



An  
Bord  
Pleanála

## Inspector's Report ABP314924-22

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<b>Development</b>	Retention of opening an entrance and hanging a farm gate.
<b>Location</b>	Smithstown, Shannon, Co. Clare.
<b>Planning Authority</b>	Clare County Council.
<b>Planning Authority Reg. Ref.</b>	21/1376.
<b>Applicant(s)</b>	Flan O' Neill.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party.
<b>Appellant(s)</b>	James Quinn & Margaret Marcus.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	19 <sup>th</sup> June 2023.
<b>Inspector</b>	Aisling Dineen

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## **1.0 Site Location and Description**

- 1.1. The appeal site is situated within the settlement boundary of Shannon Town on the northern side of the airport road.
- 1.2. Shannon Town Roundabout and the N19 is positioned circa 600 metres west of the site and the N18/M18 motorway is positioned circa 1.2 km north of the appeal site. Smithstown Road, which serves as a local access road is positioned c 160 metres north of the site. The existing serving road, the L 7178 -0 has a speed limit of 60 km/. There is a junction a short distance to the east of the site, which connects the L7178 – 0 with the R 471, also known as the Airport Road.
- 1.3. There are residentially zoned lands to the south, east and southeast of the appeal site and construction works are currently ongoing on nearby residential development.
- 1.4. The appeal site is comprised of an unused infill site, with a Recycling Centre to the west and Garden Centre to the east. There are commercial premises on the opposite side of the road to the appeal site and there are a few residential dwellings in the nearby vicinity also.
- 1.5. There is an agricultural gate with a timber post fence on the splays either side of it. This entrance and gate/opening is subject of this retention application/appeal. There is a high masonry wall on the west boundary of the site on the side of the Municipal Recycling Centre and the east boundary is contained by mature trees and hedgerow.

## **2.0 Proposed Development**

- 2.1. Retention permission is sought for an entrance and farm gate on the appeal site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On the 7<sup>th</sup> October 2022 the planning authority issued a decision to grant planning permission, subject to three conditions.

Reason No 2 stated the following:

The access point hereby permitted shall not become operational unless and until the roadside boundary improvement works to achieve the sight distances as set out in the plans and particulars received with the application on the 12<sup>th</sup> September 2022, have been completed in full to the satisfaction of the planning authority.

Reason: In the interest of orderly development and traffic safety.

The Chief Executives decision reflects the planner's report.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

On the 23<sup>rd</sup> February 2022 the planning authority issued a request for further information which comprised of two issues, as follows:

- Sight distance details. Clarity sought on the nature/extent of works which would be involved in clearing the trees/hedgerow on the site to the west. Also, formal permission from Clare County Council Property Section required.
- Surface water management details required.

In assessing the reply to the further information request regarding Item 1 with respect to sight distances, the planning report states that the applicant submitted a revised site layout, which identifies the section of hedging proposed to be removed. In addition, the applicant proposed to plant a laurel hedge inside the palisade fence to compensate for the removal of existing hedgerow. The palisade fence is to be increased in height to 3.6 metres. Also, a letter of consent from Clare County Council was submitted granting consent to submit the planning application to carry on Clare County Council owned lands. It was noted that letter did not give consent to the works being carried out.

Regarding sight lines, the report acknowledged the Road Design Office (RDO) report on file, under which it was stated that the said office was satisfied with sight lines of 54 metres and the planning report considered that this also satisfied the Boards previous reason for refusal. It was considered that the response addressed the traffic concerns raised by previous board assessor.

Regarding Item 2 of the further information request, the planning authority considered the response to be satisfactory.

### 3.2.2. Other Technical Reports

#### Road Design Office (RDO)

The RDO states that the site is within the settlement boundary of Shannon where a speed limit of 60 km/hr applies.

DMURS requires visibility splay sight lines of 59 metres (Y axis) and a set back distance (X axis) of 2.4 metres.

The applicant as submitted that a Y axis of 54 metres is demonstrated. This distance is stated to be acceptable given the characteristics of the road and unlikelihood of vehicles travelling this road at or above the speed limit.

The applicant shall submit consent from the land owner of the land to the west of the site to achieve sight distances. Consent should be sought prior to the grant of planning permission.

There is a poorly defined priority junction to the east of the site. The applicant has shown the visibility splay to cross this junction. The applicant should be asked to pay for signage and stop line road making to be installed.

The applicant will be required to construct or pay for a 3 metres wide footpath to the front of the proposed development.

## 4.0 Planning History

#### On site:

**ABP 307576 – 20** pertains to the refusal of planning permission by the Board for the retention of a new entrance.

The Board decided to make a split decision as follows:

Grant permission for the retention of the proposed access road and alteration to the land levels subject to conditions.

And,

Refuse permission for the retention of the new entrance for the following reasons and considerations:

The proposed development would endanger public safety by reason of traffic hazard having regard to the deficiencies in attainable sightlines in each direction at the entrance, and the poor horizontal alignment of the road onto which access is proposed.

Nearby site:

**ABP 311994 – 21** pertains to the grant of planning permission for a residential development of 48 houses in Smithstown, Shannon, Co. Clare.

Condition number 20 required a special contribution under Section 48 (2) (c) of the Planning and Development Act 2000 (as amended) with respect of widening 250 metres of the L 7178 -0 and for upgrading a junction.

## 5.0 Policy and Context

### 5.1. Development Plan

The operative development plan at the time the decision was made was the Clare County Development Plan, 2017-2023.

This development plan has since been superseded by the Clare County Development Plan 2023 - 2029.

The operative local area plan is the Shannon Town and Environs Local Area Plan 2012 – 2018 as amended, according to which the site is subject to the zoning objective commercial; the purposes of which is to retain lands so used for commercial or related development and, to redirect other uses to appropriately zoned lands.

Retailing is open for consideration, subject to appropriate sequential testing to demonstrate lands as the optimal location.

### 5.2. Natural Heritage Designations

The site is located:

- c. 1.5km north of the Fergus Estuary and Inner Shannon, North Shore pNHA (002048),

- c. 1.5km north of the Lower River Shannon SAC (002165)
- c. 5km south of the Lough Gash Turlough SAC (000051)
- c. 1.5km north of the River Shannon and River Fergus Estuaries SPA (004077) and

### 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

- The letter from the Senior Executive Officer, Property Management Unit, Clare County Council deals with the removal of hedgerow. This hedgerow contains trees which are over 100 years old and are owned by Clare County Council.
- There is no consent for the removal of the hedgerow from Clare County Council.
- The land for which the applicant has applied for planning permission is in his sole ownership.
- The roadway is unlit, is narrow in width and has no pedestrian walkway. It also has a speed limit of over 60 km.
- The Design Manual for Urban Roads and Streets require a 59 metre sightline east and west of the entrance and a 2.4 metre set back to the edge of carriage way. The further information details submitted fall short of all those recommendations.

- The sightline towards the east is incorrect as it goes to the far side of the road to achieve 56 metres. To the near side of the road, it is 46 metres and there is no 2.4 metre set back.
- The proposed development would endanger public safety by reason of traffic hazard regarding deficiencies in sight distances in each direction.
- Reference to previous An Bord Pleanála inspectors report is made; ABP 307576 regarding stated deficiencies in sight lines in each direction at the entrance.

## 6.2. Planning Authority Response

- The issues outlined in the appeal have been adequately addressed under the planner's report.
- The planning authority request that its decision be upheld by the Board.

## 6.3. Observations

None

## 6.4. Further Responses

None

## 7.0 Assessment

7.1. Having examined all the application and appeal documentation on file and having regard to the relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and the planning authorities' decision to grant planning permission and I am satisfied that no other substantive issues arise. AA also needs to be considered. The main issues, therefore, are as follows:

- General
- Residential Amenity
- Traffic Safety



- Appropriate Assessment

7.2. General

7.3. The Board shall note that this application should be reviewed in conjunction with Appeal ABP 314927-22 local authority reference number 21-1377, which is for planning permission for the construction of a storage yard on the appeal site. The file contains a submission with comments by the agent for the applicant indicating that the double application was an oversight and that it was not understood at the time of application that all of the details could have been submitted under one planning application.

7.4. The planning authority validated both applications and assessed each of the applications independently however the planners report cross referenced the other concurrent application on the subject site.

7.5. Residential Amenity

7.6. It is considered that there are no visual or residential amenity issues involved with this application for retention of opening an entrance and hanging an agricultural gate. I concur with the planning authority in this regard.

7.7. Traffic Safety

7.8. The appellant makes the case that the subject road is unlit, is narrow in width and has no pedestrian walkway. The appellant also takes issue with the sight distances achievable and states that the sight distances should be measured to the near side of the public road as per the DMURS guidance document and it is submitted by the appellant that the speed limit is over 60 km/h. The previous refusal by the Board is referenced under the appeal submission regarding deficiencies in sight distances in each direction.

7.9. I note that on the date of inspection that the serving road appears to be restricted in width and is of minor road nature. I acknowledge that under the plans and documents lodged with the planning application that the visibility splay to the east of the site is measured to include the priority junction to the east and is not to the near side of the road as per policy requirements. I also note that the sight distances achievable are 54 metres to the east and 54 metres to the west, as demonstrated on plans submitted to the planning authority on the 12<sup>th</sup> of September 2022. However, I

also note that the Engineers report from the Roads Design Office (RDO) has clearly stated that given that the applicant has demonstrated 54 metres sight distances that it would accept 54 metres *'given the characteristics of the road and the unlikelihood of vehicles travelling this road at or above the speed limits'*.

- 7.10. I consider that the roadside improvement works indicated under the application/appeal particularly to the west side of the proposed entrance would in fact improve the general visibility of motorists travelling in a west/east direction on this section of road in addition to improving sight distances to the west at the point of egress from the site. I also note that the hedge removal works to the east of the site along the road frontage will also enhance the sight distances available from the site generally and towards the junction to the east.
- 7.11. The appellant makes the case that no express consent for the actual works to the road side boundary, has been provided by Clare County Council. I note that the letter of consent on file from Clare County Council Property Section is in fact a standard letter granting consent for the submission of a planning application. The exact works proposed are not agreed. However, the agent for the applicant has submitted under his further information reply that that the required works have been agreed 'in principle' with Clare County Council. I consider that Condition No 2 as applied by Clare County Council under its decision to grant permission for retention is fair, reasonable and enforceable and will ensure that the necessary roadside boundary works will be completed before the site becomes operational.
- 7.12. With regard to the previous refusal on the appeal site; ABP 307576 – 20, the current application differs in that there is stated consent from the adjacent landowner for permission to lodge the application and a signed submission indicates that 'permission in principle' has been agreed with the local authority to carry out the required works. A condition should be stipulated to enforce this as per para 7.11 above. Also, the RDO has clearly reported that the sight distances are adequate with reference to plans lodged, *'given the characteristics of the road and unlikelihood of vehicles travelling this road at or above the speed limit'*.
- 7.13. I consider that subject to the roadside boundary proposals submitted being implemented and subject to an appropriate condition being applied with respect of all roadside works being agreed by Clare County Council prior to the commencement of

any operations on site, that the proposed development would not be prejudicial to traffic safety in the area and therefore I concur with the planning authority and I recommend that permission for retention of the entrance and hanging an agricultural gate should be granted.

7.14. The RDO report also proceeded to request contributions in respect of signage for a nearby priority junction and also for the establishment of a 3-metre-wide footpath along the site frontage. There does not appear to be a Special Contribution Scheme in place for such works, however the contribution scheme does not exclude the charging of a 'special' development contribution (Section 48 (2) (c)) where it would directly facilitate a proposed development.

7.15. I note that the planning authority did not apply any contribution in respect of this application.

7.16. Appropriate Assessment

Having regard to the limited nature of the proposed development and the nature of the receiving environment and 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 either individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. I recommend that planning permission for retention be granted.

## 9.0 Reasons and Considerations

Having regard to the form and layout of the proposed development, the roads layout in the area and surrounding land uses, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity and would not be prejudicial to traffic safety. The proposed development would, therefore, 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 on the 22<sup>nd</sup> day of December, 2021 and, as amended, by the further plans and particulars submitted on the 12<sup>th</sup> day of September 2022, 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><b>Reason:</b> In the interest of clarity.</p>
2.	<p>a. Comprehensive plans and details regarding the implementation of sight distances, including consent for specific required works, regarding the front boundary treatment of the site and of adjacent land as per plans and details submitted on the 12<sup>th</sup> day of September 2022, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>b. The entrance hereby permitted shall not become operational unless the sight distances are established and have been completed in full to the satisfaction of the planning authority.</p> <p><b>Reason:</b> In the interest of traffic safety.</p>
3.	<p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p> <p>Deviation from these times will only be allowed in exceptional</p>

	<p>circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
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'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.'

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Aisling Dineen  
Planning Inspector  
22<sup>nd</sup> June 2023