



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319530-24

<b>Development</b>	Retention of a side gate installed in a boundary wall
<b>Location</b>	20 Kilcoolaght Place, Killarney, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	24/27
<b>Applicant(s)</b>	Aivaras Prudnikovas
<b>Type of Application</b>	Retention Permission
<b>Planning Authority Decision</b>	Refuse to grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Aivaras Prudnikovas
<b>Observer(s)</b>	Karen Sheehan
<b>Date of Site Inspection</b>	15 <sup>th</sup> August 2024
<b>Inspector</b>	Gary Farrelly

## 1.0 Site Location and Description

The subject site has a stated area of 0.01 hectares and is located within the town of Killarney, County Kerry, within the Kilcoolaght Place housing estate. This housing estate comprises of 25 no. dwellings and was granted planning permission by An Bord Pleanála on 5<sup>th</sup> October 2020, under ref. 306401. The site previously comprised of the Dawn Dairies creamery. The property in question is no. 20 and is a mid-terrace dwelling. The rear boundary of the subject site is defined by a 2.1-metre-high boundary wall which adjoins a vehicular roadway known as Bishop Moynihan's Crescent. The roadway is located approximately 0.3 metres below the ground level of the subject site.

## 2.0 Development to be Retained

The development to be retained comprises of a gate installed within the rear boundary wall of 20 Kilcoolaght Place. The width of the gate measures circa 1.25 metres and is installed to a height of circa 2 metres.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse to grant permission by Order dated 22<sup>nd</sup> March 2024 for the following reason;

- 1. It is considered that the proposed retention of a gate along a boundary wall at the rear of a dwelling house, which provides pedestrian access onto a laneway, would endanger pedestrian and traffic safety. The proposed retention would set an undesirable precedent for similar development and would unnecessarily increase pedestrian and vehicular conflict points along the busy laneway. Accordingly, the proposed development would endanger public safety by reason of a traffic hazard and would therefore be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

#### Planning Report

There is 1 no. area planner's report on file which concluded that the use of the gate to access the laneway would result in a traffic hazard. It was also considered that it would set an undesirable precedent as there are 8 properties that could all have a gate to the laneway. A refusal of permission was recommended.

#### Other Technical Reports

Municipal District Engineer – A refusal of permission was recommended as it was considered that the development would endanger public safety by reason of a traffic hazard and would set an undesirable precedent for similar development that would unnecessarily increase pedestrian and vehicular conflict points along a busy laneway.

### **3.3. Prescribed Bodies**

None

### **3.4. Third Party Observations**

There was a total of 1 no. third party observation submitted which objected to the development on the grounds of, inter alia, pedestrian safety.

## **4.0 Planning History**

#### PA ref. 19/64 / ABP ref. 306401 (*subject site forms part of development*)

Permission was granted by An Bord Pleanála on 5<sup>th</sup> October 2020 to demolish industrial buildings and to construct 25 townhouses.

## **5.0 Policy Context**

### **5.1. Kerry County Development Plan 2022-2028**

The subject site is zoned 'Existing Residential' as part of the Killarney Town Development Plan.

### Objective KCDP 14-36

Provide a safe road system throughout the County through Road Safety Schemes and to encourage the promotion of road safety in the County.

## **5.2. Natural Heritage Designations**

The subject site is not located within any designated site. The nearest designated sites are the Killarney National Park Special Protection Area (SPA) (Site Code 004038) and the Killarney National Park, Macgillicuddy's Reeks And Caragh River Catchment Special Area of Conservation (SAC) (Site Code 000365), which are located approximately 600 metres west of the subject site. The SAC is also a proposed Natural Heritage Area (pNHA).

## **5.3. Environmental Impact Assessment (EIA) Screening**

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. I refer the Board to Appendix 1 in this regard.

## **6.0 The Appeal**

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

A first party appeal was lodged to the Board on 17<sup>th</sup> April 2024. The grounds of appeal are summarised as follows:

- There is no introduction of any new precedent as there already is a presence of multiple gates and garage doors on the laneway. The refusal reason citing an undesirable precedent being set is inconsistent.
- Any conflict between pedestrians and vehicles can be mitigated through appropriate measures such as improved visibility, signage or traffic calming techniques. The gate would not endanger public safety but rather contribute to

its enhancement, subject to expert opinion/evidence validating the effectiveness of the appropriate measures.

- The community benefit should be considered by enhancing security and by providing convenient access to the laneway.
- Adjustments can be made to the gate's design, location or operation to minimise potential safety risks.
- The decision lacks sufficient community engagement as stakeholders were not adequately informed or given the opportunity to provide input on the proposal.
- The decision should be reconsidered based on a correct interpretation of legal requirements.
- It is a challenge to handle heavy equipment such as a shed or bicycles due to the house being a mid-terrace.

## **6.2. Planning Authority Response**

No response was received from the PA to the grounds of appeal.

## **6.3. Observations**

An observation was received from Karen Sheehan on 13<sup>th</sup> May 2024 which is summarised as follows:

- It is requested that the Board upholds the decision of the planning authority.
- Whilst there are numerous rear entrances attached to existing properties these are long established. The site of the development was the old creamery site and had only one entrance/exit since the 1960s.
- No evidence of the expert opinion has been provided and it is impossible to see how stepping out onto the road would not endanger safety.
- It is questioned how the rear gate would be of any major benefit to the community as it would be mainly for utilitarian purposes of the household.
- If the gate is granted it will set an undesirable precedent for the development as it would open the possibility of a further 13 gates to be opened up.

## 7.0 Assessment

- 7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the planning authority and having inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the substantive issue in this appeal to be considered is in relation to traffic safety.

### **Traffic Safety**

- 7.2. The Board should note that the 'side gate' in question is located along a rear boundary wall on the northern side of Bishop Moynihan's Crescent. I noted on the date of my site inspection that this is a narrow vehicular laneway with no footpath.
- 7.3. Firstly, the First-Party appellant has suggested that any potential conflict between pedestrians and vehicles can be mitigated through measures validated by expert opinion and evidence. However, I note that no such opinion or evidence accompanies this application or appeal. Having inspected the site, I observed that the gate opens up directly off a vehicular roadway and, therefore, would result in a pedestrian stepping directly out onto the roadway. I consider that this would represent a clear conflict between the pedestrian users of the gate and the vehicular traffic and cyclists using the roadway and, therefore, would result in a traffic hazard. I do not consider that there is any appropriate measures or design changes that would mitigate such a serious conflict. Therefore, it is my recommendation to the Board that permission should be refused on this basis.

### Precedent

- 7.4. I note the appellant's comments regarding precedent already been set due to a number of gates and garages accessed of the subject roadway. The Board should note that having regard to my conclusions outlined above under paragraph 7.3 in which I note serious traffic safety issues, it is my view that any precedent perceived by the appellant should not be a determinative factor regarding this application.
- 7.5. Notwithstanding this, I observed that the openings in question are located on the opposite side of the roadway of the development to be retained. I also note that, having reviewed historic aerial mapping and Google street view, these access points appear to have been in-situ for a considerable period of time and, therefore, are well

established. Furthermore, the pattern of development along the northern side of the roadway consists of a circa 50 metre long boundary wall that serves a total of 8 no. dwellings. I note that there have been no pedestrian or vehicular openings granted permission by the PA along this section of the roadway according to its planning register. Additionally, prior to this development, the site comprised of a creamery and I note that there was also no pedestrian or vehicular openings along this side of the roadway (with the exception of an ESB substation). Therefore, it is my view that the development to be retained would be inconsistent with the pattern of development in the locality and if permission was granted it would set an undesirable precedent for further similar development to the north of the roadway.

### **Other Issues**

- 7.6. The applicant suggests that the PA's decision did not provide for community engagement and was based on an incorrect interpretation of legal requirements. The Board should note that I am satisfied that the PA assessed and determined the application in accordance with national legislation. The applicant has had the opportunity to put forward its case within both the application submitted to the PA and within this appeal all in accordance with national legislation.

## **8.0 Appropriate Assessment (AA) Screening**

- 8.1. I have considered the project in light of the requirements of Section 177U of the Planning and Development Act 2000, as amended. The subject site is located approximately 600 metres from the Killarney National Park Special Protection Area (SPA) (Site Code 004038) and the Killarney National Park, Macgillycuddy's Reeks And Caragh River Catchment Special Area of Conservation (SAC) (Site Code 000365).
- 8.2. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any appreciable effect on a European Site. The reason for this conclusion is as follows:
- To the minor nature and scale of the development to be retained.
  - To the distance from the nearest European sites and lack of hydrological connections.
  - Taking into account the screening determination by the PA.

- 8.3. I consider that the development to be retained would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 9.0 Recommendation

I recommend to the Board that permission is **Refused** for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

1. It is considered that the development to be retained would lead to a conflict between road users in terms of pedestrian and vehicular traffic and cyclists, due to the gate being located directly off a vehicular roadway. The development to be retained would endanger public safety by reason of a traffic hazard, would set an undesirable precedent for future similar development along the north side of the roadway and would, therefore, be contrary to the proper planning and sustainable development of the area.

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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Gary Farrelly  
Planning Inspector

10<sup>th</sup> December 2024



## Appendix 1: EIA Pre-Screening

<b>An Bord Pleanála Case Reference</b>		ABP-319530-24	
<b>Proposed Development Summary</b>		Retention of a gate	
<b>Development Address</b>		20 Kilcoolaght Place, Killarney, County Kerry	
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)			<b>Yes</b> <b>X</b> Proceed to Q2.
			<b>No</b> No further action required
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>			Proceed to Q3.
<b>No</b>	<b>X</b>		No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<del>Yes</del>			EIA Mandatory EIAR required
<del>No</del>			Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<del>Yes</del>	Tick/or leave blank	State the relevant threshold here for the Class of development and indicate the size of the development relative to the threshold.	Preliminary examination required (Form 2)
<b>5. Has Schedule 7A information been submitted?</b>			
<b>No</b>		Screening determination remains as above (Q1 to Q4)	
<b>Yes</b>		Screening Determination required	