



An
Bord
Pleanála

Inspector's Report

ABP-319824-24

Development	Retention of agricultural entrance off the L-4028-3
Location	Kilmaloda, Ballinascarthy, Co. Cork
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	23/6635
Applicant(s)	Tim Joe Cullinane
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Gerard Murphy
Observer(s)	None
Date of Site Inspection	21 January 2025
Inspector	Cáit Ryan

1.0 Site Location and Description

- 1.1. The site is located approx. 40km south west of Cork city, approx. 15km south west of Bandon, and approx. 3km south east of Ballinascarthy.
- 1.2. The site is on the northern side of local road L-4028-3. Henry Ford GAA Park Ballinascarthy is located approx. 700m to west on the southern side of this road. The entrance to Ardnava House is located approx. 100m to east, directly east of which is All Saints Kilmalooda Church of Ireland. The church is in turn bounded to the east by a Montessori premises.
- 1.3. The site is roughly triangular-shaped and comprises approx. 0.06ha, as measured from the planning authority's online mapping tool. The site is bounded
 - To south by its roadside frontage
 - To north east by a high, overgrown stone boundary wall, which contains a gap
 - To west by a large field, which slopes slightly from the adjoining public road.

A dwelling house constructed in recent years is located on the opposite (southern) side of the road, approx. 100m to east.

- 1.4. There is an existing vehicular entrance at the eastern end of the site's roadside frontage, although there no structures such as roadside entrance walls or gates. An unsurfaced track extends from the roadside entrance initially in a north westward direction along the stone boundary wall. There are a large amount of mature trees and other planting/overgrowth on the site.
- 1.5. Road markings at this location comprise a solid white line, and the road slopes gradually from east to west.

2.0 Proposed Development

- 2.1. Permission is sought for retention of an agricultural entrance off the L-4028-3.

The vehicular entrance is shown to be 4m wide.

A cover letter was submitted with the application.

Drawings submitted as Further Information (FI) show a revised sight distance triangle.

3.0 Planning Authority Decision

3.1. Decision

Following a request for Further Information, the planning authority made a decision to grant permission subject to 11no. conditions. Conditions of note are as follows:

Condition 1: Development to be carried out in accordance with plans and particulars lodged on 28 December 2023 and 8 April 2024.

Condition 3: The entrance shall be used for agricultural purposes only.

Condition 5: Vegetation or any structure shall not interfere with the sight distance triangle, and be maintained at a height not more than 1m.

Condition 6: Lower ditches and fell trees to a level not more than 1m

Condition 10: Any utility pole causing an obstruction shall be repositioned outside sight distance triangle

Condition 11: Development shall not prevent existing road side storm water drainage from flowing past the entrance using pipe not less than 300mm in diameter.

3.2. Planning Authority Reports

3.2.1. Planning Reports (23 February 2024 and 1 May 2024):

First Executive Planner's report: Notes that while there are further field accesses which could access stables/farm buildings, this would result in traversing large areas leading to soil compaction and damage to field. Subject to agricultural entrance being safe from traffic perspective, there is no objection to retention of entrance. Recommends FI.

Second Executive Planner's report: Notes FI response. States that a land ownership dispute is a civil matter. Recommends grant subject to 11no. conditions.

3.2.2. Other Technical Reports

Area Engineer (22 February 2024 and 30 April 2024)

- First report recommends FI relating to sight distance triangle, entrance design and storm water.

- Second report states no objection subject to 8no. conditions.

Conservation Officer (21 February 2024): No objection. Notes that there no proposed interventions in the stone wall based on drawings, and interventions will not impact on the grounds and gardens (of Ardnava Rector/Glebe).

3.3. Prescribed Bodies

None

3.4. Observations to Planning Authority

1no. observation was received by the planning authority. The main issues raised are similar to the grounds of appeal, and includes that the planning application is invalid and cites an enforcement notice.

4.0 Planning History

Subject site:

P.A. Ref. 08/2182: Permission refused for dwelling house, septic tank and percolation area. Refusal in current planner's report stated to be non-compliance with rural housing policy and proposal's excessive scale, mass and bulk would be unduly prominent in rural landscape and serious injure and detract from visual amenities and character of rural countryside.

The site location map and proposed site plan viewed on the planning authority's online planning search indicates that the 0.93ha (P.A. Ref. 08/2182) site included the current appeal site. Access to the proposed dwelling was shown at the current appeal site.

P.A. Ref: EF/19/76: Enforcement file relating to agricultural entrance

Sites in Vicinity:

P.A Ref. 18/48 and ABP-302282: Permission was refused for construction of a house approx. 380m north west of the site, on a laneway accessed from L-4028-3. Permission was refused for 2no. reasons relating to (1) local housing need and (2) traffic hazard.

5.0 Policy Context

5.1. Development Plan

In terms of rural housing policy, the site is located within Tourism and Rural Diversification Area.

The site is not within a High Value Landscape nor located on a Scenic Route. Landscape Character Type is Rolling Patchwork Farmland. The site is located within Flood Zone C.

Objective TM 12-8: Traffic/Mobility Management and Road Safety (d) Ensure that all new vehicular accesses are designed to appropriate standards of visibility to ensure the safety of other road users.

5.2. Natural Heritage Designations

The site is not located within or adjacent to any European sites. The nearest European sites are:

Courtmacsherry Estuary SAC (Site Code 001230) is approx. 3.3km to south east

Courtmacsherry Bay SPA (Site Code 004219) is approx. 3.3km to south east

Courtmacsherry Estuary pNHA (Site Code 001230) is approx. 3.3km to south east

5.3. 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. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

The third party appeal is from Gerard Murphy, Ardnava House. The entrance to

Ardnava House is approx. 100m east of the subject site. The main issues raised in the grounds of appeal may be summarised as follows:

- Claim made by the developer in letter of 5 April 2024 is false. All of the trees do not fall within the property of the applicant.
- Report by surveyor commissioned by third party states that some of the trees are not within applicant's property.
- As all of the trees are not on applicant's property, applicant cannot remove all of them and cannot fulfil Condition 6. The trees completely obstruct the view exiting the field and there is a significant risk of an accident.
- This new entrance is unnecessary as there are several existing entrances into this field. Destruction of 60-70 year olds trees is unnecessary.
- This development is within a very short distance of National Monuments CO123/24002 (Church) and CO123/24001 (Graveyard).
- This development will degrade the architectural heritage of the area.

Documentation submitted with the grounds of appeal include a surveyor's letter and attached mapping.

6.2. Applicant Response

The applicant has responded to the grounds of appeal as follows:

- The appellant's reference to the entrance as new is incorrect. It has existed for many years and permission has been granted for retention.
- Applicant was not involved in the survey. The survey is accepted as accurate but ownership boundaries indicated are not and are disputed.
- Trees selected for removal are either in applicant's property or in the verge between road edge and property boundaries. Appellant's survey shows this.
- Ownership of road verge relates only to subsoil. Surface is effectively under the local authority's control and the rights of the public to pass. Local authority can instruct removal of trees from this area in the interests of road safety.
- Applicant will liaise with local authority and remove trees within sightline as

required.

- Applicant has undertaken to plant replacement trees within landholding to outside the sightline requirement to ensure no net loss of biodiversity.

6.3. **Planning Authority Response**

The planning authority has confirmed that it has no further comment.

6.4. **Observations**

None

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, the reports of the local authority, and having inspected the site, and having regard to the relevant local and national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Vehicular Entrance
- Archaeological and Architectural Heritage

7.2. **Vehicular Entrance**

Sight distances

- 7.2.1. The development proposed to be retained comprises an agricultural entrance. The planning application originally lodged showed sight distances measured 3m from road edge. The planning authority requested FI for a revised sight distance triangle, showing 90m sight distances in both directions measured 3.75m back from edge of public road, in order to allow for agricultural vehicles usage.
- 7.2.2. The FI drawing (Site Plan and Sightlines to East and West; Drawing No P0001 – Revision P02) shows that all trees within site bounds within the sight triangle to north east of entrance will be felled to not more than 1m above road level.
- 7.2.3. On site inspection I noted that 90m sight distances would be achievable subject to

removal or reducing height of existing trees in an easterly direction, and reducing height of existing ditch/hedgerow in a westerly direction. The FI response states a request will be made to Eircom to set back the pole outside the sightline triangle.

- 7.2.4. There is a cluster of trees at the approximate location of the eastern red line boundary, and a utility pole a very short distance to east of these trees. The grounds of appeal state, with reference to the submitted surveyor's report, that some of the trees are not within the applicant's property and that the applicant cannot fulfil Condition 6.
- 7.2.5. Having regard to all information on file, and having inspected the site, I consider that subject to the attachment of a condition specifying requirements to be complied with to achieve adequate sight distances, that the development proposed to be retained would be acceptable in terms of traffic safety.
- 7.2.6. With regard to issues relating to land ownership raised by the third party, it is noted that the planning authority is satisfied as to the validity of the planning application.
- 7.2.7. The cover letter lodged with the application states the land in question was purchased in 2015 and formed part of the Ardnava Estate. I note the applicant's response to the grounds of appeal includes that the survey is accepted as accurate but that the indicated ownership boundaries are not correct and are disputed.
- 7.2.8. In terms of legal interest, I am satisfied that the applicant has provided sufficient evidence of their legal interest to make an application. Any further legal dispute is considered a civil matter and outside the scope of the planning appeal. In any case, this is a matter to be resolved between the parties, having regard to the provisions of Section 34(13) of the Planning and Development Act 2000, as amended.

Principle of development proposed to be retained

- 7.2.9. The grounds of appeal include that this entrance is unnecessary as there are several existing entrances into this field, and the destruction of 60-70 year old trees is unnecessary.
- 7.2.10. On site inspection I noted that there is a separate vehicular entrance approx. 100m west of the subject site, opposite a T-junction. This entrance accesses a field which is shown to be within the applicant's landholding. Due to a large amount of gravel/hardcore material deposited at this entrance, it does not appear to be in use

at present.

- 7.2.11. The 1:2500 OS map lodged with the application shows two areas partially outlined in blue either side of the L-4028-3. Lands outlined in blue show the landholding extends to L-40281-0 to the west. The application form indicates that the site area is 10ha and 45ha are under the applicant's ownership or control. The purpose of the entrance is stated to be for access to work adjoining land.
- 7.2.12. The FI response includes a 1:2500 Property Registration Authority (PRA) map and its folio reference number, north of which is Owenkeagh River. This PRA map does not include all lands extending to L-40281-0 to the west. While the extent of the landholding is not quantified on this mapping, I estimate based on OS mapping lodged with the application and the Development Plan mapping tool that the area delineated comprises at least 10ha.
- 7.2.13. While noting the existing agricultural access directly from L-4028-3 to west of the subject site, albeit one which does not at present appear to be in use, to the applicant's lands, I consider that the additional vehicular entrance proposed to be retained, to access agricultural lands, at this location would be acceptable.

Design

- 7.2.14. In terms of detail, no wall or other boundaries are in place or are proposed. On site inspection it was noted that there is no hardsurfacing in place. The FI response proposes to reconstruct the entrance, to excavate 200mm deep and to reinstate in layers of stone aggregate compacted over 6m by 4m wide.
- 7.2.15. I consider this aspect of the development would be acceptable. In the event that the Board was minded to grant permission, I consider that this matter would be adequately addressed in a standard condition requiring the development to comply with plans and particulars lodged with the application, as amended by that submitted as Further Information on 08 April 2024.

Other

- 7.2.16. In noting that subject development relates to a vehicular entrance proposed to be retained, and also involves the carrying out of works relating to felling of trees to not more than 1m height to east and reducing hedgerow height to west of entrance (and also the re-positioning of utility poles), given the nature of these works, it is

recommended, in the event the Board is minded to grant permission, that a condition is attached specifying a timeframe within which such works are required to be carried out.

7.3. Archaeological and Architectural Heritage

- 7.3.1. The grounds of appeal include that this development is within a very short distance of National Monuments CO123/24002 (Church) and CO123/24001 (Graveyard), and that it will degrade the architectural heritage of the area.
- 7.3.2. The Sites and Monuments (SMR) information viewed on www.archaeology.ie (accessed on 27 January 2025) states, for both entries (CO123-024002: Church and CO123-024001: Graveyard), that currently the information for this record has not been uploaded. In terms of detail, I note that while these entries are on the Record of Monuments and Places (RMP), there does not appear to be any information on file confirming that they are National Monuments.
- 7.3.3. Notwithstanding the current absence of information relating to these two records on www.archaeology.ie, having inspected the site and having regard to nature of the development proposed to be retained and its approx. 100m distance from the church grounds, I consider that the retention of the agricultural entrance would not adversely impact on the character or setting of these recorded monuments, nor on the visual amenities of the area, and would be unlikely to impact on any archaeology.
- 7.3.4. Furthermore, in terms of detail, I note that P.A. Ref. 08/2182, as viewed on the planning authority's online planning search, contains an internal report from Council's archaeologist, which states *inter alia* no archaeological investigation required. The dwelling house proposed in that case (and refused permission by the planning authority) was located closer to the church and graveyard than the subject site.
- 7.3.5. With regard to concerns raised relating to the degradation of the architectural heritage of the area, I note that the entrance to the Ardnava House is approx. 100m east of the site. This dwelling house is approached via an avenue, and due to its setting within the landscape, the roof only was visible as viewed from the public road. The National Inventory of Architectural Heritage (NIAH) (www.buildingsofireland.ie) entry for Ardnava (Reg. No. 20912307) assigns this

property a Regional rating, its original use being rectory/glebe/vicarage/curate's house, and built in 1812.

- 7.3.6. All Saints Kilmalooda Church of Ireland Church (NIAH Reg. No. 20912308) is assigned a Regional rating, and is stated to have been built in 1857. This church building is set back from its roadside boundary wall, and its setting principally comprises the graveyard (CO123-024001: Graveyard referenced above).
- 7.3.7. Having regard to the nature of the development proposed to be retained and the distance of same from these properties recorded on the NIAH, I consider that the development would not adversely impact on the character and setting of these buildings nor on the architectural heritage of the area, and would not adversely impact on the visual amenities of the area.
- 7.3.8. Accordingly, I consider that the development proposed to be retained would be acceptable in terms of its impacts on the archaeological and architectural character of the area.

8.0 AA Screening

- 8.1. I have considered the development proposed to be retained in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The subject site is located at Kilmaloda, Ballinascorthy, Co. Cork, approx. 3.3km north west of the nearest European sites at Courtmacsherry Estuary SAC (Site Code 001230) and Courtmacsherry Bay SPA (Site Code 004219).

The development proposed to be retained comprises an agricultural entrance.

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:

- Nature of the works which relate to retention of an agricultural entrance
- The distance from the nearest European sites and the lack of hydrological or other connections,

I consider that the development proposed 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 permission be granted for the development proposed to be retained.

10.0 Reasons and Considerations

Having regard to the pattern of development in the vicinity, the nature of the development proposed to be retained and the associated agricultural land use, it is considered that subject to compliance with the conditions set out below, the development for which retention is sought would not create a traffic hazard, and would not adversely impact on archaeology or on the architectural character of the area, and would not, therefore, be contrary to the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be retained and completed in accordance with the plans and particulars lodged with the application, as amended by Further Information received by the planning authority on the 8 day of April 2024, except as may otherwise be required in order to comply with the following conditions.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>(a) Existing trees and hedgerow shall be felled or lowered as shown on the plans and particulars lodged with the application, as amended by Further Information received by the planning authority on 8 day of April 2024.</p> <p>(b) Any utility poles shall be positioned outside the sight distance triangle.</p> <p>Reason: In the interests of traffic safety.</p>

3.	<p>The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Within 3 months of the date of this Order, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.</p> <p>Reason: To prevent flooding and in the interests of sustainable drainage.</p>
4.	<p>The entrance hereby permitted is for agricultural use only.</p> <p>Reason: In the interest of clarity.</p>
5.	<p>The development, as approved, shall be completed to the satisfaction of the planning authority within twelve months from the date of this Order.</p> <p>Reason: In the interest of public safety.</p>

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.

Cáit Ryan
Senior Planning Inspector

28 January 2025

Form 1

EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-319824-24		
Proposed Development Summary	Retention of agricultural entrance		
Development Address	Kilmaloda Ballinascarthy, Co. Cork		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	X	
	No	Tick if relevant. No further action required	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes			Proceed to Q3.
No	X		No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes			Preliminary examination required (Form 2)

5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ Date: _____