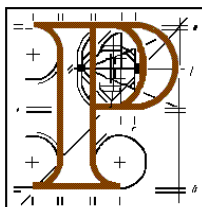


An Bord Pleanála



Inspector's Report

Retention of Removal of Boundary Ditch and Hedgerow, Construction of Post and rail Boundary Fencing, vehicular Entrance, Widening and Resurfacing of a roadway and signage at St. Mary's Church, Ballygunner, Knockboy, Waterford.

Planning Application

Planning Authority:	Waterford City and County Council
Planning Authority Reg.	15/665
Applicant:	Fr. Liam Power
Type of Application:	Permission
Planning Authority Decision:	Grant Permission with Conditions

Planning Appeal

Appellant(s):	Rita Canney
Type of Appeal:	3 rd Party Vs Decision
Observers:	None
Date of Site Inspection:	27th of July 2016

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site is St. Mary's cemetery extension and associated access and roadway to a cemetery / graveyard within the southern suburb of Waterford City of Knockboy. St. Mary's is located along the main Knockboy Road and there is a large carpark alongside the church. The graveyards are positioned to the rear and side of the church and the subject road serves the graveyards with a small turning area at the top of the cul-de-sac.
- 1.2 The site is elevated and slopes from west to east to the rear of the church. St. Mary's Church is included on the NIAH list, but it is not a Protected Structure.

2.0 DEVELOPMENT

- 2.1 The public notices state the permission is for **RETENTION** of:
- Vehicular access and widening and resurfacing of roadway from public road
 - Removal of boundary ditch along roadway
 - Erection of new post and rail fence
 - Erection of road signs
 - Extension of water services pipeline
 - Provision of surface water drainage.

3.0 SUBMISSIONS RECIEVED

A very detailed objection to the development was submitted by the third party appellant Ms Rita Canney, with similar content as the current appeal.

4.0 TECHNICAL REPORTS

Heritage Officer :- The development involves works that are non-compliant with natural heritage policies and objectives of Waterford City and County development Plan.

Policy 10.4.7 To provide for the protection and conservation of wildlife habitats

Objective 10.5.5 To ensure when undertaking development or when permitting development that the loss of or damage to existing trees is minimised.

There will be compensatory planting (360m) along the northern boundary of the graveyard which will enhance the current ecological value of area. There needs to be clear proposal regarding the hedge planting and aftercare.

Planning Report:

The works carried out to enhance the usability of the road in order to access the cemetery has resulted in a material change to the intensity of use of the road, and therefore the junction requires improvement in terms of visibility at the public road. The issue relating to 15/711 is relevant has the boundary treatment requires further consideration. Surface water flows onto Knockboy road, and the new hedge must match the original hedge in terms of species.

***FURTHER INFORMATION** was requested on 19th of January 2016 and a response was received on 12/02/2016. It is stated the council will attend to the issue of the sightlines. In terms of the current application, 15/711 on the adjoining site, the developer will provide a wall/ fence on the developer's side of the development. The landowner of the adjoining lands. Mr. Michael Phealan, gave some land to provide a turning circle at the top of the lane. The planting scheme is included and a proposal to provide speed ramps and surface water gulleys.*

Water Service Department: No objection subject to conditions

Planning Report (Part2) : There is an agreement with the roads Department regarding the junction realignment. There is a housing development proposed under 15/711 and the existing hedgerow along the remainder of the mass path up at the turning area shall be retained. Recommendation to grant permission.

5.0 PLANNING AUTHORITY'S DECISION

Waterford City and County Council granted the development subject to 3No. conditions:

1. Standard condition relating to development been in accordance with submitted drawings
2. No surface water to discharge onto public road.
3. Within two months of grant of permission, there shall be a revised junction design, a planting and aftercare plan for the hedge, and the design and layout of the turning area to be within the landownership of the applicant.

6.0 APPEAL GROUNDS

6.1 The following is a summary of the grounds of appeal:

6.2 **Background**

The works have been carried out along a notable length of a mass path which ran between the old and the new cemetery in a semi-rural part Of Waterford City. The

path has been transformed from a pedestrian pathway to a single lane roadway, facilitating opposing flows of traffic which then exit onto Knockboy Road. The change of use involved the following works:

- Excavation involved a notable trench along the line of the new fence.
- Resurfacing of grass with tarmac
- Widening of the path from 3metres to 4.5metres
- The removal of a significant length of hedgerow, over 250metres
- Replacement of hedgerow with a low fence along most of its length
- The provision of a notable turning area

6.3 **Planning History**

Ref: PL93.RL3334 deemed the works to be development and not exempted development.

6.3 **Grounds of Appeal**

The need for the road is questioned. The referral cited the road was installed for health and safety reasons and alleged difficulties with obtaining insurance. The need of the path is questioned as it offers a more hazardous solution to accessing the cemetery. It is necessary for cars existing the roadway to cross the footpath and travel some distance to the cycle lane in order to get a clear view south along Knockboy Road. The views can be obstructed by buses. Access to the older cemetery could have been improved for older people with a disability without resorting to such extensive works. A small carpark could have been provided near the new turning area. This was suggested as remedial works in the Further Information request.

Significant further information was not submitted and it is unacceptable to condition these items as 'matter to be agreed'. There should be no redesign of the junction mass path/ Knockboy road. The proposed redesign is likely to impact on carparking associated with the cemetery. How can the redesign provide a safe access from the subject roadway. Any encroachment into the carparking area will have repercussions for carparking in the turning area at the upper end of the subject new road.

The land registry mapping would indicate the junction appears to be co-owned by the council and the church, further muddling the waters.

A Road safety Audit which is associated with P15/711 for a sloping site north of the cemetery proposes the provision of a footpath between the Knockboy Road and the current cemetery carpark, which would create an obstruction for mobility users if it were extended.

The planning authority seems to consider drainage can be carried out with speed amps and drainage gullies. There are no details of the proposed attenuation, and

are only addressed in a broad sense under condition No. 2. The gullies should have sufficient capacity to divert water away from adjacent graves.

There is no lighting along the road adding to the hazardousness.

There was no permission sought for the carpark area. The site preparation and aftercare as requested by the further information was not submitted within the required timeline. It has not been established if the new hedgerow will take, where the removal of existing roots will be a problem.

6.4 The permitted development is contrary to the Waterford City Development Plan 2013-2019.

Traffic Hazard/ Accessibility for Road Users

- Sightlines to the south are poor
- The presence of three schools means a greater than average number of children using the footpaths and cycleways.
- Potential for distracting/ congesting conditions around the Sightlines obstructed by bus parking if mass/ funeral times coincide with school collection times
- The waste collection trucks use the new road
- Increase in development in the area will give rise to increase use of the roadway
- The road will attract further usage if the upper burial grounds comes into use
- There are no footpaths for people entering the road at the upper reaches of the burial ground
- There are no road markings
- There is no signage to indicate who has the right of way

Sustainable Neighbourhood Development

The development plan has policies relating to neighbourhood strategies and this development is a 'stand alone' project and is poorly integrated with the sustainable development of the local neighbourhood – The grant of permission would constitute further erosion of the environment.

Open Space and Amenity

The retention of the development would undermine the longer term survival of the remaining short section of 'Greenway' issues when the department wants to encourage such amenities and walking routes.

Natural Heritage

The former objective to preserve and protect the greenway linking St. Mary's Church to Blenheim Cross which was not included in the current development plan

for the area, but was included in the preceding one. It should still remain an objective to protect the natural heritage of an area.

The proposal should have been refused due to the lack of information on the file. There should be partial restoration of the mass path.

7.0 RESPONSES

7.1 *Planning Authority*

Most of the issues raised by the third party appellant were raised with the planning authority and considered by it.

Most of the issues raised by the appellant relate to condition No. 3 which the planning authority believe is achievable.

8.0 PLANNING HISTORY

8.1 RL93.RL3334

The development had been referred to the Board in 2015 and it would found the development was not exempted development and required planning permission.

9.0 PLANNING POLICY

Waterford City Development Plan 2013-2019 – the subject site is zoned for **Community Facilities**.

Section 12.8 and 12.16 relates to the need to provide community facilities.

10.0 ASSESSMENT

10.1 The works the subject of this appeal, were the subject of a referral case RL93.RL334 in case to the Board in 2015. The Referrer was the third party appellant, Ms Rita Canney, in respect of the removal of hedgerows along a section of a Mass Path and the provision of a new widened and surfaced roadway. The Board found that all of the works carried out at the site were development and not exempted development. Therefore Fr. Liam Power applied for planning permission to retain the said works, which is the subject of this appeal.

10.2 The works involved upgrading the access and road to the cemetery to the rear of St. Mary's Church located in Knockboy, a residential suburb of Waterford City. The Mass Path is located alongside the church and it goes from west to east up onto an elevated turning circle which provides access to the old cemetery

located to the rear of St. Mary's church , and the road way also provides access to the new cemetery extension located to the north of the access road. Essentially a very old mixed species hedge with a high ecological value was removed by the applicant over a length of over 250metres, and this was replaced by a post and rail fence. The Mass Path was consequently widened and resurfaced with tarmacadam to provide ease of access to the cemeteries.

10.3 The site is zoned under the current development plan for **Community Facilities**. Having regard to the incline and steepness of the road, and size of funeral cars and funeral corteges/ practices, I consider the upgrading of the access road to the cemetery and the provision of an adequate turning circle at the end of the road to be acceptable in principle and in line with the zoning objective for the area, and associated with the existing landuse. It is my opinion, the need for the road is self-explanatory, the cemetery has a significant extension to the north of the existing cemetery, and the access needed to be upgraded to cater for the carrying capacity and the funeral corteges associated with both. During my inspection, there were no vehicles using the road except for the grave diggers small truck with carried a mini-digger and one visitor to the graves. Other visitors to the graves parked in the carparking alongside the church at the main road during my inspection. However it is clear the subject road is not busy. I noted the visitor at the graveyard during my inspection was an elderly lady, and the new access road provided ease of access for her in her car over a considerable length and incline, without having to walk to the grave. I consider the need for the upgrading of the road is evident from the scale and incline of the cemetery. I do not agree with the third party's claim that a carpark is also required at the turning area on the hill at the end of the road. The traffic to the graveyard is light except during funerals and perhaps at the end of masses. Another carpark at the turning area would be excessive, and there is adequate space to accommodate the daily visitors to the cemetery at various times throughout the day.

10.4 I note Condition No. 3 of the grant of permission which states:

Within two months of the date of grant of planning permission, the developer shall submit the following for written agreement of the planning authority:

- (a) *Revised site layout of the junction of the access road with Knockboy Road showing relocation of access road carriageway to lie adjacent to the adjacent kerb of the cemetery carpark and the provision of a build out to keep vehicles away from boundary wall with St. Mary's Church. Agreed works shall be implemented in full six months of grant of permission.*
- (b) *Detailed site preparation and aftercare plan which shall ensure the successful establishment and maximum diversity gain from the proposed compensatory hedgerow. Details shall include a timeline for removing trees, establishing the replacement hedgerow and also suitability of boundary line in terms of the removal of the conifer trees and rooting areas and measures required to successfully prepare site for hedgerow planting. The replacement hedgerow and associated works shall take place solely within the boundary of the application site. The report*

submitted shall be prepared and signed off by a suitably qualified ecologist or hedgerow contractor.

- (c) *Revised site layout indicating the relocation of the vehicle turning area so as to be fully located within lands under the applicant's sole control. All existing hedgerows forming part of the boundary to the mass path at the eastern terminus of the access road shall be fully retained without further damage.*

In terms of item one, there are adequate sightlines to the north at the junction of the mass road with Knockboy Road. However sightlines are restricted to the south by the church wall whereby the building line is flush with the footpath severely restricting sightlines to the south. The junction will have to be moved north into a portion of the carpark which is in the ownership of the planning authority. The sightline issue can be positively addressed by way of condition and with co-operation between the local authority and the applicant which clearly exists from reading the planning reports on file and the planning authority's response to the appeal. I consider the wording of the condition is acceptable, and addresses the inadequate sightline issue within a specified timeframe. There are footpaths and a dedicated cycle lane fronting junction, and a large open carparking area beside the church. Road users and pedestrians from the area are clear about the religious and community land use of the property.

- 10.5 I consider the issue of the replacement hedge was fully considered by the planning authority, especially by the Heritage Officer's report of the 15th of January 2016. I commend the fact the planning authority are insisting considerable care is given to the provision and aftercare of a mixed species hedge along the post and rail fence to replace the hedge that was removed. I accept the loss of the original hedgerow was very unfortunate and it was crudely replaced by a post and rail fence. There should be no further loss of hedgerow associated with the site.
- 10.6 Although a portion of the turning area at the top of the road is owned by another third party who gave his consent to same as part of the further information submission, I believe the matter is a civil issue. There is no dispute between the parties at the present time, and the third party appellant is exaggerating the significance of this issue regarding the absence of land registry maps, because there is no dispute between the relevant parties. Mr. Phealan (the relevant land owner) agreed to give the parish the small portion of land to provide an adequate turning area at the top of the cemetery.
- 10.6 The issue of road gullies and surface water collection as addressed by the further information submission, and is reinforced by Condition No. 2 of the permission. The absence of lighting along the road is a matter for the applicant to consider as this is not a public road.

- 10.7 I note the appellant is requesting lighting, footpaths road markings etc for the upgraded road, however, this is a mass path providing access to the cemetery it is not a public road, and it should not be upgraded further so as to encourage access onto it from future adjoining land uses.
- 10.8 The 'greenway' link objective does not form part of the current development plan. There is an unsurfaced lane continuing east at the turning circle. This could provide a greenway link to the wider area, but this would require third party agreements. The issue of a planning application on lands to north was addressed by the planning authority and does not form part of this appeal.
- 10.9 Although the third party concerns are in great detail in the submission, they are fundamentally unsubstantiated. The development involves the upgrading of an existing mass path by the parish. It is unfortunate the original hedgerow was removed, however there is a condition to reinstate the hedgerow within a specified timeframe. Essentially, the development provides for the enhancement of an access to the community facility i.e. the cemetery over inclining ground, which is in line with the development plan objectives. I accept the southern sightline at the junction of the main road requires improvement, and again this issue has been addressed by the planning authority by condition within a specified timeframe.

11.11 **Appropriate Assessment**

Appropriate assessment (AA) considers whether the plan or project alone or in combination with other projects or plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures necessary to avoid, reduce or offset negative effects. The requirements for AA stems directly from Articles 6 (3) and 6 (4) of the Habitats Directive 92/43/EEC. Having regard to the nature and scale of the proposed development sought together with its separation from any designated European site I would not consider that an NIS or Appropriate Assessment is necessary in this case.

12.0 **RECOMMENDATION**

I recommend the planning authority's decision to grant permission for the development be upheld.

REASONS AND CONSIDERATIONS

Having regard to the location and use of the site within St. Mary's Church , the policies and objectives of the planning authority as set out in the current Development Plan for the area, including the community facilities objective for the area, the nature of the development and the existing character and setting of the site, it is considered that the proposed development, subject to compliance with the conditions set out below, would not seriously injure the

amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out 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 19th of January 2016 the as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity

2. All surface water shall be collected and disposed of in the surface water drainage system. No surface water shall discharge onto the public road.

Reason: In the interest of traffic safety.

3. Within three months of this decision a revised site layout of the junction of the access road with Knockboy Road shall be submitted to an agreed in writing with the planning authority showing relocation of access road carriageway to lie adjacent to the adjacent kerb of the cemetery carpark and the provision of a build out to keep vehicles away from boundary wall with St. Mary's Church. Agreed works shall be implemented in full six months of grant of permission.

Reason: In the interest of traffic safety.

4. Within three months of this decision the applicant shall submit and agree in writing details of the replacement hedgerow including a variety of ingenuous species, planting proposals and aftercare in line with the requirements of the planning authority. The replacement hedgerow and associated works shall take place solely within the boundary of the application site. The proposals shall be prepared and signed off by a suitably qualified ecologist or hedgerow contractor.

Reason: In the interests of the proper planning and sustainable development of the area.

Caryn Coogan

Planning Inspector

28/07/2016