



An  
Bord  
Pleanála

## Inspector's Report ABP-313597-22.

<b>Development</b>	Permission to retain the construction of an entrance and access road in order to complete the development of lands as envisaged by the granted application 98/1967 and 16/19.
<b>Location</b>	Caislean Nua, Golf Links Road, Newtown, Castletroy, Limerick.
<b>Planning Authority</b>	Limerick City & County Council.
<b>Planning Authority Reg. Ref.</b>	22/244.
<b>Applicant(s)</b>	Sonnervale Ltd.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Sonnervale Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	03/10/2022.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The subject site is located approximately 3.4km to the East of Limerick City Centre, in the Castletroy area of the city suburbs. The site lies to the north of the Castletroy Golf Course, and 300m to the south of the N7, Dublin Road, within a predominantly residential area. The area the subject of this retention application comprises a former 'temporary construction access' which has been used for the construction of the Caislean Nua residential development which lies to the south of the road.
- 1.2. The access lies immediately adjacent to an existing access which serves the Mount Green residential development to the north of the site.
- 1.3. The site the subject of this appeal, has a stated area of 0.1873h and the construction access has a gravelled finish and high metal hoarding encloses the site. The entrance point includes high solid metal gates.

## **2.0 Proposed Development**

- 2.1. Permission is sought, as per the public notices, for the retention of the construction of an entrance and access road in order to complete the development of lands as envisaged by the granted applications 98/1967 and 16/19, all at Caislean Nua, Golf Links Road, Newtown, Castletroy, Limerick.
- 2.1. The application included a number of supporting documents including as follows:
  - Plans, particulars and completed planning application form.
  - Construction Traffic Management Plan

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reasons:

1. It is considered that the entrance as proposed for retention is located in close proximity to a permitted and existing entrance. The Planning Authority are not in favour of the proliferation of vehicular entrances. Based on the information as submitted, the entrance does not adequately cater for pedestrian or cyclists movements in the layout, nor provide suitable mitigation measures to address all safety issues. Furthermore, the retention of a construction entrance which is not linked to a current housing development would pre determine the location of an entrance to serve any future development of lands to the rear of An Caislean Nua and in the absence of a traffic assessment represents a haphazard and disorderly form of development. therefore, having regard to the aforementioned, the development as proposed for the retention would endanger public safety by reason of a traffic hazard and accordingly be contrary to the proper planning and sustainable development of the area.
2. The retention of the entrance and access road would materially contravene condition 4 of planning permission reference no 20/361. Accordingly, the development as proposed for retention would be contrary to the proper planning and sustainable development of the area.

### 3.1.1. **Planning Reports**

#### Planning Officers Report:

The initial Planning report was prepared by the EP, countersigned by the SEP, and considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history, and notes the provisions of the 2010 City Development Plan and the Castletroy LAP. The report also includes a section on AA and EIA screening.

The Planning Report notes that the subject application is the third such retention application for the same development and that a construction site traffic management plan has been submitted with a splayed entrance proposed. Ultimately the report notes the description of the development refers to two planning

applications PA ref 98/1967 and PA ref 16/19, both of which have expired, with the houses permitted by these applications having been built and occupied.

There is a live planning permission for the development of 3 houses which include an area of the subject site, PA ref 20/361 refers, which includes condition relating to the area affected by the current application. It is concluded that a grant of permission would contravene conditions of the existing permission and it is noted that there is currently no other live permission associated with the use of the temporary construction road and that the current application is not linked to any permitted future phases of development. Non-compliance issues associated with grants of planning permission to the applicant are also noted.

The report concludes that in the absence of an application for housing, exploration of an alternative access, the resolution of PA ref 20/361 and an assessment of potential traffic volumes for the entrance, the proposed development is not appropriate. Given that the governing permission for the temporary construction road has expired, there was no merit in seeking further information and that the retention of the entrance would pre-determine the location of any future development of lands to the rear of the An Caislean Nua without adequately addressing issues raised.

The report concludes recommending that permission be refused for the proposed development. This report is countersigned by the SEP.

This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

### 3.1.2. **Other Technical Reports**

**Roads Traffic & Cleansing / Central Services:** The report deals with roads, public lighting and surface water disposal issues. Further information required with regard to a number of issues and the report notes the description of the development to be retained implies that it is required to facilitate the completion of works envisaged under planning permissions which have expired and would now appear to require a further planning permission. Serious concerns raised regarding the proposal.

### 3.1.3. Prescribed Bodies

None.

### 3.1.4. Third Party Submissions

None.

## 4.0 Planning History

There is extensive planning history pertaining to the subject site as follows:

**PA ref: 21/1555:** Permission refused by the PA for the retention of the construction entrance and access road in order to complete the development of lands as envisaged by the granted applications 98/1967 and 16/19.

**PA ref: 21/1131:** Permission refused by the PA for the retention of the construction entrance and access road in order to complete the development of lands as envisaged by the granted applications 98/1967 and 16/19.

**PA ref: 20/361:** Permission granted for the construction of 3 houses and all associated site works at Caislean Nua. This permission relates to a section of the temporary construction access road which will comprise part of the rear gardens of the three houses permitted. This permission has not been implemented as yet and expires 14/06/2026. The following conditions are noted:

4. The permanent site boundaries and full extent of the rear gardens serving each dwelling house shall be constructed prior to the occupation of the 3 no. dwellings.

**Reason:** In the interest of proper planning and orderly development.

5. Construction shall not commence on the three houses until outstanding conditions relating to 16/19 are fully complied with and signed off in writing to the satisfaction of the Planning Authority.

**Reason:** In the interest of proper planning and orderly development.

**ABP ref: PL13.118381 (PA ref: 98/1967):** Permission granted on appeal to develop a 9.38ha housing estate to comprise 127 x 2 storey detached houses, landscaping of 1.03ha parklands, provision of new site access off Golf Links Road.

**PA ref: 16/19:** Permission granted for the construction of 9 houses and associated site works and Retention permission of an existing temporary construction access road and associated site works.

This permission expired on the 12/04/2021 and included condition 3 which stated as follows:

3. The temporary Construction Access Road and Construction Compound shall cease to be used and shall be removed from the site within 5 years of the date of this order. The area used as the temporary construction access road shall be finished in an appropriate surface and integrated back into the overall estate. A proposal indicating this approach shall be submitted to the Planning Authority 3 months before the removal of the temporary construction access road for written agreement of the Planning Authority.

**Reason:** In the interest of orderly development.

Other relevant applications:

**PA ref. 17/462:** Permission granted for alterations to existing estate road and the construction of 12 houses and all associated site works. 2 of the houses permitted lie in the vicinity of the temporary construction road and there was no reference to the use of the temporary construction road as part of this application.

**PA ref. 18/55:** Permission granted for the construction of 31 houses and all associated site works at Caislean Nua. This permission has been constructed and expired on 16/10/2022. The temporary construction compound was identified in the area of the subject application and included the rear of 4 houses, 1 of which has now been constructed and the other 3 relating to the 20/361 permission.

There are a number of other applications and permission granted which sought alterations and amendments to the permitted development and extensions of duration of permission including 04/670, 06/2521, 15/681.

## 5.0 Policy and Context

### 5.1. Development Plan

- 5.1.1. The Board will note that the subject application seeks the retention of an entrance and access road which has been used as a temporary construction access for a larger residential development. The subject application was considered under the Limerick City Development Plan 2010. In the interim, the Board will note that the Elected Members of Limerick City & County Council adopted the Limerick Development Plan 2022-2028 at a full Council Meeting on the 17<sup>th</sup> of June 2022 and the Plan came into effect on the 29<sup>th</sup> of July 2022, six weeks after the date of adoption. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site.
- 5.1.2. The Plan is set out over 6 Volumes with Volume 1 comprising the Written Statement and Volume 2 dealing with Settlements. The remaining volumes deal with Record of Protected Structures and ACAs, Environmental Reports, Designated Sites & RMPs and accompanying strategies such as the Housing Strategy, Retail Strategy etc.
- 5.1.3. The subject site lies to the east of Limerick City Centre, on lands partially zoned Existing Residential to the east and Open Space and Recreation to the west. It is the stated objective of the Existing Residential zoning 'to provide for residential development, protect and improve existing residential amenity'. It is the stated objective of the Open Space and Recreation zoning 'to protect, provide for and improve open space, active and passive recreational amenities'.

### 5.2. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Lower River Shannon SAC (Site Code: 002165) which is located approximately 1.2km to the north of the site and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies approximately 4.4km to the west of the site.

Glenomra Wood SAC (Site Code: 001013) lies approximately 9.8km to the north while the Slievefelim to Silvermines Mountains SPA (Site Code: 004165) lies approximately 11km to the east. Tory Hill SAC (Site Code: 000439) lies approximately 15km to the south.

### **5.3. EIA Screening**

#### **5.3.1. Having regard to:**

- (a) the limited nature and scale of the development,
- (b) the location of the site within the development boundaries of Limerick City,
- (c) the location of the development outside of any sensitive location specified in article 109(3) of the Planning and Development Regulations 2001 (as amended),

It is concluded 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**

6.1.1. This is a first-party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The grounds of appeal are summarised as follows:

- The development has been constructed in an orderly manner over the past 10 years. The intention of the original development and the 2016 application was to ensure development works do not impinge on the residents of occupied units.
- Three routes for construction access were looked at and assessed and the most beneficial was to utilise the existing entrance.



- Further development will take place at the site hence the orderly use of the entrance is required to continue.
- The PA has failed to consider their direction and opinion on the granting of the entrance in the 16/19 permission.
- Adequate sight distances are available at the entrance and the entrance has been used for all the planning applications granted since 2015.
- The retention of the access is to ensure that development of the zoned land can continue in an orderly manner.
- With regard to the second reason for refusal, it is submitted that it is the landowners responsibility and right to utilise the permissions granted on their lands. Prior permission should not preclude the correct use of the lands and orderly development by means of separated construction and residential traffic.

## 6.2. Observations

None

## 6.3. Planning Authority Response

None.

## 7.0 Planning Assessment

### 7.1. Introduction

- 7.1.1. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the development
2. Planning Authority Issues
3. Appropriate Assessment

## 7.2. Principle of the development

- 7.2.1. Permission is sought, as per the public notices, for the retention of the construction of an entrance and access road in order to complete the development of lands as envisaged by the granted applications 98/1967 and 16/19, all at Caislean Nua, Golf Links Road, Newtown, Castletroy, Limerick. The Board will note that temporary permission has been granted in the past for the use of the construction access as part of numerous permissions for the construction of houses over many years. On the face of the description of the development, one might accept that a further grant of permission might be reasonable.
- 7.2.2. However, and while I acknowledge the first-party submission that the rights of the landowner to utilise permissions granted on their lands, the referenced permissions in the description of the development have expired. There is no current planning permission associated with the explicit use of the subject construction access on the identified landholding.
- 7.2.3. I would refer the Board to the conditions of the grant of planning permission, PA Ref. 16/19, which expired on the 12<sup>th</sup> of April 2021, and which permitted the construction of 9 houses and retention of the existing temporary construction access road. In particular, I note the requirements of condition 3 of said permission which explicitly requires that the ‘temporary Construction Access Road and Construction Compound shall cease to be used and shall be removed from the site within 5 years of the date of this order. The area used as the temporary construction access road shall be finished in an appropriate surface and integrated back into the overall estate.’ This condition has not been complied with and the current application relates explicitly to this referenced construction access road.
- 7.2.4. The only current grant of planning permission relating to part of the current subject site is PA ref: 20/361, whereby permission was granted for the construction of 3

houses and all associated site works at Caislean Nua. This permission relates to a section of the temporary construction access road which will comprise part of the rear gardens of the three houses permitted. This planning permission has not been implemented as yet and expires 14/06/2026. The following conditions are noted:

4. The permanent site boundaries and full extent of the rear gardens serving each dwelling house shall be constructed prior to the occupation of the 3 no. dwellings.

**Reason:** In the interest of proper planning and orderly development.

5. Construction shall not commence on the three houses until outstanding conditions relating to 16/19 are fully complied with and signed off in writing to the satisfaction of the Planning Authority.

**Reason:** In the interest of proper planning and orderly development.

7.2.5. The Board will note that the Planning Authority included a reason for refusal which indicates non-compliance with the above condition 4 of PA ref. 20/361, as well as a reason which notes that the retention of the entrance is not linked to a current housing development and would if permitted, pre-determine the location of an entrance to serve any future development of the lands to the rear of An Caislean Nua.

7.2.6. The planning history documents associated with the landholding suggests that the subject construction access is now the sole access to the remaining undeveloped lands and that master plans for the development of the wider landholding have been submitted to the PA under previous applications. The most recent 'master plan' I could locate was associated with PA ref: 18/55, which granted permission for 31 houses. It would appear that if planning applications were to be submitted for the development of the remaining landholding, and permission granted subject to the normal planning and other assessments, the currently undeveloped landholding would be accessed via the existing estate road network and not the subject construction access. I would also note that if PA ref: 20/361 is implemented, and the 3 permitted houses constructed, then the construction access road will be eliminated.

7.2.7. I do not consider the inclusion of the reason for refusal for non-compliance with conditions of a grant of planning permission which has not been implemented to be reasonable. The Board may, however, consider that the subject appeal relates to a development which would contravene condition 3 of PA ref: 16/19, which explicitly required the removal of the access and road for retention by a specific date – since past. I would accept in this instance, however, that the applicant is entitled to seek a retention permission for the entrance and access road. In addition, I note that there appears to be a number of enforcement issues associated with the wider development. Such matters are not a matter for the Board.

7.2.8. In principle, I would agree with the conclusion of the PA, that a grant of permission for the retention of the (formerly described as temporary) construction entrance and access road in the absence of any grant of planning permission for the development of the lands to be accessed, may be perceived as pre-empting a decision on any future application in terms of a positive decision, and / or, the location of accesses to the land. In the absence of any clear details relating to a future development proposals, traffic and transport impact assessments are impossible to consider. As such, I consider that a grant of planning permission to retain the construction entrance and access is premature and would represent a haphazard and disorderly form of development and would be contrary to the proper planning and sustainable development of the area.

### **7.3. Planning Authority Issues**

7.3.1. The Board will note that the Planning Authority refused planning permission for the proposed development which included a reason relating to roads and traffic matters. The primary concerns raised, relate to the proximity of the entrance to the existing entrance associated with the Mount Green residential development to the north, and the fact that the entrance does not adequately cater for pedestrians and cyclists. In the absence of any proposals for the lands for which the entrance and access road will support, it might reasonably be concluded that roads and traffic issues have not / cannot be addressed.

7.3.2. In the absence of the above detail, I would concur that the proposed development represents a haphazard form of development and would potentially endanger public safety by reason of traffic hazard.

#### **7.4. Appropriate Assessment**

7.4.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The site is not located within any designated site.

7.4.2. The closest Natura 2000 site is the Lower River Shannon SAC (Site Code: 002165) which is located approximately 1.2km to the north of the site and the River Shannon and River Fergus Estuaries SPA (Site Code: 004077) lies approximately 4.4km to the west of the site. Glenomra Wood SAC (Site Code: 001013) lies approximately 9.8km to the north while the Slievefelim to Silvermines Mountains SPA (Site Code: 004165) lies approximately 11km to the east. Tory Hill SAC (Site Code: 000439) lies approximately 15km to the south.

7.4.3. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

#### **7.5. Conclusion on Stage 1 Screening:**

7.5.1. I have considered the NPWS website, aerial and satellite imagery, the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and I have had regard to the source-pathway-receptor model between the proposed works and the European Sites. It is reasonable to conclude that on the basis of the information available, that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the European Sites

identified within the zone of influence of the subject site. As such, and in view of these sites' Conservation Objectives a Stage 2 Appropriate Assessment is not required for these sites.

## 8.0 Recommendation

I recommend that permission for the proposed development be refused for the following stated reasons.

## 9.0 Reasons and Considerations

1. The development the subject of the retention application, being a construction entrance and access road, is not related or linked to any current or permitted development on the lands to be accessed. In such circumstances, the Board is satisfied that a grant of planning permission for retention would be perceived as pre-empting a decision on any future application in terms of a positive decision, and / or, the location of accesses to the land.

In the absence of any clear details relating to future development proposals, it is considered that a grant of planning permission to retain the construction entrance and access is premature and would represent a haphazard and disorderly form of development and would be contrary to the proper planning and sustainable development of the area.

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A. Considine  
Planning Inspector  
13<sup>th</sup> February 2023