



An  
Bord  
Pleanála

## Inspector's Report ABP-314659-22

<b>Development</b>	Permission for creation of a new vehicular and pedestrian entrance and carry out all ancillary site works.
<b>Location</b>	Ardsallagh More, Roscommon Town, Co. Roscommon
<b>Planning Authority</b>	Roscommon County Council
<b>Planning Authority Reg. Ref.</b>	22/8
<b>Applicant(s)</b>	Join Our Boys Trust
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party v Condition
<b>Appellant(s)</b>	Join Our Boys Trust.
<b>Observer(s)</b>	(i) Tony Hickey on Behalf of the Ard Aoibhinn Residents Association. (ii) Sharon and Jason Gannon
<b>Date of Site Inspection</b>	23 <sup>rd</sup> November 2022.

**Inspector**

**Paul Caprani**

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## 1.0 Introduction

- 1.1. ABP 314659 relates to a first party appeal against Condition No.2 of Roscommon Co. Councils decision to grant planning permission for the creation of a new vehicular and pedestrian entrance at an existing house at Ardsallagh More, Roscommon Town Co. Roscommon. Condition No.2 requires the following:

*‘Prior to the commencement of development of the new vehicle and pedestrian access hereby permitted, the applicants shall enter into a section 47 legal agreement with Roscommon County Council in respect of the following:*

*(a) limiting the use of the new vehicle and pedestrian access to occupants of the residential property which it will serve (ie the residence permitted under Planning Ref. No. PD/15/41), and to emergency services; and*

*(b) to control the new vehicle and pedestrian access are all time buy an electronic gated mechanism, with the access gate remaining in a closed position rather than when specifically in use in accordance with (a) above.*

*Reason: in the interests of orderly development and residential amenity.’*

- 1.2. The grounds of appeal argue that the use of a section 47 agreement is not an appropriate mechanism for regulating the development and powers under the provisions of Section 34 would be more appropriate in this instance and that that it is unreasonable to require the gate to be closed at all times when not in use. Two observations were submitted requesting that the Board uphold the condition.

## 2.0 Site Location and Description

- 2.1. The appeal site is located is the south east environs of Roscommon Town in the Townland of Ardsallagh More, c.1 km south east of the Town. The N61, Roscommon to Athlone Road is located to the south of the site. The site is accessed from the N61, via a private access road (according to the appellant the road serving the site has yet to be taken in charge by the Council, observations submitted suggest that the road in question is a private road which will not be taken in charge by the Council). The access road serving the site is a poorly surfaced road, approximately 170 m in length and ends in a cul-de sac at the site entrance. The access onto the N61 is located within the 50kmph zone. A number of detached houses face directly

onto the access road serving the appeal site. A separate access road onto the N61 c.100m to the south east serves a larger residential development, Ard Aoibhinn, comprising of detached houses, set out along a series of internal access roads to the west. Both accesses onto the N61 are located within the 50kmph limit. A turning head between no.'s 18 and No. 34 Ard Aiobhinn is contiguous to the eastern boundary of the site. Part of the lands along the eastern boundary comprising of an overgrown field are in the applicant's ownership. There is also a small community garden located adjacent to the turning head<sup>1</sup>.

- 2.2. The N61 is a busy National Secondary Route it also serves Dr Hyde GAA Park<sup>2</sup> and Roscommon General Hospital. During match days and during peak periods during the day, the N61 on the approach to Roscommon Town can experience notable congestion and tail backs.
- 2.3. The site itself is relatively large with a stated site area of 0.642 Ha and accommodates a large bungalow type house. This family home was designed and built specifically for the family's three boys and their special needs. The three children are diagnosed the crippling and fatal disease - Duchenne Muscular Dystrophy (DMD). The house was designed with a GFA of over 900 sqm to facilitate 3 large motorised wheelchair users. It includes a hydro pool and physiotherapy area. The house also includes a nurses apartment and ancillary nursing facilities.
- 2.4. The site is also the home of the charitable 'Join Our Boys Trust' at this location have raised money for research into DMD. The road on which the site is access is also an established public right of way (ROW). This ROW extends along and within the south-eastern boundary of the site and into agricultural lands to the rear.

### **3.0 Proposed Development**

- 3.1. The proposed development consists of the provision of a new access to the existing permitted dwelling, granted under planning reference 15/41. The proposal involves the decommissioning of the existing permitted access as indicated in the drawings submitted. The proposed access will open onto the turning bay at the end of the public road that serves the Ard Aoibhinn estate, between no.'s 18 and 34.

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<sup>1</sup> This community garden is not to be affected by the proposed development.

<sup>2</sup> Home of Roscommon GAA

## **4.0 Planning Authority Decision**

### **4.1. Decision**

Roscommon County Council granted planning permission for the proposed development subject to 7 conditions.

### **4.2. Planning Authority Reports**

#### **4.2.1. Planning Reports**

The initial planners report sets out details of the site location and description and notes that planning permission is sought for the creation of a new vehicular and pedestrian entrance together with ancillary works. In terms of assessment, it is considered that the proposal complies with the zoning objectives pertaining to the site.

The report concluded that there are a number of issues that need to be clarified before a decision can be issued - namely:

- Clarification of the legal status of the ownership of lands regarding the new entrance. Where legal interest cannot be demonstrated letters of consent will be required.
- Further details that the existing ROW from the existing entrance (to be decommissioned) can be retained to the agricultural lands to the rear.
- Further details of the location of the proposed pedestrian access.
- Details of the boundary treatment and details of any operational / control mechanisms to be installed to ensure that the proposed access would be utilised solely to serve the occupants of the residential property on the subject site.
- Notwithstanding the contents of the letter accompanying the application, which makes reference to the medical conditions of occupants of the residential property on the subject site, submit details of the rationale and necessity for the proposed new access.

#### **4.2.2. Other Technical Reports**

#### **4.2.3. None**

The application was referred to the RCC Area Engineer and the Roads Design Dept. No reports were received.

#### 4.3. Prescribed Bodies

No submissions were received from proscribed bodies.

#### 4.4. Third Party Observations

A large number of submissions were submitted to the planning authority raising numerous concerns regarding the rationale for the proposal and the potential implications in terms of road safety and ROW issues. Most of the observations submitted were identical.

#### 4.5. **Further Information Submission**

Further Information was submitted on 29<sup>th</sup> of July 2022. It includes:

- A solicitor's letter confirming that the applicants are in full ownership of the site.
- The existing Right of Way to the lands to the north east (rear) of the site is to be retained as part of the proposal.
- The revised layout plan provides details of the pedestrian route.
- The proposed access arrangements are to tie in with the existing boundary treatment. The proposed entry gate is to be an automatic gate to ensure that access to the site is controlled by the occupants.
- Details of the boy medical conditions is set out in a letter attached to the submission. It states that the boys are wheelchair-bound and the surface of the road current serving the house is too poor and full of pot holes to be used by the boys. It will also make access to emergency services much easier, as the Eircode brings vehicles to the adjoining estate rather than the access road leading to the site.

#### 4.6. **Further Assessment by the Planning Authority**

- Sufficient legal interest has been provided to demonstrate that the applicant has sufficient interest in the lands in question.



- The information provided satisfactorily provides further information of the retention of the ROW through the site and further details of the proposed pedestrian access at the proposed entrance. Details of the proposed boundary treatment are also set out.
- Details of the medical conditions of the occupants of the house are also set out and the necessity of the proposed new access has also been demonstrated.

It is considered therefore that all technical issues in the FI request have been successfully addressed and it is considered that from a traffic safety and generation perspective the proposal, comprising of a single dwelling would be acceptable.

Permission was therefore granted subject to 7 conditions.

## 5.0 Planning History

No history files regarding appeals are attached. The Planners report makes reference to a number of relevant applications which are summarised below:

**15/41** permission granted to construct a bungalow type house with domestic garage, connections to all services and ancillary site works.

**02/498** planning approval for the construction of 8 dwellings granted outline planning permission under Reg. Ref. 98/934.

Details of these applications are contained in a box attached to the file.

## 6.0 Policy Context

### 6.1. Development Plan

The site is governed by the policies and provisions contained in the Roscommon County Development Plan 2022-2028<sup>3</sup>. Chapter 12.24 of the Development Plan specifically relates to Roads and Transportation. Reference is made to National Policy outlined in the Spatial Planning and National Roads Guidelines for Planning Authorities. The guidelines also provide for a limited level of access between the 50km/h zone and 60 km/h zone to facilitate orderly development. Access to national

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<sup>3</sup> The Roscommon Local Area Plan 2023-2029 is currently at Draft Stage.

roads within 50km/h speed limits will be considered subject to normal road safety, traffic management and urban design criteria. Visibility splays for local roads will be determined on a site-specific basis subject to traffic safety. In general, only the minimum interference with existing roadside boundaries and hedges shall be permitted.

## **6.2. Natural Heritage Designations**

The site is not located within or contiguous to a designated Natura 2000 Site. The nearest Natura 2000, the Lough Ree SAC (Site Code 000440) which is located 3 km to the east of the subject site.

## **6.3. EIA Screening**

- 6.4. On the basis of the information on the file, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

The decision of Roscommon County Council to grant planning permission with the incorporation of condition No.2 was the subject of a first party appeal. The appeal challenged the contents of this condition, and the grounds are summarised below:

- It is argued that the condition as worded creates uncertainty in the operation of the permission and it unnecessary. It treats the development very differently from all other similar types of development in the vicinity.
- It is stated that there is a long standing issue in relation to traffic safety regarding access from the site to the N61 via the existing access road, primarily due to the width of the road and restricted sightlines.
- Condition no. 2 requires the applicants to enter into a S47 agreement with the council on the operation of the entrance. There is no objection in principle to

this agreement, however when the applicant endeavoured to obtain a draft of the agreement no such agreement was made available.

- The use of a S47 agreement is not appropriate in this instance the Council should use its powers under S34 of the Act. There is no adjacent land which would warrant the use of a S47 agreement.
- On foot of comprehensive enquiries, the appellants can find no example of a house in Roscommon where a condition has been attached requiring a house to have its access gate closed except when it is in use. It is completely unwarranted from a proper planning perspective.
- The purpose of the application is to address the traffic issues relating to the entrance to the site, from the access point onto the N61. It is also accepted that it is right to maintain the existing ROW to the agricultural lands to the east (rear) of the property, the design was amended accordingly.
- Condition no. 2 is contrary to the concept of inclusivity, and it is wholly unnecessary and it is requested that the Board omit this condition including the mandatory requirement to keep the gates closed.

## **8.0 Observations**

8.1. Two observations were submitted. These are summarised below:

### **8.2. Tony Hickey on Behalf of the Ard Aoibhinn Residents Association**

- 8.2.1. This submission requests the Board to revisit the original observations submitted to the planning authority with regard to the overall concerns in respect of the proposed new access arrangements. The observation notes that the appellant highlights three main issues in their appeal and these are specifically dealt with in the observation submitted. In respect of traffic safety, it is noted that the existing access to the site is currently used by six other domestic dwellings in excess of 20 years. While the access arrangements are not ideal, there has been no recording of a traffic accident at this junction. The existing road serving the dwelling house is a private road and there is a long established right of way along this road. It is contended that the Council have no intention of doing any works to the road in question. The observer

has major concerns that the proposed development will breach the natural perimeter of the estate and this is not necessary on the basis that the dwelling already has a serviceable entrance. While the observer does not agree with the decision to grant planning permission, the use of section 47 to limit the use of the private dwelling house and the prevention of unauthorised use by the provision of a locked entrance gives the observer some comfort in the current circumstances.

8.2.2. The observer considers is Section 47 agreement to be appropriate and a reasonable compromise between the concerns of the residents and the needs of the applicant. The purpose of section 47 is to create a statutory restrictive covenant over lands to enable the planning authority to enforce it as if it were the owner of the adjacent lands. Section 47 agreements are a useful tool to regulate development and it is entirely appropriate that this Section of the Act be used in the case of the current grant of planning permission.

8.2.3. The current situation is unique whereby the entrance to the dwelling proposed opens on to a right of way. The estate in question has not at any time had a through way to this right of way. It is considered that the Council erred in granting planning permission for the proposed entrance and it is an unnecessary breach of the boundary thus planning permission should be refused. Should the Board agree with the council's decision, the Section 47 condition is an appropriate measure to ensure compliance with the use of the access for the enjoyment of the applicant only and no other third party ancillary use.

### **8.3. Observation by Sharon and Jason Gannon**

8.3.1. This observation was submitted by Brock McClure Planning and Development Consultants. This submission acknowledges the significant medical challenge faced by the occupants of dwelling which is the subject of the first party appeal. The observers are not opposed to the principle of development per se at the site but significant issues remain associated with the proposals and the existence of an already functioning access must be taken into consideration. The observers consider that the insertion of condition no. 2 struck a balance in addressing third party concerns while allowing the development to proceed. The attachment of condition No.2 and in particular, the section 47 agreement in effect, limits the use of the

access to the occupants of the residential property and emergency services. This limitation gives the observers comfort that the access will not be used for any other purpose or by any other user. The gated nature of the access proposed, which will remain closed except when in use, will provide a continued sense of security and safety for all parties involved. When planning permission was granted for the original residential dwelling, it was clear that the road in question was substandard and the onus fell very much on the applicant to upgrade this access road serving the dwelling. The existing access arrangements for the dwelling could be upgraded to a satisfactory manner should the applicant wish to do so. The observation goes on to detail the nature and purpose of section 47 agreements.

In relation to the gated nature of the proposed access, in the case where the current access were to remain open on the 24 hour basis, there would be a significant cause for concern in terms of the safety and security currently afforded to the residents at Ard Aoibhinn. It is the observer's considered opinion that this approach is reasonable and allows the development to proceed while also alleviating third party concerns. It is the observers view that the gated nature of the access required to be closed other than when at use, should be upheld by way of a Section 47 Agreement.

#### **8.4. Further Submission on Behalf of the Applicant**

- 8.4.1. The above observations were circulated to the appellant for comment. In the response dated 14<sup>th</sup> November 2022, the appellant states that it is difficult for the family to contemplate how the dwelling in question could give rise to 'non-specific security and safety concerns'. The Board are requested to visit the appeal site and are invited to visit the website ([www.joinourboys.org](http://www.joinourboys.org)) to understand why an inclusive access is of such importance. The appellants reiterate that they have no control over the condition or the remediation of the access road currently available. The proposal will result in minimal increases in traffic through the estate. The increase in trip generation will be imperceptible.

## 9.0 Assessment

### 9.1. Introduction

- 9.1.1. I have read the entire contents of the file, visited the subject site and its surroundings and have had regard to the submissions contained on file. I note that the appeal relates to a first party appeal specifically in relation to Condition No.2. The observers, while expressing concerns in relation to the development as a whole, did not submit a third party appeal but rather have restricted their submissions to observations on the first party appeal. While expressing concerns about the new access arrangements in a general way, the observations submitted in the main, request the Board to retain the condition as attached to the planning authority's decision.
- 9.1.2. Having visited the site and assessed the documentation on file, I consider the principle of an alternative access is acceptable, primarily on medical grounds, as the poor condition of the roadway is not suitable to accommodate large wheelchair accessible vehicles, or wheelchair use. Equally importantly, (as the google maps screen-grab attached to this report demonstrates), in the case of an emergency, the Eircode for the house in question brings the emergency vehicle to the proposed access point at the turning head within the Ard Aoibhinn rather than the existing access serving the dwelling. The even footpaths and roads within the Ard Aoibhinn estate would also be more beneficial and comfortable for the special needs of the children. The junction serving the Ard Aoibhinn estate is also of a higher geometrical specification and therefore of a higher road safety standard than that of the existing access serving the dwelling in question.

For the above reasons I consider that the development is acceptable in principle and therefore the appeal can be assessed under the provisions of S139 of the Act where the Board can restrict its deliberations to the condition in question.

### 9.2. Condition No.2

- 9.2.1. The Condition states the following:

*'Prior to the commencement of development of the new vehicle and pedestrian access hereby permitted, the applicants shall enter into a section 47 legal agreement with Roscommon County Council in respect of the following:*

*(a) limiting the use of the new vehicle and pedestrian access to occupants of the residential property which it will serve (ie the residence permitted under Planning Ref. No. PD/15/41), and to emergency services; and*

*(b) to control the new vehicle and pedestrian access are all time buy an electronic gated mechanism, with the access gate remaining in a closed position rather than when specifically in use in accordance with (a) above.*

*Reason: in the interests of orderly development and residential amenity.'*

9.2.2. While Roscommon have not submitted a response to the grounds of appeal, it is apparent from the planners report and from the numerous observations submitted to planning authority, that the purpose of the condition is to prohibit unfettered access through the new entrance, for all houses located along the substandard roadway. This situation could arise as a result of an existing right of way which runs along the existing access road, through the appellants property and provides access to a field to the rear.

9.2.3. This is a material concern in my view that could, if utilised by other parties along the substandard road, result in a material intensification of use of the new access by these third parties due to the public right of way which is established along the route. It could result therefore in the use of the access, by persons and traffic other than the appellant's family and this could give rise to additional traffic generation and consequential road safety concerns. The reasoning behind the condition is on the whole therefore sound in my opinion.

### 9.3. **Section 47 Agreement**

9.3.1. The use of a S47 agreement to implement the condition, is a somewhat unusual instrument to for the purposes of enforcement in my opinion. S47 agreements are normally imposed in order to regulate the development or use of the land under the applicant's ownership. For the Boards convenience this section of the Act is set out in full below:

*47.(1) A planning authority may enter into an agreement with any person interested in land in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement, and any such agreement may contain such incidental*

*and consequential provisions (including provisions of a financial character) as appear to the planning authority to be necessary or expedient for the purposes of the agreement.*

*(2) A planning authority in entering into an agreement under this section may join with any body which is a prescribed authority for the purposes of Section 11.*

*(3) An agreement made under this section with any person interested in land may be enforced by the planning authority, or anybody joined with it, against persons deriving title under that person in respect of that land as if the planning authority or body, as may be appropriate, were possessed of adjacent land, and as if the agreement had been expressed to be made for the benefit of that land.*

*(4) Nothing in this section, or in any agreement made thereunder, shall be construed as restricting the exercise, in relation to land which is the subject of any such agreement, of any powers exercisable by the Minister, the Board or the planning authority under this Act, so long as those powers are not exercised so as to contravene materially the provisions of the development plan, or as requiring the exercise of any such powers so as to contravene materially those provisions.*

*(5) Particulars of an agreement made under this section shall be entered in the register.*

9.3.2. S47 Agreements normally used for the purposes sterilising lands adjacent to the holding under the applicant's ownership in order to limit the development potential of adjoining lands in accordance with the requirements of the development plan and the proper planning and sustainable development of the area. For example, where the planning authority grant planning permission for the development of a house in a rural area, an agreement may be entered into by both parties in order to restrict further housing or other development on the adjoining lands under the applicant's ownership.

9.3.3. The proposed entrance in this instance is within the boundary of the site and does not relate to lands outside the boundary which would normally be the subject of such a S47 agreement. While it is open to use this section as an instrument to regulate the development, it is not necessary, and/or judicious to use this instrument in this particular occasion in my considered opinion. The agreement requires the particulars to be entered into a planning register. The appellant in this instance has



endeavoured to obtain a draft agreement but has failed to do so (for reasons that remain unclear).

- 9.3.4. This has resulted in a failure to carry out the permission as granted. It is clear from the personal and medical circumstances of the family that there is a requirement to carry out the development as expeditiously as possible. To this end I would recommend that the Board consider (should it deem it appropriate to restrict and regulate the use of the entrance) to do so under the provisions of S34(4) of the Act.

#### **9.4. Regulating the Opening of the proposed Gate / Entrance**

- 9.4.1. The grounds of appeal suggest that there are no relevant precedents whereby a normal house is required to keep its gates closed during times other than when in use. This may be the case, but the current appeal before the Board is one of unusual circumstances whereby the new access proposed is into a housing estate, where no such access previously existed. Furthermore, there could have been a reasonable expectation for those living in the estate that no such access would never arise, as the adjacent lands surrounding the turning head had been developed and the existing bungalow had to date availed of, and was served by a direct (albeit poorly surfaced and somewhat substandard access) onto the N61.
- 9.4.2. Perhaps more importantly, given that a right of way that exists along the poorly surfaced access road which leads to lands to the rear of the appellants dwelling, it is possible, and indeed probable due to the continuing deterioration of the roadway, that other houses along the poorly surfaced road could avail of the alternative access through the housing estate. This, in the absence of controlled entrance, could have a material and adverse impact on the amenity of residents living in the Ard Aoibhinn estate.
- 9.4.3. While the applicant argues that the proposed access will serve a single normal dwelling house, the presence of an established ROW could result in the proposed access providing an alternative access to multiple dwellings situated along the poorly surfaced road. Restricting the opening and closing arrangements of the new gated entrance by way of a condition under the provisions of S34(4), which was obviously the intention of the planning authority, is in my view reasonable and serves an

explicit purpose in protecting the residential amenity of the residents in the Ard Aoibhinn Estate.

Furthermore, I do not consider that the implementation of this condition would be unduly onerous on the applicant, it would provide additional safety and security for all residential dwellings in the area and would in no way impinge on the access arrangements for the family or for emergency services.

Therefore, I recommend that the Board retain this element of the condition.

## **9.5. Appropriate Assessment**

- 9.5.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **10.0 Recommendation**

- 10.1. On the basis of my assessment above, it is recommended that the condition be retained but reworded in order to exclude any reference to the requirement to enter into a S47 agreement. I would recommend therefore that the condition be reworded as follows:

*The new vehicular and pedestrian entrance shall incorporate an electronic gated mechanism, the design of which shall be agreed in writing with the planning authority. During periods when the gate is not actively in use it shall remain closed at all other times.*

*Reason: In the interest of orderly development and to protect the amenity of surrounding residents.*

## 11.0 Decision

Having regard to the nature of the condition the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to amend condition number 2 as follows:

2. *The new vehicular and pedestrian entrance shall incorporate an electronic gated mechanism, the design of which shall be agreed in writing with the planning authority. During periods when the gate is not actively in use it shall remain closed at all times.*

*Reason: In the interest of orderly development and to protect the amenity of surrounding residents.*

## 12.0 Reasons and Considerations

It is considered that the proposed access subject to the condition above would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience and would therefore be in accordance with the proper planning and sustainable development of the area.

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**Paul Caprani**  
**Planning Inspector**

**November 28<sup>th</sup> 2022**