



An
Bord
Pleanála

Inspector's Report ABP-311247-21

Development

Retention of house access road as constructed.

Proposed extension of boundary for site granted permission under 16/21 to include the access road and modifications to the entrance road sightlines and all associated works.

Location

Rathmoylan, Dunmore East, Co. Waterford.

Planning Authority

Waterford City & County Council

Planning Authority Reg. Ref.

20/510

Applicant(s)

Janice Murphy & Paul Lenehan

Type of Application

Retention permission & permission

Planning Authority Decision

Refusal

Type of Appeal

First Party -v- Decision

Appellant(s)

Janice Murphy & Paul Lenehan

Observer(s)

Ciaran & Jane Bailey

Date of Site Inspection

24th May 2022

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Rathmoylan close to Swines Head on the Waterford coastline between Dunmore East (2.5km to the north-east) and Tramore (8.6km to the west). This site is accessed off Coxtown Road (L4068), which runs between Dunmore East and the R685 (the regional road between Passage East and Tramore). It runs through open countryside, punctuated by several dwelling houses.
- 1.2. The site itself comprises the applicants' residential property and the means of access to it along an existing laneway and a recently constructed diversion from this laneway in the vicinity of its junction with the L4068 and three dwelling houses to the west. This site is consequently of elongated form, and it extends over an area of 0.575 hectares.

2.0 Proposed Development

- 2.1. The proposal comprises the following two elements:
 - The retention of the access road to the applicants' dwelling house, as constructed, i.e., the new section of roadway, which forms a diversion from a portion of the existing laneway towards its northern end, and
 - The proposed extension of the application site granted permission under 16/21 to include the new section of roadway as defined above and modifications to this roadway to improve sightlines at its northernmost junction with the existing laneway.
- 2.2. Under further information, the greater portion of the constructed roadway was shown as being subject to realignment to facilitate improvements to the junctions at either end of this diversion from the existing laneway.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, permission was refused for the following reason:

Based on the details provided with the application, it has not been demonstrated that traffic movements from the development would not endanger public safety by reason of traffic hazard owing to the available sightline distances at both junctions of the access road to be retained and the existing access road. The proposed development would, therefore, constitute a traffic hazard and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The following further information was requested:

- Demonstrate the need for the access road against the backdrop of a letter stating that the applicants have a right of way over the pre-existing access road, which serves their site and three other residential properties.
- Sightlines have not been demonstrated to be in accordance with the CDP and, in the absence of a Stage 1/2 RSA, the junctions of the access road may give rise to a traffic hazard.
- Design specifications for access road to be submitted, including surface water drainage arrangements.

3.2.2. Other Technical Reports

- Waterford City & County Council: Roads: Objection raised – see reason for refusal.

4.0 Planning History

- 14/600157: Dormer type dwelling house with WWTS: Permitted and unimplemented.
- 16/21: Dwelling house and garage with WWTS and access road together with all ancillary site works: Permitted and implemented.
- Enforcement enquiry (file no. 2867) re. “works concerning the creation of an access road and entrance”. These works were not deemed to be

unauthorised development in a letter from the Planning Authority to the current applicants dated 29th January 2019 and the file was closed.

- 2019/2: Section 5 declaration on “works concerning the creation of an access road and entrance” was the subject of a referral to the Board (ABP-304134-19) which concluded that they were development that was not exempted development.
- Enforcement notice ref. no. CRM 3016 served, which requires that the new section of roadway cease to be used and that the access to it be closed off.

5.0 Policy and Context

5.1. Development Plan

Under the Waterford County Development Plan 2011 – 2017 (CDP), the site is shown as lying within an area that is agriculture, wherein the objective is “To provide for the development of agriculture and to protect and improve rural amenity.”

Under the CDP’s “Scenic Landscape Evaluation” (SLE), the site is shown as lying beside a visually vulnerable portion of the L4068, which extends westwards from Dunmore East. Under Policy 6.6(b) of the SLE,

The onus should be on the applicant for permission to develop in the environs of a scenic route, to demonstrate that there will be no obstruction or degradation of the views towards visually vulnerable features nor significant alterations to the appearance or character of sensitive areas.

Under Policy ENV 4 of the CDP,

The Council will assess all proposals for development in terms of the Scenic Landscape Evaluation Map, the Development Management Standards and the Rural Housing Design Guidelines.

5.2. Natural Heritage Designations

- Tramore Dunes and Back Strand SAC & pNHA (000671)
- Tramore Back Strand SPA (004027)

5.3. EIA Screening

Under Item 10(d)(d) of Part 2 of Schedule 5 to Article 93 of the Planning and Development Regulations, 2001 – 2022, where a private road would exceed 2000m in length the need for a mandatory EIA arises. The proposal is for the retention of c. 80m long private road. Accordingly, it does not attract the need for a mandatory EIA. Furthermore, as this proposal would fall well below the relevant threshold, I conclude that, based on its nature, size, and location, there is no real likelihood of significant effects upon the environment and so the preparation of an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The applicants begin by providing a chronology of the planning history of the site, which is interlaced with relevant extracts from correspondence with the observers. They conclude this chronology by referring to their current application and the further information request (FI) of the Planning Authority.

- The first item of the FI asked about the need for the private road in question. The applicants refer to their solicitor's letter which confirms that a portion of the existing laneway (Folio 21533F) is currently owned as tenants in common by the observers (50%) and the applicant, Janice Murphy, and her cousins (50%). This letter also confirms that, while the applicants sought an all-purpose right of way over this portion of the existing laneway in favour of their residential site only, the observers have not agreed to this.
- The second item of the FI asked about sightlines at the junctions between the existing laneway and the section of new roadway. The applicants responded by submitting revised plans of this roadway and its junctions.

The applicants cite the following grounds of appeal against the Planning Authority's reason for refusal:

- While the applicants continue to use the existing laneway, this is not a sustainable situation, as they do not have a legal right of way to do so – hence the need for the new section of roadway.

- At the appeal stage, the applicants have submitted a Sightline Assessment Report, which assesses traffic movements and their potential impact on road safety. They also undertook a 7-day Automatic Traffic Count (ATC) and speed survey of the existing laneway for the period Saturday 14th – Friday 20th August 2021. Based on the findings of this survey and the revised plans, submitted as FI, they concluded that the sightlines shown on these plans are appropriate, i.e., $x = 2.4\text{m}$ and $y = 30\text{m}$, at each of the junctions in question.

6.2. Planning Authority Response

None

6.3. Observations

Ciaran & Jane Bailey

The observers begin by summarising the background to the current application. They then proceed to make the following observations:

- The new roadway and its junctions are hazardous. The risk of collision is real, especially during seasonal high points in the use of agricultural vehicles/machinery. The inherent hazard would not be overcome by the proposed revisions to the alignment of this roadway, e.g., the southern junction would change from being a dangerous fork to being a dangerous chicane, and the northern junction would be close to both the junction between the L4026 and the existing laneway and the access point to the observers' residential property. Furthermore, its presence would be unexpected and confusing in a rural area.
- The applicability of the TII's documents (DN-GEO-03031 & 03060) to the unsurfaced existing laneway and unsurfaced new roadway is questioned on the basis that they relate to public roads with sealed surfaces.

The submitted ATC is critiqued on the basis that it did not coincide with a seasonal high point for agricultural vehicles/machinery. Such vehicles tend to travel faster than private cars along the existing laneway. This ATC did

coincide with a period during which traffic movements generated by the observers was suppressed, due to Covid-19.

The submitted ATC is also critiqued on the basis that it only monitored vehicle speeds close to the northern junction rather than the southern one: the view is expressed that they would be likely to be higher close to this latter junction.

- The new roadway is unnecessary as a right of way along the existing laneway exists for the applicants. The observers would be willing to clarify this matter in a legally binding manner for the benefit of the applicants' household and their successors-in-title, but not Janice Murphy's cousins, as they are concerned over the prospect of pressure from these cousins for future housing to accommodate them elsewhere on the family farmlands served by the existing laneway.

The observers have not at anytime sought to prevent the applicants from using the existing laneway nor do they intend to do so in the future.

- The observers understand that, legally, Janice Murphy, as part owner of the portion of the existing laneway in question, has a right of way over it and that, by virtue of marital law, her husband, Paul Lenehan, has such a right, too. The applicants' solicitor takes a different view – hence the observers' offer of a legally binding clarification of this matter.

Attention is drawn to the multiple use of the existing laneway by farmers and households and the “impossibility” of the observers erecting a physical barrier to control its use. Attention is also drawn to the letter of the applicants' solicitor, which refers to the future marketability of their residential property, rather than the practicalities of access “on the ground”.

- The new roadway has resulted in the removal and fragmentation of hedgerow, which serves as a wildlife corridor. The proposed revisions to this roadway would entail further removal and fragmentation. The rural character of the area has, therefore, been eroded and would be eroded some more.
- The retention of the new roadway would give rise to pressure for additional housing and the potential suburbanisation of the countryside.

- The proposed extension of the boundary to the site of 16/21 should be explicitly refused to avoid any loophole, whereby the new roadway could be considered to be retained.
- Attention is drawn to recent sightings of Choughs on Swine Head, which is identified in the CDP's "Scenic Landscape Evaluation" as being a sensitive area with a very low capacity to absorb new development. These factors militate against the addition of further housing in the surrounding area.

6.4. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the Waterford County Development Plan 2011 – 2017 (CDP), relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Planning history, need, legalities, and rural planning policies,
- (ii) Traffic and access,
- (iii) Water, and
- (iv) Appropriate Assessment.

(i) Planning history, need, legalities, and rural planning policies

7.2. The planning history of the applicants' site indicates that they received outline planning permission for a dwelling house under application 14/600157. Under further information, the applicants were invited to enter into a Section 47 agreement whereby the remainder of the family farm would be sterilised for the purposes of future housing. As this farm is jointly owned by the applicant, Janice Murphy, and her cousins, she was unable to gain the consent of her cousins to enter into such an agreement. The outline permission granted was the subject of an appeal (PL93.244658), wherein the applicants appealed two of the attached conditions. They then withdrew their application and appeal.

- 7.3. The applicants subsequently received full planning permission for a dwelling house under application 16/21. The application site was composed of the proposed house plot only, i.e., the extension of the existing laneway to the north was not included within this site, although its route lay across the family farm. The cousins of the applicant, Janice Murphy, who are co-owners with her of this farm, undertook to grant sole ownership of the application site to her, once full permission was received. This permission has been implemented, the dwelling house and the extension to the existing laneway to the north have been constructed, and this dwelling house is occupied by the applicants.
- 7.4. The plans submitted under application 16/21, its assessment, and the subsequent decision all indicated and presupposed that the existing laneway would be used to access the proposed dwelling house, albeit with a southerly extension as shown on the site layout plan.
- 7.5. During my site visit, I inspected the existing laneway. I noted that it serves three occupied dwelling houses and an unoccupied one, as well as the surrounding farmland. I noted, too, that, as an ungated, single lane, unsurfaced roadway, it is physically capable of providing the needed means of access to these dwelling houses and farmland in a satisfactory and unimpeded manner.
- 7.6. The current application was preceded by the applicants undertaking works to provide the new roadway in question, which functions as a diversion around a portion of the existing laneway, towards its northern end. Initially, the Planning Authority took the view that these works were a “minor adjustment” to the permission granted to application 16/21. The observers, however, established by means of ultimately a referral to the Board (ABP-304134-19) that the new roadway was development that was not exempted development.
- 7.7. Under further information, the Planning Authority requested that the applicants explain the need for the new roadway. At the appeal stage, they have submitted a solicitor’s letter dated 1st June 2021, which addresses the question of access to their new dwelling house from a legal perspective. This letter is accompanied by two maps, i.e., Map 1, which identifies the portion of the existing laneway between points B and C, and Map 2, which identifies this portion as Folio 21533F. It explains that as the applicant, Janice Murphy, and her cousins on the one hand and the observers on

the other hand are registered co-owners as tenants in common of Folio 21533F, they must act in concert in the granting of any right of way to a third party over this portion of the existing laneway. The view is expressed that, while Janice Murphy can enter onto the portion in question, her husband Paul Lenehan cannot, unless all the tenants in common agree to this. Likewise, invitees and licensees cannot so enter, unless all the tenants in common agree. Such agreement to an all purpose right of way in favour of the applicants' residential property (Folio WD42482F) only has not been forthcoming with the observers. Legally, their residential property is incapable of being certified as marketable without such agreement – hence the need for the new roadway as a work around.

- 7.8. The observers have expressed the view that Paul Lenehan, as Janice Murphy's husband, has the right to enter onto the portion of the existing laneway in question by virtue of marital law. Nevertheless, if this is not the case, then their solicitor has set out in a letter dated 13th September 2021, that a right of way to Paul Lenehan could be granted by the tenants in common, for the purpose of accessing/egressing the applicants' residential property.
- 7.9. While I am not in a position to arbitrate between the various legal opinions that have been expressed, I consider that *prime facie* a legal solution to the applicants' legal problem may still be achievable. The need for recourse to the new roadway is not, therefore, self-evident.
- 7.10. Under the CDP's "Scenic Landscape Evaluation" (SLE), the site is shown as lying beside a visually vulnerable portion of the L4068, which extends westwards from Dunmore East. Under Policy 6.6(b) of the SLE,

The onus should be on the applicant for permission to develop in the environs of a scenic route, to demonstrate that there will be no obstruction or degradation of the views towards visually vulnerable features nor significant alterations to the appearance or character of sensitive areas.

- 7.11. While the new c. 80m long roadway is not readily visible from the L4086, its construction has entailed the formation of a cutting with an attendant scar in the local landscape. As an essentially duplicate stretch of roadway to the pre-existing laneway, its presence is anomalous and incongruous. Its insertion in a visually vulnerable area is thus unjustified and unwelcome from landscape and visual perspectives.

7.12. I conclude that the applicants face no physical impediment to accessing their residential property. I conclude, too, that any legal problem that may be attendant upon their use of the means of access to this property may yet be amenable to legal remedy. In these circumstances, the construction of the new roadway in question is premature. Furthermore, as it effectively duplicates the means of access provided by an existing laneway, such duplication with its attendant scar upon the local landscape in a visually vulnerable area is unjustified and adversely effects visual amenity.

(ii) Traffic and access

7.13. The Planning Authority refused the current application on the grounds that the applicants had failed to demonstrate that the available sightlines at either end of the new roadway would be adequate to ensure road safety. Under further information, the applicants submitted an “as-built survey” of this roadway and a proposed realignment of it. Under the latter drawing, the northern junction would be re-sited slightly to the east to give greater clearance from a bend in the existing laneway to the west, and the southern junction would be re-sited and redesigned as one that has a “T” format rather the existing forked format. Consequently, the greater portion of the as-built roadway would be reworked to achieve the proposed realignment.

7.14. Under the proposed realignment drawing, both junctions would be accompanied by sightlines with x and y dimensions of 2.4m and 30m, respectively. At the appeal stage, the applicants have submitted a “Sightline Assessment Report” (SAR), which provides a justification for these sightlines.

7.15. The observers have critiqued the SAR on the grounds that it draws upon documents that do not address unsurfaced private roads, the period selected was not representative of the high season for agricultural use of the existing laneway, and only one point was used for monitoring speed.

7.16. During my site visit, I observed that the existing laneway is initially of relatively straight alignment before passing through a bend and on into a mildly meandering stretch before rising at a gentle gradient to connect with the new stretch of roadway that the applicants’ constructed in conjunction with the construction of their dwelling house. This laneway is of single lane width, and it is unsurfaced, although some compaction of surface chippings is evident in wheel tracks. Given these

characteristics, I consider that vehicle speeds would *ceteris paribus* tend to be slower than on sealed surfaces. The citation of documents that address sealed surface public roads would thus entail an argument “from the greater to the lesser”. The period selected was in mid-August when some agricultural traffic could have been anticipated, although the traffic recorded is not differentiated between domestic and agricultural. The daily averages are low at c. 17 movements in either direction. Nevertheless, even appreciably higher averages would still be considered low. The monitoring point was adjacent to the bend, i.e., close to the northern junction. Given that slower speeds would be expected at this point, while they may be representative of the northern junction, I agree with the applicants that they cannot be assumed to be representative of the southern junction where the passing existing laneway is of mildly meandering form. That said, there appears to be scope to increase the y distance to 40m at this junction, if the Board were minded to grant.

- 7.17. Under the first heading of my assessment, I discussed how, as a duplicate roadway to the pre-existing laneway, the new section of road is anomalous and incongruous from landscape and visual perspectives. I also consider that its presence as effectively a short diversion or by-pass of the existing laneway is inherently confusing to road users and so potentially unsafe. As such, it constitutes a poor traffic management measure. Under its proposed realignment, which is intended to improve its safety, the likelihood of its use in practise has been diminished, as such use would necessarily involve slower movements than the equivalent use of the existing laneway.
- 7.18. I conclude that the applicant has yet to demonstrate the appropriateness of the sightlines selected for the southern junction. I also conclude that the emerging road layout would be inherently confusing, potentially unsafe, and flawed from a traffic management perspective.

(iii) Water

- 7.19. Under the proposed alignment drawing of the new section of road, concrete slotted drainage channels would be installed across either end of this road, and they would discharge to soakaways in accordance with BRE 365. Additionally, a concrete slotted drainage channel would be installed across the existing laneway to the south of the entrance to the observers’ residential property. This channel would be capable

of intercepting surface water run-off from the south, which presently runs into the observers' property.

7.20. Under the OPW's flood maps, the site is not the subject of any identified flood risk.

7.21. I conclude that, under the proposal, no water issues would arise.

(iv) Appropriate Assessment

7.22. The site is neither in nor near to any European site. The nearest such sites are beside Tramore, i.e., Tramore Dunes and Back Strand SAC (000671) and Tramore Back Strand SPA (004027). I am not aware of any source/pathway/receptor route between the site and these sites. No Appropriate Assessment issues therefore arise.

7.23. The observers have submitted a photograph of a Chough on their garden fence. While this bird species is a qualifying interest in some SPAs, it is not such an interest in the Tramore Back Strand SPA.

7.24. Having regard to the nature, scale, and location of the proposal, the nature of the receiving environment, and the proximity of the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the proposal would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

That permission be refused.

9.0 Reasons and Considerations

Having regard to the Scenic Landscape Evaluation of the Waterford County Development Plan 2011 – 2017 (as varied and extended) and the planning history of the applicants' residential property in the townland of Rathmoylan, it is considered that the proposed retention of a new section of roadway, which accompanies the northern portion of the existing laneway between the L4026 and the applicants' residential property, would duplicate the means of access that is physically available to this property. This new section of roadway, which has junctions at either end of it with the existing laneway, would function as an optional diversion from this laneway. As such, its presence and use would be inherently confusing to road users and so it would represent a poorly judged traffic management measure, which would put at risk road safety. Furthermore, its construction has entailed the formation of a cutting and scar in the local landscape, which is shown as being visually vulnerable in the County Development Plan, and so its presence adversely effects the visual amenities of the area. The proposed retention of this duplicate roadway would, therefore, endorse an anomalous and incongruous feature in the local landscape, the use of which would be in conflict with good traffic management and road safety. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.

Hugh D. Morrison
Planning Inspector

10th June 2022