



An
Bord
Pleanála

Inspector's Report

ABP-313335-22

Development	Removal of existing unauthorized entrance and the installation of dressage arena and two single storey stable blocks.
Location	Blackberry Lane, Morristownbiller, Newbridge, Co. Kildare.
Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	22114
Applicant(s)	Michael Harrington and Daniel O'Brien.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Michael Harrington and Daniel O'Brien.
Observer(s)	Patrick Booth Bill White Gerard Gibson.

Date of Site Inspection

7th July 2022.

Inspector

Lucy Roche

1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 0.29ha, is located on Blackberry Lane within the settlement boundary of Newbridge, Co. Kildare. As the crow flies, Newbridge Town Centre is located c. 1.5km to the south-west of the site while Newbridge Train Station is located c800m to the east.
- 1.2. Blackberry Lane (L7025) is a narrow public road that connects the Morrinstown Biller Road to the northeast and Strandhouse Road to the southwest. It serves several residential properties and agricultural lands. A commercial dog kennel is located c250m west of the subject site.
- 1.3. The appeal site itself fronts onto the northern section of Blackberry Lane. It is bounded by hedgerows, mature trees and timber post and rail fencing and is served by a double entrance. The site is relatively flat and finished with hard core. There is a residential property to the northeast while the lands to the immediate south and west are in agricultural use.

2.0 Proposed Development

- 2.1. Permission has been sought for:

- The removal of the existing unauthorised entrance.

As per the drawings submitted the existing double entrance is to be replaced by a new single entrance. The proposed entrance comprises a timber sheeted gate to a width of c5.04m. The recessed space is to be splayed by a timber post and rail fence with new planting to the rear. The splayed area extends to an overall width of c12.7m.

- The re-sodding of approx. 1100 SQ.M of existing hardstand area
- The installation of a 20x40m dressage arena (c800sqm),
- The construction of 2 no single storey 'L' shaped stable blocks.

As per the drawings submitted with the appeal (drawing No's MH/PLN-003 and MH/PLN-003a), each block has a floor area of 64sqm, a height of c5.0m and comprises 2 stables and 1 tack/feed room. Material finishes comprise blue/black slate, hardwood windows and doors and nappe plaster.

- 2 no. dungsteads
- Boundary landscaping and all associated site works.

3.0 Planning Authority Decision

3.1. Decision

Kildare County Council did by order dated the 29th of March 2022 decide to refuse permission for the proposed development for the following reasons:

1. In the absence of satisfactory information to determine the potential impact of traffic generated from the proposed development, combined with narrow width of Blackberry Lane and its substandard condition, the proposed development would endanger public safety by reason of traffic hazard and the obstruction of road users and, would therefore be contrary to the proper planning and sustainable development of the area.
2. In the absence of satisfactory information regarding the dungstead, it has not been demonstrated to the satisfaction of the Planning Authority that if permitted the proposed development would not lead to conditions which would be prejudicial to public health and would therefore be contrary to the proper planning and sustainable development of the area
3. Having regard to the limited landholding and the proposed equine development, and the lack of information on the recent importation of aggregate used to fill the site or proposals to safely remove same, to permit the proposed development would be contrary to Policy EQ3 of the Kildare County Development Plan 2017-2023 which seeks to ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting and design consideration and would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The applicants have not submitted sufficient details of the proposed equine activity. Concerns raised regarding the site size and the viability of the land holding to carry out the requested equine development.
- The applicants have not demonstrated any additional lands in their ownership to support such an activity.
- The applicant failed to submit details of the weekly proposed traffic movements and vehicle types to and from the site having consideration to the narrow and substandard condition of the L-7025 local road
- Insufficient information on how the applicants intend on dealing with potential effluent generated on site.
- Insufficient information has been submitted in relation to the unauthorised works carried out on site; in particular, no details have been provided in the application in relation to - the amount of hedgerow and topsoil removed from the site; the quantity and source of the aggregate material used to fill the site or proposals to safely remove the aggregate material.
- The report concludes with a recommendation to refuse permission.

3.2.2. Other Technical Reports

MD Engineer:	Recommends Refusal. The proposal is premature considering the unauthorised development on site
Water Services:	The applicants will need to apply for a connection to Irish Water, it is unclear how the applicants intend on dealing with potential effluent generated on site. Conditions recommended.
Environment:	Further information requested regarding the need for an adequately sized effluent holding tank
Roads:	Further information requested on traffic movements and vehicle type; the potential endangerment of public safety due to traffic hazard and obstruction to road users and in relation to the design of the entrance
Heritage Officer:	No comment

3.3. **Prescribed Bodies**

Irish Water: No objection subject to conditions.

3.4. **Third Party Observations**

The Planning Authority received three third-party submissions during their determination of the application. The issues raised in these submissions are similar to those raised in the observations received under this appeal.

4.0 **Planning History**

4.1. **KCC Ref: 21/1524:**

Permission refused (2021) for the retention of a new site entrance, including foundation strips and footing for splayed wing walled entrance, site clearance, importation of aggregate hardstanding area and all ancillary site works. Permission was refused for 3no reasons: The development would be contrary to the Agricultural zoning objective for the area and to the key principle for boundary and entrances as set out in Section 16.6.2 of the KCDP; traffic hazard and public health / deterioration of a Natura 2000 site.

4.2. **ABP Ref:300885 (KCC Ref:17/1285)**

Permission refused (2018) for a dwelling, WWTS, entrance etc. for two reasons: 1) contrary to '1' Agricultural Zoning and objectives of CDP and 2) lack of rural housing need

5.0 **Policy Context**

5.1. **Development Plan**

- 5.1.1. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The Kildare County Development Plan 2023-2029 was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28th of January

2023. I have assessed the proposal under the provisions of the operative Development Plan, namely the Kildare County Development Plan 2023-2029.

5.1.2. Section 9.5. - Policies: Equine Industry

It is the policy of the Council to:

RD P3 Support equine related activities of an appropriate size at suitable locations in the county.

RD P4 Support and encourage the continued development of a distinguished bloodstock and equine industry in the County, including breeding and training, and seek to ensure appropriate environmental conditions for equine operations, insofar as is practicable.

It is an objective of the Council to:

RD O16 Ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting, and design considerations.

5.2. **Newbridge Local Area Plan 2013-2019 (extended to Dec 2021).**

The proposed development site is zoned 'I' Agriculture with the objective '*to retain and protect agricultural uses.*' The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. This includes limited housing for members of landowners' families/persons who can demonstrate a need to live in the agriculture zone (in accordance with Policy RH 4 as set out in the Kildare County Development Plan 2011–2017, or as amended)

5.3. **Natural Heritage Designations**

The proposed development site is not located on or directly adjacent to any designated site. The Pollardstown Fen SAC (Site Code 000396) is located c. 750m

to the west of the site and Mouds Bog SAC (Site Code 002331) is located c.2.4km to the north.

5.4. EIA Screening

- 5.4.1. Having regard to the type of development which is not a class of development for the purposes of EIA and scale and nature of the development comprising an equine development on agricultural zoned lands, it is considered that 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

- The planning authority failed to recognize the nature and restorative elements of the application. The applicants are precluded from developing the site by legal injunction. This application was an attempt to address the unauthorised development on site and attain permission for a small development for the applicant's hobby – training of horses
- The three refusal reasons of the planning authority do not appear to be balanced or reasonable and are not supported by the relevant departments in Kildare County Council.
- The applicants purchased a portion of land, zone agriculturally in the town of Newbridge. They are members of the travelling community; horses and ponies are an integral part of their lifestyle and culture.
- The applicants' own ponies that are currently let out to grass on a farm 3 miles from the site
- The proposed equine development is a hobby and not an occupation
- Only one animal can use the dressage arena at one time therefore the intensity of such a use is extremely minimal

- Two stable blocks are required as the land is owned 50/50 by two people and they want their own independence and to avoid cross contamination of horses.

Refusal Reason #1

- Blackberry Lane is a well trafficked road that accommodates 25 houses, a commercial kennels and considerable through traffic
- Two houses have recently been permitted on the land (KCC Ref: 18/90 and 20/653) which allowed for additional traffic
- The development is for equine hobby purposes. It would be fair and reasonable to assume 4-6 traffic movements per day (possible less during the week and more at weekends). This would be far less than a one-off house.
- The planning officer decided to overrule and or / ignore the Road Departments request for further information.

Refusal Reason #2

- The dungsteads are designed in accordance with the most recent Teagasc recommendations, the details are clearly shown on Drawing No. MH/PLN-004
- The dungstead will cater for 2 ponies/horses and the dungstead details provided are entirely acceptable for this level of development.

Refusal Reason #3

- The development is a hobby. A dressage arena to exercise horses and ponies on a facility that the applicants do not have at their livery yard. It is not a business. Specific sports horses such as dressage horses only require a dressage arena (20m by 40m), a livery yard (which the applicants have elsewhere) and stable accommodation to be used sporadically
- Objective EQ3 is not a prescriptive specific policy objective – the subjective opinion of the assessing planner is used to determine if the development is located on a suitable and viable landholding.
- The site is suitable for dressage training of horses, and it is viable to the applicant to have this facility close to the livery yard he keeps his horses.

- The imported material is not a defined waste product it is a granular fill and has no environmental impact. It is very simple to remove non-toxic granular fill and a simple construction management plan could be provided should the Board decide to grant permission

6.2. Planning Authority Response:

- The Planning Authority has no further comments or observations to make and requests that An Bord Pleanála uphold the decision to refuse permission.

6.3. Observations

Three observations were received. The issues raised by the observers can be summarised as follows:

Bill White

- The applicants are not from the area and have no ties to the area
- The applicants have insufficient land to support the proposed stables. A minimum of 0.6ha of grazing land is required for each horse.
- Animal health and welfare should be taken into consideration
- The works carried out on site (in the absence of planning permission) have resulted in flooding of adjacent lands.
- The existing entrance is too large and is out of context with other houses in the area.
- Septic tanks were installed on the property, without planning permission, and are not at the correct distance from the boundary.
- The submission includes an engineer's report from JMG Engineering Services (Aug 2021), on the condition of the field / site and whether planning permission was required for the works to date.

Gerard Gibson

- No objection to the removal of the existing unauthorised entrance or proposals to re-sod approximately 1100sqm of existing hardstand area. It is understood that the site is subject to a court order that it be reinstated to its original condition prior to the completion of the illegal development works.
- Concerns raised regarding the potential negative impact of the development on Blackberry Lane and its residents from an environmental, traffic hazard, residential amenity, and public health perspective
- The proposed dressage area is suggestive of commercial activity
- This appeal should not be allowed to facilitate either the circumvention of the planning laws or to form part of a more objectionable intention by the promoters to continue with their further commercial development of the site.

Patrick Booth

- The applicants have carried out unauthorised development works which have negatively impacted the site, adjacent properties, and the access roadway
- The installation of two septic tanks on site and the applicant's intent for their usage is a concern for local residents
- A court order was granted (4th day of May 2022) requiring the applicants to reinstate the site to its previous green field condition by 5th day of July 2022. No appeals will be heard on the court order.
- The site is located on a narrow road that cannot support the addition of any further traffic
- The character and size of the development will result in significant potential nuisance, activity on a small site with the attendant impacts on the sites either side and the general amenity of all residents in the local area.

7.0 Assessment

7.1. Introduction

7.1.1. Having examined the application details and all other documentation on file, and having regard to relevant planning policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning report. Issues of alleged unauthorised development and appropriate assessment also merit consideration.

7.1.2. The issues can be dealt with under the following headings:

- Background / Unauthorised Development
- Principle of the Development and Compliance with Planning Policy
- Nature, Scale and Location of Proposed Equine Development
- Site Entrance
- Aggregate
- Collection, Storage, and Disposal of Animal Wastes
- Appropriate Assessment

7.2. Background / Unauthorised Development.

7.2.1. It would appear from the documentation on file, including the observations received, and from the planning history of the site, that unauthorised development has occurred on site and that the lands are subject to a legal injunction / court order.

7.2.2. Observers to this appeal have raised issues relating to the unauthorised / alleged unauthorised development on site; particular concerns have been raised in relation to the alleged installation of septic tanks on site. It is the contention of the observers to this appeal, that the court order requires that the lands be reinstated to their original greenfield condition.

7.2.3. The first party acknowledges the unauthorised development on site and submits that this application is, in the main, an application to return the land to its original agricultural condition, stating that the applicants are precluded from undertaking any remedial works due to the legal injunction / court order.

7.2.4. I have reviewed the plans and particulars submitted with the application and the appeal and I note that works proposed as part of this application, i.e., the proposals to remove the existing unauthorised entrance, to re-plant the front boundary and to re-sod of a portion of the site, would, if permitted, help to address elements of unauthorised development on site. However, I consider that the proposed equine development should be assessed on its merits having regard to relevant planning considerations and planning policy. Furthermore, I note that issues of unauthorised development are a matter of planning enforcement which falls under the jurisdiction of the planning authority and outside the remit of the Board.

7.3. Principle of the Development and Compliance with Planning Policy

7.3.1. The appeal site is located in an area zoned 'I – agricultural' in the Newbridge Local area Plan 2013 – 2019 (as extended). The Objective for this area is 'to retain and protect agricultural uses.' The purpose of this zoning is to ensure the retention of agricultural uses and protect them from urban sprawl and ribbon development. Uses which are directly associated with agriculture or which would not interfere with this use are open for consideration. The development of this site for equine purposes would I consider accord in principle with this zoning objective.

7.3.2. It is the policy (RD P3) of the Kildare County Development Plan 2023-2029 (KCDP) to support equine related activities of an appropriate size at suitable locations in the county. Objective RD O16 of the KCDP seeks to ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting, and design considerations. The nature and scale of the proposed equine development and its suitability at this location is considered in the following sections of this report.

7.4. Nature, Scale and Location of Proposed Equine Development

7.4.1. The proposed equine development comprises two 'L' shaped stable blocks and a dressage arena. The dressage arena is located centrally within the site. The stable blocks have been positioned to the rear of the site, in opposite corners. Each stable

block has a stated floor area of 64sqm and encompasses two stables and a tack room.

- 7.4.2. In accordance with the details provided, the applicants each have 2 horses that they graze on lands owned by a third party, c3 miles from the appeal site. As these lands do not have a proper training area, the applicants wish to use their lands on Blackberry Lane to train their horses while they continue to graze their horses on third party lands. The stable blocks are to be used for private use by the applicants to support their hobby. The first party contends that two separate stable blocks have been proposed as the applicants want their own independence and to avoid cross contamination of horses.
- 7.4.3. The appeal site has a stated area of c0.29ha. The site is not located within the curtilage of the applicant's family home and does not appear to form part of a larger land holding. In my opinion the site small for equine purposes and I am not satisfied is not of sufficient size to cater for the nature and scale of the development proposed i.e., the keeping and training of c4 ponies / horses by two separate individuals. In addition, I am not satisfied that the need for two separate stable blocks on this landholding has been adequately justified.
- 7.4.4. The site is located on Blackberry Lane, a narrow substandard local road with limited opportunities for two cars to pass each other. In my opinion this road has limited capacity for additional traffic. From the information available it would not appear that either of the two applicants currently reside on Blackberry Lane and I note that it is the intention of the applicants to continue to graze their horses on lands c3 miles from the site. The development of this site as proposed would therefore generate additional traffic movements to and from the site, on a regular basis. The generation of additional, unnecessary, traffic movements on Blackberry Lane would I consider, endanger public safety by reason of traffic hazard and the obstruction of road users.
- 7.4.5. Considering the above issues, I am not satisfied that the proposed development site is suitable for the nature and scale of development proposed. The proposed development would therefore be contrary to Objective RD O16 of the KCDP.

7.5. Site Entrance:

- 7.5.1. The appeal site is currently served by a partially constructed and unauthorised, double entrance. Proposals to retain this entrance were previously refused by Kildare County Council under planning Ref: No:21/1524. As part of the works proposed under this application the applicants are proposing to remove the existing unauthorised entrance and replace it with a single recessed entrance. This proposal is I consider acceptable in principle.
- 7.5.2. The Road, Transportation and Public Safety Department of Kildare County Council have, in their report to the planning authority, requested further information to ensure that the proposed (replacement) entrance is designed to their required specification. I am satisfied that this issue can be addressed by way of condition should the Board decide to grant permission for the proposed development.

7.6. Aggregate

- 7.6.1. The planning authority in their assessment and in their decision to refuse permission for this development, raised concerns regarding the lack of information on the quantity and source of the aggregate used to fill the site and the lack of proposals to safely remove same (Refusal Reason 3 relates). Having regard to the nature of the material concerned (hardcore / aggregate) and the works proposed under this application, which include the partial resodding of the appeal site, I consider that the main issue in the regard is the need to ensure that any aggregate removed from the site is satisfactorily disposed of / reused in an appropriate manor. I am satisfied that this issue can be adequately addressed though the submission of a waste management plan (or similar) which may be requested by way of condition in the event that the Board decide to grant permission.

7.7. Collection, Storage, and Disposal of Animal Wastes

- 7.7.1. Each of the proposed stable blocks is to be served by a dungstead, comprising an unroofed structure, enclosed by solid blockwork walls on three sides and open to the front.

- 7.7.2. As per the details and calculations provided on drawing No. MH/PLN – 004, each stable block, will require a dungstead with a capacity of 19.2m³ and a soiled water holding tank with a capacity of 21.27m. I note that the Environment Section of Kildare County Council, in their report to the planning authority, requested further information on the size and design of the effluent holding tanks. Should the Board decide to grant permission for this development I recommend the applicant be required by way of condition, to submit to the planning authority for agreement, full details of the design and capacity of the dungsteads, and effluent holding tanks.
- 7.7.3. No proposals for the disposal of liquid and soiled animal wastes generated on site have been provided and I am not satisfied that there is sufficient land available within the site for land spreading.

7.8. Appropriate Assessment

The proposed development site is not located on or adjacent to a designated site. The Pollardstown Fen SAC (Site Code 000396) is located c. 750m to the west of the site and Mouds Bog SAC (Site Code 002331) is located c.2.4km to the north.

Having regard to the nature and scale of the proposed development, comprising an equine development (dressage arena, stables and dung steads), the nature of the receiving environment, the separation distances to adjoining Natura 2000 sites and the lack of any direct or indirect linkages, no appropriate assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on any European site. Appropriate assessment is therefore not required.

8.0 Recommendation

- 8.1. I recommend that permission for this development be refused for reasons outlined below.

9.0 Reasons and Considerations

1.	<p>It is a stated objective of the Kildare County Development Plan 2023 -2029 to ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting, and design considerations. This objective is considered reasonable.</p> <p>Having regard to the nature and scale of proposed equine development, which includes two separate stable buildings and associated effluent storage facilities, the limited site size and the location of the site on lands which do not form part of a larger landholding, and which are not within the curtilage of either applicants' family home; and having regard to the location of the site on Blackberry Lane, a narrow substandard public road which has limited capacity for additional traffic movements.</p> <p>It is considered that the proposed development would result in the haphazard development of these lands and would give rise to additional unnecessary traffic movements on Blackberry Lane which would endanger public safety by reason of traffic hazard and the obstruction of road users. Furthermore, the Board is not satisfied, based on the information available, that adequate provision has been made for the disposal of liquid and animal wastes generated on site. To permit this development in the absence of this information would be prejudicial to public health and contrary to the amenities of the area.</p> <p>For these reasons it is considered that this site is unsuitable for the proposed equine development. The proposed development would therefore conflict with Objective RDO16 of the Kildare County Development Plan 2023-2029 and would be contrary to proper planning and sustainable development of the area.</p>
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Lucy Roche
Planning Inspector

20th February 2023