



An
Bord
Pleanála

Inspector's Addendum 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 Introduction

- 1.1 This report is an addendum report to my Inspector's Report in respect of ABP-316855-23 dated 24th of March 2024.
- 1.2 In accordance with the Board Direction (BD-016359-24) dated 20/05/2024; The board decided to defer consideration of this case and to issue a Section 137 notice to the parties as follows: "Having regard to the interpretation of 'road' in section 2 of the Planning and Development Act 2000 (as amended), it appears to the Board that the proposed development may come within class 10(dd) Part 2, Schedule 5 of the Planning and Development Regulations 2001 (as amended) that being a private road which exceeds 20000metres in length and that regard, it would appear to the Board that the development may come within the scope of mandatory Environmental Impact Assessment. As the proposed development includes, in part, a retention application, the Board also notes the provisions of section 34(12) of the 2000 Act (as amended) that provides that a retention application cannot be considered by a planning authority for a development which would have required Environmental Impact Assessment (EIA). The provisions of Part XA 'Substitute Consent' of the 2000 Act (as amended) are also noted."
- 1.3 This notice was issued to the parties under Section 137 on the 18th of June 2024. A response to the issues was required to be submitted on or before the 8th of July 2024.
- 1.6 In response to the Board's direction above, please see additional analysis in relation to the documentation submitted in response to this issue below. This addendum report sets out a summary of the responses received from the parties to the appeal and sets out an assessment of the key issues raised.

2.0 Background -

- 2.1 This development relates to retention of as constructed farm laneways and bridges, and for the extension of these farm roadways and bridges on the family farm at Cloncullane, Dooary, Ballyroan village in Co. Laois. The full background and assessment of the development is set out in the Inspectors Report in respect of ABP-316855-23 dated 24th of March 2024.

3.0 Responses to the Board's Correspondence

3.1 Applicant's Response

A response was received from McGill Planning on behalf of the applicants on the 5th of July 2024.

1. An OS map was submitted at the Further Information stage of the planning application which indicated the various stages at which the development of the private farm laneway took place. It is noted that Stages 1, 2, 3 and 4 are the subject of the retention part of this application, and these took place over periods 1982, 2003, 2005 and 2007.
2. The dates are of critical importance because the portions of the private laneway were carried out prior to the enactment of SI 235 of 2008 of the Planning and Development Regulations which amended Schedule 5 of the Regulations to add the following:

Amendment of Schedule 5 of the Regulations:

7. Part 2 of Schedule 5 of the Regulations is amended by the insertion after paragraph 10(d) of the following:

(dd) All private roads which would exceed 2000 metres in length

3. The development of Stages 1, 2, 3 and 4 took place prior to the enactment of that amendment to the Planning Regulations and would not be the subject of the EIA considerations as the section of legislation was not in force at the time of the carrying out of the development.
4. The Board inspector will note from the site visit the condition of the laneway confirms the age of the laneway which dates back to between 17 and 42 years.
5. Stage 5 of the laneway was completed in 2018.
6. The following is a table of each stage of the agricultural laneways.

Stage	Year	Measurements	Cumulative Total
1	1982	363.6m	363.6m
2	2003	180.8m	544.4m
3	2005	125.1m	669.5m
4	2007	216.4m	885.9m
5	2018	418.1m	1304m
6	2020 (Permitted)	531.9m	1835.9m

7. Stages 1, 2, 3 and 4 have a total length of 885.9metres. This falls well below the 2000m threshold. This would not be subject to the mandatory EIA . Furthermore Stages 1 to 5 which total 1,304m also fall well below the 2000m threshold.
8. Stage 6 was included on the O.S. map and is located in the south-east of the farm holding. This section was permitted under planning reference 20/665 in 2020 . It measures 531.9m. It was included in the current application in order to clarify for the planning authority the full extent of the farm laneway used by the applicant. When added to stages 1-5 the total length is 1835.9m which is below the 2,000m threshold under Class 10(dd) of Part 2, Schedule 5 of the Regulations.
9. The development the full length of the laneway for retention is below the 2000m threshold and the provisions of Part XA Substitute Consent would not apply. Furthermore, the section of the laneway predates 2008, and cannot be subject to EIA.
10. For the absolute avoidance of any doubt regarding the thresholds surrounding the EIA, the applicant is no longer seeking planning permission for the proposed Stages 7 and 8 which would comprise of a further 970.7m of farm laneway. Revised drawings are hereby submitted confirming Stages 7 and 8 are omitted and no longer been sought for same.

11. It is requested that An Bord Pleanala examine the case de novo with the omission of Stages 7 and 8. The Board is requested to grant planning permission for the development as per the proposed amendment now tabled with a condition attached similar to the following
12. *The development shall be carried out in accordance with the plans and particulars as amended and received by An Bord Pleanala dated (5th of July 2024) and proposed laneway Stages 7 and 8 be omitted from the proposed development.*
Reason: In the interests of clarity.
13. Alternatively the Board could also issue a split decision, granting retention of the farm laneways Stages 1-6, and refuse Stages 7 and 8.

3.2 Planning Authority's Response

There was no response from the planning authority.

3.3 Further Responses

There were no Further Response from the appellant 'People Over Wind'.

4.0 Assessment

- 4.1 Having reviewed the response from the applicant and the documentation received, I am satisfied that the matters to be considered in this addendum report to the original Inspector's Report dated 24th of March 2024 are provided in accordance with the matters arising from the Board Direction dated 20th of May 2024.
- 4.2 Following on from the Board's opinion that the laneway the subject of this appeal may come within the scope for a mandatory Environmental Impact Assessment, in particular, Class 10(dd) of Part 2, Schedule 5 of the Planning and Development Regulations 2001 (as amended).

The above cited legislation was enacted under SI 23/2008 Planning and Development Regulations 2008, in July 2008. According to the submission and the

planning application documentation, four stages of the farm laneway were completed prior to the enactment of the amendment.

Stage	Year	Measurement	Cumulative Total
1	1982	363.6m	363.6m
2	2003	180.8m	544.4m
3	2005	125.1	669.5m
4	2007	216.4	885.9m

- 4.3 I inspected ALL sections of the farm laneways during my site inspection. It was clear to me that Stages 1-4 have been in place for a consideration length of time, simply by viewing the field pattern, hedgerows, drains and road surface. It was very obvious on site, that Stage 6 had been installed in recent years because the field boundaries were still immature, the bridges appeared newly constructed with the concrete finish still fresh and new in appearance, and field patterns had been rearranged. In my opinion, it is not reasonable to include the first four stages of the laneways given the length of time they have existed on the farm without enforcement proceedings been initiated, and the fact they pre-date the enactment of the amendment to the Planning Regulations in 2008.
- 4.4 Stage 6 which is 531.9m was granted planning permission under planning reference 20/665. Stage 5 was erected in 2018 and it is 418.1m. The total amount of existing laneway without the benefit of planning permission is 1,304metres. If you included the permitted section of laneway, (Stage 6), the total length of existing laneway through the farm is 1835m. **Both** of these totals are **BELOW** the 2000m prescribed in Class 10(dd) of Part 2, Schedule 5 of the Planning and Development Regulations as amended. The provisions of Part XA 'Substitute Consent' of the Planning and Development Act do not apply.
- 4.5 The applicant has now in response to the Board's Direction of 20/05/2024 revised the application to exclude the 'proposed' new sections of the farm laneway referred to in the original submitted documentation, as Stages 7 and Stage 8 which would have cumulated in a further 970.7m of laneways across the brow of the hill on the

landholding. These sections, Stages 7 and 8, are now omitted from the application, and revised drawings were submitted to the Board on the 5th of July 2024 including these revisions. These revisions remove any uncertainty regarding the thresholds associated with EIA.

5.0 Recommendation

I refer to the previous Inspector's Report and recommendation dated 24th of March 2024, 2024. Having regard to the queries raised in the Board Direction dated the 20th of May 2024, and to the applicant's response, I would conclude that the applicant has adequately addressed the issues as raised by the Board in its Direction in relation to whether the development comes within the scope of a mandatory Environmental Impact Assessment. I would therefore recommend that permission be granted as per my recommendation to grant planning permission in the Inspectors Report dated the 24th of March 2024, with one additional condition to omit the 'proposed' sections of laneway.

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.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the appeal, as amended by the further plans and particulars submitted to the Board on the 5th of July 2024, 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 proposed extension to the existing farm laneway, described as Stage 7 and Stage 8 on the documents submitted to the planning authority in the Further Information Response date stamped 13th of March 2023, and to the Board on appeal on the 5th of July 2024 shall be omitted from the grant of planning permission.

Reason: In the interest of clarity.

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

Reason: In the interest of clarity.

i Coogan
Planning Inspector

16th of August 2024