



An  
Bord  
Pleanála

## Inspector's Report ABP 302975-18.

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<b>Development</b>	Retention of relocated access driveway and associated works.
<b>Location</b>	Ballymanus Lodge, Chapel Lane, Glenealy, Co. Wicklow.
<b>Planning Authority</b>	Wicklow Co. Council.
<b>Planning Authority Reg. Ref.</b>	18960
<b>Applicants</b>	Trevor Hill & Christina Lopez Moran
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellants</b>	John & Bernadette Glynn
<b>Observers</b>	None
<b>Date of Site Inspection</b>	24/1/2019
<b>Inspector</b>	Siobhan Carroll

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## 1.0 Site Location and Description

- 1.1. The appeal site is located at Chapel Lane, Glenealy, Co. Wicklow. The site at Ballymanus Lodge which has a stated area of 0.06640 hectares is situated 970m to the north of the village of Glenealy. Ballymanus Lodge is located at the northern end of Chapel Lane. Chapel Lane serves a number of dwellings, agricultural lands and to the Coillte forest at Carrick Mountain.
- 1.2. The subject driveway extends for approximately 58m. There is a gate at the southern end of the driveway and the boundary with the Coillte lands is defined by a stonewall and a forest access barrier.

## 2.0 Proposed Development

- 2.1. Permission is sought for the retention of relocated access driveway and associated works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was granted subject to two conditions.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- The Planning Authority concluded that from a planning perspective no real issues arise as the proposal represents a minor realignment of an existing private laneway. It is highlighted that the application does not include permission for any new gateway or similar barrier.

### 3.3. Third Party Observations

- 3.3.1. The Planning Authority received ten submissions/observations in relation to the application. The main issues raised are similar to those set out in the appeal.

## 4.0 Planning History

**PA Reg. Ref. 17/74** – Permission was granted for sun room to side of dwelling and retention of domestic garage and storage sheds at Ballymanus Lodge, Chapel Lane, Glenealy, Co. Wicklow.

**PA Reg. Ref. 06/5112** – Permission was granted for extension & alterations to existing dwelling, revised roof design & relocation of existing right of way at Ballymanus Lodge, Chapel Lane, Glenealy, Co. Wicklow.

## 5.0 Policy Context

### 5.1. Wicklow County Development Plan 2016 – 2022

- Appendix 1 – Development Design Standards
- Section 7 refers to Roads and Transportation

### 5.2. Natural Heritage Designations

The closest Natura 2000 site is the Deputy's Pass Nature Reserve SAC (site code 000717) is located 1.7km to the south of the appeal site.

### 5.3. Environmental Impact Assessment (EIA)

- The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations and therefore is not subject to EIA requirements.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

A third party appeal was lodged by John and Bernadette Glynn. The issues raised can be summarised as follows;

- The appellants John and Bernadette Glynn are residents of Chapel Lane, Glenealy.

- The appellants contend that the subject road is a public road.
- They state that it is incorrect to describe the original road which was dug up and removed by the applicant as an access driveway.
- The matter of the status of the road has been raised since 2006. The appellants cite a letter issued by Wicklow Co. Council on the 5<sup>th</sup> of November 2018 a copy of which is appended with the appeal. The letter states, *‘the District Engineer reports the following – According to all records investigated the road is public up to forestry junction.’*
- The appellants question whether the subject section of new road is a substitute for the original public road. The appellants submit that the Land Registry map (appendix 7 with the appeal) indicates the original road L-109630 known as Chapel Lane leads directly to Coillte land between the stone posts. The section of new road for which retention is sought does not lead to this. Therefore, it is contended that the proposed retention does not represent a minor change.
- The appellants state that they have a public right to walk and drive along the public road to access the forest.
- The route to access the woods is established as a public road for its entire length.
- The permission granted by Wicklow Co. Council included a condition which states that *‘this permission does not include permission for the construction of any gateway or barriers on the proposed access driveway.’*
- Chapter 10 of the Wicklow County Development Plan 2016-2022 refers to Heritage policy NH 49 seeks to support and facilitate access to amenity areas.
- It is also noted that it is Coillte policy to encourage walkers to access their forests.
- The appellants consider that the subject road does not directly access onto the Forestry lands but that it provides access onto a private strip of land. They raise concern that access may be restricted should a barrier be place by the landowner to restrict pedestrian access.

## 6.2. Applicant Response

A response to the third party appeal has been submitted by the applicants Trevor Hill & Christina Lopez Moran. The relevant issues raised are summarised as follows;

- In relation to the access to the Coillte lands it is stated that access has always been open. There is an un-gated pedestrian access to the side of the gate.
- It is stated that Coillte do not permit public vehicles onto forestry property. The appellants state that no emergency services have ever had a problem accessing the woods from the applicant's entrance.
- A letter from Wicklow Mountain Rescue states that they never had a problem accessing the woods via the applicant's entrance.
- The appellants refer to a strip of private land. The applicants confirm that area of land was signed over to Coillte.
- The applicants state that the Right of way is private and not public.
- There is a list of named individuals on the deeds who have a Right of Way including Coillte. A public road would not require individuals to be named as having a Right of Way.
- The applicants have been advised by their solicitor that there is not a public Right of Way on their property. They confirm that the subject roadway is a private road. They stated that it is not owned by Wicklow Co. Council and that it stops being a public road at the property boundary of their neighbour.
- In relation to the relocation of the road a letter was issued by the applicant's solicitor clarifying that Coillte agreed to the relocation of the road.
- The applicants note that they received letters from other residents in Glenealy stating that they have no issues with the road or access.
- The applicants confirm that a non-gated pedestrian access is available for the public to access the Coillte lands.
- In relation to the matter raised by the appellants which states *"the planner included a condition that although the gate is exempt development it is not given permission to be closed, indicating their intention to keep access open."*

the applicants do not consider that the grant of permission issued by Wicklow Co. Council refers to this matter.

- The applicants stated that the aforementioned gate has never been locked at that vehicular access is available to their property to visitors and service providers.
- In relation to the private Rights of Way the applicants state that the old Rights of Way were extinguished and moved to their other folio. All the entitlements like the right of way in favour of Coillte and James Carroll were transferred to the new road/folio number and all the legal aspects were completed with the land registry in 2011.
- The planning application relates to moving the subject roadway away from the applicant's front door and utilising their land to improve the access and setting of their property.

### 6.3. Planning Authority Response

A response to the third party appeal has been submitted by the Planning Authority. The issues raised are as follows;

- Section 34(13) of the Planning and Development Act 2000, as amended states; *'A person shall not be entitled solely by reason of a permission under this section to carry out any development.'* Hence, it is an applicant's responsibility to ensure that they have sufficient legal interest to carry out a proposed development and the granting of permission by a Planning Authority does not confer any such interest where it did not already exist.
- The applicants have stated in the application form that they are the owners of the subject site.
- The submitted Site Layout Plan indicated the subject development within the redline boundary and that the proposed realigned laneway connected to the existing woodland tracks/roads.
- Based on the information submitted by the applicant and the third parties, the Planning Authority concluded that there was a difference in opinion about the legal interest of the applicant to effect the proposed development. The issues

raised were legal matters and not planning matters. The applicants submitted a Solicitor's letter in relation to the existence of Right of Ways on their lands. The letter confirm that James Carroll and Coillte had Right of Ways. The applicants have submitted details to indicate that both parties were in agreement with the relocation of the Right of Ways and they were registered on the folio.

- The submissions to the application referred to the blocking of the roadway and the erection of a gate. The appellants raised the issue of the gate in their submission with the application. Neither of these elements were proposed as part of the application. The Planning Authority would note condition no. 2 attached to the grant of permission which clarifies the matter.
- Wicklow Co. Council issued a letter which stated that the section of the laneway that has been realigned was not in the charge of Wicklow Co. Council. A copy of this letter was submitted by the applicants on 3/10/18. The appellants have included in the appeal documentation a copy of a letter from Wicklow Co. Council dated 5/11/18 stating that *"the road is public up to the forestry junction"*. This letter contradicts the previous letter issued by Wicklow Co. Council. Having examined the available information and records held by Wicklow Co. Council in relation to this road/laneway and having spoken to the Roads Authority, there is no definitive information which shows that the subject road/laneway is a public road. The current Wicklow Co. Council road mapping system would appear to support the view expressed in the first letter from the Council.
- Whether the subject road is a public road or a private road is not a material consideration for the purposes of the planning assessment. The permitted development does not physically prevent any vehicles from driving to and from the forestry boundary. The width and alignment of the subject road/laneway is similar to that of the original road/laneway and it has been constructed to abut the forest.
- The appellants state *that "the planners have failed to understand that the revised route does not give direct access to the forest but ends in a strip of private land"*. This is not what is proposed by the applicant. Furthermore, no



impediment to access to the forest was observed during the original site visit other than a standard forestry type single bar barrier. This was erected at the entrance to the forest and does not form part of the application. If it is the case that the applicants have constructed the proposed road/laneway on third party lands without sufficient interest then this is a civil matter.

- The issue relating to the existence of Public Rights of Way are legal issues and the granting of permission does not give permission for any changes to existing legal or established Rights of Way.
- The Planning Authority state that the appellants incorrectly stated that “the planners included a condition that although the gate is exempted development it is not given permission to be closed.” There is no reference in the planning conditions as to whether the gate is exempt or not. Permission is not sought for a gate or other barrier and this was clarified by condition 2.
- One the day of the second site visit, a gate was observed on the proposed road/laneway it was closed but not locked. There was pedestrian access to the side of the gate. Whether this gate is exempted development or not has not been established.
- In conclusion, the Planning Authority note that several of the issues being raised in the appeal are legal matters and that the permission is being misinterpreted.

## 7.0 **Assessment**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Principle of development
- Appropriate Assessment

## 7.1. Principle of development

- 7.1.1. The proposed development relates to the retention of a relocated access driveway and associated works. The Planning Authority were satisfied that the proposal represented a minor realignment of an existing laneway and permission was granted.
- 7.1.2. The appellants contend that the subject road is a public road. They submit that the proposed development to be retained does not represent a minor change. The appellants raise the matter of Right of Way on the subject laneway/driveway.
- 7.1.3. As indicated on the site layout plan the original section of road/driveway was situated circa 4m from the front of the dwelling. The realigned section of road/driveway is located circa 10m forward of the dwelling. The subject development has resulted in the road/driveway serving the applicants property being marginally set forward from the front of the dwelling. The road/driveway has a fine gravel surface and it is defined by a low wooden fence along both sides. The direct vehicular access to the front of the dwelling is located at the northern end of the road/driveway. Where the section of road/driveway ends it directly adjoins the Coillte lands. The boundary is defined by a stonewall and a forest access barrier. The subject road/driveway including the surfacing and the boundary treatment have been designed to integrate with the surrounding area. Therefore, I am satisfied that does not unduly impact upon the visual amenities of the area.
- 7.1.4. Having regard to the details set out above, I would concur with the assessment of the Planning Authority that subject realignment of the access road/driveway is relatively minor in nature. The width and alignment of the proposed access road/driveway is similar to the original section of road/driveway. Therefore, I would consider it acceptable from a planning perspective.
- 7.1.5. As detailed in the appeal response from the Planning Authority a gate was observed on the proposed road/laneway when the site visit was carried out. It was observed that the gate was closed but not locked and that there was pedestrian access to the side of the gate. I also observed the gate on inspection of the site. The subject application does not include a proposal to retain a gate on the road/driveway. The Planning Authority in their grant of permission included a condition which stated that the permission does not include permission for the construction of any gateways or

barriers on the proposed access driveway. Should the Board decide to grant permission, I would recommend the attachment of a similarly worded condition.

- 7.1.6. In relation to matters raised in the appeal concerning Rights of Way and whether applicants have sufficient legal interests in the lands to carry out the development, I note that the applicants confirm in their appeal response that the subject road/driveway is a private road. I also note that the applicants stated in the Planning Application form that they are the owners of the site. They state in their appeal response that the Right of Way is private and not public and that the two parties James Carroll and Coillte who have Right of Ways were in agreement with the relocation of the Right of Ways and they were registered on the folio.
- 7.1.7. Furthermore, in relation to these matters concerning issues relating to title to land, Section 5.13 of the Development Management Guidelines for Planning Authorities, (2007) advises that “the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts.” The Planning and Development Act 2000, as amended, requires that applicants have sufficient legal interests in the lands to carry out the development. I note that it is not within the remit of the Board to determine legal interests and/or obligations held by the applicant, in relation to such lands. Section 34(13) of the Planning and Development Act, 2000, as amended, relates as follows: “A person shall not be entitled solely by reason of a permission or approval under this section to carry out a development.” This subsection makes it clear that the grant of permission does not relieve the grantee of the necessity of obtaining any other permits or licences which statutes or regulations or common law may necessitate. Having regard to the documentary evidence provided by the applicants in relation the matter of Rights of Way, I conclude this is a civil legal issue between the parties, therefore, I do not consider that issues raised in the appeal are reasonable and substantive grounds for refusal of the proposed development.

## 7.2. **Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development, retention of relocated access driveway and associated works and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that

the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. I recommend a grant of permission subject to the following conditions.

## 9.0 Reasons and Considerations

Having regard to the policies of the planning authority, as set out in the current Development Plan for the area and to the pattern of development in the vicinity, it is considered that the relocated access driveway to be retained would be acceptable in terms of visual amenity and would be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be retained and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. This permission does not include permission for the construction of any gateways or barriers on the proposed access driveway.

**Reason:** In the interests of clarification.

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Siobhan Carroll  
Planning Inspector

22<sup>nd</sup> of March 2019