



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311815-21

#### Development

Retention of the metal vehicle entrance gate to front perimeter of the site and the retention of the metal fencing at the front, side and rear perimeter of the site. Removal of the metal façade on the vehicle entrance gate at the front perimeter and the removal of the metal façade on the fencing to the front perimeter of the site, to be replaced with a composite wood façade. All together with associated site works.

#### Location

379 Killeighter, Kilcock, Co. Kildare.

#### Planning Authority

Kildare County Council

#### Planning Authority Reg. Ref.

211163

#### Applicant(s)

Piotr Milesczyk

#### Type of Application

Retention Permission

#### Planning Authority Decision

Refuse

#### Type of Appeal

First Party

**Appellant(s)**

Piotr Milesczyk

**Observer(s)**

Rachel & Michael O'Connor

David & Amanda Molloy

**Date of Site Inspection**

6<sup>th</sup> January 2021

**Inspector**

Liam Bowe

## 1.0 Site Location and Description

- 1.1. The site is located in the rural townland of Killeighter, Kilcock, Co. Kildare. The village of Enfield is circa 5.4km to the west and Kilcock is circa 4.5km to the east. The M4 motorway is located 1.2km to the south of the appeal site.
- 1.2. The site has a stated area of 0.29 hectares. It is accessed off the R148 regional road. The surrounding rural area is lowland in nature. The predominate land use is agriculture with sporadic housing along the local roads.
- 1.3. There is a semi-detached single storey dwelling with an associated domestic garage, metal storage shed and portaloo on the site. The associated side and rear garden areas appear to be in use as storage for cars, jeeps and vans. The site is secured on three sides (north, south and east) by 2.4m high palisade fencing, and by a wall that is a shared boundary with the neighbouring dwelling immediately to the west of the appeal site.
- 1.4. There is a semi-detached dwelling on the site immediately to the west and a detached dwelling on the site immediately to the east. The owners/occupiers of both of these dwellings are observers on this appeal.

## 2.0 Proposed Development

- 2.1. Permission is sought for the retention of the existing palisade fencing along the north, south and east site boundaries and permission is sought to replace the metal façade finish on the entrance gate and front fencing (southern side) with a composite wood façade.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority issued a Notification of Decision to Refuse Permission because the design, scale and appearance of the fence and gate constituted an

obtrusive feature in this rural area that would injure the visual amenity of the area and adversely impact on the residential amenities of nearby properties.

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

3.2.1. The Planning Officer raised concerns regarding the visual impact of the proposed development, consistency with development plan policy and recommended that permission be refused for the obtrusive nature of the design, scale and appearance of the fence and gate in this rural area, which is in accordance with the notification of decision issued.

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

Area Engineer: No objection. Conditions recommended.

Water Services Section: No objection.

Transportation Section: No objection. Conditions recommended.

Environment Section: No objection. Conditions recommended.

### **3.3. Prescribed Bodies**

None received.

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

Pat Beirne, Cornagher House, Killeighter, Kilcock, Co. Kildare

- Contends that the fencing on the site is problematic due to the commercial / industrial nature of the aesthetic of the fence combined with the height.
- Has observed an extensive number of vehicles on the property, which he believes are associated with a commercial operation.
- Contends that the garden areas associated with the house on the site have been resurfaced with hardcore tarmac and concrete.
- Concerned that surface water run-off from the site would adversely affect his farmland.

Rachel O'Connor, 378 Killeighter, Kilcock, Co. Kildare

- Contends that the fencing on the site is problematic due to the commercial / industrial nature of the aesthetic of the fence combined with the height.
- Contends that cars are being sold on the site and the dwelling is being rented to workers.
- Has environmental concerns about the auto-related business purported to being carried out on the site.
- Observes that there is a portaloo and portable steel cabin on the site for employees.
- Highlights a boundary dispute with the owner of the site.

David Molloy, 380 Killeighter, Kilcock, Co. Kildare

- Contends that the development is not in keeping with the residences on either side of the site.
- Contends that the entrance is not suitable for multiple large or small vehicles entering or exiting the premises on this busy road.
- Has environmental concerns about the auto-related business purported to being carried out on the site.
- Concerned that there is no surface water attenuation system on the site.

## 4.0 Planning History

### 4.1. Appeal Site:

**P.A. Ref. No. 211164:** Notification of decision to grant permission for the construction of a single storey metal domestic storage shed (120m<sup>2</sup>) together with all associated site works issued by Kildare County Council on 26<sup>th</sup> January 2022, subject to 10 conditions.

## 5.0 Policy Context

### 5.1. Kildare County Development Plan 2017-2023

#### Section 4.13.2 Access and Entrances

“RH17: Require that the design of entrance gateways should be in keeping with the rural setting. All applications for a dwelling in a rural area should include detailed drawings and specifications for entrance treatments. The roadside boundary should ideally consist of a sod/earth mound/ fencing planted with a double row of native hedgerow species (refer to Table 17.2) e.g. Hawthorn, field maple, holly, blackthorn, hazel etc. High block walls and gates and ornamental features will not be permitted.”

#### Section 10.4.10 Rural Enterprises

Key considerations for rural enterprise will include:

- In general, existing ‘footloose’ commercial or industrial activities in towns and villages will not be permitted to re-locate to unserviced rural areas.
- Commercial / industrial developments in rural areas may be acceptable subject to proper planning considerations, where the Council is satisfied that the proposed development requires to be located in the rural area due to its dependence on an existing local resource or source material that is required for the carrying out of the industrial process / commercial activity / service. The local resource or source of material shall be in close proximity to the location of the proposed development.

Proposals for the development of one-off new small-scale enterprises in rural areas outside of designated employment centres will be assessed against the following criteria:

- The proposed development shall be located on the site of a redundant farm building / yard or similar agricultural brownfield site;
- There is a social and economic benefit to being located in a rural area;
- The proposal will not adversely affect the character and appearance of the landscape; and

- The development will not be detrimental to the amenity of nearby properties, and in particular the amenities of nearby residents.

## 5.2. Natural Heritage Designations

- 5.2.1. The subject site is not located within or adjacent to any designated European Site. The nearest such site is the River Boyne and River Blackwater Special Area of Conservation (002299), which is situated approx. 11.1 km to the north west of the site at its closest point.
- 5.2.2. The Royal Canal pNHA, Site Code 002103, lies approximately 600m to the north of the site.

## 5.3. EIA Screening

The proposed alterations of boundaries to the existing residential dwelling is not a class of development for which EIA is required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal are submitted by Piotr Milesczyk, 147 Beech Park, Easton Road, Leixlip, Co. Kildare (first party and stated as owner of the appeal site). The main points made can be summarised as follows:
- Contend that the proposed façade treatment of the existing fence would harmonise with the existing trees and vegetation on the site.
  - Clarifies that it is intended to remove the metal façade on the southern site boundary and replace it with a composite wooden finish.

## 6.2. Planning Authority Response

None received.

## 6.3. Observations

Rachel & Michael O'Connor, 378 Killeighter, Kilcock, Co. Kildare

- Outline their agreement with Kildare County Council's decision to refuse permission for the entrance and fencing as this is a rural area with domestic dwellings on either side of the property.
- Contend that there is a car sales business being run from the premises without the relevant planning consents.
- Advise that they are currently proceeding with a legal case to resolve boundary issues with the owner(s) of the appeal site, stated as Trodamer Limited.
- Contend that the development is devaluing properties on either side of the appeal site.
- They include Land Registry details and various photographs of the appeal site.

David & Amanda Molloy, 380 Killeighter, Kilcock, Co. Kildare

- Contend that this is a rural residential area with family homes on either side of the property and no permission has been granted for change of use from private residential to commercial on the appeal site.
- Contends that the entrance is not suitable for multiple large or small vehicles entering or exiting the premises on this busy road.
- References unauthorised activity on the appeal site.



- Have environmental concerns about the auto-related business purported to being carried out on the site in relation to oil spills, noise, and surface water run-off.

## 7.0 **Assessment**

I consider that the main issues in the assessment of this appeal are as follows:

- Design and Visual Impact
- Legal and Other Issues
- Appropriate Assessment

### 7.1. **Design and Visual Impact**

- 7.1.1. The first party clarifies that it is intended to remove the metal façade on the southern site boundary and replace it with a composite wooden finish and contends that the proposed façade treatment of the existing fence would harmonise with the existing trees and vegetation on the site.
- 7.1.2. The Planning Authority issued a decision to refuse permission on the basis that the design, scale and appearance of the fence and gate constituted an obtrusive feature in this rural area that would injure the visual amenity of the area and adversely impact on the residential amenities of nearby properties.
- 7.1.3. Similarly, the third party observers reiterated their initial objections to the retention of the entrance and fencing on the basis that this is a rural residential area with family homes on either side of the property.
- 7.1.4. On the day of my site inspection, I noted a marked difference between the types of entrance and road boundary treatment on the appeal site compared to the two residential properties immediately to the east and west of the appeal site. The existing pallisade fencing finish, and the proposed composite wood finish, on the front boundary of the appeal site has and would have the appearance of a commercial/industrial complex in this rural area. The adjacent dwellings have a simple low wall and low fence, respectively, which would be typical boundaries associated with houses in the countryside.

- 7.1.5. The policy for the treatment of entrances and roadside boundaries for residential properties in a rural area is outlined in Section 4.13.2 of the Kildare County Development Plan 2017-2023. Policy RH17 states that it is a requirement that the design of entrance gateways should be in keeping with the rural setting and the roadside boundary should ideally consist of a sod/earth mound/ fencing planted with a double row of native hedgerow species. I am satisfied that the existing entrance and fencing, as well as the proposed alterations to these in the form of a composite wooden finish, clearly conflicts with this policy.
- 7.1.6. I also consider that the industrial/commercial nature of the existing entrance and fencing, as well as the proposed alterations to these in the form of a composite wooden finish, would form an incongruous feature on the landscape in this rural part of Co. Kildare. It is my opinion that the entrance and boundaries to be retained and completed would have a significant adverse impact on the visual amenities and rural character of the area and should be refused on this basis.
- 7.1.7. I note the concerns raised by both observers in relation to the contended adverse impact on their residential amenity. I have assessed this appeal on the basis of the as stated retention and completion of the entrance and boundaries only, and I am satisfied that the development to be retained and completed would not directly impact on their respective residential amenities. However, I consider that the presence of an incongruous gate and boundary treatment at this rural location and the impact on the visual amenity and character of the area would have an indirect negative impact on residential amenity.

## **7.2. Legal and Other Issues**

- 7.2.1. I note the information submitted in relation to the issue of ownership of the site alluded to by one of the observers. It is clear from the information submitted that Trodamer Limited, and the first party in this appeal are registered and reside at the same address, namely 147 Beech Park, Easton Road, Leixlip, Co. Kildare. In terms of the legal interest, I conclude that it is not clear that there is insufficient legal interest for the purposes of the planning application and decision.
- 7.2.2. I note the information submitted in relation to a boundary dispute with the owners of the dwelling to the west of the appeal site. I cannot determine conclusively that the

boundary is correctly located but, for the purposes of this appeal, the disputed boundary forms no part of the development to be retained and completed.

- 7.2.3. I note the references by both observers regarding possible unauthorised use(s) on the site. The development for retention and completion under this appeal is for an entrance and boundaries only and, consequently, an assessment on existing or proposed uses on the appeal site has not been carried out herein. Planning Enforcement is the role of the respective Planning Authority, and An Bord Pleanála has no role in this.
- 7.2.4. I also note the concerns raised by the observers in their response to the appeal and by the Planning Authority in its decision, in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out above, I am satisfied that the retention and completion of the entrance and boundaries would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

### **7.3. Appropriate Assessment**

- 7.3.1. The site is not located within any designated site. The nearest such site is the River Boyne and River Blackwater Special Area of Conservation (002299), which is situated approx. 11.1 km to the northwest at its closest point. There is no direct or indirect hydrological connection between the appeal site and this European site.
- 7.3.2. Having regard to the nature of the development for which retention and permission is sought and the fact that the proposed development has no pathway to any European site, it does not have the potential to have an effect on any European site and there is no potential for it to have likely significant effects on any site in combination with any other plan or project. It is reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the River Boyne and River Blackwater Special Area of Conservation (002299), or any European site, in view of the site's Conservation Objectives, and that a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 8.0 Recommendation

- 8.1. I recommend that permission is refused in accordance with the following reason and considerations.

## 9.0 Reasons and Considerations

- 9.1. The site of the development for retention and completion is located within a rural area where Policy RH17 under Section 4.13.2 of the Kildare County Development Plan 2017-2023 requires that the design of entrance gateways and associated roadside boundary should be in keeping with its rural setting. It is considered that the development, resulting in a type of entrance and roadside boundary that would be normally associated with an industrial/commercial development would conflict with this policy and would constitute an incongruous feature in this rural area adjacent to established residential properties. The development for retention and proposals for its completion would, therefore, seriously injure the visual and residential amenities of this rural area and would be contrary to the proper planning and sustainable development of the area.

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Liam Bowe  
Planning Inspector

7<sup>th</sup> February 2022