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Bord  
Pleanála

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## Inspector's Report

### ABP-309029-20

<b>Development</b>	Construction of a house, garage, site entrance and all associated site works
<b>Location</b>	Derevald, Durrow Townparks, Durrow, Laois
<b>Planning Authority</b>	Laois County Council
<b>Planning Authority Reg. Ref.</b>	2071
<b>Applicants</b>	Chris Finnegan & Edel O'Gorman
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant with conditions
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	David & Gemma Shaughnessy
<b>Date of Site Inspection</b>	16 <sup>th</sup> March 2021
<b>Inspector</b>	Fergal Ó Bric

## **1.0 Site Location and Description**

- 1.1. The appeal site has a stated area of 0.1923 hectares and is located on the south-western side of the town of Durrow. The site is located to the rear of a family landholding that fronts onto the R639 (formerly the main Durrow/Cork Road). The subject site comprises an open grassed field. The northern portion of the family landholding is in residential and commercial use connected with the operation of a road haulage business. With the exception of the family road haulage business the lands in the vicinity of the site are predominantly in residential use with a combination of detached houses on large individual sites to the north of the site and a small housing estate (Derevald) immediately east of the site and a larger housing estate (Old Oak Grove) further west of the site.
- 1.2. The site is enclosed by a combination of boundary hedgerows and fences. Levels across the site rise gradually in a southerly direction. Land to the south of the site is in agricultural use.

## **2.0 Proposed Development**

- 2.1. The development would comprise the construction of a single storey house with a stated floor area of 188 square metres (sq. m.) together with a detached single storey garage with a stated floor area of 49 sq. m. and all ancillary site works.
- 2.2. The proposed dwelling would be accessed via the continuation of an internal cul-de-sac road serving the 7 houses (5 detached and a pair of semi-detached dwellings) within the Derevald estate to the east of the appeal site.
- 2.3. The Derevald estate connects with the R639 via Scot's Lane. This is a short, narrow laneway that serves the Derevald estate, a single house, a bus hire business and agricultural lands.
- 2.4. Further information was submitted in relation to: A cross section of the proposed internal roadway; Details of a connection point into the public surface water drainage system and response to issues raised within third party submissions.

## 3.0 Planning Authority Decision

### 3.1. Decision

Notification of a decision to grant planning permission for the proposed development subject to 12 conditions issued by the Planning Authority, order dated 26<sup>th</sup> day of November 2020.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The planning reports set out the following:

- The principle of the development is acceptable given its urban location which is fully serviceable.
- The site is located outside the confines of the critical Flood Zones A and B indicated in the Strategic Flood Risk Assessment of the Plan.
- The design of the proposed dwelling is acceptable.
- The applicants have revised his previous proposals, refused planning permission by the Board, to provide for an additional three dwellings within the remainder of the field, between their proposed dwelling and immediately west of the Derevald estate.
- The applicants have submitted a letter of consent for use of the right of way through the Derevald estate.
- The applicants have confirmed that it is not feasible to provide access to the site via an alternative route through the family lands, as the yard is used as a base for the family haulage company and is not available to them, as it is not in their ownership.

The planning authority decision reflects the recommendation of the Planning Officer.

#### 3.2.2. Other Technical Reports

Western Area Office: Further information sought regarding cross-section of road and connection to public surface water sewer.

### 3.3. Third Party Observations

- 3.3.1. Submissions from three third parties (residents of Derevald estate) were received by the Planning Authority. The issues raised in these submissions are similar in content to the issues raised within the third-party appeal submission.

## 4.0 Planning History

On Site:

Reg. Ref. 20/72 and Board reference number 309061-20, A concurrent planning application and appeal, seeking, outline permission for three dwellings, site entrance and all associated site works within the remainder of the applicant's family field, immediately east of the single dwelling proposal, the subject of the current appeal.

Reg. Ref. 19/54 and Board reference number 304528-19 – In 2019, planning permission refused for the construction of a single dwelling, garage, site entrance and associated site works. The reason for refusal was as follows:

Having regard to the location of the site within the development boundary of Durrow, to the size of the site, to the zoning objective which applies to the site, which is 'Residential 2 – to provide for new residential development, residential services and community facilities' and the development management standard DM03 (density of residential development) which states that the number of dwellings to be provided on a site should be determined with reference to the document Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009', as recorded in the Laois County Development Plan 2017-2023, to the availability of supporting infrastructure, and to the pattern of existing residential development in the environs of the site, it is considered that the proposed development of a single dwelling would not constitute efficient use of zoned and serviced residential land, given the location of the site within the town of Durrow and considering the density range for edge of small towns and villages, as recommended in the Ministerial Guidelines, 'Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009' published by the Department of Environment, Heritage and Local Government. The proposed development would be contrary to these Ministerial Guidelines and to the

relevant provisions of the Laois County Development Plan 2017-2023 and would, therefore, be contrary to the proper planning and sustainable development of the area.

On Derevald site to east of appeal site:

Reg. Ref. 04/952 – In 2004, planning permission for 6 houses was granted by the planning authority to Ned O’Flanagan

Reg. Ref. 06/422\_- In 2006, planning permission for an additional house (pair of semi-detached houses in place of detached house permitted per Reg. Ref. 04/952) was granted by the planning authority to Denis Phelan.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The site of the proposed development is located within an area zoned ‘Residential 2’ in the Durrow Town Plan contained within Volume No. 2 of the Laois County Development Plan 2017-2023.

5.1.2. The following housing policies are applicable.

DU11: Housing to be provided in line with Housing Strategy 2017-2023.

DU12: Promote densities in the order of 12 units to the hectare.

### **5.2. Natural Heritage Designations**

5.2.1. The River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162) is located approximately 1 kilometre north-east of the site.

5.2.2. The River Nore Special Protection Area (SPA) is located approximately 1.1 kilometres north-east of the site.

### **5.3. EIA Screening – Preliminary Examination**

5.3.1. Having regard to the existing pattern of development in the vicinity of the site, the nature and scale of the proposed development and the 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**

6.1.1. The third-party appeal submission is made by one of the residents of the Derevald housing development, immediately east of the appeal site. The submitted grounds of appeal include:

- This application and the concurrent application for the three dwellings are being made to merely address the previous objections of the Board and it is unlikely that the dwellings being sought permission for under Board reference number 309061-20 would be developed.
- Scot's Lane (linking the Derevald estate with the Cork Road) has not been taken in charge.
- Scot's Lane must be regarded as a private road on which there are significant difficulties and safety issues.
- The appropriate decision for what is materially the same application as previously refused planning permission under board reference number 304528-19 is a refusal.
- There is a deliberate segregation between the appeal, Board reference number 309061-20, and the current appeal.
- If the applicant were serious about developing a multi-unit development, one composite planning application would have been made to the Planning Authority.
- The land, the subject of the current appeal comprises Folio number 5365F.
- There is no historical right of way through the Derevald development and the field entrance to the site is clearly marked on the aerial survey maps, submitted as Appendix 4.

- The applicant has no right of way over Scot's Lane nor over a section of the Derevald internal access road.
- The applicants have an alternative access to their own lands from the public road, the R639.
- The Road Design Section of Laois County council stated under planning reference number 04/952, that due to the narrow access road (Scot's Lane) that no more than 6 houses could be developed off it.
- No pedestrian safety assessment was submitted as part of the planning documentation nor requested by the Planning Authority.
- The appellants have commissioned a traffic report prepared by Consultant Engineers who observed that Scot's Lane is substandard and gives rise to endangerment of public safety and that the design is contrary to Laois County Council Road Design standards, that an escalation of a traffic hazard would arise due to conflicting traffic movements, the matter of access and impact upon Scott's Lane has not be meaningfully assessed and no mitigation measures are proposed to address safety/traffic issues.
- The taking in charge of a development by the Council is not transferable to third parties.
- The applicants have not demonstrated that they have the necessary right-of-way over Scot's Lane to facilitate the proposed development.
- There are precedent cases (quoted by the appellant) where Laois County Council have requested written proof of the possession of adequate rights of way from applicant's prior to permitting development. The appellants are surprised that this has not happened in the current instance.
- Scot's Lane is only 3.69 metres wide at its narrowest point. Cars cannot pass each other simultaneously on the lane.
- The current proposal is not materially different from that refused planning permission by the Board under 304528-19.

## 6.2. Applicant's Response

A submission from the applicant's Planning Consultant, correspondence dated 25<sup>th</sup> day of January 2021, in response to the submitted grounds of appeal, includes the following:

- Mr. Denis Phelan has a long-established right of way from the R639 to the said development via the laneway known locally as Scot's Lane. Mr. Phelan has issued a letter of consent to the applicants (Mr. C. Finnegan & Ms. E. O'Gorman) to access their land via his property.
- The local authority has deemed the location of the public site notice to be acceptable.
- Notwithstanding the narrow width of Scot's Lane, it has served 7 houses, a bus operator and an infrequently used agricultural field entrance for many years without incident.
- The proposed dwelling would be located in an area characterised by a range of house type designs including bungalow, dormer bungalows and two storey house types. The design of the proposed dwelling will not be out of character with the established pattern of development.
- The applicant explored the possibility of alternative access to serve the proposed development. However, this would have involved crossing third party owned lands (in the ownership of the local authority) and severing existing lands currently in commercial use. This option was deemed to be unacceptable to the planning authority at early pre-planning meetings.
- The proposals represent a more intensive use of the landholding.

## 6.3. Planning Authority Response

6.3.1. None received.

## 7.0 Assessment

7.1. I consider that the key issues to be addressed in the context of the current appeal are as follows:



- Right of Way
- Access, Roads & Traffic.
- Design. & Layout
- Procedural Matter
- Appropriate Assessment.

## 7.2. Right of Way

- 7.2.1. The submitted grounds of appeal argue that Scot's Lane over which the applicant must pass in order to access the appeal site via the Derevald estate is a private laneway which has not been taken in charge by the local authority. It is submitted that the applicants have not demonstrated that they have adequate legal right to pass over the laneway.
- 7.2.2. The applicants, in response, state that they have submitted evidence demonstrating that they have the requisite legal entitlement to pass over Scot's Lane.
- 7.2.3. I note from the planning documentation submitted, that the applicants have submitted a copy of a letter from Brophy & Martin Solicitors stating that Mr. Denis Phelan is the owner of 2 folios of land relating to the land on which the Derevald estate was built. The letter states that Mr. Phelan has a long standing right of way over Scot's Lane and that he has granted the applicants the requisite consent to pass over the laneway.
- 7.2.4. On balance, I consider that the applicants have provided sufficient evidence of right of way to pass over Scot's Lane in order to permit the making of a valid planning application and for the determination of this appeal by the Board. I consider that any further dispute in relation to right of way (viz. the nature of the right of way initially granted to Mr. Phelan and any restrictions on his power to further grant a right of way to other parties) constitutes a civil matter between the parties and is not a matter that falls within the scope of planning and development legislation for determination.
- 7.2.5. Section 5.13 of the Development Management Guidelines 2007 sets out the following in relation to title of land "The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land.;

these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as Section 34(13) of the Planning and Development Act 2000 (as amended) states, a person is not entitled solely by reason of a permission to carry out any development”.

### **7.3. Access, Roads & Traffic**

- 7.3.1. The submitted grounds of appeal argue that the access road to the site via Scot’s Lane (approximately 3.69 metres wide at its narrowest point) is inadequate in width to accommodate additional traffic movements. In this regard, the grounds of appeal highlight that a Planning Authority Roads Department report in respect of the planning permission under which the original 6 houses at Derevald estate were permitted (Reg. Ref. 04/952) stated that no more than 6 houses would be permitted at this location due to the narrowness of Scot’s Lane. It is submitted that traffic movements along Scot’s Lane are already at saturation point due to vehicle movements associated with the existing houses at Derevald estate together with vehicle movements associated with the bus operator and the agricultural entrance onto the laneway.
- 7.3.2. Notwithstanding the contents of the Roads Department report in relation to Reg. Ref. 04/952, each application must be assessed on its individual merits. I note that the planning authority have clearly revised their opinion in relation to the capacity of Scot’s Lane in circumstances where they subsequently granted planning permission for an additional house in the Derevald estate (Reg. Ref. 06/422) and have permitted the proposed development now under appeal
- 7.3.3. It has been submitted by the applicant that Scot’s Lane has been in use carrying current volumes of traffic for many years without incident.
- 7.3.4. I consider the narrowness and substandard nature of Scot’s Lane serves as a traffic calming mechanism. The laneway itself is relatively short. Vehicles cannot gain significant speed when travelling along this short section of laneway and are forced by reason of its character and width to proceed at a slow pace and with caution. The 50 kilometre per hour speed control zone applies in this area. Sightlines at both the junction of Scot’s Lane and the R639 and at the entrance to the Derevald estate are adequate. On this basis, I consider that the marginal increase in traffic movements that would be generated by the proposed development could be accommodated

without creating a traffic hazard or adversely impacting upon the safety of other road users.

- 7.3.5. The submitted grounds of appeal argue that the proposed development would result in conflict in vehicle turning movements as a consequence of inadequate sightlines at the new entrance to the proposed house from the bottom of the existing cul-de-sac of the estate road serving the houses in Derevald estate. This conflict would arise between cars exiting the proposed house and cars reversing out of existing car parking spaces at the bottom of the cul-de-sac. No details of this junction have been included with the planning documentation. This matter could be addressed by the attachment of an appropriately worded condition to any grant of planning permission that may issue from the Board.

#### 7.4. **Design & Layout**

- 7.4.1. The applicants have submitted a revised site layout and a greater density of development within the whole of the 0.48-hectare field immediately south of the Finnegan family home and truck business and immediately west of the Derevald residential development, from that refused planning permission by the Board under board reference number 304528-19. However, this has been achieved by the applicants submitting two separate but concurrent planning applications for development in the same field. The current proposal is for a single dwelling on 0.1923 hectares within the western part of the field. The concurrent application (also under appeal (board reference number 309061-20) is seeking outline permission for the development of three dwelling units, within the eastern part of the field on a stated site area of 0.2844 hectares
- 7.4.2. Therefore, in theory the applicants are proposing to increase the density of development within the family land holding, to address the reason for refusal set out by the Board under reference number 304528-19, and to demonstrate consistency with the provisions of the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009’.
- 7.4.3. This proposal should be assessed with the other concurrent appeal for the three dwellings immediately to its east. I consider that the approach taken would not result in a requirement on the applicant to develop the site to a higher density and that a single application for permission is required in this instance in order to ensure that

hap-hazard or piecemeal development would not occur. Under the current proposals, the applicants/developers could pick or choose which permission to implement. Therefore, I am not satisfied that the reason for refusal as set out by the Board under reference number 304528-19, in terms of densification on the land holding has been addressed in a satisfactory or comprehensive manner within the separate concurrent proposals.

- 7.4.4. On balance, I consider that the design and layout, presented within the two separate and concurrent planning applications, would result in piecemeal development, the under-utilisation and under-development of zoned serviced lands and therefore, would be contrary to the provisions of the Sustainable Residential Development in Urban Areas – Guidelines for Planning Authorities, 2009' and contrary to the Res 2, zoning objective of the site and to the proper planning and sustainable development of the area. I consider, that the applicants have failed to satisfactorily address the refusal reason set out by the Board within the revised proposals on the overall land holding.

#### 7.5. **Procedural Matters**

- 7.5.1. The submitted grounds of appeal argue that the public notice erected at the entrance to Derevald estate fails to comply with the requirements of the *Planning and Development Regulations, 2001 (as amended)* insofar as the notice was erected at the entrance from a private laneway (Scot's Lane) rather than at the entrance from the public road (junction of Scot's Lane and the Cork Road).
- 7.5.2. It has been pointed out on behalf of the applicant, in response, that the location of the public notice was deemed to be satisfactory by the Planning Authority.
- 7.5.3. I consider that no evidence has been presented to suggest that any party to the appeal or other members of the public were prejudiced as a consequence of the location at which the site notice was located. On the basis of the documentation on file I am satisfied that the objectors to the proposed development have been afforded adequate opportunity to set out their objections to the proposed development to both the Local Authority and to the Board. Notwithstanding the status of the laneway as a private road, it is nonetheless a route along which members of the public including visitors to the Derevald estate have unrestricted access. In any event, the planning

application was validated by the planning authority. The Board have no role in relation to the validation process.

## **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of development proposed to the location of the site within a built-up area of the town, the availability of public water supply and foul sewer drainage and to the nature of the receiving environment, 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**

I recommend that planning permission be refused for the reason(s) as set out below.

## **9.0 Reason(s)**

The "Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas" published by the Department of the Environment, Heritage and Local Government in May 2009, require a high-quality approach to the design of new housing. Taken in conjunction with the concurrent application for outline permission, the proposed development would represent a haphazard and piecemeal form of development that would clearly result in an unsustainable form / density of development on the site. which would not accord with the prevailing character of the town. It is considered that the proposed development would, therefore, conflict with provisions of the said guidelines and would be contrary to the proper planning and sustainable development of the area.

Note: This represents a new issue in the appeal not raised by any of the parties to this appeal. Under Section 137 (2) of the Planning and Development Act 2000 (as amended), the Board shall give notice in writing to each of the parties and to each of

the persons who have made submissions or observations in relation to the appeal or referral of this new issue.

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Fergal Ó Bric

Planning Inspectorate

30<sup>th</sup> March 2021