



An
Bord
Pleanála

Inspector's Report ABP315272-22

Development

In summary: a) shared vehicular entrance; b) remove condition No 2 of permission 20/5502 which permitted entrance to be used for existing dwelling only and c) modifications to entrance

Location

Inchinapallas, Ballyhooley, Co Cork.

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

22/6082

Applicant(s)

Mary Scanlan

Type of Application

Planning Permission

Planning Authority Decision

Refusal of permission.

Type of Appeal

First Party

Appellant(s)

Mary Scanlan (Applicant).

Observer(s)

None

Date of Site Inspection

29th May 2023.

Inspector

Ann Bogan

1.0 Site Location and Description

- 1.1. The site, which is 0.44ha in area, is located in the townland of Inchinapallas approximately 3km from Ballyhooly and 7km from Fermoy, Co Cork. The site is bounded by the N72 to the south and a local road (L97217) to the west. The lands to the north of the site are in agricultural use, with an existing dwelling to the east. A speed limit of 100km applies to the N72 in this location, and it has a solid white line down the centre and no hard shoulders.
- 1.2. There is an existing single storey dwelling and outbuilding on the western part of the site, while the eastern part of the site is undeveloped. The applicant is applying for permission as the Executrix of her mother's estate (the existing house and grounds) and on her own behalf as the owner of the undeveloped site.
- 1.3. There are two vehicular entrances to the site: one is located centrally on the southern boundary, onto the N72 National Secondary Road, and is incomplete. The southern boundary is formed by a stone wall. The second entrance is onto the local road (L97217) to the west. The site boundary along the local road is formed by a wall which appears to have been increased in height at its junction with the N72.

2.0 Proposed Development

- 2.1. The current application seeks permission for the permitted entrance off the N72 to be used as a shared entrance, in essence the removal of Condition No. 2 of the previous permission (Ref 20/5502), which requires that the entrance be used to access the existing dwelling on the site only. The applicant states in the documentation accompanying the application that the shared entrance is required to access her site (the undeveloped part of the site to the east) in lieu of an existing right of way to the north of existing house, due to restricted sightlines at the junction of the L97217 with the N72.
- 2.2. The proposed development also includes an additional entrance bell-end and gates internal to the site off the permitted entrance to serve the existing dwelling.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reasons:

1. The proposed development is intended to provide a shared entrance from an existing entrance that directly adjoins with the National Secondary Road, the N72. The proposed development would be contrary to objective TM12-13 (m) of the Cork County Development Plan 2022 which seeks to avoid the generation of increased traffic from existing access points onto national roads to which speed limits of greater than 50kph apply and Department of Environment, Community and Local Government Guidelines 'Spatial Planning and National Roads' 2012 which seeks to control development on/affecting national roads, to safeguard the strategic role of the national road network and to avoid the creation of new access points onto national roads. The proposed development, with access onto a national road, where the maximum speed limit applies, would endanger public safety by reason of traffic hazard and obstruction of road users due to the movements of the extra traffic generated and, the proposal, by itself, or by the precedent which a grant of planning permission would set, would adversely affect the operation and safety of the national road network. The proposed development would therefore, be contrary to the stated Development Plan objective and to the Section 28 Guidelines and would be contrary to the proper planning and sustainable development of the area.
2. The proposed vehicular access to the site would join a busy public road that is poorly aligned, at a point where sightlines are restricted in both directions. The Planning Authority is not satisfied on the basis of the submissions made on the application, that the traffic likely to be generated by the proposed development would not endanger public safety by reason of traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Area Planning Officer noted *‘on the face of the details provided within the current application and noting that the current application is for a development which is principally the same as that for which permission has been refused twice, I am not satisfied that the circumstances of the Applicant or the subject site have changed from those which have resulted in the preceding refusals.’*

- 3.2.2. He concluded that the proposed development would contravene the Development Plan and Spatial Planning and National Roads Guidelines, 2012 and recommended refusal of permission for 2 reasons. The recommendation was endorsed by the Senior Executive Planner. The decision of the Planning Authority reflects this recommendation.

3.2.3. Other Technical Reports

Roads and Transportation: Noted the extensive planning history on the site, including the legacy (expired) permission for a dwelling on the undeveloped part of the site to the east, which required the entrance to be via the existing access off the local road to the west, and recommended refusal of permission for a shared entrance off the N72 due to concerns that the development would endanger public safety by reason of traffic hazard.

3.3. **Prescribed Bodies**

- 3.3.1. Transport Infrastructure Ireland recommends refusal as the proposal is at variance with National Policy governing development on or adjoining National Roads

4.0 **Planning History**

The Planners report includes the planning history of the site. The following are of most relevance:

21/4977 (ABP-310770/21) - permission refused by Cork County Council and An Bord Pleanala for (a) a shared vehicular entrance to provide improved sightlines (b) remove condition No 2 of planning register No. 20/5502 (c) modifications to entrance

21/4062 - permission refused by Cork County Council for a shared entrance, modifications of entrance and all associated site works at the entrance granted under planning reference 20/5502.

20/5502 - Permission granted for retention and completion of modifications to entrance and closure of temporary entrance and all associated site works. Condition 2 required the permitted entrance to be used to access the existing dwelling on the site only. Condition 3 required the wall height and pier adjacent to the local road junction to be reduced to 1.05m and existing wall along the side road maintained at its existing height. Condition 5 required existing entrance to be closed off within two months of completion of new entrance.

17/7398 – Refusal of permission for retention and completion of: Close existing domestic entrance and re-locate and form new double domestic entrance for existing and proposed dwellings (Planning Ref: 14/5191) on existing adjoining sites and all associated works at Inchinapallas, Ballyhooly, Co. Cork.

Applications relating to a proposed dwelling on the site

14/5191 – Permission granted (now expired) for a storey-and-a-half dwelling with attached garage and treatment unit, representing an extension of duration to permission granted under Planning Ref No 09/5316

09/5316 – Permission granted for a storey-and-a-half dwelling with attached garage and treatment unit, on the eastern part of the site, with access off the local road to the west, L97217.

5.0 Policy and Context

5.1. Development Plan

Cork County Development Plan 2022-2028 includes relevant policy relating to access onto national roads:

‘County Development Plan Objective TM 12-13: National, Regional and Local Road Network

(j) Restrict individual access onto national roads in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network.

(m) Avoid the creation of additional access points from new developments or the generation of increased traffic from existing accesses onto national roads to which speed limits of greater than 50kph apply.'

5.2. National Policy

Spatial Planning and National Roads - Guidelines for Planning Authorities, 2012 (Dept Environment Community and Local Government), Section 2.5 addresses policy to be included in Development Plans on access to National Roads:

Lands adjoining National Roads to which speed limits greater than 60 kmh apply:

The policy of the planning authority will be to avoid the creation of any additional access point from new development or the generation of increased traffic from existing accesses to national roads to which speed limits greater than 60 kmh apply.

This provision applies to all categories of development, including individual houses in rural areas, regardless of the housing circumstances of the applicant.

5.3. Natural Heritage Designations

Blackwater River SAC (Site Code 002170)

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 an environmental impact assessment can, therefore, be excluded by way of preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- Road works carried out on the N72 in 2016 resulted in the edge of the road being positioned at a higher level than previously, in relation to the site. This

resulted in distorted sightlines to the west from the previous entrance off the N72, rendering it less safe.

- Permission was secured for closure of the existing entrance off the N72 and construction of a new entrance further east to improve sightlines (Planning ref 20/5502). Sightlines from this entrance are 95m to the east and 135m to the west.
- The appellant has a right of way (since 2014) off the L97217 north of the existing house to give access to the undeveloped land to the east. The sightlines at junction of L97217 were distorted by the roadworks in 2016 as the N72 has now been positioned closer to the junction. Sightlines from the L97217 junction are now 41m to the east and 130m to the west.
- Use of the N72 entrance as a shared entrance would be safer for the appellant and for other road users on the N72.
- The Spatial Planning and National Roads Guidelines (2012) exceptional circumstances provisions should be taken into account and a less restrictive approach applied in this circumstance as the proposed shared access from the N72 is safer than the access from the L97217 to the N72, as it has better sightlines.
- Adjustments to the boundary wall along L-97217 were done with approval from the County Council. It is not correct that a condition be imposed to reduce the pillar height on permission ref. 20/5502.
- The appellant intends to re-apply for permission shortly for a dwelling on the site in place of the expired permission

6.2. Planning Authority Response

None

6.3. Observations

None

6.4. Further Responses

None

7.0 Assessment

- 7.1. I consider that the main issue that arises to be considered under this appeal is compliance with national and local policy with regard to access onto a national road and contravention of a condition attached to an existing permission.
- 7.2. As noted earlier there is an extensive planning history attached to this site relating to applications for a dwelling on the eastern portion of the site and a new access from the N72. The existing dwelling on the site was served by an access off the N72 adjacent to the dwelling and by a rear access off the local road to the west L97217. Permission was granted for a dwelling on the eastern part of the site under planning ref. 09/5316, the duration of which was extended under planning ref. 14/5191. This dwelling was to be served by an existing access onto the local road L97217, and was not to be served by an access onto the N72. This permission was not implemented and expired in 2019.
- 7.3. Following road works to the N72 in the vicinity of both the site and the junction with the L97217, the appellant secured permission under reference 20/5502 to close the original entrance onto the N72 and to retain and complete a new entrance to the east to serve the existing dwelling. The planning authority assessed the proposal to replace the existing entrance by an entrance to the east, and while it did not fully meet the optimum sightlines for a national secondary road, it was an improvement on the previous entrance and was considered to be acceptable and permission was granted subject to 5 conditions. Condition No 2 required that the entrance be used to access the existing dwelling only. The permission was not appealed and it and the conditions attaching to it still stand.
- 7.4. The previous entrance onto the N72 has now been closed and replaced by a stone wall and the new permitted entrance to the east has been created, although the wing walls have not yet been constructed.
- 7.5. The current application is for the use of the entrance permitted under 20/5502 as a shared entrance and is in substance the same as an application for a shared

entrance which was refused by Cork County Council (21/4062), and not appealed and a further application for a shared entrance which was refused permission by both Cork County Council (21/4977)) and by An Bord Pleanála on appeal (310770-21), the only difference being some variation in the wording of the description of the proposed development. While the appellants reference to the impacts of roadworks on the N72 on sightlines is noted, there is no evidence of a change in circumstances since the previous applications or since the original grant of permission for the entrance under Planning Ref. 20/5502, which could be taken into account in considering the current application. A new County Development Plan has been made but the objectives relating to avoidance of entrances or intensification of existing entrances onto National Roads are restated and extended.

- 7.6. I note the appellant argues that the exceptional circumstances provisions allowed for in the Spatial Planning and National Roads Guidelines should be applied in this case. However, Section 2.6 of the Guidelines state that identification of stretches of road to which a less restrictive approach would apply, only arise by way of inclusion of an objective in the Development Plan, having taken account of the advice of the NRA. The approach is not intended to be applied to an individual case such as this, in the absence of such a Development Plan policy.
- 7.7. The application does not state the specific purpose of the shared entrance. However, in the submission lodged with the appeal, the appellant indicated that she intends to shortly apply for planning permission for a dwelling on the site. The drawings accompanying the application show an existing wayleave north of the existing dwelling giving access onto the local road for the previously permitted dwelling on the eastern part of the site, and a proposal to replace it with a wayleave at the new entrance onto the N72 'on grant of planning'. It is likely therefore that the appellant intends that the shared access would serve a future dwelling on the site.
- 7.8. However, in the absence of an extant permission for a dwelling on the site there is no basis or need for a shared access at this location. Any future application for a dwelling will have to be assessed against the national and local policies pertaining at the time including those relating to national roads, regardless of the planning history of the site.

7.9. I am satisfied that permitting a shared entrance as proposed in this application would contravene national policy in relation to the control of development on national roads as set out in the Spatial Planning and National Roads Guidelines for Planning Authorities which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially Objective TM 12-13 (j) and (m) of the Cork County Development Plan which restricts access onto national roads in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network and seeks to avoid the creation of additional access points from new developments or the generation of increased traffic from existing accesses onto national roads to which speed limits of greater than 50kph apply. The proposal also contravenes materially condition 2 attached to permission ref. 20/5502 which is considered reasonable. I therefore recommend a refusal of permission for these reasons.

7.10. **Appropriate Assessment**

Having regard to the nature and scale of the proposed development and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the 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 permission be refused for the proposed development for the following reasons and considerations.

9.0 **Reasons and Considerations**

1. The proposed development would result in the intensification of the use of an existing access onto the N72 National Secondary Road at a location where the maximum speed limit of 100 km/h applies. Having regard to the location of the site, it is considered that the proposed development by itself or by the precedent it would set for other development, would endanger public safety by reason of traffic hazard and obstruction of road users, would contravene national policy in relation to the control of development on national roads as

set out in the Spatial Planning and National Roads Guidelines for Planning Authorities issued by the Department of the Environment, Community and Local Government in January, 2012, which seeks to secure the efficiency, capacity and safety of the national road network and would contravene materially Objective TM 12-13 (j) and (m) of the Cork County Development Plan which restricts access onto national roads in order to protect the substantial investment in the national road network, to improve carrying capacity, efficiency and safety and to prevent the premature obsolescence of the network and seeks to avoid the creation of additional access points from new developments or the generation of increased traffic from existing accesses onto national roads to which speed limits of greater than 50kph apply. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development in providing for a shared entrance would contravene materially a condition attached to an existing permission for development, namely condition number two attached to the permission granted by Cork County Council on the 12th day of October 2020 under planning register reference number 20/05502.

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.

Ann Bogan
Planning Inspector

31st May 2023