



An  
Bord  
Pleanála

## Inspector's Report ABP317779-23

### Development

Retention of as constructed garage, relocated DWWTS, and permission to construct new roadside boundary fence, revised setback position of entrance piers, splays, automatic entrance gate, and all associated site works.

### Location

Caher Road, Islandduane, Mungret, Co. Limerick.

### Planning Authority

Limerick City and County Council.

### Planning Authority Reg. Ref.

23207.

### Applicant(s)

Yvonne O'Donoghue.

### Type of Application

Retention and Permission.

### Planning Authority Decision

Grant with conditions.

### Type of Appeal

Third Party

### Appellant(s)

Pat O'Connor & Nicola Cummins.

### Observer(s)

None on file.

**Date of Site Inspection**

7<sup>th</sup> November 2023.

**Inspector**

Des Johnson.

## 1.0 Site Location and Description

- 1.1. The site is on the south side of Caher Road, approximately 800m due south of Mungret in Co. Limerick.
- 1.2. There is an existing occupied two storey detached dwelling on the site and a single storey detached structure to the rear of the site adjacent to the site's western boundary.
- 1.3. The effective carriageway on the Caher Road along the site frontage is approximately 3.8m. There is a single storey house on the opposite side of the road set back from the carriageway. Concrete foundations are evident for a splay at the proposed entrance and a blue metal post erected approximately 3.9m from the edge of the carriageway. At a setback of 2.4m at the proposed entrance there is a sightline of approximately 70m to the centre of the carriageway to the south-east, and approximately 62m to the centre of the carriageway to the north-west. The appellants property (a large two storey detached dwelling) adjoins the appeal site to the west. At a setback of 2.4m from the carriageway at the entrance to this property there is a sightline of approximately 45m to the centre of the carriageway to the north west and approximately 50m to the south east outside of the existing blue metal post erected at the proposed entrance.
- 1.4. Caher Road has no public lighting, no footpaths and no road markings along this stretch. High voltage wires erected on pylons cross the Caher Road a short distance to the south west of the appeal site. There is a speed limit of 50km/h along this stretch of the Caher Road (L1402).

## 2.0 Proposed Development

- 2.1. The proposal is for the retention of an as constructed garage, and relocated WWTS, and permission to construct new roadside boundary fence, revised setback position of entrance piers, splays, automatic entrance gate, and all associated site works.
- 2.2. The following gross floor areas are stated: existing house 460.26sqm, garage 100.29sqm. The site area is stated to be 0.38ha.

## 3.0 Planning Authority Decision

### 3.1. Decision

To Grant Retention for the as-constructed garage, and relocated WWTS, and to Grant Permission for the construction of new roadside fence, revised setback position of entrance piers, splays, automated entrance gate, pedestrian gate, and all associated site works. The decision is subject to 5 conditions. Condition 1 relates to compliance, Condition 3 relates to requirements for a 1m gravel area and maintenance of a 3m grass area outside the boundary wall, Conditions 4 and 5 contain surface water run-off requirements

Condition 2 – states that this permission is subject to the terms of the governing permission Planning Reference 16/717, except where departure from that permission is authorised by this permission.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The house is now occupied. The applicant indicated that the garage was lived in while the house was under construction and this use has now ceased. A condition could be imposed on any permission requiring non-habitable use of the garage. Rooflights in the house will not impact on the amenity of the adjoining dwelling. The sightlines as indicated are incorrect, and the current state of the hardstand and setback is not appropriate and must be addressed. Further Information is recommended. Following the submission of Further Information on 22<sup>nd</sup> June 2023, an addendum Planner's report states that Conditions shall apply with regard to surface water control, and maintenance of the strip between the front boundary of the site and the public road, and that changes to the elevation of the dwelling will not impact on the amenity of any adjoining dwelling with regard to orientation and the existing distance to site boundaries. There is one objection raising issues of public traffic health and safety, impact of roof lights, and environmental and public health. (Note: the objection was submitted by KM Solicitors on behalf of Mr Pat O'Connor). Permission is recommended.

### 3.2.2. Other Technical Reports

Roads report dated 28.06.2023 recommends conditions. These include requirements relating to the following:

- The landowner is responsible for the 1.0m gravel area outside the grassed area
- The landowner is responsible for the maintenance of the 3.0m grassed area outside their boundary wall
- Measures to prevent/manage all surface water from entering on to the public highway
- Appropriate disposal of surface water run-off.

Environment Section report states that the relocation of the DWWTS is acceptable.

## 4.0 Planning History

Register Reference 16/717 – Permission granted subject to 16 conditions for the construction of a two-storey house, garage, WWTS, percolation area, entrance and all associated site works. Condition 4 is an occupancy condition; Condition 5 contains requirements in respect of the roadside boundary as follows:

*The existing roadside boundary shall be removed for the entire frontage of the site and a new front boundary constructed to consist of an earthen bank or a sod and stone bank to a consolidated height of 1.0m which shall be planted on top with a double row of native hedging species (e.g. holly, hawthorn, blackthorn, ash etc.) common to the locality. Details of the site entrance and roadside boundary shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development. A rendered block wall or decorative wall is hereby not permitted.*

A compliance submission in respect of Condition 5 was made to the Planning Authority on 26<sup>th</sup> January 2023. By letter dated 4<sup>th</sup> April 2023, the Planning Authority stated that the Site Layout Plan submitted was not in compliance with Condition 5. In particular, the Planning Authority stated as follows:

- The layout submitted shows the side boundary between 16/717 and 17/1085 extended out to the road edge which would impede sightlines from both accesses
- Foundations for the access, along with two steel columns has been constructed which is not acceptable to the Roads Section
- The applicant has extended the side vegetation boundary between 16/717 and 17/1085 too far and is impeding sightlines from the access belonging to application 17/1085
- The sightlines on the applicant's drawings have not been achieved.

Condition 10 relates to requirements in respect of the treatment plant and polishing filter.

Warning Letter DC-435-22 – non-compliance with planning conditions.

Register Reference 17/1085 – Permission granted for the construction of a two-storey house, garage, WWTS, percolation area, entrance and all associated site works on the adjoining site to the west. This is the appellants' site and the two storey house is now constructed and occupied. The permission is subject to 15 conditions. Condition 4 required the applicant, prior to the commencement of development, to submit for written agreement of the Planning Authority revised drawings providing relocation of the proposed vehicular entrance to the extreme east of the site. Drawings were to include details of the proposed vehicular entrance, the roadside boundary recess and the relocated WWTS. In a compliance submission dated 30<sup>th</sup> October 2019 a revised site layout drawing was submitted showing the site entrance relocated to the east side of the site. The compliance drawing stated that "as there is no hedgerow to the east of the relocated entrance, that is within the site boundaries of Planning Reference Number 17/1085, sight line to the east will be dependent of the planning conditions of the site with Planning Reference Number 16/717".

## 5.0 Policy and Context

### 5.1. Development Plan

The Limerick Development Plan 2022-2028 is the statutory plan for the area.

Objective TR 037 relates to Land Uses and Access Standards on to All Roads. It is an objective to ensure that any development involving a new access to a public road, or the intensification of use of an existing access on to a public road, that would compromise the safety and capacity of the road network, will not be permitted unless the new or existing access meets the appropriate design standards,

## 5.2. **Natural Heritage Designations**

Lower River Shannon SAC is approximately 2.6km to the north

River Shannon and River Fergus Estuaries SPA is approximately 2.6km to the north.

## 5.3. **EIA Screening**

- 5.4. Having regard to the nature and modest scale of the proposed development and the development proposed for retention, and the likely emissions therefrom, it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

These are submitted on behalf of the owner of the directly adjoining property to the west and may be summarised as follows:

1. The contents of planning reference 16/717 should be considered in conjunction with this appeal. The applicant has not complied with the conditions of reference 16/717, and this is having an adverse effect on the appellants' property rights and the public at large.
2. The proposed roadside boundary modifications in reference 23/207 are dangerous and not in compliance with good planning. The proposal will block the safe line of sight. The appellants' have a separate planning application (reference 17/1085) linked to this appeal. The appellants line of sight is dependent on conditions attached to reference 16/717.

3. Further Information submitted contained material changes to the original submission. It did not include a topographical survey as requested by the planning authority. The drawing submitted is not an accurate reflection of the relevant features on the applicant's property, and cannot be used to determine safe line of sight.
4. Currently there is a blue steel post erected by the applicant to the west of their entrance. This is 3.9m from the road edge. If this remains and is surrounded by a concrete pier as shown on the proposed drawing, the appellants' line of sight will be reduced to approximately 30m. There are excavations and foundations for piers, splayed entrance and pedestrian gate that were constructed without approval.
5. Hedging has been set by the applicant to the east of the entrance along the proposed new front boundary line; the position of this hedging is not reflected accurately on the submitted drawing. It is shown at 4.5m from the road edge whereas it is 3.9m at the splayed entrance.
6. The original submitted drawing showed the face of the applicant's east boundary 4m from the road edge whereas the FI revised drawing shows it at 3.489m.
7. No scientific speed survey was undertaken indicating the operational or design speed along this stretch of the Caher Road. Additional housing will put additional strain on the infrastructure in the Mungret area. If permission is granted, this will set a dangerous precedent for determining safe line of sight.
8. The proposed location for the pedestrian gate is not safe.
9. The Board should consider the permitting of a stone or rendered wall along the roadside boundary for health and safety reasons.
10. It is indicated that the boundary fence between the applicant's and appellants' properties is to be set back 4.4m. This is not adequate to provide safe line of sight to the appellants' property. The setback should be 5m.
11. No valid maintenance contract for the permitted DWWTS has been submitted. The shape and size of the proposed sand polishing filter does not match the shape and size of what was permitted in the Site Suitability Report for file



16/717. The appellants are concerned regarding non compliance and the adverse environmental impact of the constructed system.

12. The garage continues to retain the characteristics of a habitable space, and the appellants' are concerned regarding future use and the treatment of associated wastewater. The front façade of the garage looks typical of the front door of a house. The garage is essentially a second house with a floor area of 100.29sqm. No condition has been imposed requiring the cessation of habitable use of the garage.

13. There are existing skylights which were not shown in reference 16/717 and are not referred to in the public notice. These overlook the public road, and a skylight overlooks the appellants' property, compromising privacy.

## 6.2. Applicant's Response

A response, date stamped 04 September 2023 may be summarised as follows:

1. The 3.0m setback has been topsoiled and grass seeded. The 4.4m setback of the concrete posts and wire fence of the western boundary from the edge of the road has been carried out. The Caher Road from its junction with the R859 at Mungret to its junction with the R526 has a 50km/hr speed limit. The forward sightline within this speed zone at a setback of 2.4m is 70m. The maximum sightline available to the west is 65.5m. "Due to the width of the road there is an overtaking constraint, therefore a sight line to the centre of the road is 90m".
2. A setback deviation to 1.8m which can be applied in certain circumstances where there is an overtaking constraint, would achieve a sightline of 69.6m to the near edge of the road (to the south east), and 90m to the centre of the road. A pole is not considered an obstruction to a line of sight. The operational or design speed on the road is significantly less than 50km, and perhaps as low as 30km per hour, which would reduce the forward sightline distance to 50m.
3. The garage is being used solely for domestic garage usage with wood storage. Rooflights provide extra light and aeration and have no impact on other dwellings. The chimney in the garage was permitted under reference

16/717. For the purposes of living accommodation during construction, a stove was installed for heating. The garage is returned to garage space.

4. There is an active maintenance contract for the DWWTS. It is working correctly.

### 6.3. **Planning Authority Response**

None on file

### 6.4. **Observations**

None on file.

### 6.5. **Further Responses**

None on file.

## 7.0 **Assessment**

- 7.1. The proposal is for the retention of an as constructed garage and relocated WWTS, and for permission to construct new roadside boundary fence, revised setback position of entrance piers. The as constructed garage is single storey with loft space, and has a stated floor area of 100.29sqm. The relocated effluent treatment system and sand polishing filter are sited to the front of the existing house. There is a third party appeal from the adjoining owner to the west. The existing houses on the applicant's and appellants' sites were subject to separate planning permissions granted by the Planning Authority – Register reference 16/717 (applicant) granted on 17<sup>th</sup> November 2016 and Register reference 17/1085 (appellant) granted on 15<sup>th</sup> June 2018. Both permissions were subject to Section 47 agreements by way of conditions.

- 7.2. I submit that the key issues in this appeal are as follows:

- Retention of garage
- Retention of WWTS
- Proposed entrance and traffic safety issues

- Residential amenities
- Conclusion

### 7.3. **Retention of garage**

Based on the information on file, including the Planning Report dated 18<sup>th</sup> November 2016 relating to Register reference 16/717, the permitted garage under that permission was to have a maximum floor area of 60sqm. The existing garage for which permission is sought has a stated floor area of 100.29sqm. It is stated that the garage was used as residential accommodation while the dwelling was being constructed but that residential use has now ceased. I was unable to gain entry to the garage at the time of inspection but observed that the internal layout included a kitchen area but that the garage did not appear to be currently occupied. The front elevation of the garage is not as illustrated on the submitted drawings but as illustrated on the attached photograph. I consider that the garage does not impact on the amenities of the adjoining property and that the issue of the use of the garage may be addressed by way of condition.

### 7.4. **Retention of WWTS**

Register reference 16/717 permitted a WWTS and percolation area to the rear of the site. The system was relocated to the front of the site between the house and the front site boundary. The Environment Section of the Planning Authority considers that the relocation is acceptable. The permission under appeal includes a condition (Number 2) stating that “this permission is subject to the terms of the governing permission Planning Ref: 16/717, except where departure from the terms of that permission is authorised by this permission”. The permission under Register reference 16/717 includes a condition relating to the maintenance of the treatment plant and polishing filter. In these circumstances, I consider that the retention of the relocated WWTS is acceptable.

### 7.5. **Proposed entrance and safety issues**

The permission granted under Register reference 16/717 includes a condition (No.5) requiring details of the site entrance and roadside boundary to be submitted to and agreed in writing with the Planning Authority prior to the commencement of

development. Based on the information available, it appears that details submitted were not deemed to be in compliance with the condition by the Planning Authority. The permission under appeal is for new roadside boundary fence and revised detailing of the entrance. The Site Layout Plan (date stamped 22 June 2023) and Drawing P23-207 show piers adjacent to the boundary with the adjoining property to the west setback approximately 4.4m from the edge of the public road, and the common fence between the two properties similarly setback. The entrance and the adjoining entrance to the west are on a bend in the road and where the effective carriageway width is approximately 3.8m. and where sightlines are restricted. I consider that, in the interests of traffic safety, a condition should be imposed on any permission granted requiring that (1) the proposed piers at the pedestrian gate and entrance splays be setback a minimum of 5m from the near edge of the carriageway, (2) the face of the common boundary between the subject site and the adjoining site to the west be setback a minimum of 5m from the edge of the near edge of the carriageway, and (3) no physical obstructions be retained or erected within 5m from the near edge of the carriageway.

I see no objection to the any other aspect of the roadside boundary.

#### **7.6. Residential amenities**

I see no reason to conclude that the rooflights in the garage to be retained would have any adverse impact on the residential amenities of the adjoining property.

#### **7.7. Appropriate Assessment Screening**

Having regard to the nature and scale of the proposed development and the development proposed for retention, the receiving environment, the separation distances, and the absence of any pathway to European sites, it can be concluded that the proposed development, alone or in-combination with other plans or projects, would not give rise to any significant effects on any European site. As such, there is no requirement for a Natura Impact Statement in this case.

## 8.0 Recommendation

8.1. I recommend that planning permission be granted.

## 9.0 Reasons and Considerations

Having regard to the nature of the development proposed and for retention, and to the planning history relating to the site, it is considered that the development, subject to compliance with the following conditions, would be acceptable in terms of traffic safety and public health, would not have an adverse impact on the amenities of adjoining property, 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, and retained in accordance with the plans and particulars lodged with the application on 14<sup>th</sup> April 2023, and Further Information submitted on 22<sup>nd</sup> June 2023, 27<sup>th</sup> June 2023 and 30<sup>th</sup> June 2023, 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>The proposed entrance configuration shall be amended as follows:</p> <ul style="list-style-type: none"><li>• The piers at the pedestrian gate shall be setback a minimum distance of 5 metres from the near edge of the adjoining carriageway</li><li>• The face of the existing western boundary with the adjoining dwelling shall be setback a minimum of 5 metres from the near edge of the adjoining carriageway</li><li>• No physical obstruction shall be retained or erected within 5m from the near edge of the adjoining carriageway</li></ul>

	<p>Revised drawings, incorporating these requirements, shall be submitted to and agreed in writing with the Planning Authority prior to the commencement of development.</p> <p><b>Reason:</b> In the interest of public and traffic safety.</p>
3.	<p>Surface water drainage arrangements shall comply with the requirements of the planning authority for such services and works.</p> <p><b>Reason:</b> In the interest of public health.</p>
4.	<p>This permission is subject to the governing permission, Planning Reference 16/717, except where departure from the terms of that permission is authorised by this permission.</p> <p><b>Reason:</b> In the interests of clarity and orderly development.</p>
5.	<p>The as constructed garage to be retained shall be used for purposes solely ancillary to the use of the main dwelling, and shall not be used for residential or commercial purposes without a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of clarity and orderly development.</p>
6.	<p>Details for the maintenance of the 3.0m grassed area and 1.0m gravel area adjoining the front boundary of the site shall be submitted and agreed in writing with the Planning Authority, and shall be carried out in accordance with the written agreement, before completion of the revised site entrance arrangements.</p> <p><b>Reason:</b> In the interest of public and traffic safety, and orderly development.</p>

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Des Johnson

Planning Inspector

. 14<sup>th</sup> November 2023.

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.