to which they have also contributed. Because it is a private road, damage resulting from this development is the responsibility of persons using this roadway. The bond condition, in the planning authority's decision, relates to damage to the public road network only. They have been informed that it is unlikely that LIS funding will be available for maintenance of this road in the future.
- 7.4.4. Section 47 of the Planning and Development Acts provides the planning authority with a mechanism to deal with such a situation
- Subsection (1) states
- A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.
- 7.4.5. A Section 47 is a voluntary agreement between two parties.

7.4.6. In my opinion, should the Board be minded to grant permission, a prior to commencement condition, requiring a Section 47 agreement to be in place to provide for the repair and maintenance of the private road should be attached to any decision.

## 7.5. **Other Issues**

7.5.1. The nature of the letter of consent to the making of the application has been referred to earlier in this report. The Board may consider that it does not comply with Article 22 (2) of the Planning and Development Regulations because it refers to a road rather than road entrances and because it is not possible to check its validity.

7.5.2. The planning authority have referred to Article 8 G of the Planning and Development Regulations 2001-2015 as amended, with the suggestion that the proposed entrance to the private roadway is exempted development. I am not satisfied that it would constitute exempted development and in any case it is now the subject of an application / appeal and the merits of the access require full consideration.

## 8.0 **Recommendation**

8.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

## 9.0 **Reasons and Considerations**

1 The proposed development is located on a regional road, where minimum sightlines for safe access/egress are not available, and the traffic turning movements generated by the proposed development would endanger public safety by reason of traffic hazard. The proposed development would accordingly be contrary to the proper planning and sustainable development of the area.

2 The proposed development would be likely to impact adversely on the structure and maintenance of a private road, which is the only access available to residential and farming road users; in the absence of appropriate mitigation, the proposed development would be contrary to the proper planning and sustainable development of the area.

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Planning Inspector

19<sup>th</sup> August 2020

Appendices

Appendix 1 Photographs

Appendix 2 Cavan County Development Plan 2014-2020, extracts