



An
Bord
Pleanála

Inspector's Report ABP314158-22

Development	Retention permission of groundworks comprising of hard surface drive and turning areas for access to existing barn and the construction of an earthen berm for all for agricultural purposes.
Location	Green Barn, Enniskerry Road, Kilternan, Dublin 18
Planning Authority	Dun Laoghaire County Council
Planning Authority Reg. Ref.	D22A/0613
Applicant(s)	David Johnson
Type of Application	Retention Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	David Johnson
Observer(s)	Hugo and Marie Doherty John Hickey Joe Doyle Robin & Brid Hanna
Date of Site Inspection	9 th September 2023

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1.0 Site Location and Description

- 1.1. The proposed development is located on the east side of the Enniskerry Road (R117) opposite the former Kiltiernan Hotel. The site comprises generally of a flat open field with mature boundaries to the north and east. Access to the site is via a splayed entrance from the Enniskerry Road on the western corner of the site. There is an shed with haybarn type roof on the northern eastern corner of the site which is connected to the vehicular entrance via a hard surfaced access road.
- 1.2. An earthen berm circa 2.0 - 3.0 metres in height runs roughly north-south through the site. There is a hardsurfaced area to the rear where a lorry and vans were parked on the day of the site visit
- 1.3. There are single detached houses located to the south and to the east of the landholding
- 1.4. On the day the day of the site visit, there were what appeared to be creosoted telephone poles stored within the site on the access road to the shed and on a lorry to the rear of the berm. There was also wood chips stored on the access road.
- 1.5. There was what appeared to be a new telephone or electricity box installed in the southern corner of the landholding but outside of the red line boundary of the site.
- 1.6. The stated site area is 0.5055ha.

2.0 Proposed Development

- 2.1. The proposed development comprises of the following: Retention Permission for
 - Ground works carried out to facilitate modern day agricultural machinery including safe passage to hay shed and associated parking area with a G.F.A. of 5055m².
 - A 2.3m high screening berm and
 - the provision of permeable hardscaping for 26m turning circle for fire tender all to comply with SUDs Sustainable Drainage Systems and all associated works

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority refused permission for the following reason:

- 1. The development proposed for retention is considered to be excessive in scale and extent, and to be contrary to Policy Objective GIB4, as it does not conserve and enhance the existing High Amenity Zone within which it is located. The Applicant has not satisfactorily demonstrated how the proposed development relates to the agricultural use of the lands. The Planning Authority is, therefore, not satisfied that the proposed development would not be contrary to the Objective 'G' zoning of the subject site 'to protect and improve high amenity areas'. The proposed development would, by itself and by the precedent it would set for other similar developments, detract from the amenity value of the area. The proposed development for retention would, therefore, not be in accordance with the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the Planning Officer (dated 27th June 2022) reflects the decision of the Planning Authority.

3.2.2. Other Technical Reports

- Drainage Planning Report (31st March 2022) - No objection subject to conditions specifically that all surface water shall be on site drainage
- Transportation Section Planning Report (22nd April 2022) - No objection subject to conditions specifically that in the case where there is going to be an intensification of use of the existing vehicular access onto the Enniskerry Road that the footpath in front of the existing access needs to be dished and straightened all to the satisfaction of Roads Maintenance and Roads Control Sections.

- Environment Section Planning Report (22nd April 2022) have no comments in relation to the proposed development.

3.3. Submissions/Observations

There are eight submissions on file which raise the following issues:

- That the proposed development would result in increased traffic movements from the Enniskerry Road.
- That unauthorised works have taken place on the site on an ongoing basis and these works are not subject to this retention planning permission.
- That the works proposed do not accord with the zoning objective for the site.
- That the works carried out to date have had impacts upon wildlife.
- It is not clear what the use of the proposed development is.

4.0 Planning History

- D20A/0166 – in the name of the same applicant for permission for the construction of new vehicular access route from approved recessed planning application Ref No. D18A/1154 to existing hardscaped area. The retention of existing hardscaping yard and timber store bays. The installation of permeable hardscaping to the additional area of the plot, the installation of temporary enclosures to house gravels, aggregates, barks, wood chipping and the expansion of existing timber bays and associated site works on a site area of 0.23ha – permission refused on grounds that the use would not accord with the zoning objective for the area.
- D18A/1154 in the name of the same applicant for Permission for Retention of a recessed farm entrance with splayed fence off Enniskerry Road as access to the property at Newgrange, Enniskerry Road, Kiltarnan. Granted permission. The entrance subject of this application is the now vehicular access to the site.
- I understand from the planners report that there is a planning enforcement case open on this site, ENF 21521 applies. The report refers to the significant

excavation of land and changes to ground levels which has occurred without the benefit of planning permission.

5.0 Policy and Context

5.1. Development Plan

- Dun Laoghaire Rathdown County Development Plan 2022-2028 is the statutory development plan in the area where the proposed development site is located.
- Within the plan the site is subject to zoning objective G, which seeks *'to provide protect and improve high amenity areas*
- Section 12.3.12 - Rural - Non-Residential Development. As with rural housing, the Council's position in relation to non-residential rural development is again essentially restrictive and precautionary. Any application for non-residential development within the rural area will be dealt with on a case-by-case basis and will be assessed having regard to the following:
 - Compliance of the proposed use with the zoning objective of the site.
 - The need for such a use within the rural area.
 - The suitability of the site in accordance with Section 12.3.10.1.
 - Potential negative visual impacts on the surrounding properties or landscape and for other negative impacts on the rural amenity - which could result from the design, location, layout, size, and type of the proposed development.
 - Vehicular access arrangements, parking requirements and potential impacts on the existing road network.
 - Wastewater treatment and drinking water provisions on site. An un-serviced site must comply with the 'EPA Wastewater Treatment Manuals

5.2. Policy Objective GIB4: High Amenity Zones - It is Policy Objective to conserve and enhance existing High Amenity Zones and to seek to manage these and other areas

to absorb further recreational uses and activity without damaging their unique character.

5.3. **Natural Heritage Designations**

- Knocksink Wood SAC is located 2km to the south west
- Ballyman SAC is 1.7km to the south
- Wicklow Mountains SPA 5km to the west.

5.4. **EIA Screening**

Having regard to the nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 **The Appeal**

A first party appeal was lodged by Lucas Glendon Architecture & Design on behalf of David Johnson on the 25th July 2022

6.1. **Grounds of Appeal**

- That the proposed development is for agricultural use and therefore appropriate to the rural context of the site.

6.2. **Planning Authority Response**

- 6.2.1. The Planning Authority responded on the 17th August 2022 asking the Board to refer to the planners report on the file

6.3. **Observations**

- 6.3.1. Four observations have been received as follows

- Hugo and Marie Doherty (19th August 2022)

- John Hickey (22nd August 2022)
- Joe Doyle (22nd August 2022)
- Robin & Brid Hanna (18th August 2022)

6.3.2. These observations can be summarised as follows:

- That the proposal does not comply with the zoning objective for the site.
- That there is a history of planning breaches which have not been addressed in the application.
- The applicant was refused permission under D20A/0166 to construct a roadway from the gate to the shed along with other works but he went ahead and constructed the said roadway anyway.
- A car parking area has been constructed to the rear, western side of the berm.
- That the site has been used for non-agricultural activities including sporting activities, camper, truck and car parking and storage of non-agricultural materials.
- Traffic Safety
- That the applicant has not sought retention permission for all the works carried out to date including two large car parks.
- Lack of clarity of what is proposed for the site
- Bark (mulch) is dumped on site on a continual basis. There are a lot of truck movements in and out of this field and there is a fear that the site will be used for the purposes of a storage facility or dump.

6.4. Further Responses

- None

6.5. Assessment

6.5.1. Introduction

6.5.1.1. I have examined the application details and all other documentation on file and I have inspected the site and have had regard to the relevant local development plan policies, history files and other relevant guidance documents.

6.5.2. I am satisfied the substantive issues arising from the grounds of this third party appeal relate to the following matters-

- Principle of Development
- Residential Amenity
- Visual Amenity
- Traffic Safety
- Appropriate Assessment Screening

6.6. Principle of Development

6.6.1. The proposed development site is located within an area designated as zoning objective G, in the Dun Laoghaire Rathdown County Development Plan 2022-2028.

6.6.2. Under Zoning Objective 'G' it is the objective of the council "to protect and improve high amenity areas"

6.6.3. Regard is also had to Policy Objective GIB4: High Amenity Zones which states that - *It is Policy Objective to conserve and enhance existing High Amenity Zones and to seek to manage these and other areas to absorb further recreational uses and activity without damaging their unique character.*

- 6.6.4. Section 12.3.12 - Rural - Non-Residential Development also applies and which states *As with rural housing, the Council's position in relation to non-residential rural development is again essentially restrictive and precautionary*
- 6.6.5. I understand from the details submitted with the application, it is stated that the use of the proposed development is for agricultural purposes. Further Information was requested by the planning authority with respect of the use and again the response from the applicant was that the use was agricultural. The planning application form submitted with the application states under item 13 that the existing use is agricultural and the proposed use is agricultural.
- 6.6.6. While it is not specifically stated that Agriculture is a use which is 'Open for Consideration' with zoning objective G, in the permitted uses as set out in Table 13.1.5 Dun Laoghaire Rathdown County Development Plan 2022-2028, Agricultural Buildings are 'Open to Consideration'. With respect of the same, I consider that an agricultural use is an acceptable use within this land use designation.
- 6.6.7. However, it is not clear from the documentation submitted with the application as to what type of agriculture is being carried out on site. On the day of the site visit, there was a lorry parked to the east of the berm with creosoted telephone poles on the same – this lorry are not visible from the adjoining Enniskerry Road. Additionally, there were vans parked behind this berm. There were more creosoted poles stored under a tarp on the access road to the barn. There was an obvious smell of creosote on the day of the site visit. On the day of the site visit no agricultural use was observed on site other than the storage of a few silage bales. I also noted a heap of wood chippings on site on the day of the site visit.
- 6.6.8. There is a hardcored parking area to the west of the berm which does not have the benefit of planning permission and which does not form part of the proposed development. I note that this hardcored parking area is located directly adjacent to the residential property of one of the observers on the file. I would expect that the use of the same would have impacts upon the residential amenities of this residential property - however, this hardcored parking area as stated previously is not part of the

proposed retention application. I understand from the details submitted by the applicants agent that future planning applications will address this issue.

6.6.9. I note the applicants have stated that they are storing young trees on site on a temporary basis for Crann which is a charitable organisation with respect of promoting the planting of trees. There is a letter on file from Crann to this effect.

6.6.10. I further note that the first party appeal includes for a photo of bee hives on the site located behind the berm

6.6.11. Both of the above uses can be classed as agricultural but I would consider that these agricultural uses are minor compared the storage uses (cresoted poles, wood chippings) and parking uses which were present on the site on the day of the site visit. On this basis I am of the opinion that the predominate use is commercial i.e. materials storage and hardcored parking area. I note that permission was refused for materials storage and a hardcore area under D20A/0166 which was for:

Permission is sought for the construction of new vehicular access route from approved recessed planning application Ref No. D18A/1154 to existing hardscaped area. The retention of existing hardscaping yard and timber store bays. The installation of permeable hardscaping to the additional area of the plot, the installation of temporary enclosures to house gravels, aggregates, barks, wood chipping and the expansion of existing timber bays and associated site works on a site area of 0.23ha

6.6.12. Despite this refusal of planning the applicant went ahead and constructed the roadway from the vehicular access to the site, constructed a hardcored area behind the berm and is storing materials on site in the form of cresoted poles and wood chip as well as parking for lorries and vans.

6.6.13. The retention permission subject of this application is for

- Ground works carried out to facilitate modern day agricultural machinery including safe passage to hay shed and associated parking area with a G.F.A. of 5055m².

- A 2.3m high screening berm and
 - the provision of permeable hardscaping for 26m turning circle for fire tender all to comply with SUDs Sustainable Drainage Systems and all associated works
- and that the use as stated in the application form is agricultural use. It is not clear from the site visit and from the details submitted what the actual use being carried out on site is. It certainly does not appear to be agricultural in nature and from the site visit the predominant use is commercial storage of materials and vehicular parking.

6.6.14. In any rate the applicant has not applied for retention permission for all of the works done on site nor has he applied for retention permission for the uses carried out.

6.6.15. No permission exists for the hardcored area to the rear of the berm nor does any permission exist for a second hardcored area to the west of the site parallel to the roadside boundary. Both of these areas are outside of the development/red line boundary of the site

6.6.16. I also note within this second hardcored area that what appears to be a new steel building with surrounding fencing which may be a telephone exchange. There is no planning in place for the same nor is it clear as to whether the structure is exempt from planning permission or not. In any rate it is expected the Dun Laoighre Rathdown will deal with the issue of enforcement if it is so required.

6.6.17. I would consider that having regard to the above that the piecemeal nature of the application and the lack of detail with respect of the exact use of the site is misleading and I would also consider that the applicant should have applied for permission for all the unauthorised works and uses on site which in this case he has not.

6.6.18. On the basis of the above, I generally concur with the case planners deliberation that the applicant has not satisfactorily demonstrated how the proposed development relates to the agricultural use of the lands and on this basis I would consider that the proposed development does not accord with the land use zoning objective for the site which seeks *to provide protect and improve high amenity areas*

6.7. Residential Amenity

- 6.7.1. There are two houses located adjacent to the proposed development site to the south and to the east.
- 6.7.2. I do not consider that the proposed development for which retention is being sought will impact upon the residential amenities of these properties having regard to the agricultural use proposed in the application. However, in the case where the applicant seeks retention for hardcored area to the rear of the berm which is located between the berm and the residential property of one of the observers then the impact on residential amenities can be re-assessed at that stage.

6.8. Visual Amenities

- 6.8.1. The berm for which retention is sought is the most visible element in the landscape when viewed from the road
- 6.8.2. The use of the said berm has not been explicitly stated. It does block views to whatever is stored to the west of the berm as viewed from the public road which on the day of the site visit was commercial vehicles.
- 6.8.3. Section 12.3.12 as outlined above states that it is the Council's position in relation to non-residential rural development that it is essentially restrictive and precautionary and will be assessed having regard to in part *'The need for such a use within the rural area'*.
- 6.8.4. It is not clear what use the berm forms and it does not appear to have any agricultural use. In this respect, it is suggested that without any clear details with respect of its use that the proposed berm has a negative impact on the visual amenities of the area which is therefore contrary to Section 12.3.2 and contrary to the zoning objective for the site which seeks *'to provide protect and improve high amenity areas'*

6.9. Traffic Safety

- 6.9.1. Access to the site is via the existing access as granted permission under D18A/1154

- 6.9.2. The Transportation Section Planning Report dated 22nd April 2022 states that they have no objection to the proposals subject to conditions specifically that in the case where there is going to be an intensification of use of the existing vehicular access onto the Enniskerry Road that the footpath in front of the existing access needs to be dishd and straightened
- 6.9.3. As stated previously, it is not clear from the details submitted with the application and having regard to what was visible on the site on the day of the site visit as to what the proposed use is. Lorries parked on site are clearly not agricultural in nature and as such without sufficient details with respect of the use, I am concerned that there currently is an intensification of use of the said entrance.
- 6.9.4. However, the transportation planning report on file appears not to have an issue with the intensification of the entrance subject to measures being put in place specifically dishd the footpaths along the Enniskerry Road.
- 6.9.5. I would consider however, that until details with respect of traffic movements on and off the site are known then it would be premature to make any ascertainment that the access to the site is or is not suitable for increased traffic volumes and consequential turning movements.
- 6.9.6. With respect the above. I consider that no traffic safety issues arise as a consequence of the current proposal. However, having regard to the commercial nature of the vehicles on the site it would be remiss not to have regard to the potential impact of the same on traffic safety at the entrance.

6.10. **Appropriate Assessment Screening**

Having regard to the nature and scale of the proposed development, the distance from any European site and the absence of a pathway between the application site and any European site it is possible to screen out the requirement for the submission of an NIS

7.0 **Recommendation**

I recommend that permission be refused for the following reasons:

1. The site is located within an area zoned as High Amenity in the Dun Laoighre-Rathdown County Development Plan 2022 2028 where it is the policy of the

council under the land use zoning objective G to '*provide protect and improve high amenity areas*. Policy Objective GIB4 further seeks *to conserve and enhance existing High Amenity Zones*

The Applicant has not satisfactorily demonstrated how the proposed development relates to the agricultural use of the lands. Having regard to the same and having regard to the fact that the application for retention does not address all of the unauthorised works and uses on site, the Board is, therefore, not satisfied, on the basis of the information submitted with the application and on the basis of the non-agricultural uses that were evident on the site on the day of the site visit that the proposed development would not be contrary to the zoning objective for the site, nor would it not be contrary to policy objective GIB4 which in part seeks '*to conserve and enhance existing High Amenity Zones*'. The proposed development would, by itself and by the precedent it would set for other similar developments, detract from the amenity value of the area. The proposed development for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the presence of commercial vehicles on the site and the storage of non-agricultural material, the Board are not satisfied on the basis of the details submitted with the application that the proposed development would not result in an intensification of use of the existing entrance to the site which was granted permission as a farm entrance under Planning Reg. Ref. D18A/1154. Having regard to the same, the Board is not satisfied that the proposed development would not result in the intensification of use of an access onto the Regional Road R117 which would endanger public safety by reason of traffic hazard and the additional and conflicting traffic movements generated by the development would interfere with the safety and free flow of traffic on the public road
3. The proposed berm for which retention permission is being sought is located in an area which is subject to land use zoning objective G, as designated in the Dun Laoighre-Rathdown County Development Plan 2022-2028 where it is the objective to '*provide protect and improve high amenity areas*' The proposed berm and the lack of clarity with respect of the function would be visually obtrusive and would

seriously injure the amenities of the area and of property in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way

Andrew Hersey
Planning Inspector

23rd October 2023