



An
Bord
Pleanála

Inspector's Report ABP 310458-21

Development

Retention permission to previously approved full planning permission Ref F13A/0383, to keep the entrance to the adjacent house in order for two separate entrances to remain.

Location

Nevitt, Lusk, Co. Dublin.

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F21A/0158

Applicant(s)

Aidan O'Kelly and Jane Morrin

Type of Application

Retention Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Aidan O'Kelly and Jane Morrin

Observer(s)

None

Date of Site Inspection

07th November 2021

Inspector

Brendan Coyne

1.0 Site Location and Description

- 1.1. The site (0.33 Ha) is located on the southern side of a local road in the townland of Nevitt, c. 4.5 km north-west of Lusk. The site as outlined is L-shaped, with a road frontage width of c. 86 metres. The site contains a detached 1.5 storey dwelling and a detached garage/store at its eastern end and 2 no. vehicular entrances along the roadside boundary, identified as Entrance Gate 1 and Entrance Gate 2. The dwelling on the appeal site is identified as the home of the applicant and is served by Entrance Gate 2. Entrance Gate 1 is located at the western narrow end of the site and serves a detached single storey dwelling identified as the original family home of the applicant. The roadside boundary of the site is defined with a timber post and rail fence, hedgerow and a coniferous tree. A grass margin is provided between the front boundary wall of Entrance Gate 1 and the edge of the public road. The ground level of the site slopes gradually in an easterly direction. The character of the surrounding area is rural, interspersed with one-off housing and agricultural buildings. The speed limit of the local road is 80km/hr. A quarry is located c. 2.3km further to the north-west and the M1 motorway is located c. 0.6 km to the east.

2.0 Proposed Development

- 2.1. Retention Permission sought to development previously approved full planning permission under P.A. Ref. FI3A/0383 for the following,
- To keep the existing vehicular entrance to the front of the adjacent house (to the west of the site) in order for two separate entrances to remain.

3.0 Planning Authority Decision

3.1. Decision

Fingal County Council REFUSED retention permission for the proposed development. The reason for refusal was as follows;

The proposed development would be contrary to Objectives DMS126 and DMS129 of the Fingal Development Plan 2017-2023, would endanger public safety by reason of traffic hazard, and would therefore be contrary to the proper

planning and sustainable development of the area. Furthermore, the proposed development would set an undesirable precedent for other similar developments in the area, which would in themselves and cumulatively be harmful to both transport infrastructure and the visual and residential amenity of the area and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

Basis for the Planning Authority Decision. Includes:

- The applicant has included a cover letter regarding the reasons for the subject application and ongoing non-compliance with the original application.
- The reasons provided are not of planning nature and relate primarily to personal financial issues / perceived fairness, and therefore are not considered as part of the planning assessment.
- Concerns regard Section 10 of the application form where it is stated that the applicant is the legal owner, while the applicant also states that the site (that overlaps the property to the west) is owned by the applicant's parents in law.
- A letter of consent should have been submitted with the application.
- While the proposed development is acceptable in principle in accordance with the "RU" zoning objective. However the proposal is at variance with Objectives DMS126 and DMS129 and therefore is not considered acceptable.
- The proposed retention of the original family entrance does not allow for the closing up of the existing (arguably suburban style) entrance and reintegrate the site boundary with the character of the adjoining rural area.
- It is unclear if the applicants intended on the replanting of native hedgerow to the front roadside boundary of the parent's home.
- As per P.A. Ref. F13A/0383 the original entrance was to be closed and landscaping and planting was to take place around the new shared entrance.

- Non-compliance with P.A. Ref. F13A/0383 with regards landscaping impacts on the amenity of adjoining property and the visual amenity of the surrounding area, especially given the site is located in a 'Highly Sensitive Landscape' as per the Fingal County Development Plan 2017 - 2023.
- Site inspection found relatively high speed and high frequency of vehicles along the road, which is located within an 80km/hr speed limit zone.
- Sightlines are limited from both entrances.
- The Transportation Planning Section recommends the proposed development be refused permission – see below.
- The proposed development would not give rise to any significant adverse direct, indirect or secondary impacts on the integrity of any nearby Natura 2000 sites.
- The retention of Entrance Gate 1 would be contrary to the conditions imposed under P.A. Ref. F13A/0383.
- The proposed development would be contrary to Objectives DMS126 and DMS129 of the Fingal Development Plan 2017-2023.

3.3. Other Technical Reports

3.3.1. Transportation Planning Section:

- The proposed development is located in a 80km/hr speed limit zone.
- The more recently built dwelling was granted permission under P.A. Ref. F13A/0383.
- Condition No. 5.C of the notification of decision to grant permission required “the existing vehicular access of the family home shall be removed upon completion of a new vehicular access and replaced with a suitable boundary treatment.”
- The applicants are not in compliance with P.A. Ref. F13A/0383 which required a joint access serving both properties.
- The road serving the site is very heavily trafficked by cars and lorries going to and from the nearby quarry.

- It was estimated that the for the most part cars were travelling at circa 60Km/h and over and trucks were also travelling at speed.
- The design speed of the road at this location is 80 km/hr, requiring sightlines of 145m visibility from a 2.4m setback from the edge of the road to the nearside edge of the road, as per DN-GEO-03060 of the TII Standards.
- The alignment of the road to the west due to a bend and a crest in the road limits sightlines in this direction.
- Further to site visit, it was found that sight lines are substandard to the west for both houses due to the alignment of the road, namely a bend and a crest in the road.
- The boundary hedge between both properties severely impedes sight lines for both properties and in the interest of obtaining optimum sightlines should be trimmed back and lowered to a height of 0.9m. A gorse bush at the new property's entrance would also have to be cut back.
- If work was done to the existing hedge, sight lines from the new entrance (Entrance Gate 2) would be appreciably better than those that can be achieved from the original family home entrance particularly to the west where there is a bend to contend with. This is a logical reason for requesting the original entrance to be removed on the completion of the new entrance.
- The Transportation Planning Section is not in favour of the original family access being retained and believe a joint access, as permitted, is the best solution in this case.
- In the interest of road safety, the Transportation Planning Section's aim is to reduce the number of accesses onto roads where possible.
- The inclusion of a joint entrance in the parent application was a significant factor in how the development was assessed from a transportation point of view with regard to the substandard sightlines to the west.
- The new access (Entrance Gate 1) should become the joint access as per P.A. Ref. F13A/0383 and the access serving the original family home should be removed and replaced with a suitable boundary treatment as conditioned.

3.3.2. **Water Services Department:** No objections.

4.0 Planning History

P.A. Ref. F17B/0146 Retention Permission GRANTED in Sept. 2017 to Jane Morrin for a window in the east gable of first floor level and also the change in size of a window in the rear west wall to a new storey and a half dwelling. The window in the east gable measures 2000mm x 600mm and the window in the rear west wall has changed from 1250mm x 1000mm to 1800mm x 800mm.

Noted Condition(s) included the following:

C.2 The conditions of the permission made under Reg. Ref. F13A/0383 shall be complied with in full in the course of the development herein permitted, save for the changes to the plans permitted under this application.

P.A. Ref. F13A/0383 Permission GRANTED in April 2014 to J. Morrin for 1) construction of a new storey and a half dwelling house, 2) construction of a domestic garage/store, 3) proprietary wastewater treatment system, 4) closing of existing vehicular entrance and opening of new vehicular entrance and all ancillary works.

Noted Condition(s) included the following:

C. 5 The following requirements of the Transportation Department, shall be strictly adhered to:

a. No development of any form including planting, fences or wing walls shall exist within the area required to provide visibility from the site entrance point. The visibility requirements shall be as agreed by way of compliance with the Transportation Engineer, Transportation Planning Section prior to the commencement of the development.

b. The site entrance gates shall be recessed a minimum of 6m from the edge of the road carriageway in order that vehicles can queue off-road should the gates be in a closed position. Entrance gates shall open inwards to the site. Wing-walls from the gate to the front boundary wall/fence/hedgerow shall be splayed as agreed with the Transportation Engineer, Transportation Planning Section.

c. The existing vehicular access of the family home shall be removed upon completion of the new vehicular access and replaced with a suitable boundary treatment.

d. The vehicular entry-splay (i.e. the paved area lying between the edge of road carriageway and the gates/piers of the site entrance) shall be constructed in a bound road material or other suitable material to a detail approved by the Area Engineer, Operations.

e. Parking for two cars shall be provided within the curtilage of the site with an adequate turning area so that cars can exit in forward gear.

f. All underground or overhead services and poles shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.

g. All the above works shall be carried out prior to occupation of the development and at the developer's expense according to the Specification and Conditions of Fingal County Council.

REASON: In the interest of traffic safety.

5.0 Policy and Context

5.1. Development Plan

Fingal County Development Plan 2017-2023 is the statutory plan for the area. The following provisions are considered relevant:

Zoning: The site is zoned "RU" Rural which has the objective to 'Protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'.

The site is located in a 'Highly Sensitive Landscape' area, as per Map Sheet No.14.

Relevant Policy Objectives relating to Roads include the following:

Objective DMS126: Restrict unnecessary new accesses directly off Regional Roads. Ensure premature obsolescence of all county/local roads does not occur by avoiding excessive levels of individual entrances. Ensure that necessary new entrances are

designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazards.

Objective DMS129: Promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards.

5.2. **National Policy / Guidelines**

Design Manual for Roads and Bridges (2011)

Design Manual for Urban Roads and Streets (2019)

Geometric Design of Junctions (priority junctions, direct accesses, roundabouts, grade separated and compact grade separated junctions). (2017) DN-GEO-03060. TII publication.

5.3. **Natural Heritage Designations**

- 5.3.1. The site is located c. 6 km to the north-west of the Rogerstown Estuary SPA (site code: 004015) and SAC (site code: 000208).

5.4. **EIA Screening**

- 5.4.1. Having regard to the limited 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. A first-party appeal was received from the applicants Aidan O'Kelly and Jane Morrin, against the decision made by the Planning Authority to refuse permission for the proposed development. The main grounds of appeal are summarised below;

- The appellants are appealing the decision of the Planning Authority to refuse permission for the retention of Entrance Gate 1 to the front of the original family home and Entrance Gate 2 to the front of their own home to remain.
- The aesthetics of both houses will be diminished if Entrance Gate 1 is closed up.
- The appellants “in-laws” will be entering their property from an entrance which is located 28m further to the east of their existing Entrance Gate 1.
- The condition imposed under P.A. Ref. F13A/0383 creates significant cost in order to close up Entrance Gate 1, provide a continuous wall, remove the tar entrance, relay grass so that the garden looks continuous and cut down trees in order to create an entrance from Entrance Gate 2.
- The retention of Entrance Gate 1 would not set a undesirable precedent as it is a different scenario to most other new builds and entrances.
- Entrance Gate 2 cannot be located any closer to Gate 1 by reason that the appellant’s “in-laws” septic tank is located alongside their treeline and the land between their treeline and the appellant’s new entrance is a wayleave.
- The removal of Entrance Gate 1 would de-value both the appellants property and that of the original family home by reason that there will be a shared entrance.
- The proposed development would not endanger public safety by reason of traffic hazard as it relates only to one dwelling.
- A super dump was previously permitted in the area which would have resulted in multiple additional trucks in the area bringing waste to and from the dump.
- The non-completion of the entrance gate has had financial implications for the appellants with their bank and consequently their inability to complete the house on the site.

6.2. Planning Authority Response

The Planning Authority confirms that it has no further comment to make. In the event that the appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

6.3. **Observations**

None

7.0 **Assessment**

7.1. The main issue for consideration is the reason for refusal, as cited by the Planning Authority. This issue can be addressed under the heading 'Access / Sightlines'. I am satisfied that all other issues were fully addressed by the Planning Authority and that no other substantive issues arise. The issue for consideration is addressed below.

7.2. **Access / Sightlines**

7.2.1. The appellants are seeking retention permission for development previously approved planning permission under P.A. Ref. F13A/0383, to keep the existing Entrance Gate 1 to the front of the original family home of the applicant, in order for two separate entrances to remain. Under P.A. Ref. F13A/0383 permission was granted to the applicant Jane Morrin for (inter alia) the construction of a 1.5 storey dwelling house, the closing of an existing vehicular entrance (to the front of the original family home) and the opening of new vehicular entrance at the subject site. Condition No. 5 under this permission requires that the following be strictly adhered to:

a. No development of any form including planting, fences or wing walls shall exist within the area required to provide visibility from the site entrance point. The visibility requirements shall be as agreed by way of compliance with the Transportation Engineer, Transportation Planning Section prior to the commencement of the development.

b. The site entrance gates shall be recessed a minimum of 6m from the edge of the road carriageway in order that vehicles can queue off-road should the gates be in a closed position. Entrance gates shall open inwards to the site. Wing-walls from the gate to the front boundary wall/fence/hedgerow shall be splayed as agreed with the Transportation Engineer, Transportation Planning Section.

c. The existing vehicular access of the family home shall be removed upon completion of the new vehicular access and replaced with a suitable boundary treatment.

d. The vehicular entry-splay (i.e. the paved area lying between the edge of road carriageway and the gates/piers of the site entrance) shall be constructed in a bound road material or other suitable material to a detail approved by the Area Engineer, Operations.

e. Parking for two cars shall be provided within the curtilage of the site with an adequate turning area so that cars can exit in forward gear.

f. All underground or overhead services and poles shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.

g. All the above works shall be carried out prior to occupation of the development and at the developer's expense according to the Specification and Conditions of Fingal County Council.

7.2.2. In consideration of the proposed development under the subject application, the Council's Transportation Planning Section report states that the applicants are not in compliance with the parent permission P.A. Ref. F13A/0383 which required that the two properties avail of a new joint access. The report states that the road serving the site is very heavily trafficked by both cars and lorries going to and from a quarry located c. 2.3 to the north-west. During site inspection, the Transportation Planning Section estimated that for the most part cars were travelling at c. 60 km/h and over and that the trucks were also travelling at speed along the road. The report states that the design speed of the road at this location is 80 km/hr, requiring sightlines of 145m visibility from a 2.4m setback from the edge of the road, as per DN-GEO-03060 of the TII Standards. The Transportation Planning Section found that sight lines are substandard to the west of both entrances due to the alignment of the road, namely a bend and a crest in the road. The report states that the boundary hedge between both entrances severely impedes sight lines for both properties and in the interest of obtaining optimum sightlines this hedge should be trimmed back and lowered to a height of 0.9m and that a gorse bush at Entrance Gate 2 would also have to be cut back. The report states that if this work was undertaken, the sight lines at Entrance

Gate 2 would be appreciably better than the sightlines at Entrance Gate 1, which has restricted sightlines due to the bend and crest in the road to the west of the entrance. On this basis the Transportation Planning Section consider Entrance Gate 1 serving the original family home should not be retained and that the joint vehicular entrance, as permitted under P.A. Ref. F13A/0383 is the best solution. The report notes that the provision of a joint vehicular entrance in the parent application P.A. Ref. F13A/0383 was a significant factor in how the development was assessed from a transportation point of view, especially with regard to the substandard sightlines to the west. The report concludes that the new access (Entrance Gate 2) should become the joint vehicular access as permitted under P.A. Ref. F13A/0383 and that Entrance Gate 1 should be removed and replaced with a suitable boundary treatment, as conditioned. On this basis, the Transportation Planning Section state the proposed development would constitute a traffic hazard as the required sightlines cannot be achieved and therefore recommend that the proposed development be refused permission. The appellants contest the Planning Authority's reason for refusal, as detailed in Section 6.1 above.

- 7.2.3. The appeal site is located on the southern side of a local rural road and is located within an 80km/hr speed limit zone. Objective DMS126 of the Development Plan seeks to *'ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate, thereby avoiding the creation of traffic hazards'*. The NRA document Design Manual for Roads and Bridges (DMRB), specifically Section TD 41-42/09 requires a sightline 'X' minimum setback of 2.4m from the edge of the public road and 'Y' sightline distances of 120m for road design speeds of 70kph and 160m for road design speeds of 85kph. The drawings submitted with the application and appeal do not detail the sightlines at Entrance Gate 1. Further to site inspection, I noted the bend and crest/trough in the road to the west of Entrance Gate 1 and the roadside hedging between both entrances, as referred to by the Council's Transportation Planning Section. Having regard to the Rural Place Map submitted, I note that the bend in the road is located c. 100m to the west of Entrance Gate 1 and that the road alignment curves in a north-westerly direction thereafter. I noted during site inspection that the trough in the road is not located within the sightline of Entrance Gate 1 but rather further to the north-west. The boundary treatment to the front of Entrance Gate 1 comprises a splayed wall 0.6m high with 1.2m high piers to both sides

of the entrance. A grass margin c. 4m deep is provided to the front of the boundary wall serving Entrance Gate. The road alignment to the east of Entrance Gate 1 is relatively straight for a distance of c.130 metres. While the sightlines provided to the west of Entrance Gate 1 do not strictly adhere to the DMRB requirements, given the existing established context of Entrance Gate 1 serving an existing dwelling, the relatively low volumes of traffic using the road, the sightline distances available at Entrance Gate 1, the splayed boundary treatment at the entrance and the 6.8m setback of the gate from the edge of the carriageway, it is my view that the sightlines provided at the Entrance Gate 1 are acceptable in this instance. Given the limited number of additional vehicular movements the development generates, it is my view that the proposed development would not result in a traffic hazard or generate any road safety issues. I recommend, therefore, that the appeal should succeed in relation to the Planning Authority reason for refusal.

7.2.4. Screening for Appropriate Assessment

- 7.2.5. Having regard to the nature and scale of the proposed development, which relates to the retention of a vehicular entrance at a location that is not in close proximity of a Natura 2000 site, 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.

8.0 Recommendation

- 8.1. Having regard to the nature and use of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposal would not seriously injure the amenities of the area, result in a traffic hazard, or conflict with the objectives of the Development Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.
- 8.2. I recommend that permission should be granted subject to the Conditions set out below.

9.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, and by the further plans and particulars received by An Bord Pleanála on the 08th day of June 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission(s) granted on the 07/04/2014 under planning register reference number F13A/0383 and on the 13/09/2017 under planning register reference number F17B/0146, and any agreements entered into thereunder.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).</p>

Brendan Coyne
Planning Inspector

08th November 2021