

A. McCANN & Co.
SOLICITORS

Angela McCann B.C.L. 56a York Road Tel (01) 2802538
Solicitor Dun Laoghaire, Co. Dublin Tel (01) 2843287
Commissioner for Oaths DX 6014 D/L Fax (01) 2843658

Your Ref:

Our Ref:OMcC/461

Mr Frank Heffernan
Heffernan Foskin
Otteran House
South Parade
Waterford

30 May 2017

By E-Mail frank@khfsolicitors.com

Re: Your Clients: Ciaran and Jane Bailey

Our Clients: Janice and Paul Lenehan

Premises: Site at Rathmoylan, Dunmore East, Co. Waterford

Dear Mr Heffernan

We act for Paul and Janice Lenehan in the above matter and understand that Kim Long has passed a Deed of Grant of Right of Way to you which our clients require to proceed. I understand that your clients are concerned not to grant rights in this deed which might extend to the entire farmland or permit further development beyond the planning already granted. I confirm that that is absolutely not our client's intention. The rights granted in the deed are limited to our client's site as referenced in the First Schedule.

Having reviewed the matter with them in light of your clients concern we have established that our client's site is self serving so the rights at items 4 and 5 of the Second Schedule can be deleted. I hope this gives your clients reassurance as to the objective here.

Paul and Janice Lenehan simply require access to their site for use of that site only.

I understand that Mr Bailey is on-shore until the end of next week and our client has a Tracker Mortgage which is running to an end in terms of being capable of being transferred from the property they sold to this site. Hence this matter is now time critical and I would be really grateful if you could give me a call on receipt of this letter. My personal mobile is 087 132 4506.

Yours sincerely

Olivia McCann
Consultant Solicitor
A. McCann & Co



The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
D01 V902

12 June 2019

Re: Referral under Section 5 of the Planning and Development Act 2000 (as amended) in respect of the question, "Whether the works concerning creation of an access road and entrance are or are not development and/ or are not exempted development" at Rathmoylan, Dunmore East, County Waterford.

PA Ref: D52019/2

ABP ref: ABP-304-134-19

Dear Sir/ Madam,

I am writing on behalf of Janice Murphy and Paul Lenehan in respond to your letter of 23 May 2019.

It is not proposed to respond in detail to each individual point made by Ciaran Bailey and Jane Bailey, but rather make a general response to each of bullet points in the conclusion which summarise all that is said in the body of the letter. However, my clients do wish to clarify and correct a number of inaccuracies, information gaps and conflicting statements made in the referrer's submission "Background information to the proposed contract of transfer". This clarification is detailed in Appendix A of this letter.

- Referral made in good faith and not vexatious

Response –

Please refer to my clients' clarification of events on the day works on the access commenced (Appendix A)

The correspondence the referrers sent when the works started was not addressed to any member of staff in the planning office or planning enforcement staff. The planning authority has a formal complaints system in place which, if followed, triggers the formal process of enforcement under the Planning and Development Acts.¹

1

<http://www.waterfordcouncil.ie/media/forms/planning/English/PDF/Complaint%20Form%20for%20Unauthorised%20Development.pdf>

When they did make their complaint known to the planning authority, something only now brought to my clients' attention, the entire road as far as the proposed house was complete to base level.

- Referrers prepared to facilitate an easement of the right of way to my clients providing it does not extend to the other landowners

Response – The Referrers apparent willingness to facilitate my clients with an easement of right of way has never been expressed to them. In fact, it was made very clear that they were not willing to grant a right of way as requested.

Janice Murphy's family are legal owners of the landholding and access laneway and entitled to access their land. That entitlement existed over the existing road before any planning application was made for a house.

In the event of any future planning applications for a house by any of Janice's family the Referrers statutory rights to object to any future planning application would not have been affected by their providing an easement of right of way to my clients to access their house. In fact, on the 30th May 2017, Janice and Paul's solicitor confirmed, very clearly in writing, that the right of way extended only to Janice and Paul to allow them to access their own site. (see Appendix B) The referrers legal advisors would no doubt have advised them this was the case. That point was also made explicitly clear to Ciaran Bailey and his advisor, at a meeting between Paul and Janice Lenehan and Ciaran Bailey and his advisor on 14th June 2017.

- The claim that the access road and entrance is an immaterial deviation from planning permission 16/21 is doubtful and should not preclude the Board from making a decision on the referral

Response – The planning authority has determined that the adjustment to the access is an immaterial deviation to the planning permission. It is considered a matter for the Courts to determine if the planning authority erred in its decision or if access is not an immaterial deviation to the permission.

- The Section 5 Referral is not flawed

Response – The Board will determine whether the Referral question is flawed or not.

The conclusion that, if the works involved in creating the access road do not fall into Classes 9 or 13 of Schedule 2 of the Regulations, they require planning permission, is also flawed. They are permitted under permission 16/21.


- The access road and entrance are likely to give rise to a traffic hazard on the Referrers laneway

Response – The section of road in question does not represent a traffic hazard.

Article 9 of the Regulations would only be relevant in assessing whether works are or are not exempted. In this case it is considered the works are in accordance with planning permission 16/21, therefore the provisions of Article 9 are irrelevant.

I look forward to the Boards decision

Yours faithfully,

A handwritten signature in black ink that reads "Peter Thomson". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Peter Thomson, MSc, MIPI

Appendix A

Response to Appendix C, "Background information to proposed contract of transfer", included in Referrer's submission to the Board.

The document titled, "Some background Information to the proposed contact of transfer" included as Appendix C in the referrer's submission to the Board contains multiple inaccuracies and information gaps. We feel it is absolutely necessary to respond and correct the inaccuracies and provide all of the relevant information to the Board.

In paragraph 2, "***We note that Janice Lenehan and her 9 cousins do not take part in any kind of farming activity & that all of the farm is rented out to a neighbouring farmer***". This is false information. The land is not rented out and Janice manages the farm on behalf of her extended family.

In paragraph 3: "***Paul informed us that an unplanned hitch had arisen with Planning App 16/21, and asked would we be prepared to sign over our 50% Right of Way to the lane outside, to them.***"

This statement is completely untrue. Paul never advised them of an unplanned hitch and we certainly never asked the Referrer's "to sign-over their 50% right of way". We often spoke to them about the fact that we would need their agreement to give us a right of way over the "small triangle" of land at the entrance which we owned in common with them. In fact, we often brought this up during conversations with them, even before we submitted our outline planning application as we wanted to ensure that they would be in agreement with this before we proceeded. They always indicated that this would be "no problem".

During the site transfer process, our solicitor drafted the Grant of Right of Way over the parcel of land which was required to be signed by the Baileys and Janice's 9 family members. Paul advised Ciaran Bailey that the document was ready & Ciaran Bailey suggested that they would "just sign it without the need for a solicitor". However, at the advice of our solicitor, we suggested to them that good practice would be for them to review the document with their solicitor and take advice and we agreed to pay for their legal costs re same. They agreed to arrange a meeting with their solicitor to sign.

In reference to their comments in paragraph 3, where they refer to the "***joint ownership with the 9 cousins, of the lands***", the farm and access laneway have been in the ownership of Janice and her 9 other family members since the untimely death of her uncle in December 1999 and this was the situation when the Baileys purchased their site in 2007. We had always assumed that they knew who owned the farm and laneway and we also assumed that they understood the ownership structure of the "parcel" which they acquired 50% ownership of when they purchased their site. We therefore never felt the need to discuss this with them. In fact, the landowners were all named in our outline and full planning permission applications, so we certainly never tried to hide this information, contrary to what may be suggested in the background document.

In paragraph 3, "***It was obvious from the document that all the cousins would benefit***". This belief that the Baileys had about signing the Right of Way was and still is completely mis-held & we have endeavoured to clarify this matter on numerous occasions as follows:

1. Our solicitor (A McCann & Co.) sent a letter to their solicitor advising them of the fact that the rights granted in the deed were "**limited to our site**" and their legal advisors would no doubt have advised them this was the case (**See Appendix 2**)
2. Following several attempts to engage with the Baileys to understand their concerns and clarify our position, they finally agreed to a meeting with us. This two hour meeting was attended by Ciaran Bailey and his advisor Tomas O' Donoghue and Paul and Janice Lenehan on 14th June 2017. At this meeting, we explained at length our requirement for the Right of Way and the fact that this was limited to us to access our site only.
3. At the meeting mentioned above, Tomas O' Donoghue (Bailey's advisor) asked for our permission to speak directly with Kim Long, the solicitor acting on behalf of Janice and her family to further discuss and understand the implications of the Right of way. We were delighted to offer Tomas this opportunity. Tomas proceeded to have a lengthy conversation with Kim Long, during which she clarified the situation.

Following our meeting with Ciaran Bailey and Tomas O' Donoghue and his subsequent discussion with Kim Long solicitor, the Baileys met Janice at the school gate in late June and advised her that they were now happy with the outcome of the discussions and that they would be signing the right of way document. They certainly did not give us the impressions that they felt they were being "**mised**" as stated in paragraph 3 of their background document.

However, despite all of the endeavours to clarify the position with regard to the Right of Way and their indication to Janice that they were going to agree to it, the referrer' chose not to sign the grant of right of way and the next communication was the email from Ciaran Bailey to Paul on 19th July 2017, advising him that they would not be signing. This came as a complete shock to us, our solicitors and even their own advisor, Tomas O' Donoghue.

From: Tomas O'Donoghue [<mailto:tomasodonoghue.ceng@gmail.com>]
Sent: 20 July 2017 14:58
To: Kim Long
Subject: Ciaran and Jane Bailey, Rathmoylen.

Dear Kim

Just to let you know that I got a phone call last night from Ciaran saying that they wouldn't be signing the release. I was cc'ed this morning on the email he sent to Paul Lenehan outlining his intention and I suppose Paul will be contacting you shortly, if he has not done so already.

This is just to clarify matters as that my understanding was, when we last talked that they were going to proceed. Clearly I got it wrong.

Best wishes.

Tomás

With reference to paragraph 5, on the morning that the diggers arrived on site to create the new entrance, Ciaran Bailey approached the owner of the grounds-work company whom we had engaged. Ciaran Bailey raised a concern about water run-off in extreme rain conditions and he requested that we move the location where the lanes join a few metres to the South away from his entrance and house and to a location opposite his back garden. Our contractor suggested to Mr Bailey that he should speak to us directly with his concerns and request. Our contractor phoned us and we immediately visited the site to review the matter. Despite being on the laneway outside Mr Bailey's house, he never made any attempt to approach us. Later that day, Paul called to the Baileys' home and asked Ciaran Bailey to engage directly with us if he wanted

to discuss any aspect of the laneway, and not to engage with the grounds work team who were working on our behalf. We invited him to the site works and in consultation with him about his concerns for water run-off, we agreed to open the ditch where the lanes join at the location he requested.

During that conversation, Ciaran Bailey asked why we hadn't discussed our plans with him in advance and also if the work was in accordance with planning permission. We explained, as all the works were taking place on private land owned by Janice and her family and there was no interference with any property owned by the Baileys, we did not have any reason to discuss this with them. We advised him that we had permission to proceed and that any works would be in accordance with our planning permission.

The work was certainly not "*amateur and disorganised*" as stated in paragraph 5. Our architect had submitted a drawing to Waterford County Council of the minor amendment to the laneway and this had been marked-out at the location of the works, by our engineer on the previous day. All the works were carried out by a professional grounds work contractor.

We note that the Baileys continue to be "*seriously concerned*" about future development on our farm but any other potential development would be subject to the planning process and the Bailey's would be entitled to exercise their statutory rights to object.

