



An  
Bord  
Pleanála

## Inspector's Report ABP-309398-21

### Development

Retention permission for an existing agricultural vehicular entrance and associated works.

*\* Significant Further Information received on 15/12/2020 which includes information on the retention and completion of works for an existing agricultural vehicular entrance and associated works.*

### Location

Priortown, Milltown, Termonfeckin, Co. Louth.

### Planning Authority

Louth County Council.

### Planning Authority Reg. Ref.

191002.

### Applicant

Thomas Callan.

### Type of Application

Retention Permission.

### Planning Authority Decision

Grant.

### Type of Appeal

Third Party.

### Appellants

Bernard & Therese Gogarty.

**Observer(s)**

None.

**Date of Site Inspection**

17<sup>th</sup> day of April, 2021.

**Inspector**

P.M. Young.

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## 1.0 Site Location and Description

- 1.1. The appeal site consists of a triangular shaped parcel of land that forms part of a larger agricultural field that extends in a southerly direction as well as a larger block of agricultural land that is located to the immediate east of the L2278 in the Townlands of Priorstown/Milltown, c2.6km to the north west of the settlement of Termonfeckin and c4.4km to the south west of the settlement of Clogherhead, in County Louth.
- 1.2. It has a given site area of 0.1829ha and at the time of inspection it, as well as the larger field it forms part of was in grass. The north easternmost roadside boundary of the site onto which the entrance subject of this application is sited is located alongside a heavily trafficked junction that not only consists of three public roads converging but also accommodates the entrance serving Black Hall, a period country house, and its associated mature parkland grounds. This property is afforded protection as a Protected Structure and is also listed in the NIAH register.
- 1.3. The eastern and western boundaries of the site contain indigenous hedgerows. The southern boundary of the site is not demarcated and at its nearest point it lies within c20m of an enclosure that contains four National Monuments.
- 1.4. The surrounding area is characterised by a rural drumlin landscape setting that contains a significant proliferation of one-off detached dwellings and is also peppered with farmsteads.

## 2.0 Proposed Development

- 2.1. By way of this application retention permission is sought for an agricultural vehicular entrance together with all associated site works.
- 2.2. On the 15<sup>th</sup> day of December, 2020, the applicant submitted significant further information to the Planning Authority. This response included:
  - Legal agreement and its associated map.
  - Revised Public Notices.
  - Drawings.
  - Landscaping Plan.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. Retention permission was **granted** for the development subject to 4 no. conditions. Of note are the requirements of the following conditions:

Condition No. 2: Relates to the protection of sightlines from the permitted entrance.

Condition No. 3: Requires the entrance to be constructed as per that detailed in the drawings submitted with the applicant's further information response.

Condition No. 4: Requires the planting of an indigenous hedgerow within the first available planting season following the completion of the development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The **final Planning Officer's report** is the basis of the Planning Authority's decision and it considered the applicants further information response satisfactorily addressed the items raised in the further information request. It concludes that the development sought under this application to be acceptable, subject to conditions.

The **initial Planning Officer's report** concludes with a request for further information on the following matters:

Item 1(a): Revised site layout plan requested.

Item 1(b): Proof of a formal legal agreement for the lands outside of the applicant's landownership to make the modifications to the roadside boundaries alongside proof of the creation of a burden against the title of the land.

Item 1(c): Location and existing visibility splays for the original agricultural access requested alongside justification as to why this is no longer suitable.

Item 2: Landscaping Plan requested for behind the visibility splays.

Item 3: Revised Public Notices.

### 3.2.2. **Other Technical Reports**

**Infrastructure:** This report includes the following comments:

- Details submitted do not clearly outline the nature and extent of the works sought.
- The field in which the site is located appears to benefit from access onto the local road approximately 200m to the south of the proposed retention entrance.
- It is requested that the applicant outline the field area that requires an entrance onto the public road network at a hazardous road junction; how this complies with the Development Plan; and, whether it represents an improvement over the original site access.
- It concludes with a request for further information in relation to demonstrating that the required sightlines can be achieved and whether the agricultural entrance represents an improvement in terms of access to these lands.

### 3.3. **Prescribed Bodies**

3.3.1. None.

### 3.4. **Third Party Observations**

3.4.1. The Planning Authority received one 3<sup>rd</sup> Party submission to the initial application and a further two 3<sup>rd</sup> Party submissions following the applicant's submission of significant further information. I have noted the content of these submissions and I consider that the substantive issues raised in them correlate with those raised in the appeal submission.

## 4.0 **Planning History**

### 4.1. **Site and Setting**

4.1.1. None relevant.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. This appeal site is governed by the provisions contained within Louth County Development Plan, 2015 to 2021, under which it is located in a larger parcel of land subject to Development Zone 5 land use zoning objective. The stated objective for such land is: *“to protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone”*.
- 5.1.2. Section 7.3.6 of the Development Plan deals with the matter of entrances and states that: *“the provision of suitable and safe entrances is essential to facilitate traffic flow and movement and to protect the safety of road users”*. It also indicates that: *“visibility standards in respect of new entrances and existing entrances where there is an intensification of use, onto all categories of roads and vehicle dwell areas are set out in Table 7.4 and 7.5”* of the Development Plan.
- 5.1.3. Policy TC 12 of the Development Plan is relevant. It states that the Planning Authority will: *“apply the visibility standards and vehicle dwell area requirements as set out in Tables 7.4 and 7.5 in accordance with the National Roads Authority Design Manual for Roads & Bridges (DMRB) for the national road network and to ensure that the standards set out in the Design Manual for Urban Roads & Streets (DMURS) apply to all urban roads & streets”*.
- 5.1.4. Policy RD 1 of the Development Plan is relevant. It states that the Planning Authority will: *“support the implementation of the policies identified in the National Spatial Strategy, The Regional Planning Guidelines for the Border Region 2010-2022, and the Rural Development Programme (or any subsequent programme adopted thereafter) pertaining to the sustainable and balanced development of County Louth’s rural areas”*.
- 5.1.5. Section 3.3 of the Development Plan indicates that the Council’s Rural Development strategy is based on promoting sustainable rural development aimed at maintaining vibrant and viable rural communities while also seeking to protect the amenity,

recreational and heritage value of the rural landscapes and the countryside of the County.

- 5.1.6. Policy RD 3 of the Development Plan is relevant. It states that the Planning Authority will seek: *“to secure vibrant and viable rural communities by promoting sustainable development and settlement patterns in rural areas, environmentally friendly agricultural practices and the protection of natural resources, environment, sensitive landscapes and landscapes of the countryside”*.
- 5.1.7. Section 3.4 of the Development Plan recognises the importance of agricultural in terms of employment and income in rural areas
- 5.1.8. Policy RD 9 of the Development Plan is relevant. It states that the Planning Authority will seek: *“to encourage and facilitate agricultural development whilst ensuring that such development does not result in a negative effect on the scenic amenity of the countryside”*.

## 5.2. Natural Heritage Designations

- 5.2.1. The site does not form part of a European Site nor does it adjoin any such sites. The nearest European sites are:
- Boyne Coast & Estuary Special Area of Conservation (Site Code: 001957) which lies c4.2km to the south east.
  - Clogherhead Special Area of Conservation (Site Code: 001459) which lies c4.7km to the north east.
  - Boyne Estuary Special Protection Areas (Site Code: 004080) which lies c5km to the south east.

## 5.3. EIA Screening

- 5.3.1. Having regard to the modest nature, scale and extent of the development sought under this application together with the absence of any connectivity to any sensitive location, 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.



## 5.4. Built Heritage

5.4.1. This appeal site is sensitive to change due to the presence of a significant built heritage that are afforded protection within it and within the visual setting of the entrance subject to this application. These are summarised as follows:

- The period entrance to Black Hall House (RPS No. and NIAH No. 13902207) lies c36m to the north east of the entrance subject of this application.
- The following National Monuments are situated within an enclosure c80m to the south west of the entrance subject of this application.
  - LH01801 (Classification 'CHUR').
  - LH01802 (Classification 'OGHA').
  - LH02682 (Classification 'CHBG').
  - LH02313 (Classification 'GRAV').

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. The grounds of this appeal can be summarised as follows:

- Reference is made to the submission made to the Planning Authority.
- The description of the development is misleading as it is described as an existing agricultural vehicular entrance and associated works. The subject entrance has only been recently opened and this application is made on foot of enforcement proceedings in relation to the same.
- It is contended that personnel from the Council read out relevant extracts of the legal agreement and indicated that an agreement by the adjoining landowner to maintain necessary sight lines was submitted. This information is not available in on the Council's website.
- There is no indication of a legal agreement for closing of the other entrance.

- Due to Covid restrictions all but essential travel was permitted during the time this application was made. Thus, effectively preventing the appellants from inspecting the documentation.
- Permitting retention for another agricultural entrance into what is effectively a small field is unnecessary and undesirable given the entrance's location at a junction.
- The works required to comply with planning requirements would of necessity result in the destruction of the approach to Blackhall Cross which is a significant landmark in the area.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The revised public notices submitted were deemed to be correct and to accurately describe the development sought under this application.
- A copy of the legal agreement was not published on the Councils website nor was it furnished to the appellants in order to ensure compliance with the General Data Protection Regulations.
- Condition No. 3 pertains to the closure of the entrance to the north and thus there will only be one agricultural entrance serving this field onto the public road.
- Condition No. 4 requires the planting of an indigenous hedgerow behind the visibility splays. The Planning Authority are therefore satisfied that the development will not result in a significant visual impact nor would it adversely impact the character of Blackhall Cross.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. Having inspected the site, examined all documents on file and having had regard to all relevant planning provisions, I consider that the main issues for consideration in this appeal case are those raised by the 3<sup>rd</sup> Party in their grounds of appeal submission to the Board. I therefore propose to assess them under the following broad headings:

- Civil Matters

- Justification for the Entrance
- Road Hazard and Traffic Safety
- Impact on Amenities

7.1.2. Alongside these I consider that the matter of 'Appropriate Assessment' requires examination and given the built heritage sensitivity of the site's setting I consider it is also appropriate that consideration is given to the potential impact of this development on the built heritage of the area. The latter matter the Board may consider to be a 'new issue' in the context of this appeal case.

7.1.3. Before I commence my assessment, the subject of this appeal concerns an application for retention permission for a development consisting of an agricultural vehicular entrance and also on foot of the significant further information permission for the works associated with this entrance to achieve the required sightlines onto the public road in a manner that accords with relevant road safety requirements for such a development and also that is respectful of the visual amenity of its rural setting.

7.1.4. In relation to applications that include an element of retention I note that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place. Further, the development should be assessed in terms of its contribution towards the achievement of the applicable zoning objective for the lands in which it is situated, the vision for the zoning objective and its compliance as well as consistency with the policies and objectives it contains.

7.1.5. In this situation the site is situated on lands subject to the '*Development Zone 5*' land use objective in the Louth County Development Plan, 2015 to 2021. As set out previously in this report the objective reads in part as follows: "*to protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance*". As the entrance relates to agriculture related development which is consistent with the dominant function of Development Zone 5 lands and the type of development sought under this application relates to access to an existing agricultural

field, I therefore consider that the principle of the vehicular entrance to be acceptable, subject to safeguards, in this instance.

- 7.1.6. I am also cognisant that the significant further information was accompanied by revised public notices and that further 3<sup>rd</sup> Party submissions were received. These clearly set out that the development sought consists of both retention and completion of works for an existing agricultural entrance together with its associated works and indicates that significant further information was available for inspection at the Planning Authority's office.
- 7.1.7. I consider that the description of the development set out in the notices are adequate to describe the nature of the development sought in this case and I note that the Development Management Guidelines for Planning Authority's that the purpose of public notices is to alert the public to the nature and extent of the development. It also indicates that it should comprise of a brief description of the development being sought. In addition, the Planning & Development Regulations, 2006, amended Article 18 and Schedule 3, Form No. 1, to provide that the public notices should give 'a brief description' of the nature and extent of the development proposed.
- 7.1.8. The 'Newspaper Notice' was published on the 8<sup>th</sup> day of December and was received by the Planning Authority on the 15<sup>th</sup> day of December. The site notice was erected on the same date with two weeks available for viewing during the office hours of the Planning Authority's office. During this time restrictions on movement due to the Covid 19 pandemic were relaxed were not as restrictive as the months post and preceding December, 2020.
- 7.1.9. The appellants as part of their appeal submission to the Board outline concerns with regards to the Planning Authority's procedural handling of the further information and sensitive information contained therein which was not available on the public website.
- 7.1.10. It is not uncommon for certain information to be handled in compliance with the General Data Protection Regulations due to the sensitive nature of personal data it may contain. Therefore, the handling of such information is rightly done with the required due care by the Planning Authority in compliance with the said regulations.
- 7.1.11. In addition, I note that the appellants indicate that relevant sections of this sensitive data were made available to them over the phone. I also consider that it is the case with any development consisting of an entrance onto a public road that there is an

expectation that this includes the achievement of the required sightlines in a site setting appropriate manner.

7.1.12. Whilst it would appear to me that the appellants were not disenfranchised by the Planning Authority's handling of the sensitive data the Board does not have a role as an ombudsman and as such, I consider that the concerns raised with regards to the procedural handling of this application is not a matter for the Board to make a determination on.

7.1.13. In terms of the revisions made in the further information given the qualitative improvements to the design of the road entrance particularly in terms of achieving the required sightlines for such an entrance onto a local road where the maximum speed limit applies and where there is what I consider to be a complex junction my assessment below is therefore based upon these revisions.

## 7.2. Civil Matters

7.2.1. Item No. 1(b) of the Planning Authority's further information request states inter alia that *"the applicant shall submit a formal legal agreement together with a map showing the extent of the lands so affected outside the site boundary together with an undertaking from the landowner's solicitor that the agreement will be entered as a burden against the title of the land"*.

7.2.2. The applicant as part of their further information response to the Planning Authority provides a letter from the purported owner of the land which is required to achieve the required sightlines in a northerly direction from the subject entrance which states their office has been instructed by the said landowner that: *"he wishes to enter into a legal agreement with Thomas Callan, title owner of land at Priorstown/Milltown Termonfeckin (on consequence of gaining retention of planning permission to retain existing agricultural entrance) allowing the removal and cutting down/repositioning of hedge row boundary to increase the road visibility from the existing entrances from point A to point B"*. Point A and Point B are indicated in an attached map.

7.2.3. While the Planning Authority was satisfied that the information provided in response to Item 1(b), I have a number of concerns with it.

7.2.4. Firstly, the letter provided by the purported owner affected in achieving the required sightlines to the north of the subject entrance is not in the form of an affidavit. It

therefore cannot be considered as a verified statement that has been made under oath that provides a level of certainty and assurance of its veracity.

- 7.2.5. Secondly, there is no substantive evidence provided that the purported owner of the affected land to the north is the actual landowner.
- 7.2.6. Thirdly, if it is accepted that they are the landowner there is no verified statement included to assure that a burden would be entered into title of the land but rather it is indicated that a legal agreement only would be formed with the applicant.
- 7.2.7. Fourthly, the dimensions of the extent of this burden are not indicated in either the letter or the attached document with the revised drawings showing that the modified boundary would require a wider strip of land to that indicated in blue between Point A and Point B.
- 7.2.8. Fifthly, upon removal, cutting down through to repositioning of the hedgerow boundary there is no assurance provided on which party would be responsible for maintaining the required entrance sightline on lands outside of the applicant's legal interest once the agricultural entrance is operational. Yet the safe use of the subject entrance is required on such sightlines being maintained at what is a very heavily trafficked junction as per the revisions set out in the further information response.
- 7.2.9. In addition, I also consider that there is ambiguity in the statement including that the purported landowner only wishes to enter into a legal agreement which is not a very clear indication whereas 'will' or 'shall'; that such an agreement would be done in advance of any further works and or any change in landownership.
- 7.2.10. While I consider that the Board has no statutory power to adjudicate upon matters relating to title and ownership as these constitute civil matters of concern in relation to the development sought is that the works required to facilitate the required sightlines to the north of the subject entrance is dependent upon the consent of a 3<sup>rd</sup> Party as the extent of roadside boundary in this direction does not all fall within the applicants legal interest to carry out these works or to maintain the required sightlines thereafter.
- 7.2.11. Based on the information provided with this application I am not satisfied that the applicant has satisfactorily demonstrated Item No. 1(b) of the Planning Authority's further information request. Should the Board be minded to grant permission for the development in the absence of the same they could seek further information from the applicant or include a condition requiring that this matter be addressed 'in writing' with

the Planning Authority prior to any commencement of works in order to allay the above concerns.

### **7.3. Justification for the Entrance**

- 7.3.1. In relation to Item 1(c) of the Planning Authority's further information request which in part requested the applicant to outline the reasons as to why the original agricultural access is no longer suitable the applicant in their further information response states that: "*the subject entrance has been formed to improve visibility from accessing and existing the subject lands via a more convenient location relative to vehicular traffic speed and site line*".
- 7.3.2. Having inspected the site, including the existing historical entrance onto the public road serving this field I consider that there is merit to this entrance not offering a safe access onto the public road network. Notwithstanding, I raise concern that there also appears to be access to this field from a local road bounding the southernmost boundary of the field which is outlined in blue.
- 7.3.3. From this much lighter trafficked local road there appears to be a track that runs from an existing road entrance along the westernmost portion of the blue line area to where it meets with the river that bisects the subject field where at this point there is an overpass over the watercourse providing access to the northern portion of the field in which the redlined site area is located.
- 7.3.4. Based on the information provided and having inspected the site I am not satisfied that the subject field for which this entrance is served by only one historical entrance onto the public road prior to the construction of the entrance subject of this application. Moreover, I am not satisfied given the subject entrances location on a heavily trafficked junction in what is also a highly scenic and built heritage sensitive junction given that it also functions as the point of entry to Protected Structure Blackhall House via a period entrance with its landscaped demesne adding to the attractiveness of this rural location that this is the safest point to facilitate access onto the public road network to serve this field or that it is one that relates in a practical and functional manner with the applicants larger agricultural landholding.

### **7.4. Road Hazard and Traffic Safety**

- 7.4.1. Given the above concerns I am not satisfied that the applicant has demonstrated by way of the information provided with the application and with the further information

that the subject entrance would benefit from the required sightlines in perpetuity for its safe use at a point in the public road network where there is a complex and heavily trafficked junction.

7.4.2. Further I am not convinced that the addition of another entrance at this junction would not result in a road safety diminishment of this junction's operations for other road users due to the additional potential for conflict to arise from the additional traffic manoeuvres that would arise at a point where the maximum road speed applies or that it is the case that this field is served by no other entrances other than the entrance that is indicated in the submitted plans as 'Original Entrance'. Further, that the applicant has demonstrated that there are no other safer options to serve the subject field in which the redline or blue line area is indicated.

7.4.3. Moreover, in terms of the design of the roadside entrance accompanying the further information the justification for two separate entrances as opposed to one that could provide a shared access to subject field and the adjoining land within the redline area of the site has not been demonstrated and is excessive in the context of this road junction where movements from these entrances have the potential to add to the visual obstacles and hazards present at this junction. Including the visual obstruction of the raised green area with the mature tree which is centrally located in this junction. In addition, this junction is not a designed road junction, and it consists of intersecting local roads at angles where at points sightlines are deficient particularly from dwell areas and as such the additional traffic movements this development would give rise to would add to the road safety and traffic hazards already present for users of this junction.

## 7.5. Impact on Visual Amenities

7.5.1. The particular road junction onto which the subject entrance opens onto is particularly attractive given that it has a strong sylvan character on its northern and north eastern sides through to it containing an attractive but relatively modest period entrance serving Blackhall House, a Protected Structure. The curtilage of this Protected Structure as legible from the public domain significantly contributes to the visual interest, character, and qualities of the visual setting the subject entrance forms part of as does in my view the small, raised pocket of open space which contains a single mature tree in its centre. In addition, the ground levels and the road alignments of this



locality are undulating with the roadside boundaries characterised by indigenous hedgerows and trees.

7.5.2. In this instance I consider that whilst careful landscaping of the new roadside boundaries alongside the provision of appropriate field entrance piers from which gates would be hung would potentially allay the potential for this development to result in undue diminishment of the scenic amenities of this rural location. This I note could be achieved by way of appropriately worded condition should the Board be minded to grant retention permission that would seek to secure a more qualitative landscaping and roadside boundary outcome.

7.5.3. Notwithstanding, the provision of two agricultural entrances in close proximity to one another at a complex and heavily traffic junction of local roads in the absence of clarity on whether there are more suitable existing entrances available to serve this field onto the public road network is considered to require an excessive intervention into this attractive and highly scenic rural location which would require further loss of mature indigenous hedgerows alongside would change the visual appearance, physical character and layout of the adjoining stretch of roadside boundary in a manner that is out of character with that of this rural locality. It is therefore considered that as a result the proposed development would be contrary to Policy RD 9 of the Development Plan that seeks to ensure that agricultural developments do not result in a negative effective on the scenic amenity of the countryside.

## 7.6. **Appropriate Assessment**

7.6.1. Having regard to the minor nature of the retention development to be retained and the proposed development works to complete it, together with the significant lateral separation distance between the site and the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development sought under this application would be likely to have a significant effect individually or in combination with other plans or projects on any European site.

## 8.0 **Recommendation**

8.1. I recommend that retention permission and planning permission for the development sought under this application be **refused** based on the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The Board is not satisfied that the applicant has sufficiently demonstrated a genuine need for the creation of a new agricultural access at a location opening onto a complex and heavily trafficked road junction positioned alongside another agricultural entrance to its north or that they have satisfied that they have the appropriate consent as well as agreements in place to maintain the required sightlines thereafter for the lands required to the north of the entrance that falls outside of their legal interest to meet required standards for this type of development onto the public road network.

Also, the Board is not satisfied that the subject field is not served by another access in addition to the entrance labelled as 'Original Entrance' on the submitted plans or that there is a more suitable location where the subject field bounds the public road where safe access could be obtained onto the public road network.

It is considered that that as a result the design response would give rise to undue negative effective on the scenic amenity of the countryside in a manner that would be contrary to Policy RD 9 of the Louth County Development Plan, 2015 to 2021.

Furthermore, in the absence of demonstrating sufficient legal interest to carry out the works to provide and maintain the required sight lines onto the public road the traffic generated by the proposed development would endanger public safety by reason of a traffic hazard and obstruction of road users of the heavily trafficked road junction it opens directly onto.

Therefore, the development sought under this application would be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

17<sup>th</sup> day of May, 2021.