



An
Bord
Pleanála

Inspector's Report ABP-316855-23

Development	Retention of laneway and bridges with extension for same.
Location	Dooary , Cloncullane , Ballyroan, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	22654
Applicant(s)	John and Seamus Mulhall.
Type of Application	Permission
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	People Over Wind
Observer(s)	None
Date of Site Inspection	15 th of March 2024
Inspector	Caryn Coogan

1.0 Site Location and Description

- 1.1. The subject site is a farm to the east of Ballyroan village in Co. Laois. The farm is undulating from west to east rising towards Cullenagh Mountain, north of the farm.
- 1.2. The farmyard is positioned within a number of townlands, Cloncullane, Dooary, Ballinaclough.
- 1.3. The subject of this appeal is a farm laneway, that currently traverses the landholding from one access point to another. The main access to the farm is adjacent to the farmyard area at the western extremity of the landholding. There are holding pens for livestock at this access.
- 1.4. From the main access the farm road heads eastwards. This laneway has been in place for a considerable number of years as evident from the field layout, boundaries, adjoining ditch and structural condition. The road turns south and follows the lower contour of a steep inclining hill within the farm ownership.
- 1.5. Eventually the farm laneway leads out onto lower fields within the farmland that are laid out into four flat gelds dissected by the road farm and a stream. This section of road would appear to be recently constructed and includes a new culverted bridge for farm machinery.
- 1.6. The road ends at the other access to the farmland, which is off a cul-de-sac serving a large Coilte forestry plantation, and a number of one off houses.

2.0 Proposed Development

- 2.1. The proposed development is in two sections:
 - (a) Retention of as constructed farm laneway and bridges
 - (b) Extension of existing farm laneway and bridges.
- 2.2. Following receipt of Further Information date stamped 13th March 2023 the following details were clarified:
 - The total landholding is 69.28ha. The laneways are to enable livestock and machinery to move within the farm in particular from the four paddocks to the south.

- The laneways were constructed in stages over several years. There was waste material used to construct the lanes.
 - (a) Stage 1 constructed over 40 years ago, 363m of laneway.
 - (b) Stage 2 constructed in 2003 consisted of 180m of laneway.
 - (c) The third stage was constructed in 2007 and consisted of 216m
 - (d) The fourth stage was constructed in 2018 and is 418m
 - (e) The sixth stage was constructed in 2020 and is 531m.
- The 7th stage will be constructed in 2024 and will consist of 380me stretch, and a final stage of 590metres as per drawings.
- An EIAR was not required. An environmental report was submitted.

3.0 Planning Authority Decision

3.1. Decision

On the 4th of April 2023 by Manager's Order Laois granted planning permission for the development subject to 7No. standard conditions.

Of particular note is **Condition No. 2**:

The laneway hereby permitted shall be used solely for the purposes detailed in the approved plans and particulars. It shall not be used for any other purposes. No change of use shall take place without prior grant of planning permission (notwithstanding the exempted development provisions of the Local Government (Planning and Development Regulations 2001, as amended) No business, trade or commercial activity of any kind whatsoever shall take place from the site.

Reason : In the interests of clarity.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- A portion of the internal roadway and bridges has been granted planning permission under planning reference 20/665.

- No impact on residential amenity. Environmental Impact to be examined.
- No amenity designations associated with the landholding.
- Access from the north is off L-27782 (Local Tertiary Road). Access from the south is off a private laneway.

3.2.2. **Other Technical Reports**

Environment Section : No objection subject to conditions.

3.3. **Prescribed Bodies**

None

3.4. **Third Party Observations**

People Over Wind objected to the development on the following grounds:

- Why was planning permission not sought for the roads in advance of providing them?
- The applicants have demonstrated little regard for the planning system
- Under reference 13/268 Coillte received planning permission for an 18No. wind turbine farm each of the landholding. A letter of consent was submitted by John Mullhall at the time, and it may relate to lands associated with the current planning application.
- The farm laneways could be used for the wind farm
- The application is mis-leading
- There was waste used in the construction of the roadways, in particular hazardous waste i.e. tarmac.
- Drawings are incorrect, the planning application is invalid.

4.0 **Planning History**

4.1 Enforcement File 22/13 relating to the works associated with the current planning application and appeal.

4.2 ***Planning Reference 20/665***

Permission granted to Seamus Mulhall for retention of existing laneway and associated bridge. (This section as described in the further information relating to the current application/ appeal, was constructed in 2020)

4.3 Lands to the east of farm in the ownership of Coillte:

Ref. 13/268: Permission refused by LCC to Coillte Teoranta for development comprising a wind farm of 18 no. turbines and associated infrastructure [but not including a grid connection] at Cullenagh Mountain and lands to the south. The application was accompanied by an EIS and an NIS. The applicant appealed the decision to the Board (PL 11.242626), and by Order dated 17th June 2014, permission was granted subject to 22 no. conditions. The development has not been carried out to date.

5.0 Policy Context

5.1. Development Plan

Section 9.2 of the current Laois County Development Plan relates to **Agriculture**. The Council recognises the importance of agriculture for sustaining, enhancing and maintaining a viable rural economy. The Council will support and facilitate agricultural restructuring and diversification within the framework of the 2020 Strategy (Department of Agriculture 2010), in order to integrate the sector more closely with rural development, in pursuit of environmental and social objectives. This approach accords with national policy as set out in the National Sustainable Development Strategy.

5.2. Natural Heritage Designations

The River Barrow and River Nore SAC is located 4 kilometres to the south of the landholding. Having regard to the nature and scale of the proposed development and nature of the receiving environment together with the proximity 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.

5.3. EIA Screening

Having regard to the existing, limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site as well as the criteria set out in Schedule 7 of the Planning and Development Regulations, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Note Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

A summary of the relevant issues in the appeal is as follows:

- 6.1.1 There was a similar planning application, ref. 20/665, submitted by Mr. Seamus Mulhall adjacent to the subject development. Why were the works the subject of the current application not asked for under the earlier planning application.

In addition, retention permission and permission for infill of 16,600 and 83.337 tonnes at Cashel, Ballyroan by John Mulhall under reference 17/42 demonstrated little regard to the planning system.

Under planning reference 13/288 Coillte applied for an 18 turbine windfarm with an EIS and an NIS. An Bord Pleanála granted planning permission for the wind farm. The planning application included a letter of consent from John Mulhall for the development of some of his lands. The same lands the subject of this current appeal would be included in the windfarm proposal.

It is understood a new planning application is to be submitted for a windfarm on the same lands as previously applied for. Submitted on appeal is an indicative outline of the permitted Cullenagh Windfarm. The farm laneway runs adjacent to the boundary of the permitted wind farm and could be used as an access or haul point for the wind farm in the future. Therefore the application to retain and extend the unauthorised development under the guise as a 'farm laneway' is completely misleading.

6.1.2 The route of the proposed grid connection is outlined in purple as per the Cullenagh Wind Farm website. This overlaps with the farm laneway the subject of this appeal. The alignment of the grid route runs closer to the disputed internal roadways, possibly indicating the alignment of Coillte and Mrssers Mulhalls intentions.

The real need for such extensive roadways needs to be established.

6.1.3 The roadways intersect and traverse the landholding providing significant scarring and damage to the landscape.

6.1.4 The applicant has a history of proceeding with development without the benefit of planning permission, further information is required. If the intention is to misguide the planning authority and the public, and to use the development to facilitate the commercial activity of a windfarm, the application should be invalidated.

6.1.5 there are numerous farms in the locality that do not have such elaborate laneways.

6.1.6 It is unclear how condition No. 2 of the permission can be implemented given the vague information on file and the applicants planning history.

6.1.7 The submitted drawings do not present a true reflection of the material used by the applicant to construct the laneway. The information is misleading. The exact material should be clarified. In the event waste materials were used, it may result in serious environmental impacts on ground and surface water. A photograph of waste tarmac is submitted, and this is considered to be hazardous waste. This could lead to serious environmental impacts and requires further investigations. Detailed drawings on construction methods and planned materials for the roadways and bridges are required.

6.2. **Applicant Response**

The applicant made a submission stating the following:

- (i) Condition No. 2 of the permission states: The road hereby permitted shall be used solely for the purposes detailed in the approved plans and particulars. It shall not be used for any other purpose. The road is to service the land and is for agricultural purposes.
- (ii) Planning reference 13/268 Coillte submitted a planning application for 18 turbines. The laneway does not extend to this boundary.

6.3. Planning Authority Response

There was no response from the planning authority.

7.0 Assessment

I examined the appeal file and carried out a full site inspection of the subject farm roads and I will consider the appeal under the following headings:

- Background
- The nature and extent of the development
- Other concerns raised on appeal
- Appropriate Assessment

7.1 Background

7.1.1 This third-party appeal has been brought by a group called 'People Over Wind'. To be clear, the current appeal relates to internal farm roads, both existing and proposed. There are no wind turbines associated with the land holding. Included in the Appendix of this report, along with photographs from my site inspection, is a copy of the Board's decision on appeal PL11.242626, which was permission granted to Coillte Teoranta for 18No. wind turbines on lands to the north, east and south of the applicant's landholding.

7.1.2 The third-party appeal suggests that the current proposal to retain and extend unauthorised development under the guise of farm laneways is misleading, and that the subject lanes runs adjacent to the boundary of the future windfarm. The 18No. wind turbines granted were planning permission in 2014 on adjoining lands, have not been developed to date, therefore the permission is due to expire. In my opinion, it is prudent not to be presumptuous about a new planning application or the outcome of same. Essentially, the Board can only consider the current planning application at face value. Based on the comprehensive information presented in the planning application file, I can find no evidence to suggest the farm lanes are linked to any future wind farm on the adjoining lands. From my site inspection each laneway had a clear farming role and a natural functional progression through the field and paddock pattern of the applicant's landholding.

7.2 Nature and Extent of Development

- 7.2.1 The applicants' landholding is a farm to the east of Ballyroan village in Co. Laois. The farmyard and buildings are located alongside the public road at the north-west extremity of the landholding. The main access to the land adjoins the farmyard, and there is a livestock collecting pen at the entrance.
- 7.2.2 The landholding is laid out in the collection of fields and paddocks, consisting of grassland for cattle. The fields are divided by hedgerows and fencing. The landholding has an irregular configuration and topography. In order to connect the fields and the paddocks at the southern end of the farmland and to each other, there is a farm roadway traversing the farm from the north to the south. There are accesses to the local road network at the northern and southern end of the farm. The southern end exits onto a private lane which is also used by Coillte to the east, at the end of a cul de sac serving a number of one-off dwellings.
- 7.2.3 It was clear from my inspection the land and soil type varied throughout the farm. The topography ranged from flat to hilly, with the lower lying areas having poorer draining soils. In order to manage the field systems and paddocks, the roads were provided on a phased basis starting 40 years ago.
- 7.2.4 The further information provides a detailed account of how the landowners progressed the provision of their farm roads to cater to for their livestock and machinery.
- Stage 1 constructed over 40 years ago, 363m of laneway.
 - Stage 2 constructed in 2003 consisted of 180m of laneway.
 - Stage 3 was constructed in 2007 and consisted of 216m of laneway
 - Stage 4 was constructed in 2018 and is 418m
 - Stage 6 was constructed in 2020 and is 531m., and this is the southern most part of the farm which has two large paddocks either side of the laneway each with drinking troughs. There is a small drain dividing the paddocks and there is a bridge at this point where the drain is culverted. The bridge is basic and adequate for farm machinery as per Plates 7 and 9 of my photographs. The Board should note this section of the laneway has been granted planning permission under **Planning Reference 20/665**.
 - The 7th stage will be constructed in 2024 and will consist of 380me stretch, and a final stage of 590metres as per drawings. The new proposed laneways

are indicated on Plates 2 and 10 of my photographs and extend onto the steeper gradients of the farm.

- 7.2.5 Internal farm laneways are associated with Irish farms to provide ease of access for heavy farm machinery through the network of field. This also ensure unnecessary trips on the public road system. In this instance for example large silage loads can be hauled internally on the farm to the farmyard located to the north east. In addition, livestock can be moved safely and freely through the elongated and undulating landholding without the necessity to bring them across the public road way.
- 7.2.6 The proposed laneway extensions onto the hillier portion of the landholding across steep gradient, will ensure safer movement of large machinery across the steep slopes.
- 7.2.7 The principle of the development is in keeping with the agricultural use of the land. The internal roadways are a normal and practical necessity on working farms. The development will not lead to any increase in traffic movements, in fact, it will reduce the level of traffic movements onto the surrounding road network. In terms of a current development plan for the area, I refer to Section 9.2 Laois County Development Plan 2021-2027 relating to **Agriculture**, *'The Council recognises the importance of agriculture for sustaining, enhancing and maintaining a viable rural economy. The Council will support and facilitate agricultural restructuring and diversification within the framework of the 2020 Strategy (Department of Agriculture 2010), in order to integrate the sector more closely with rural development, in pursuit of environmental and social objectives'*. I consider the laneways, which are the subject of this appeal, are essential to the viable functioning of the farm. The proposal complies with the development plan policies and objectives.

7.3 Other concerns raised on appeal

- 7.3.1 The appeal raises a number of concerns some of which are irrelevant, unsubstantiated and inaccurate. I will address the relevant issues raised below:
- The reference quoted by the appellant as relevant to this case is Planning Ref; 14/42, which related to retention of infill of 16,00 and 83337 tonnes of subsoil at Cashel, Ballyroan. This case is not related to the subject landholding. The applicants to the cited case were Frances and Michael Coyne. This issue can be dismissed by the Board.

- The current planning application/ appeal was submitted by the applicants following an enforcement file being opened by the planning authority in 2022. Prior to that, the applicants had been granted planning permission for a section of the farm roadway under Planning Reference 20/665.
- Any future planning applications in the vicinity of the landholding for wind turbines or grid connections, is purely speculative, and has no bearing on the assessment of this current appeal. The appellant has made serious presumptions in the appeal submission and unsubstantiated claims the planning application is invalid on that basis. This issue can be dismissed by the Board.
- The farmland is not located in a high amenity landscape area. There are no designations associated with the farm. The laneways follow the field patterns, some of which are completely screened from mature hedgerows. The elevated portion of the farm can be viewed from the surrounding area. However, the provision of laneway extensions across the brow of the hill which not create a significant visual impact. The roadways are not obtrusive, and will not interfere with the character of the landscape, view or visual and rural amenities of the area.
- The appellants claim there was hazardous waste used to construct laneways. This is substantiated by a photograph allegedly taken along the laneway of a piece of recycled tarmac. There is a drawing submitted of the specification for the laneways and culverts (Drawing No. 3756-C008). As seen from my inspection photographs, the specification is basic and sufficient for agricultural machinery. Nearly all the laneways have a thick sward of grass running up the middle of them between the tracks. There was no evidence of hazardous waste. According to the appeal submission, the planning authority's Environment Section are addressing this allegation under file reference WD-21-706. This issue is beyond the remit of the Board.

7.4 **Appropriate Assessment**

The development relates to the retention and extension of farm laneways on a farm in Ballyroan, Co. Laois. Having regard to the nature and scale of the proposed

development, the nature of the receiving environment and lack of proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise and that the proposed development would not be likely to have any significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. Having regard to the above assessment, and based on the following reasons and considerations, it is recommended that permission be granted subject to conditions.

9.0 Reasons and Considerations

Having regard to the Laois County Development Plan 2021-2027, and the scale and nature of the proposed development, it is considered that the development would not seriously injure the visual amenities of the area and would be acceptable in terms of traffic. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 13th of March 2023, 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.

Reason: In the interest of clarity.

2. The use of the laneways and associated bridges shall be limited to agricultural use only.

Reason: In the interest of clarity.

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.

Caryn Coogan
Planning Inspector

24th of March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP- 316855-23		
Proposed Development Summary	a) To retain the existing farm laneway and associated bridges b) Permission for an extension to the existing farm laneway and associated bridges		
Development Address	Dooary, Cloncullane, Ballyroan, Co. Laois.		
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	Y
		No	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) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
No		Part 2, Class 1. Agriculture, Silviculture and Aquaculture, and does not equal or exceed any relevant quantity, area or limit where specified for this class.	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
		Conclusion	
No		Part 2, Class 1. Agriculture, Silviculture and Aquaculture, and does not equal or exceed any relevant quantity, area or limit where specified for this class.	No EIAR or Preliminary Examination required
4. Has Schedule 7A information been submitted?			

No	N/A	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____