



An
Bord
Pleanála

Inspector's Report

ABP-311806-21

Development	Relocation of vehicular entrance and construction of shed. associated site works.
Location	Newhouse, Bennettsbridge, Co Kilkenny
Planning Authority	Kilkenny County Council
Planning Authority Reg. Ref.	21178
Applicant(s)	Michael Denieffe
Type of Application	Permission
Planning Authority Decision	Grant, subject to conditions
Type of Appeal	Third Party
Appellant(s)	Patrick F. O'Reilly
Observer(s)	None
Date of Site Inspection	17 th December 2021
Inspector	Liam Bowe

1.0 Site Location and Description

- 1.1. The site is located in the rural townland of Newhouse, Bennettsbridge. The village of Bennettsbridge is circa 3.4km to the north-west and Thomastown is circa 3.6km to the south. The Regional Road (R700) that links these two settlements is located circa 800m to the west of the appeal site. The Dublin-Waterford railway line is also 100m to the west of the appeal site.
- 1.2. The site has a stated area of 0.848 hectares. It is accessed off the local road. The surrounding rural area is lowland in nature. The predominate land use is agriculture with sporadic housing along the local roads.
- 1.3. The site contains a house with an associated domestic garage. There is also a small landholding of 5 hectares associated with the dwelling. There is a vehicular access to this house to the south of the site, but this access is not contained within the boundary of the appeal site. This access also facilitates agricultural access to the 5 hectare field to the south west of the house. The area to the rear of the house within the agricultural field also forms part of the site. On the day of my site inspection, it was evident that livestock had been on this land from the presence of a water trough and recent poaching of the ground.
- 1.4. The neighbouring dwelling to the east is in the ownership of the third party and lies approximately 200m from the appeal site. The neighbouring dwelling to the south is located 150m from the proposed new entrance.

2.0 Proposed Development

- 2.1. Permission is sought for the relocation of the site entrance to a location circa 50m to the north of the existing entrance. Permission is also sought for an agricultural shed to the north of the existing house and garage. The proposed shed is 7.031m in height with an area of 578.28m². The finishes are mass concrete wall to 1.8m in height and the remainder of the building will be finished in green cladding. It is proposed to use the shed for cattle, straw storage and for storing machinery.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to eight conditions, which are standard in nature.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The initial report of the Planning Officer notes the objection received and raises concerns regarding traffic safety, impact on drainage, details of location of the shed, and effluent storage and recommends further information. A second report, subsequent to the submission of a response to further information, recommends clarification of further information regarding the existence of water bodies in the location of the proposed agricultural shed. A third report, subsequent to the submission of a response to the clarification of further information, recommends grant of permission consistent with the notification of decision which issued.

3.2.2. Other Technical Reports

A/Assistant Engineer, Environment Section – The initial report highlighted the lack of sufficient detail and sought further information in relation to surface water management, and storage capacity for slurry and farmyard manure.

Environmental Technician required clarification of the further information regarding the existence of water bodies in the location of the proposed agricultural shed. A subsequent report advised that there were no objections to the proposed development, subject to standard conditions.

Area Engineer – The initial report highlighted concerns about the forward and stopping visibility at the proposed entrance and details of all works required to the roadside boundary in order to achieve sightlines. A second report, subsequent to the submission of a response to further information, confirmed that the sightlines are acceptable.

3.3. **Prescribed Bodies**

None.

3.4. **Third Party Observations**

A submission was received from Patrick F. O'Reilly. The issues raised are generally similar to those referenced in the grounds of appeal. These include concerns regarding the location of the entrance, impacts on land drainage system, and the dividing wall on the shared boundary.

4.0 **Planning History**

4.1. **Appeal Site:**

P.A. Ref. No.13/518: Permission granted for the erection of a house with treatment system and soil polishing filter and permission for the erection of an agricultural shed part to be used as a straw bedded area for the housing of livestock, part for the storage of straw and meal and the remainder for the parking of machinery.

P.A. Ref. No.13/210: Permission refused for the erection of a house and agricultural shed because of substandard sightline available for right turning traffic into the site, which would lead to a traffic hazard.

5.0 **Policy Context**

5.1. **Kilkenny County Development Plan 2014-2020 (extended)**

5.1.1. Chapter 6 Rural Development

Strategic Aim: "To manage rural change and guide development to ensure vibrant and sustainable rural areas whilst conserving and sustainably managing our environment and heritage."

5.1.2. Section 6.2 Agriculture – "Agriculture is a vital part of the economic life of the County and is a major driver for sustaining, enhancing and maintaining the rural economy and culture."

5.2. Natural Heritage Designations

The site is not located within or close to any European site. The closest Natura 2000 sites are the River Barrow and River Nore SAC and the River Nore SPA, approx. 2km to the west.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development, the site location outside of any protected site and the nature of the receiving environment, the limited ecological value of the lands in question, and the separation distance from the nearest 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.

6.0 The Appeal

6.1. Grounds of Appeal

A third party appeal was submitted by Patrick F. O'Reilly. The issues raised are as follows:

- Contends that the matter of an entrance at this location has already been decided by Kilkenny County Council under Planning Ref. No. P13/210.
- Concerned about the likelihood of a road traffic collision occurring at this location, with right turning movements into the site of particular concern for on-coming traffic.
- Contends that the proposed development will impinge drainage of both the road and neighbouring lands and that this will lead to flooding.
- Concerned that an important habitat and trees will be destroyed.
- Contends that the land where the entrance is proposed is owned by Kilkenny County Council.

6.2. Applicant Response

A response to the third party appeal was submitted by Peter Thomson Planning Solutions on behalf of the applicant Michael Denieffe. The issues raised are as follows:

- Highlights that the appellant has not objected to the proposed agricultural shed.
- Once the new entrance is developed, the existing entrance will be decommissioned.
- That the Council or An Bord Pleanála are not precluded from granting permission for a development that was previously refused.
- Notes that the Area Engineer considers the proposed entrance safer than the existing one.
- That his client will engage with the Council regarding the roadside drainage to prevent flooding at this location.
- There is no record of a traffic accident on the LS6716 between 2005 and 2016.
- Contends that the digital road survey which accompanied the application demonstrates clear visibility at the proposed entrance.
- There will be no increase in traffic from the proposals.
- That the proposed entrance will be served by a soakaway.
- Contends that no evidence was submitted by the appellant to support the claim that a wide range of wildlife exists or will be lost. States that tree loss will be kept to a minimum.
- Submits copies of the Land Folios showing the lands registered to the applicant.

6.3. Planning Authority Response

- The planning authority advised that they have no further comment to make.

6.4. Observations

- None received.

7.0 Assessment

I consider that the following are the main issues relevant to the assessment of this appeal:

- Principle of Development
- Traffic Safety
- Drainage
- Other issues
- Appropriate Assessment

7.1. Principle of Development

- 7.1.1. The appellant contends that the matter of an entrance at this location has already been decided upon by Kilkenny County Council under Planning Ref. No. P13/210 where permission was refused for a house, agricultural shed and an entrance at this location because of substandard sightline available for right turning traffic into the site. Permission for the house and agricultural shed was subsequently granted with an alternative entrance to the south. The house and entrance were present on the day of my site inspection. However, the permitted agricultural shed is not constructed and permission for this has now expired.
- 7.1.2. The first party's planning consultant responds to this by stating that An Bord Pleanála are not precluded from granting permission for a development that was previously refused and that consideration can be given to the relocation of the entrance. The first party highlights that the appellant has not objected to the proposed agricultural shed.
- 7.1.3. An application can be legitimately made for development which has previously been refused by a planning authority or An Bord Pleanála. Such an application can address a reason for refusal in a previous application and this does not result in an automatic reason for refusal. In this appeal, the traffic safety issue that resulted in a

reason for refusal on a previous application on the site is a material consideration in the assessment of the new proposal.

- 7.1.4. The proposed development is located in a rural area where agriculture is the prevalent land use. The principle of the proposed development is therefore acceptable, subject to the detailed considerations below.

7.2. Traffic Safety

- 7.2.1. The appellant contends that the matter of an entrance at this location has already been decided by Kilkenny County Council under Planning Ref. No. P13/210 where permission was refused. The appellant is concerned about the likelihood of a road traffic collision occurring at this location, with right turning movements into the site of particular concern for on-coming traffic. The first party response contends that the digital road survey which accompanied the application demonstrates clear visibility at the proposed entrance and that there will be no increase in traffic from the proposals.
- 7.2.2. As detailed in the further information response and as indicated on the Site Layout Plan, sightlines of 90 metres have been demonstrated to provide both safe access and egress to and from the site. The applicant proposes to remove and reinstate 25 metres of hedgerow to the south of the proposed entrance in order to provide the visibility sightline to the south for exiting the site.
- 7.2.3. I note that the Council's Area Engineer considers the proposed entrance safer than the existing one. I concur with this assessment, as right turning vehicles accessing the site will be significantly more visible to traffic approaching from the north east and the location of the new entrance would be on the outside of the bend.
- 7.2.4. I note the first party's contention that the proposal will not result in any increase in traffic. The first party seems to make this argument on the basis that an agricultural shed has previously been permitted. It should be noted however that this permission has expired. On this basis, there will be an increase in vehicular activity to/from the site. However, based on the relatively small scale of the agricultural shed and small landholding associated with it, I consider that the level of vehicular activity generated should be no more than what would be expected to/from a dwelling with an associated farmyard in this rural area.

7.2.5. Accordingly, having regard to the detailed proposals provided in respect of the proposed entrance, I am satisfied that the proposed development would not give rise to a traffic hazard.

7.2.6. I note the first party's statement that once the new entrance is developed and operational, the existing entrance will be decommissioned, and the land returned to agricultural use. On this issue, I draw the Board's attention to the Site Layout Plans submitted with the application and highlight the fact that the existing entrance is not included in the site edged red associated with this planning appeal. The existing entrance is however on the lands outlined in blue on the site layout plan and therefore within the control of the first party. The first party has clearly annotated on the site layout plan that the 'entrance currently in use to access the existing dwelling is to be returned to agricultural use only for access to field'. I consider this to be acceptable.

7.3. **Drainage**

7.3.1. The appeal raises the issue of surface water drainage. Specifically, concern is expressed that the proposed development will impinge on drainage of both the road and neighbouring lands and that this will lead to flooding.

7.3.2. In response to the issue, the first party stated that the proposed entrance will be served by a soakaway to the south and that he will engage with the Council regarding the roadside drainage to prevent flooding at this location.

7.3.3. I note the first party's calculations for surface water (84m³) that will be generated from the proposed agricultural shed and associated hardstanding and a proposal for 4 no. soak pits of 4m x 4m x 1.5m on the basis of these calculations. I am satisfied that this proposal for the disposal of surface water is appropriate and will result in no adverse impact on adjoining properties or the public road.

7.3.4. Regarding drainage at the site entrance, the first party proposes to provide another soakpit to the southern side of the proposed new entrance. No detailed calculations or designs are provided for this. On the day of my site inspection, I noted the absence of roadside drainage i.e., a grass verge ran along both sides of the local road at this location. This would indicate that the land in the area is generally capable of draining the surface water. Therefore, I consider that the proposal to

provide a soakpit with a new entrance would be capable of disposing surface water associated with the hardstanding area of the new entrance.

7.3.5. In the event that there are drainage pipes in this area, the details of how they are protected can be dealt with by the first party in consultation with the local Area Engineer. This can be required by a condition attached to a grant of permission. This would ensure that the appellants property will not be adversely affected by surface water as it would be allowed to drain as it is now.

7.3.6. Overall, having regard to the detailed proposals provided in respect of the treatment and disposal of surface water generated on the site, I am satisfied that the scheme has been designed to ensure that surface water would not enter the appellant's property and would not cause flooding on the public road.

7.4. **Other Issues**

Impact on Wildlife

7.4.1. The appellant raises the adverse impact on wildlife as an issue and categorises these impacts as:

- Ecological,
- Habitat loss, and
- Trees destroyed.

There are no protected habitats in the area or no evidence provided of protected species. No such habitats or species were observed at the time of my inspection of the site, and I consider that the impact on wildlife habitats by the provision of a new entrance would be minimal. There are no significant trees to be removed.

Legal Interest

7.4.2. In terms of the legal interest, the first party submitted details of his legal interest in the appeal site, including folios as part of the response to the appeal. I am satisfied that the applicant has provided sufficient evidence of their legal interest for the purposes of the planning application and decision. Any further consents that may have to be obtained are essentially a subsequent matter and are outside the scope of the planning appeal.

7.5. Appropriate Assessment

- 7.5.1. The appeal site is remote from any European site. The nearest Natura 2000 sites are River Barrow & River Nore SAC (site code: 002162) and the River Nore SPA (site code: 004233) and these are situated 2km to the west of the appeal site. There is no hydrological connection between the appeal site and these Natura 2000 sites and it has no known habitat to support any of the Special Conservation Interests of these European sites. No foraging or breeding habitat would be lost as a result of the proposed development.
- 7.5.2. Having regard to the nature, scale, and location of the proposed development, the nature of the receiving environment, and the separation distance to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not 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. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the existing pattern of development in the area, and to the nature, use and extent of the subject development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 12th day of August 2021 and 10th day of September 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 and the development shall be retained, carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The agricultural shed shall be confined to use connected with the agricultural use of the farm holding and shall not be used for commercial purposes, sublet or sold separately from the farm holding.</p> <p>Reason: In the interest of clarity, orderly development and the amenities of the area</p>
3.	<p>A minimum of 16 weeks storage shall be provided in the underground storage tank. Prior to commencement of development, details showing how it is intended to comply with this requirement shall be submitted to and agreed in writing with the planning authority.</p> <p>Reason: In the interest of environmental protection and public health.</p>
4.	<p>The roof and elevational cladding of the proposed shed shall be green in colour, the precise details of which shall be agreed with the planning authority, prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
5.	<p>All surface water shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties. The precise details of the roadside drainage at the new entrance shall be agreed with the planning authority, prior to commencement of development.</p>

	<p>Reason: In the interest of clarity, orderly development and the amenities of the area.</p>
6.	<p>The developer shall pay to the planning authority a financial contribution of €468.00 (four hundred and sixty eight euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

Liam Bowe
 Planning Inspector

12th January 2021