



An
Bord
Pleanála

Inspector's Report

ABP-314735-22

Development	Construction of a farm entrance and all ancillary works such as stone wall to part of road frontage, fencing and hedging in creation of new sightlines etc.
Location	Ballysallagh, Ballynacargy, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	22225
Applicant(s)	William Maxwell
Type of Application	Permission.
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Thomas McKeon.
Observer(s)	None
Date of Site Inspection	26 th of April 2023
Inspector	Caryn Coogan

1.0 **Site Location and Description**

- 1.1 The subject site is located along the R393 just outside of the village of Ballynacarrigy, Co. Westmeath, which is 14km from Mullingar. The site is stated to be 0.96Ha and it is a grassed field, with no sheds or stock holding facilities. To the south is the local GAA grounds and a roadway, Moynihan Park GAA grounds.
- 1.2 The Regional Road forms the southwestern site boundary. It consists of a stone wall along a short section of it and a hedgerow with mature feature trees. The field boundary is elevated above the level of the road with a slight embankment up to the boundary from the road edge. The Regional Road rises slightly in a northern direction along the front of the site and there is a continuous white line. There is also a footpath on the opposite side of the road to the proposed entrance.
- 1.3 The Ballynarrigy Business Park the opposite side of the road to the subject site. There are a number of dwellings located alongside the road to the south of the business park entrance.

2.0 **Proposed Development**

- 2.1 A new farm entrance is proposed to service the existing farm. The proposal will replace the existing farmyard entrance and an existing field entrance that was retained by the original owner.
- 2.2 The farm is an outfarm to a larger dairy farm. The planning application states the applicant originally leased the land but he has recently purchased it. The entrance is to accommodate large farm vehicles.

3.0 **Planning Authority Decision**

3.1 **Decision**

Planning permission was granted by Westmeath Co. Co. for the new farm entrance including a stone wall played entrance, fencing and hedging subject to 6No. conditions.

3.2 **Planning Authority Reports**

- The applicant has stated he recently purchased the farm and the original farm entrance was retained by the former owner. A third party submission claims the applicant is not the owner and the applicant has a longterm lease of the lands. There is a solicitor's letter accompanying the application documentation indicating the applicant has purchased the lands, and he has sufficient interest in the lands to make the planning application. The planning authority requested further information on the legal ownership issue.
- On the 15th of July 2022, land registry details were submitted and a solicitor's letters confirming Mr. Liam Maxwell is the full legal and beneficial owner of the property as from the 8th of July 2022. Based on the information presented, a grant of planning permission is recommended.

3.3 **Other Technical Reports**

Engineering Report: The sightlines can be achieved and should be maintained at all times. The entrance to be recessed as per the site layout drawing.

3.4 **Prescribed Bodies**

None

3.5 **Third Party Observations**

- (i) Cllr Johnny Penrose requested the planning application be expediated.
- (ii) Thomas McKeon The farm was not sold at auction to the applicant. There is no existing field entrance, only an existing agricultural entrance which has been operating since 1960. The existing entrance can accommodate large machinery. The proposal involves the removal of trees and hedges planted by him 25years ago to provide an unnecessary entrance. A new entrance is unwarranted. The site layout drawing is misleading. The levels indicated on the drawings do not make sense either. The applicant did not buy the land.

4.0 **Planning History**

There is no relevant planning history.

5.0 **Policy Context**

5.1 **Development Plan**

Agricultural policies contained in the Westmeath Development Plan 2021-2027 encourage agricultural developments in rural areas.

5.2 **Natural Heritage Designations**

Lough Owel SAC (000688) is situated c. 8 km east of the site and Lough Iron SPA (004046) is situated c. 5 km NE of the site.

There is a proposed Natural Heritage Area c. 500 metres north and east of the site. There are no direct hydrological links connections from the appeal site to the said pNHA.

5.3 **EIA Screening**

Having regard to the limited nature and scale of the proposed development and the absence of any connectivity to any sensitive location, 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**

Mr Thomas McKeon has taken this appeal against the decision to grant planning permission for the farm entrance on the following grounds:

- 6.1.1 The lands were leased to the applicant by the third-party appellant. There was a ten-year lease agreement on the lands. The lands were sold to the applicant against the appellant's wishes while he was trying to prepare a second dwelling during his divorce proceedings. The legal order to sell the lands is unsafe and flawed. The appellant was psychiatrically ill and admitted to a psychiatric hospital and he was not present at the first court hearing in relation to the sale of the lands. During his recovery he recovery he was informed he would be served court papers for a second hearing, which did not happen he was not present in court. The proceedings went ahead on the basis he was duly served with the paper/ documents.

6.1.2 The documents prepared by the seller's auctioneers display a red line outlining the precise area for sale along with a conditions of sale documents prepared by the seller's auctioneers, on the basis the purchaser would have to buy the lands on the basis that planning permission would be sought for a separate entrance along with connections to services including water and electricity. The applicant has stated this is his lands and the proposed lands encroach on lands not in his possession. The planning authority ignored this concern. Also, the initial letter submitted to the planning authority noted the total landholding and it does not include the applicant's total landholding where his main farming activities occur at his residence both of which are two neighbouring townlands. The appellant believes it is a total affront to the statutory requirement in the process of making a planning application to any local authority. The applicant entered into an agreement with the local GAA club which adjoins the appellant's farmlands to sell four acres of land before he had secured an entrance to the lands. The Chairman of the GAA Club is a local representative for the area which allows him to make representations a planning application which he did in this case. There is a serious conflict of interest which was overlooked by the planning authority.

6.1.3 The location of the proposed entrance is not in line with safety guidelines in the Westmeath County development Plan. The planning application was not referred to the national roads authority for their considerations especially since it is a new entrance onto the Regional Road R393).

6.1.4 The applicant has terminated the lease of the lands with the appellant (the landowners) and removed all his materials from the yard including stores of silage and cubicles he had installed in the existing slatted shed. However, he is happy for the applicant to continue with the lease of the lands and extend further if he wishes.

6.2 **Applicant Response**

The applicant's solicitors have responded to the appeal.

6.2.1 The applicant is the owner of the land comprising of Folio WH17324 and his application for registration is currently pending before the Property Registration Authority. They were purchased by way of an auction on 17th of February 2022 pursuant of a Court Order. The Deed of Transfer following the payment of sale

funds was signed by the appellant's former wife and the County Registrar on behalf of the appellant.

6.3 Planning Authority Response

There was no response from the planning authority.

7 Assessment

- 7.2 The proposed development consists of a new farm entrance off the Regional Road (R363) just outside of Ballynacarrigy village in Co. Westmeath. The proposed entrance is a recessed field access to enable machinery to access the land. The planning authority granted planning permission for the proposed development and the Area Engineer had no objection in principle to the proposal on traffic safety grounds.
- 7.3 The third-party appeal is based on personal and private issues relating to the ownership of the land. The issues raised on appeal are beyond the remit of the planning appeals board and are civil matters regarding the sale of the land to the applicant. According to the appeal file, the purchase of the lands, including the subject site, was made on the 17th of February 2022 pursuant of a Court Order. The payment of sale funds was signed by the appellants former wife and the County Registrar of Westmeath on behalf of the third-party appellant, Mr. McKeon. The appellant claims to still own said lands, and has leased the lands to the applicant, Mr. Maxwell. According to the appeal file, part of the sale agreement was that the applicant would open his own farm/ field entrance which is the subject of this appeal. The former owner would retain the existing access to the landholding.
- 7.4 In essence, the applicant, Mr. William Maxwell has stated on the appeal file he is the legal owner of the site. To support his claim, and following the planning authority's request for further information on this issue, the applicant submitted to the planning authority on 15th of July 2022 the following:-
- (i) Land Registry details on Folio 17324 which was transferred on the 8th of July 2022 from Edel McKeon to Emper Organic Limited (a company owned by William Maxwell). According to the Land Registry, Family Law proceedings entitled an Order for the sale of the lands as part of the terms

of Divorce Settlement. The purchaser entered into Contracts for Sale for the purchase of the property at public auction on the 17th of February 2022;

- (ii) A letter from the applicant's solicitor stating the applicant is the full legal and beneficial owner of the property.

The applicant has also responded on appeal reiterating the above details.

- 7.4 The third-party appellant has submitted the lands were leased to the applicant by himself for a period of ten years. The lands were sold to the applicant against the appellant's wishes while he was trying to prepare a second dwelling during his divorce proceedings. He maintains the legal order to sell the lands is unsafe and flawed. The appellant is still in a position to lease the lands to the applicant and is happy to do so. Unfortunately, the appellant has not substantiated his grounds of appeal with any evidence to counter the applicant's case which includes substantiated evidence. Based on the evidence on file the applicant is entitled to make this planning application. I would recommend the Board include a footnote with any decision citing Section 34(13) of the Planning and Development Act 2000 as amended, '*A person shall not be entitled solely by reason of a permission under this section to carry out any development*'. The appellant should note, the planning system is not designed to resolve disputes regarding the title of land.
- 7.5 The appellant is concerned the application was not referred to the National Roads Authority for comment. The proposal is a new entrance onto a Regional Road (R393), and there is no statutory requirement to refer planning applications relating to Regional Roads to the NRA.
- 7.6 I would agree with the applicants concern that the proposal will result in the removal of a number of notable trees which embellish the visual amenities on the approach to the village from Mullingar. However, the site layout drawing states the horse chestnut tree will be retained and the 4No. beech trees will be removed and transplanted by a qualified arboriculturalist.
- 7.7 The splayed entrance will consist of 1.5m salvaged stone walls and piers, with a 6metre field gate entrance setback 20metres from the edge of the road. This is a quality specification for an agricultural entrance and will match the existing stone wall extending along the road frontage of the site from the junction with the adjoining

GAA service road. The streetlamp along the road frontage will remain insitu, and the 10k ESB overhead electric lines are not affected by the proposed development.

8.0 Recommendation

8.1 I recommend the planning authority's decision to grant planning permission be upheld by the Board.

9.0 Reasons and Considerations

Having regard to the use of the subject site for agricultural purposes, the lack of direct access to the landholding from the public road, the design and scale of the farm entrance and the adequate sightlines available in both directions at the proposed entrance along the Regional Road (R393), it is considered the proposed development would be acceptable in traffic safety terms and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid</p>

	<p>prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
3.	<p>All uncontaminated surface water shall be collected and discharged within the subject site and shall not discharge onto the public road.</p> <p>Reason: In the interests of traffic safety.</p>

Section 34(13) of the Planning and Development Act 2000 as amended, 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'.

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.

Caryn Coogan

Planning Inspector

23rd May 2023