



<b>Development</b>	Construction of new splayed entrance walls and piers with access gates including chain link or equal approved boundary treatment to access road.
<b>Location</b>	Knocknagashel West, Knocknagashel, Tralee, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	20326
<b>Applicant(s)</b>	Thomas & Joan Griffin
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Split Decision
<b>Type of Appeal</b>	First Party (1) Third Party (2)
<b>Appellant(s)</b>	(1) Thomas & Joan Griffin. (2) Niall & Patricia Fitzgerald & Others
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> March 2021.
<b>Inspector</b>	Bríd Maxwell

## 1.0 Site Location and Description

1.1. This appeal relates to a stretch of access roadway serving a residential dwelling and business and agricultural land holdings located within an upland remote rural area in the townland of Knocknagashel West Tralee Co Kerry. The site has a stated area of 0.058 hectares and is located circa 150m to the north of Knocknagashel Village and 8km south of Abbeafeale and 22 km northeast of Tralee. The site runs between two third party dwelling sites that to the west being the home of the third-party appellant. The boundary to the west comprises a sod and stone retaining wall and planted embankment and that to the east is defined by a sod and stone ditch with trees and hedging. The first party dwelling is located circa 90m to the north of the appeal site.

## 2.0 Proposed Development

- 2.1. The application as described in the public notices involves permission to construct new splayed entrance walls and piers with access gates including chain link or equal approved boundary treatment to existing access road, with all associated ancillary site works. The proposed entrance wall will include stone piers and gates to match those of the existing residential property to the east.
- 2.2. Application indicates that it is proposed to install automated security type gates which will restrict access to the first party and landowners with right of way. I note that the application was accompanied by two matching letters of consent compiled by the agent for the first party, and signed by Maurice O Connor and Paddy McElligott, who have a right of way on the access road. The letters express agreement to *“full consent to Thomas and Joan Griffin of Knocknagashel West, Knocknagashel Tralee Co Kerry to apply for full planning permission on the existing access roadway entrance at Knocknagashel West, Knocknagashel Tralee Co Kerry”*. The proposed chain link fence will extend over a distance of 56m. Application indicates that the proposal will involve the removal of a stone wall and grassed embankment on the road edge.

## 3.0 Planning Authority Decision

### 3.1. Decision

By order dated 30<sup>th</sup> November 2020, Kerry County Council issued notification of a split decision in respect of the development as follows:

To grant permission to construct chain link or equal approved boundary treatment to existing access road, with all associated ancillary site works, and

To refuse permission for new splayed entrance walls and piers with access gates for the following reason:

*“Based on inspection of the site and submission made in relation to the planning application, the Planning Authority is not satisfied that the proposed development would not interfere with an established public right-of-way and would, therefore, be contrary to the proper planning and sustainable development of the area.”*

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

Planner’s initial report sought clarification on the need for chain link fence. The report noted an apparent overlap between the site and site of 15/719 (permission for an extension to dwelling).

Final report considers that a 1.5m high chain link fence is acceptable and there should be no interference with the western boundary of the adjoining landowner. The provision of gates at the entrance would restrict the use of the road. As there is a suggestion that the roadway was used by the public historically there is concern that the proposal would hinder the use of a public right of way.

The recommendation was to grant permission for chain link fencing and refuse permission for the splayed entrance with access piers consistent with the decision.

#### 3.2.2. Other Technical Reports

None

### 3.3. Prescribed Bodies

No submissions

### 3.4. Third Party Observations

3.4.1 Submission by Patricia, Niall, Caoilte, Maebh and Inse Fitzgerald of Sliabh Solas, Knocknagashel West object to the proposal on grounds of :

- Traffic Hazard.
- Impact on established amenity.
- Visual impact.
- Need for entrance gates and chain link fence not demonstrated.
- Impact flora and fauna including frogs and newts.
- Maps supplied with the application are misleading inaccurate.
- Potential destabilising impact on hedging and septic tank
- Road a mass path connects Cummer to Knocknagashel to the north site of the parish and crosses a tributary of the river Feale on the way.

## 4.0 Planning History

### Recent decisions on nearby sites.

**17/681** Site to the northeast Permission to retain farm building / store as constructed including all associated ancillary site works.

**15/718** Permission to Construct a single storey extension to south west side of dwelling

## 5.0 Policy Context

### 5.1. Development Plan

The Kerry County Development Plan 2015-2021 refers.

The site is within an area designated as Rural General. These areas constitute the least sensitive landscapes throughout the County.

Section 13.4 Sets out the standards for residential development in rural areas and includes the following

#### Boundary Treatment

“The line of existing roadside boundaries in rural areas should be retained where possible, particularly along scenic roads, subject to traffic safety considerations, whereby setback may be required. The area between the new and old roadside boundary shall be levelled, drained and surfaced in a suitable material and kept free of any obstruction. If the front boundary or a section of the front boundary is removed it shall be reinstated with the use of indigenous locally sourced planting and materials. Existing sod and stone boundaries should be reinstated as existing.

RS-4 Ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County.

### 5.2. Natural Heritage Designations

The site is not within a designated area, The nearest such sites are the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA within approximately 200m to the northwest. The site is also upstream of the Lower River Shannon SAC.

### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the 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.

## 6.0 The Appeal

6.1. There are two appeals – a first party appeal against the refusal and a third-party appeal of the permission.

### 6.2. Grounds of First Party Appeal

6.2.1 The First party appeal is against the refusal of new splayed entrance walls and piers with access gates. I note that the first party appellant requested an oral hearing of the grounds of appeal. The Board decided at meeting on January 26<sup>th</sup> 2021 that there was sufficient written evidence on file to enable an assessment of the issues raised and therefore considered that an oral hearing should not be held. I have summarised the grounds of appeal as follows:

- The existing private road is for road owners' access only. All property owners have given her full written consent for the construction of the development as it will safeguard their property.
- Entrance is setback from the public road to prevent any disruption to traffic.
- First party has serious security concerns
- Confirm that the proposal is entirely within the lands owned by the applicant.
- Without the security gates the chainlink fencing is of no great benefit as access will be open to all.

6.2.2 The third-party appeal by Niall, Patricia, Caoilte, Meadh and Inse FitzGerald, Sliabh Solas, Knocknagoshel West. Grounds of Appeal are summarised as follows:

- Object to the proposed chain link fence which will result in removal of part of property and potential destabilisation of property.
- Negative implications for septic tank and drainage.
- Site purchased in 2002 with the public right of way as its eastern boundary.
- Roadway is a mass path used by the general public and a number of parties.
- Proposal will result in removal of embankment with significant flora and fauna.

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

6.3.1 The Planning Authority did not respond to the grounds of appeal.

### **6.4. First Party Response to Third Party Appeal**

6.4.1 Submission by Ross Planning and Design agent for the First Party in response to the Third-Party appeal is summarised as follows:

- Development is within the site boundary and will not affect the third-party appellant's property. No impact on the septic tank.
- Any unauthorised drainage onto the access road will be addressed.
- Manmade drystone boundary wall has been developed on the access road. Applicants are seeking to reinstate the road to its original width between its original boundaries and to secure the property.
- Health and safety issue between the high and low ground level.
- Current court case pending on an alleged incident along the access road therefore it is paramount for the applicant to protect themselves from similar claims.
- The applicant wishes to remove the spoil heap which has accumulated over time and which is camouflaged by manmade drystone wall which is reducing the original width and preventing natural roadside drainage.
- No evidence that this area is home to any protected species.
- In the event that there is a requirement to stabilise any weak points along the access road the family would be willing to make a contribution to this.

### **6.5 Third Party Response to First Party Appeal**

6.5.1 Agree with the decision of Kerry County Council to deny the blocking of the Mass Road with gates, pillars and walls.

- Local relief at the decision of the Council given that there was a misunderstanding regarding the location of the proposed gates.

- Local Gardai are extremely proactive in the area and the text alert scheme is operational. Site is in a quiet rural area with little crime and the need for the gates is questioned.
- More appropriate that gates and walls are adjacent to the family home

## 7.0 Assessment

- 7.1 Regarding the first party appeal of the decision of Kerry County Council to refuse permission for the proposed entrance gates and walls the refusal was based on the following reason: *“Based on inspection of the site and submission made in relation to the planning application, the Planning Authority is not satisfied that the proposed development would not interfere with an established public right-of-way and would, therefore, be contrary to the proper planning and sustainable development of the area.”*
- 7.2 I note the letters of consent provided with the application from two affected landowners outlining “full consent to Thomas and Joan Griffin of Knocknagashel West, Knocknagashel, Tralee Co Kerry to apply for full planning permission on the existing access roadway entrance at Knocknagashel West, Knocknagashel Tralee Co Kerry”. This consent is in my view vague and does not demonstrate clearly the agreement to the detailed nature of the proposal and the acceptance of the practical implications of the proposal in terms future ease of access.
- 7.3 I note that the third party contends that they have since purchasing the dwelling in 2002 had access to a right of way over this roadway and also provide a detailed account that this roadway is a mass path and used by numerous people. I cannot adjudicate on the opposing claims with regard to the right of way or the boundary and I note issues regarding legal interest that all the matters raised are essentially civil matters between the parties and are not strictly matters for determination within the scope of planning legislation. In this regard I would refer the parties to Section 34(13) of the Planning and Development Act 2000, as amended as follows: “A



*person shall not be entitled solely by reason of a permission under this section to carry out any development.”*

7.4 As regards the proposal to remove a section of the existing sod and stone ditch I consider that it has not been demonstrated that the proposal would not undermine the entire sod and stone fence along the boundary. I would also be of the view that the need for removal and replacement with a chain link fence has not been demonstrated. I consider that the loss of a sod and stone ditch and its replacement with chain link fencing would be detrimental to visual and rural amenity and would clearly be contrary to the development management standards and guidelines for residential development in rural areas as set out at 13.4 which requires that *“The line of existing roadside boundaries in rural areas should be retained where possible, particularly along scenic roads, subject to traffic safety considerations, whereby setback may be required. The area between the new and old roadside boundary shall be levelled, drained and surfaced in a suitable material and kept free of any obstruction. If the front boundary or a section of the front boundary is removed it shall be reinstated with the use of indigenous locally sourced planting and materials. Existing sod and stone boundaries should be reinstated as existing.”* The proposal would also set an undesirable precedent for similar such development. As regards the provision of entrance gates I consider that in light of the nature of the access road and distance from the dwelling the provision of the proposed ornamental entrance gates would also be a visually inappropriate form of boundary treatment for a shared access roadway within a rural setting.

7.5 As regards appropriate assessment screening, I note the proximity of the site to the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA which is within 200m of the site. The qualifying in interest is the Hen Harrier. Having regard to the limited scale and nature of the proposed development and connectivity to the 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

- 8.1 I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that permission is refused for the following reason.

### Reasons and Considerations

Having regard to the locational context of the site, it is considered that the proposed development which comprises an ornate entrance gate and length of chain link fencing by reason of its design and likely impact on an established sod and stone ditch and distance from the dwelling site would detract from the visual and rural amenities of the area, would interfere with the character of the landscape, and would set an undesirable precedent for similar future development in the area. The proposed development would be contrary to rural Housing objective RS-4 to ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County and would be contrary to the standards for boundary treatment in respect of residential development in rural areas (section 13.4) of the County Development Plan 2015-2021. The proposal would also be contrary to rural housing policy objective RS-4 to ensure that the provision of rural housing will protect the landscape, the natural and built heritage, the economic assets and the environment of the County. The development for which permission is sought would therefore be contrary to the proper planning and sustainable development of the area.

Having regard to the locational context of the site, it is not considered that sufficient justification has been given relative to the need for the proposed entrance gates and fencing based on the evidence provided, the Board is not satisfied that the proposed development would not if permitted, interfere with an established right of way. The proposed development would accordingly be contrary to the proper planning and sustainable development of the area.

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Bríd Maxwell  
Planning Inspector  
23 March 2021