



An
Bord
Pleanála

Inspector's Report ABP 318269-23

Development	Erect precast concrete panels/posts and vehicular gate to yard at the rear of butcher's shop.
Location	Main Street, Moyvane, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	23/424
Applicant	Noel Stack
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	3 rd Party v. Grant
Appellants	Robert Stack & Maria Stack
Observers	None
Date of Site Inspection	3 rd February 2024
Inspector	Mary Kennelly

1.0 Site Location and Description

- 1.1.1. The site is located on the Main Street of Moyvane village which is located approx. 2km to the east of the N69, Tarbert to Listowel road. The village is approx. 11km to the northeast of Listowel. The site relates to a Butcher's shop which is located on the western side of Main Street approx. 20m south of the junction with Church Road and opposite the junction with Glin Road. This section of Main Street is mixed in terms of land use with some commercial premises intermingled with residential properties.
- 1.1.2. The site comprises a single-story retail unit which is attached to a 2-storey house immediately to the south. The submissions on file indicate that this house is the applicant's family home. There is a public house immediately to the south of the house and two attached houses to the north of the shop. There is a pedestrian lane immediately to the north of the retail unit which leads to the rear yard behind the butcher's shop. Church Road is predominantly residential in use. There is vehicular access to the rear of the appeal site from Church Road, which also provides access to the rear of other properties.
- 1.1.3. The site area is given as 0.014ha, including the rear yard, part of which is open and not delineated physically. There is a small concrete yard with a metal gate immediately to the rear of the butcher's shop and a further open section which is not fenced or defined on the ground. The applicant's private house also has a vehicular gate which opens onto this yard area and is on the southern side of the yard. There are some residential properties on Church Road which back onto this area, one of which has a rear extension which is located c.1200mm from the boundary of the appeal site (at its closest point). There is a pedestrian right-of-way from Main Street through this area to Church Road, which runs alongside the northern boundary of the appeal site. Beyond the appeal site, there is a 'shared alleyway' to the west.

2.0 Proposed Development

- 2.1.1. The proposed development seeks permission to construct a precast panel fence and a vehicular gate in order to enclose the open section of the yard to the rear of the butcher's shop. The proposed fencing is in the form of a concrete post/panel fence with a height of 1.8 metres. The gate would be at the far western end. The proposal

would retain the pedestrian right-of-way and the shared alleyway beyond the boundaries of the site.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The P.A. decided to grant planning permission for the erection of the fence and gate subject to four conditions including:

Condition 2: fence to be no higher than 1.5 metres.

Condition 3: gate to open inwards, no water to flow onto public road and vehicular access as per Site Layout map submitted to P.A. on 12/07/23.

Condition 4: any external lighting to be properly cowled and directed away from the public roadway and shall not be visible from any point more than 100m away from the light.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report noted the urban location and commercial nature of the site. A need for Further Information was identified with regard to land registry details (including legal title and proof of ownership) and details of surface water measures for the yard. It was also noted that third-party submissions had indicated that the proposal would cause loss of light to adjoining property and that it would compromise vehicular access to an adjoining site. FI was requested on 9th June 2023.

Further information received on the 12th July 2023 was considered inadequate as it did not contain a map to accompany the title deed. Clarification was sought on the 25th July 2023. The applicant's agent responded by stating that it is a 'Registry of Deeds' property and hence there is no accompanying map. However, details of the land ownership were provided. The following was also confirmed:

- The area to be fenced in is owned solely by the applicant and no rights of way will be obstructed.
- The proposed works will not affect deliveries to adjoining landowners.

- The proposed fence is 1.8m in height but this height could be reduced to 1.5m for the section of walling that is immediately adjacent to the ground floor window of the adjoining property.
- No additional surface water will be created from the proposed works as the areas to be enclosed are at present a concrete yard. An ACO drain will be constructed across the proposed gate which will be connected to an existing rainwater gulley within the applicant's site.

A **grant of permission** subject to conditions was recommended.

3.3. **Other Technical Reports**

3.3.1. Roads Report received – no objection subject to conditions.

3.4. **Prescribed Bodies**

3.4.1. None received.

3.5. **Third Party Observations**

3.5.1. The Planner's Report states that one objection had been received by the planning authority (from the appellants). The letter was submitted to the P.A. on the 8th May 2023 and raised similar issues to those set out in the grounds of appeal. The issues raised related to

- Proposal will impede a public right-of-way.
- The rear of their property has been used for deliveries for 25 years associated with the agri-business.
- It will block light to the kitchen window of their property.

4.0 **Planning History**

4.1.1. **95/306 – Site fronting Church Road and backing onto rear lane** - Permission granted to Bobby Stack for first floor extension to rear of agri-store and first floor extension to rear of dwelling house. This property is identified as the appellant's and permission was granted on the 2nd of October 1995. No further details are available on the PA website and details have not been forwarded by the planning authority.

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

5.1.1. **Moyvane** is designated as a **Village** in the County Settlement hierarchy.

5.1.2. Chapter 14 (Volume 1) Connectivity

KCDP 14-10 Promote a shift away from the private car to greater use of active travel (walking and cycling) and public transport.

Section 14.8 Public Rights of Way

- A Public Right of Way is defined as ‘a strip of land (normally a road or path), usually leading from a public place to a public space, along which the public has a legal right to travel’.
- There are very few registered Public Rights of Way in Ireland that are not maintained public roads. Access to the countryside is usually obtained through ‘permissive rights of way’ i.e., with the landowners’ permission. Landowners have facilitated, through their goodwill and tolerance, access to the countryside through their lands. Ireland’s waymarked trails are ‘permissive routes’ and have been developed with the landowners’ agreement.
- Public Rights of Way were listed and mapped as part of the Kerry County Development Plan 2015-2021, and these are appended to this Plan in Volume 3. It is important to note that this is not an exhaustive list. The omission of a Right of Way from this list shall not be taken as an indication that such a right of way does not exist. In addition, the inclusion of a route in this plan does not create a public right of way.
- Where no Public Rights of Way exist to important recreational areas, places of historic interest, architectural heritage, scientific sites and sites of cultural heritage, the Council will encourage the creation of such Rights of Way in co-operation with local landowners.

KCDP 14-70 - Protect all existing Public Rights of Way (including those not listed in this plan) and ensure that development does not impinge on these routes.

5.1.3. **Development management standards – Volume 6 of CDP**

Section 1.5.4.1 – Pedestrian and Vehicular Movement

- All new development will be required to maximise permeability and connectivity for pedestrian and cyclists and to create direct links to adjacent roads and public transport networks in accordance with the provisions of the 'Urban Design Manual – A Best Practice Guide' (2009)
- Movement should be convenient, safe and pleasant.

Section 1.5.4.11 Screen Walls in Urban Areas

- Boundary treatments should be in the form of screen walls which should be 1.8m (in height) and should be of brick/stone/rendered blockwork. Concrete post and timber/concrete panel fencing may also be permitted for inter-site, side boundary treatment.

Section 1.9.2 Surface Water

- Surface water from the development will be required to be contained within the site and piped to the public system. No surface water will be permitted to pond within the forecourt, adjoining the boundary walls or along the entrance/exit lanes. Appropriately designed and maintained hydrocarbon interceptors will also be required.

5.2. **Natural Heritage Designations**

Lower River Shannon SAC (site code 002165) located approx. 2km to the south.

Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (Site code 004161) is located approx. 4km to the east.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A Third-Party Appeal has been received from the Robert and Maria Stack of Church Road. The submission can be summarised as follows:

- **Legal ownership** – the legal ownership of the lands in question are queried and it is stated that a map for public viewing should be available on the file.
- **Impact on right-of-way and pedestrian access** – the right-of-way is used by a significant number of people from Main Street to get to the church and school. The proposed development will reduce the lane-way width to 1160mm which will impede access, will increase the likelihood of anti-social behaviour and make it an unsafe area.
- **Established pattern of development** – the area proposed to be fenced-in has been an open common area for as long as they can remember. This area serves the rear door of their house, the rear business access to their business premises and the shed which contains their turf for heating their home.
- **Inadequate information regarding use** - No information has been given regarding the intended use of the fenced-in area. Is it questioned whether it would be used for deliveries or works associated with the butcher's business. These issues are important as the appellant's living room door and window face onto this area and it could affect their residential amenity. The view of the fencing from their property is also inadequately detailed.
- **Proximity of fence to rear elevation of living room** – The proposal will seriously injure the residential amenities of their property as the fence would be within 1.2m of their living room window and fully glazed door. This rear access is used on a daily basis and will be impeded by the proposed development. It is also likely to impede access in terms of a fire escape and for firefighting purposes. The rear elevation has been in place for 28 years.
- **Overshadowing** – the proposal will reduce light entering their house, as this elevation is south-facing. The condition requiring the wall height to be reduced to 1.5m will not adequately address this issue.
- **Proximity to rear door/window** – the proposed fencing will push pedestrians closer to the rear window and door of the appellant's property, with consequent reduction in privacy and amenity.
- **Inaccurate drawings** – the width of the pedestrian lane and the distance between the proposed fencing panels and the rear wall of the appellants'

house is considered to be inaccurately shown. It is submitted that the relevant distances are 1160mm rather than 1200mm as shown.

6.2. Response from first party

- 6.2.1. A response to the grounds of appeal was received from the first party on 14th of November 2023. The main substance of the response was in the form of a rebuttal of the grounds of appeal. The following points of note were made:

Reasons for proposed development: To allow the applicant unhindered and safe access to the rear of his business and adjoining house, to increase the size of his rear yard for business purposes and to define his property correctly on the ground.

Background – the applicant states that his rear access is constantly completely blocked by ‘nuisance parking’ or the access is restricted by indiscriminate parking. This is affecting his business and prevents him from gaining access to the rear of his premises and the rear of his dwelling house. Photographs illustrating this are enclosed.

Right of way – the laneway is used by all the property owners that have access to same and by the public as a pedestrian access. The existing indiscriminate parking prevents access to the rear of the applicant’s premises which is necessary for the operation of his business. However, the proposed fencing will not hinder access to any other users of the lane in terms of accessing their properties. The pedestrian right-of-way would not only be maintained but would be increased to 1.2m.

Pedestrian safety - The proposed development would increase the pedestrian walkway from 1160mm to 1200mm and will enable pedestrians to walk freely without danger from vehicles. At present, the appellant parks a vehicle directly outside his premises which obstructs pedestrian access along the lane.

No loss of amenity – the proposed fencing, with reduced height to 1.5 metres for the extent of the appellant’s property, will not cause any loss of light to the adjoining neighbours.

6.3. Planning Authority Response

The P.A. has not responded to the grounds of appeal.

7.0 Assessment

I consider that the issues arising can be assessed under the following headings:

- Encroachment, legal ownership and right-of-way
- Residential amenity
- Accuracy of drawings
- Environmental Impact Assessment
- Appropriate Assessment

7.1. Encroachment, Legal Ownership and Right-of-way

- 7.1.1. The site comprises a butcher's shop which is stated to have been established in 1924. The planning authority raised concerns in the initial planning report that there was some question over legal ownership and sought Fi on this matter on the 9th June 2023. The applicant's response (12th July 2023) was considered inadequate as details of the Land Registry were provided without an accompanying map. However, in response to a request for clarification, the applicant's agent stated that as the title was on the 'Registry of Deeds', there was no map accompanying it. Further details were provided of the conveyance in 1943 which included a description. It was stated that the applicant's agent, an engineer, drew the plan depicting the extent of the site in accordance with this description. The P.A. accepted this as sufficient proof of ownership, and the Area Planner pointed out that the onus is on the developer to establish sufficient legal title before any works are commenced.
- 7.1.2. The current Kerry County Development Plan (2022) refers to public rights-of-way in Chapter 14 'Connectivity.' It is noted that very few rights-of-way are registered. There is a list of registered rights-of-way in Appendix 3 of the CDP. It is noted, however, that omission from the list should not be taken as the non-existence of a right-of-way and similarly, the inclusion of a right-of-way on the list is not equivalent to the creation of such a right-of-way. Policy Objective KCDP 14-70 states all rights-of-way will be protected, and that the P.A. will ensure that development does not impinge on such rights-of-way.
- 7.1.3. It is noted that there are no rights-of-way at this location listed in Appendix 3. Notwithstanding this, it seems to be accepted by all parties that there is an

established or commonly used right-of-way for pedestrians through this backland area from Main Street to Church Road. This R.O.W. is stated to be through the narrow alleyway (1160mm) immediately adjacent to the butcher's shop, which then widens out alongside the applicant's yard, travels through the 'shared alleyway' and exits onto Church Road to the southwest.

7.1.4. In addition to the claims of obstruction of the pedestrian public right-of-way, the third-party appellants have raised concerns regarding the proposed fencing in terms of preventing vehicular access to the rear of their property. It is stated that they have habitually used this area for parking and deliveries of goods in relation to their agri-business for at least 25 years. Furthermore, they gain access to their peat store from this area.

7.1.5. The applicant has confirmed the following:

- The area to be fenced is owned exclusively by the applicant.
- No rights-of-way will be obstructed.
- The development will not affect deliveries to adjoining landowners.

7.1.6. In terms of the legal ownership, I would agree with the planning authority's view that adequate information has been provided to enable the application to be determined. In any case, the onus is on the developer to establish that he has sufficient legal interest to carry out the development (Section 34(13) of the P&D Act).

7.1.7. In regard to the protection of any public rights-of-way, it is noted that a 1.2m wide pedestrian walkway is maintained from the point where it widens out alongside the western boundary of the appeal site as far as the 'shared alleyway'. This would ensure that any pedestrian right-of-way present, as described above, would be maintained. Furthermore, it would ensure that pedestrian permeability and connectivity is maintained in accordance with the policies and objectives of the CDP. For the avoidance of doubt, should the Board be minded to grant permission, a condition to this effect could be attached to any such permission.

7.1.8. It is unclear whether there is likely to be any significant degree of encroachment, as no evidence has been provided to challenge the ownership details provided by the applicant. Notwithstanding this, however, it is noted that the appellants' car was parked immediately outside the window of their property, which seemed to extend

across the redline boundary of the appeal site. It is acknowledged that the appellants would no longer be able to park in this precise location, but pedestrian access around the rear of their property would still be maintained. In addition, the vehicular gates to the south of the window would still be accessible. Thus, deliveries could still be made, and goods unloaded, in relation to the agri-business. This would be a civil matter in any case, and as stated previously, the onus is on the developer to ensure that the development, if granted, can be implemented.

7.2. Residential amenity

- 7.2.1. The grounds of appeal raise concerns regarding the proximity of the fence panels to the window to their living room which faces onto the shared backland area, with the potential for loss of light and to the potential for noise and disturbance arising from the use of the yard in connection with a butcher's shop.
- 7.2.2. **Overshadowing** – There is a large, double-glazed window and a glazed door which face directly onto the shared space at the rear of the appellants' property. It is stated that this is a living room, and the window and door are south facing. As a result, concern has been expressed regarding the potential for loss of daylight to this room as a result of the 1.8m high fence panels, which would be located a maximum of 1200mm away. The applicant had responded to these concerns during the planning application process by reducing the panel closest to the appellants' window to a height of 1.5m. It is noted that the P.A. decision has attached a condition restricting the height of all of the fence panels to 1.5m.
- 7.2.3. I noted during my site inspection that the appellants' vehicle, which is an SUV, was parked very close to this window and door. I also noted from the photographs taken by the Area Planner and in photos submitted by the applicant, that the vehicle is also parked in the same position. The likelihood is, therefore, that daylight (and sunlight) reaching this window would be reduced by this current practice of parking a high vehicle directly outside and is unlikely to be worsened by the proposed development. The proposed fence panels would be c.1200mm away and if restricted to 1.5m in height, would be unlikely to result in any significant loss of light. In terms of privacy, the window faces directly onto a public right-of-way. It is difficult in these circumstances to accept that there would be any significant reduction in residential amenity to the appellants' property as a result of the proposed development.

- 7.2.4. **Noise and disturbance** – the proposed development relates to a small yard area where the applicant would access the rear of his shop for deliveries, loading and unloading and parking a vehicle associated with the business. It is also stated that it would enable him to access the rear of his private residence as the area tends to be used for indiscriminate parking which results in blocking access to his business and private entrances. It is unlikely, therefore, that the proposed development would give rise to any significant increase in noise and disturbance associated with the use.
- 7.2.5. In conclusion, it is considered that the proposed fencing in of the open yard to the rear of the butcher's shop would not result in any undue increase in overshadowing and would not result in any serious injury to the residential amenities of adjoining properties.

7.3. **Accuracy of drawings**

- 7.3.1. The appellants claim that the drawings inaccurately depict the boundary of the site and that the area maintained free of development would be just 1160mm. The applicant's agent has responded to this by stating that he has carefully measured the area on the ground and is confident that an area of at least 1200mm in width will be maintained. It is considered that notwithstanding these submissions, the Board could attach a condition, should it be minded to grant permission, requiring a minimum width of 1200mm to be maintained unobstructed for pedestrian access.

7.4. **Environmental Impact Assessment**

- 7.4.1. The proposed development relates to the erection of fence panels and a vehicular gate to enclose an existing yard. This development is not of a class of development set out in Schedule 5, Part 2 of the Planning and Development Regulations 2001 (as amended). As such EIA is not required.
- 7.4.2. Having regard to the nature and scale of the proposed development within the development boundary of Moyvane village on serviced lands, 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 pre-screening stage and preliminary examination and/or a screening determination is not required.

7.5. Appropriate Assessment

- 7.5.1. The site is not located within a designated European site and the nearest European sites are as follows:

Lower River Shannon SAC (site code 002165) located approx. 2km to the south.

Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (Site code 004161) is located approx. 4km to the east.

- 7.5.2. There are no known hydrological links to the protected sites. Given the scale and nature of the development, the distances involved, that the site is located in an established urban area, on brownfield and serviced lands, it is considered that no appropriate assessment issues are likely to arise.

8.0 Recommendation

It is recommended that permission be granted subject to conditions for the reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the policies and objectives as set out in the Kerry County Development Plan 2022-2028, to the scale and nature of the proposed development and to the nature and character of the surrounding environment, it is considered that subject to compliance with the conditions set out below, the proposed development would be an acceptable form of development at this location and would not seriously injure the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 12th day of July

2023 and on the 30th day of August 2023 and by the plans and particulars submitted to An Bord Pleanála on the 14th day of November 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.

Reason: In the interest of clarity.

2. The proposed development shall be amended as follows:

- (a) The height of the proposed concrete post panel fence shall be no greater than 1500mm for the entirety of its length.

The revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of residential amenity.

3. The width of the pedestrian walkway linking Main Street with Church Road shall be maintained at a minimum of 1200mm from the pinchpoint adjoining the butcher's shop alongside the western boundary of the site.

Reason: In the interests of maintaining pedestrian permeability and connectivity.

4. Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

5. 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.

Reason: In the interest of public health.

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.

Mary Kennelly
Senior Planning Inspector

5th February 2024