



An
Bord
Pleanála

inspector's Report ABP-303713-19

Development	Retention of construction of private roadway through farm to access farm buildings and removal of old roadway now soiled and grassed over.
Location	Ross Td , Mucknagh, Athlone, Co. Westmeath
Planning Authority	Westmeath County Council
Planning Authority Reg. Ref.	187101
Applicant(s)	Padraig and Marie Murphy.
Type of Application	Retention.
Planning Authority Decision	To grant.
Type of Appeal	Third Party
Appellant(s)	William Coughlan.
Observer(s)	None.
Date of Site Inspection	7 th May 2019
Inspector	Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The 1.54ha appeal site lies c.10km north of Athlone town on the eastern shore of Lough Ree in the townland of Ross, Mucknagh, Co. Westmeath. It comprises a triangular shaped site and is situated to the south of a minor access road that serves a residential property and farm, to the north of the site. The minor access road is gated to the north east of the site in the location of the public notices (see Site Location Map and photographs).
- 1.2. Along the western side of the site is a newly constructed roadway. It provides access to a cluster of buildings, including the applicant's farm yard, which lie to the south of the road. The roadway, for part of its length, is raised above the surrounding agricultural land. The eastern boundary of the site, on the outside of the removed roadway, runs within an agricultural field. Its route is marked by telegraph poles.
- 1.3. The appellant's property lies to the west of the new access road, at its southern end.

2.0 Proposed Development

- 2.1. The proposed development, as revised by way of further information submitted on the 7th January 2019, comprises retention of (a) the constructed private roadway, and (b) the removal of the old roadway now soiled and grassed over. The planning application states that the site has been prone to flooding (in 2009, 2015 and 2016) which prevented access to farm buildings (and animals) to the south of the site using the old roadway. The application is accompanied by an Appropriate Assessment (AA) Screening Report.
- 2.2. In response to the request for further information, the applicant states that (i) the observer, see below, does not have a right of way over the old roadway, but has access to his site from the townland of Killeenmore, (ii) a gate has always been in existence at the end of public road leading onto the private access to the applicant's lands, (iii) the applicant has a statutory duty to maintain his own fences and leave his property stockproof (opening to observer's site was closed and left stockproof), and (iv) as indicated in the Appropriate Assessment Screening Report, the work has very little impact on the Special Area of Conservation.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 24th January 2019 the planning authority decided to grant permission for the development subject to 3 conditions. Condition no. 2 requires that the roadway be used for agricultural purposes only and not to facilitate domestic access, unless by subsequent grant of permission. Condition no. 3 requires the back planting of the roadway with native hedgerow.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 26th July 2018 – Summarises the planning history of the site, submissions and relevant planning policies, particularly in respect of Lough Ree. Identifies two main issues for the subject application (i) impact on Lough Ree SAC/SPA and requirement for appropriate assessment, and (ii) third-party submission relating to right of way issues. It recommends further information in respect of the submission received.
- 24th January 2019 – Considers that (i) the issues raised in the third-party submission relate to a civil matter which is outside of planning legislation, and (ii) the AA screening report is satisfactory, and the proposed development will not have a significant impact on European sites. Recommends granting permission subject to condition.

3.2.2. Other Technical Reports

- Area Engineer (11th July 2018) – No objections.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

- William Coughlan – Applicant has removed a road over which the observer has a right of way, blocked the entrance to the observer’s site (infilled stone wall) and blocked the public road access to the right of way (gate across public road). The road for which retention is sought passes through a Special Area of Conservation and is in breach of Planning Regulations and the County Development Plan.

4.0 Planning History

- Enforcement history, ENF 17014 – In respect of unauthorised development, new elevated roadway.

5.0 Policy and Context

5.1. Planning and Development Act 2000 (as amended)

- 5.2. Section 34(12) states that a planning authority shall refuse to consider an application to retain an unauthorised development if it is of the opinion that it would have required an appropriate assessment.

5.3. Westmeath County Development Plan 2014 to 2020

- 5.3.1. The appeal site lies on the eastern shore of Lough Ree, a designated High Amenity Area. High amenity policies seek to conserve the natural resources of each Area, in terms of landscape character, scenic quality, habitat value and water quality; prohibit development that would injure the natural amenity of the Area; and strictly control development adjoining or on the approach to the lakeshore (policies P-HAA1, P-HAA5 and P-HAA6 respectively).
- 5.3.2. Policies of the County Development Plan also seek to protect the county’s lakes and their shorelines, islands, amenity and biodiversity from inappropriate development (Policy P-LM1). Lough Ree is dealt with in section 6.28 of the Plan and it is recognised as a significant national resource, in terms of habitat, tourism and

recreation. Specific policies for the Lough seek to maintain and preserve its aesthetic value and its shoreline and water quality (P-LR1).

5.4. Natural Heritage/European Sites

5.4.1. Lough Ree is designated as a Natural Heritage Area and Special Area of Conservation (common site code 000440) and a Special Protection Area (site code 004064). Policies of the plan afford protection to national and European sites (policies P-NHA1, P-NAT2, P-NAT4).

5.4.2. Conservation objectives for the SAC are to maintain or restore the favourable conservation condition of the sites qualifying interests:

- Otter *Lutra*
- Natural eutrophic lakes with Magnopotamion or Hydrocharition – type vegetation
- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Fetescu-Brometalia)(important orchid sites*)
- Degraded Raised Bog still capable of natural regeneration
- Alkaline Fens
- Limestone Pavement*
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- Bog Woodland*
- Otter (*Lutra lutra*)
(* priority habitat)

5.4.3. Conservation objectives for the SPA are to maintain or restore the favourable conservation condition of bird species of special conservation interest:

- Little Grebe
- Whooper Swan
- Wigeon
- Teal
- Mallard
- Shoveler
- Tufted Duck
- Common Scoter
- Goldeneye
- Coot
- Golden Plover
- Lapwing

- Common Tern

5.4.4. The Natura 2000 Standard Data Form for Lough Ree SPA describes the lake as the third largest in the country, with inflow from the Shannon, Inny and Hind Rivers and outflow to the River Shannon, and as having a very long, indented shoreline and may sheltered bays, with Swamp vegetation, especially *Phragmites australis*, occurring in the sheltered areas. It states that swamp often grades to species-rich calcareous fen or freshwater marsh, with '*lowland wet grassland, some of which floods in winter, ..found in abundance around the shore*'. Identified threats to the SPA include grazing (threat and pressure code, A04).

5.5. EIA Screening

5.5.1. The proposed development is of a type that falls within a class under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 for the purposes of environmental impact assessment i.e. Class 10 (dd), Infrastructure projects, private roads.

5.5.2. Whilst the site is located in a sensitive location, adjoining Lough Ree a designated NHA/SAC/SPA, it is very limited in size and will not give rise to any significant waste or result in emissions or pollutants. Consequently, issues arising from the proximity of the site to Lough Ree can be dealt with adequately under the Habitats Directive (Appropriate Assessment) and there is no likelihood of other significant effects on the environment.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The third-party grounds of appeal are:

- Removal of roadway over which third party has a right of way (C-D-E on marked map) and blocking of entrance to property (E on marked map). Alternative route indicated by the applicant (F-K on marked map) is over 900m and is not practical as the route floods at certain times of the year

making vehicular access impossible. Appellant engaged in civil remedy with the applicant in relation to this matter.

- Impact on Special Area of Conservation – The elevated roadway interferes with the natural flood plain of the lake. This impact warrants thorough Appropriate Assessment and has not been adequately assessed. The works were carried out without supervision of the local authority or conditions designed to protect the lake environment.

6.2. Applicant Response

6.2.1. In response to the appeal, the applicant repeats matters set out in the application to the planning authority. Additional matters are as follows:

- Assures the Board that the alternative route to the appellant's property was always used by the appellant's father to access his property (marked A to B on the attached map). If the route has fallen into a state of poor maintenance, this is no reason to claim access onto a private road. Agrees that civil action is being taken and are defending their position because no right of way ever existed.
- The Appropriate Assessment Screening Report states that the work has had very limited impact on the Special Area of Conservation.

6.3. Planning Authority Response/Observations/Further Responses

- None.

7.0 Assessment

7.1. I have read the appeal file and inspected the site. The proposed development is modest in scale and takes place within an agricultural environment. No significant visual impacts arise. Key issues for this appeal therefore relate to, and can be confined to, the following:

- Impact on rights of way.
- Appropriate Assessment (and impact of development on Lough Ree SAC and SPA).

7.2. Impacts on Right of Way

- 7.2.1. The parties to the appeal claim different interests in (a) the roadway that originally traversed the appeal site, (b) the access to this roadway (now gated), and (c) access to the appellant's property (now infilled). The appellant also draws the Board's attention to the inadequacy of the alternative access to the appellant's property.
- 7.2.2. The application documents on file include a Land Ownership Map (see file). It indicates that the appeal site and surrounding lands are owned by the applicant. Having regard to this, I am satisfied that the applicant has demonstrated sufficient legal title to make the application. Therefore, the outstanding matters of rights of way fall outside of the planning system. Notwithstanding this, I note that, as set out in section 34(13) of the Planning Act, a person is not be entitled solely by reason of a permission to carry out any development.

7.3. Appropriate Assessment.

- 7.3.1. **Conservation Interests.** Conservation interests of Lough Ree are summarised above. The northern part of the access road, to be retained, falls partly within the designated Lough Ree NHA/SAC and wholly within the Lough Ree
- 7.3.2. **Proposed development.** The Screening Report states that the new access road is c.306m in length, constructed on a foundation of limestone boulders and surfaced with clause 804, with foundations which incorporate drainage pipes to allow water to pass under the road during high water events.
- 7.3.3. The southern half of the roadway lies outside of the designated SAC and SPA. The northern half of the road lies alongside the SAC boundary, with the road partly inside and partly outside the designated area, and within the SPA boundary.
- 7.3.4. **Baseline environment.** The applicant's Appropriate Assessment Screening Report states that the new road is located in Improved agricultural grassland (GA1) for most of its length, with a short section crossing Wet grassland (GS 4) dominated by floating sweet-grass, hairy sedge and marsh marigold. It also states that the Wet grassland to the east of the road is hydrologically connected, via a culvert under the road, to Wet grassland on the western side of the road, which grades into Reed and large sedge swamp (away from the road).

7.3.5. The screening report states that Coot was recorded in a reed bed c.40m west of the road. Reed and large sedge swamp and Wet grassland habitats are stated to provide suitable foraging habitats for special conservation interest species associated with the SPA.

7.3.6. **Likely Effects.** The Screening Report considers that the development is unlikely to have resulted in a significant impact on Lough Ree SAC or SPA, or other European sites, alone or in combination with other developments for the following reasons:

Lough Ree SAC

- The development footprint is within modified habitats which do not conform to those listed in Annex I of the Habitats Directive or associated with Lough Ree SAC. Therefore, no loss of Annex I habitat and no significant loss of potential supporting habitat for species of conservation interest.
- The development is located outside the 10m buffer zone for otter.
- Development was carried out outside of the winter flooding season. Road is stable and there is no evidence of pollution runoff. Foundations incorporate drainage to allow water to pass under the road during high water events.
- Increased potential for disturbance is unlikely given that the new road replaced a regularly used existing access track, the area is subject to on-going agricultural activity and species (i.e. otter) are likely to be habituated to agricultural disturbance.

Lough Ree SPA

- No breeding habitat associated with the special conservation interest species occurring within the road footprint. No potential for direct impact on European site.
- Development located in improved and wet grassland habitats, works carried out outside of winter flooding season. Road is stable with no evidence of pollution and drainage pipes allow water to pass under the road during high water events. No significant loss to potential supporting habitat for species of conservation interest.
- Small scale works, so no significant disturbance related impacts.

- Operation of the road is unlikely to result in any increased potential for disturbance as it replaces an existing regularly utilised access track, the area is subject to ongoing agricultural activity and species are likely to be habituated to disturbance (e.g. as evidenced by Coot nesting adjacent to access track).

Other European sites (within 15km)

- Development is outside of the boundary of European site(s) and no hydrological connectivity between the development and these (Carn Park Bog SAC; River Shannon Callows SAC; Lough Funshinagh SAC; Fort William Turlough SAC; Ballynamona Bog and Corkip Lough SAC; Middle Shannon Callows SPA).

Cumulative Impacts

- No other projects identified in the townland or Ross for the last 5 years.

7.3.7. **Assessment.** I note that the Screening Report does not map the territory associated with the habitats stated to occur on site. Notwithstanding this, from the inspection of the site, I would generally accept the findings of the assessment of the baseline environment. The southern part of the access road to be retained, and the old roadway, appear to lie in improved agricultural land. However, the northern part of the route appears to cross wet grassland, that grades into reed and swamp. The characteristics of the site would be consistent with the observed habitat on the shoreline of the SPA (see section 5.4.4 above).

Lough Ree SAC

7.3.8. The identified habitats on the appeal site do not correspond with those listed in Annex I of the Habitats Directive or with those occurring within the Special Area of Conservation and listed of special conservation interest. However, the habitat is included within the SAC boundary and inevitably provides supporting habitat to the site. Within this context, the main effect of the road to be retained is therefore (a) a small loss of this supporting habitat (in the context of the size of the Lough) and (b) the fragmentation and potential loss of the wet grassland habitat which it crosses. Given that the habitat affected does not correspond to the special conservation interests of the site, and given that it is modest in scale, I would not consider that the loss of habitat would give rise to any significant effects on the integrity of the SAC.

With regard to fragmentation/loss of the wetland habitat, the applicant states that the roadway incorporates drainage pipes to allow water to pass under the road during high water events. On inspection of the site, I saw no evidence of these channels (just the appearance of one field drain in the field to the east of the roadway).

However, if in place and working effectively, these would allow water inundating the site to pass under the roadway providing hydrological connectivity to land to the east and west of the road and no loss of wet grassland to the east of the roadway. Again, having regard to the modest scale of the project, the small area of Wet grassland affected (in the context of the overall lough) and subject to this measure, I do not consider that there would be any significant effect on the supporting habitats present on the site to impact on the conservation interests of the SAC.

7.3.9. With regard to the effect of the development on Otter species, the Conservation Objectives for the SAC indicate in Map 9 a 250m commuting buffer, which the appeal site appears to fall outside (see attachments). On page 20 it refers to a 10m terrestrial buffer zone along shoreline and riverbanks, which is '*critical*' for otters and I would accept that the appeal site lies outside of this distance, from the established shoreline. I would accept therefore, having regard to this scientific information, and the modest scale of the project, that the proposed development would not be likely to have a significant effect on otters.

7.3.10. With regard to pollution and disturbance, I saw no evidence of past or on-going pollution associated with the access road to be retained and would also accept the findings of the Screening Report and consider that there is an on-going level of agricultural activity in the area of the site, that arose from the use of the original road way and use and maintenance of the agricultural land, through which the road to be retained now passes.

Lough Ree SPA

7.3.11. As stated, the northern part of the roadway to be retained lies within Lough Ree SPA. Direct impacts on bird species of conservation interest are unlikely given, the absence of use of the site by any species. Indirect impacts may arise as a consequence of land take and disturbance.

7.3.12. As discussed, land take from the SPA is quite modest (in area) and probably negligible, with the reinstatement of the old roadway. However, potential impacts

may arise, from the fragmentation of existing wet grassland (a habitat which is stated in the Standard Data Form to be in abundance around the shore) or its loss (if flood waters are prevented access). However, with the incorporation of drainage channels under the road to connect the lands east and west of the constructed roadway, such impacts are unlikely.

7.3.13. With regard to disturbance, bird species in the vicinity of the site would be habituated to the use of the land for the road for agricultural purposes (as well as the old roadway) and are unlikely to be significantly affected by the development.

7.3.14. With regard to impacts on other European sites, I would accept that the appeal site is substantially removed from other European sites in the wider area and not directly connected to them. Significant effects on these wider sites are, therefore, highly unlikely. Cumulative effects are also highly unlikely given the absence of other projects in the vicinity of the site and its general remove from nearby centres of population and points of public access to Lough Ree.

7.3.15. **Screening conclusion.** Having regard to the above, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000400 and 004064, Lough Ree SAC and SPA, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8.0 Recommendation

8.1. I recommend that retention be granted for the proposed development.

9.0 Reasons and Considerations

Having regard to the nature, scale and form of the proposed development and the established use of the site for agricultural purposes, it is considered that subject to compliance with the conditions set out below, the proposed development would not adversely affect the integrity of any European site, in view of the site's conservation

objectives, and would be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out 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. 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The constructed farm roadway shall be used for agricultural purposes only and shall not be used to facilitate domestic access unless authorised by a subsequent grant of permission.</p> <p>Reason: In the interest of clarity and orderly development.</p>
3.	<p>Within 3 months of the date of this order, the following shall be submitted to the planning authority:</p> <ul style="list-style-type: none"> i. Details of the pipes constructed under the access road, ii. Arrangements for the maintenance of the pipes to ensure connectivity between land parcels east and west of the roadway, iii. Back planting of the roadway with native indigenous hedgerow, including a timescale for implementation. Planting shall be undertaken in the first planting season following the date of this Order. Planting shall be maintained thereafter and any plants that die, become diseased or are removed shall be replaced within the following planting season by plants of a similar size and species. <p>Reason: In the interest of visual amenity and nature conservation.</p>

Deirdre MacGabhann

Planning Inspector

17th May 2019