



An  
Bord  
Pleanála

## Inspector's Report ABP 310770-21

<b>Development</b>	Shared vehicular entrance, remove condition 2 attached to ref. 20/5502 and associated works.
<b>Location</b>	Inchinapallas, Ballyhooly, Co. Cork
<b>Planning Authority</b>	Cork County Council
<b>Planning Authority Reg. Ref.</b>	21/4977
<b>Applicant</b>	Mary Scanlan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	1 <sup>st</sup> Party v. refusal
<b>Appellant</b>	Mary Scanlan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18/08/21
<b>Inspector</b>	Pauline Fitzpatrick

## **1.0 Site Location and Description**

- 1.1. The site which has a stated area of 0.44 hectares is to the north of National Secondary Road N72 in the townland of Inchinapallas c. 6km to the west of Fermoy and 3km to the east of Ballyhooly. Local Road L-97217 bounds the site to the west. The lands to the north are in agricultural use with a dwelling bounding the site to the east.
- 1.2. The site, outlined in red on the site plans, is rectangular in shape with a single storey dwelling and associated outbuilding located in the western most section of the site. The eastern section of the site is undeveloped.
- 1.3. Currently there are two entrances serving the site from the N72. That nearest the dwelling is currently being closed up. The 2<sup>nd</sup> entrance is located centrally in the roadside boundary and is, as yet, incomplete. The roadside boundary is delineated by a stone wall. The site is also served by an access from the local road bounding the site to the west. The site boundary along the local road is delineated by a wall which appears to have been increased in height at its junction with the N72.
- 1.4. The N72 in the vicinity of the site does not have the benefit of hard shoulders with a solid white central line. The 100km/hr speed limit applies. The road surface along the site frontage is marginally higher than the site along parts.

## **2.0 Proposed Development**

- 2.1. Permission is sought to develop a shared entrance onto the N72.
- 2.2. The documentation in support of the application contends that consequent to road works on the N72 sight lines at local road L97217 were reduced to the east. Using this junction has compromised her safety.
- 2.3. In seeking permission for the shared entrance this would annul condition 2 attached to permission granted under ref. 20/5502 which requires that the entrance be used to access the existing dwelling on the site only.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission for two reasons which can be summarised as follows:

1. The proposal would be contrary to objective TM 3-1(d) of the Cork County Development Plan and the guidelines on Spatial Planning and National Roads. The proposal would endanger public safety by reason of traffic hazard and obstruction of road users due to the extra traffic movements generated. The proposal and precedent set would adversely affect the operation and safety of the national road network.
2. The proposal would join a busy public road that is poorly aligned at a point where sightlines are restricted in both directions. The planning authority is not satisfied that traffic likely to be generated would not endanger public safety by reason of traffic hazard.

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

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

The Area Planner's report notes:

- The applicant was previously refused permission for a dwelling with an access onto the N72 on two occasions on grounds of traffic hazard. Permission was granted under ref. 09/5316 for a dwelling with access to be taken from the L-97217 to the west. The permission, the duration of which was extended, expired in July 2019.
- Permission to close the existing entrance and relocate same to the N72 to serve the existing and permitted dwellings was refused under ref. 17/7398 on grounds of additional traffic onto N72.
- Permission was granted under ref. 20/5502 to retain and complete modifications to entrance and closure of temporary entrance. Condition 2 required that the entrance serve the existing dwelling only.

- Permission was refused under ref. 21/4062 to modify the permitted entrance to provide for a shared entrance on grounds of intensification of access onto a national road and that it would contravene materially condition 2 attached to ref. 20/5502.
- Permission for the dwelling on the lands to the east has expired. It is not clear what purpose the shared entrance will serve.
- The proposal of a shared entrance would result in the intensification of the use of the entrance. The removal of condition 2 attached to ref. 20/5502 would have the same effect.

A refusal of permission for 2 no. reasons recommended. The recommendation was endorsed by the Senior Planner.

### 3.2.2. Other Technical Reports

Area Engineer notes the extensive planning history on the site. He is not in favour of removing the condition attached to 20/5502 as it would breach the conditions of the legacy planning condition governing the vacant plot. An entrance along the back of the existing dwelling onto the local road to the west was required. A refusal of permission recommended.

Liaison Officer has no comment.

National Roads Office considers the shared entrance is at variance with official policy in relation to control of development on/affecting national roads. It would intensify the use of the existing entrance. The sightlines displayed fall way short of the minimum requirement of 215 metres. Those on the site drawings are incorrect. A refusal of permission recommended.

### 3.3. Prescribed Bodies

Transport Infrastructure Ireland considers the proposal to be at variance with official policy in relation to control of frontage development on national roads. It is recommended that a Road Safety Audit should be carried out. Any recommendations arising to be incorporated in the proposed development by amendment to the existing planning application or by way of conditions should permission be granted.

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

None.

## 4.0 **Planning History**

The planning history on the site is summarised in Table 1 of the Area Planner's report.

Of note:

**20/5502** – permission granted in July, 2020 for retention and completion of modifications to entrance and closure of temporary entrance.

Condition 2: the permitted entrance to be used to access the existing dwelling on site only.

Condition 5: existing entrance to be closed off within 2 months of completion of new entrance.

**21/4062** – permission refused in March 2021 for a shared entrance, modification to entrance and associated site works. The 2 reasons for refusal are the same as in the current appeal case.

## 5.0 **Policy Context**

### 5.1. **Spatial Planning and National Roads – Guidelines for Planning Authorities, 2012**

Section 2.5 states that the policy of the PA will be to avoid the creation of any additional access points from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60kmh apply. This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

## 5.2. **Cork County Development Plan, 2014**

Objective TM 3-1: National Road Network

- a) Seek the support of the National Roads Authority in the implementation of the following major projects:

*Key Regional Projects*

Mallow to Fermoy

- c) Restrict individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.
- d) Avoid the creation of additional access points from new development or the generation of increased traffic from existing accesses onto national roads to which speed limits greater than 50kph apply.

The site is within an area designated as a High Value Landscape.

## 5.3. **Natural Heritage Designations**

The Blackwater River (Cork/Waterford) SAC is c. 170 metres to the south.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

The 1<sup>st</sup> party appeal which is accompanied by supporting detail can be summarised as follows:

- Consequent to road works on the N72 the road has been positioned closer to the site boundary. Sightlines from the existing access to the west were reduced rendering it less safe. Sightlines to the east from L-97217 were also reduced.
- Permission was sought and secured to relocate the access onto the N72 under planning ref. 20/5502. Sightlines at the new entrance are 110 metres to the east and 135 metres to the west.

- If permission is granted it would allow for the removal of the registered right of way and allow for the existing dwelling to be set back to a safer position.
- The proposal will allow for remedial works on the N72 and may result in works to L-97217 junction not being necessary.
- Exceptional circumstances as allowed for in the guidelines of Spatial Planning and National Road exist in this case. The shared access is safer than access from L-97217. The capacity onto the N72 will be the same as if the appellant accessed from the L-97217.
- Adjustments to the boundary wall along L-97217 were done with approval from the County Council. It is not correct that a condition be imposed to reduce the pillar height on permission ref. 20/5502.
- The increase in road levels resulting in 400mm difference between the road and her property materially affected the safety, privacy and security of the property. This is acknowledged in the Road Safety Audit statement 2016.
- A Road Safety Audit is not required.
- The temporary entrance is to be closed.

## **6.2. Planning Authority Response**

None

## **6.3. Observations**

None

## **7.0 Assessment**

- 7.1. I consider that the substantive issue arising in the case relates to compliance with national and local policy with respect to access onto a national road and contravention of a condition attached to an existing permission.
- 7.2. As noted in Table 1 of the Area Planner's report on file there is an extensive planning history pertaining to the site dating back to 2007 both in terms of seeking permission

for a dwelling on the undeveloped eastern portion of the site and for a new access from the N72.

- 7.3. The existing dwelling on site has historically been served by an entrance onto the N72 immediately to the south-east, in addition to an access onto local road L97217 allowing access to the rear of the dwelling. Permission was granted for a dwelling on the undeveloped eastern portion of the site under ref. 09/5316, the duration of which was extended under ref. 14/5191. The dwelling was not constructed and the permission expired in 2019. The said dwelling was to be served by the existing access from local road L97217. It was not to be served by an access onto the N72.
- 7.4. Following road works to the N72 in the vicinity of both the site and the junction with the L97217 the applicant sought and secured permission under reference 20/5502 to close the original entrance onto the N72 serving the dwelling (which, as per the details in the planner's assessment on the said file, had been materially altered and widened without the benefit of planning permission) and to retain and complete a new entrance to the east of same. As permission for the dwelling under ref. 09/5316 (extended under ref. 14/5191) had expired the entrance to be retained was to serve the existing dwelling, only. The planning authority considered that the proposal equated to the replacement of an existing, unsafe entrance and was acceptable. Permission was granted subject to 5 conditions. Condition No.2 required that the entrance be used to access the existing dwelling only. This permission was not appealed and therefore stands.
- 7.5. The current proposal subject of this appeal in terms of the access onto the N72 is the same as that granted under ref. 20/5502, save that permission is now being sought to allow for a shared entrance. The appeal submission is silent on why a shared entrance is proposed. Whilst I note the appellant's assertions regarding the impact of improvements to the N72 on the sightlines available, the entrance as permitted is exactly the same as that proposed and what is to be gained in terms improvements or what exceptional circumstances arise are unclear. Indeed I note that the exceptional circumstances allowed in for the guidelines for Spatial Planning for National Roads has been misinterpreted. Section 2.6 is quite explicit in stating that identification of stretches of national roads where a less restrictive approach may be applied would be as part of the process of reviewing or varying the relevant



development plan, only, and having consulted and taken on board the advice of the NRA. Thus decisions are not to be made on a case by case basis.

- 7.6. In the absence of detail it is not unreasonable to conclude, based on the planning history on site, that permission for a dwelling on the undeveloped portion of the site may be sought at some stage in the future. I note that the appellant contends that the shared entrance would allow for the extinguishment of the right of way to the north of the existing dwelling which provided access to the dwelling as permitted thereby allowing the potential setback of the existing dwelling.
- 7.7. The fact remains there is no extant permission for a dwelling on the site and any future application will be required to be assessed against the national and local planning policies including those pertaining to national roads that prevail at that time, notwithstanding the planning history on the site. As is stands there is no basis or need for such a shared entrance at this location. To permit such a scenario could give rise to an unreasonable expectation as to the favourable consideration of the future development of the undeveloped section of the site. On this basis the proposal would contravene national policy in relation to the control of development on national roads as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially Objective TM 3-1 of the Cork County Development Plan that restricts individual access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network. The proposal also contravenes materially condition 2 attached to permission ref. 20/5502 which is considered reasonable. I therefore recommend a refusal of permission for these reasons.
- 7.8. As noted the entrance is the same as that assessed and approved under planning permission ref. 20/5502 and whilst the sight lines fall short of the optimum 215 metre requirements on a national secondary road, it has been adjudicated upon and it was concluded that it represents an improvement over the substandard access arrangements. The conditions that apply to the permission stand.

### *Appropriate Assessment – Screening*

- 7.9. Having regard to the nature and scale of the proposed development and distance from the nearest designated 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**

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

## **9.0 Reasons and Considerations**

1. The proposed development would result in the intensification of the use of an existing access onto the N72 National Secondary Road at a location where the maximum speed limit of 100 km/h applies. Having regard to the location of the site, it is considered that the proposed development by itself or by the precedent it would set for other development, would endanger public safety by reason of traffic hazard and obstruction of road users, would contravene national policy in relation to the control of development on national roads as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in January, 2012, which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially Objective TM 3-1 of the Cork County Development Plan that restricts access onto national roads, in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development in providing for a shared entrance would contravene materially a condition attached to an existing permission for development, namely condition number two attached to the permission

granted by Cork County Council pm the 12<sup>th</sup> day of October 2020 under planning register reference number 20/05502.

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**Pauline Fitzpatrick**  
**Senior Planning Inspector**

**September, 2021**