

**AN BORD PLEANÁLA**  
LDG- 014539-19.  
ABP- \_\_\_\_\_  
**27 MAR 2019**  
Fee: € 220 Type: Cheque  
Time: — By: Reg Post

Ciaran and Jane Bailey  
Rathmoylan,  
Dunmore East  
Co. Waterford  
X91D6Y0

An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1

**Referral under Section 5 (3) of the Planning and Development Act 2000 (as amended) concerning works consisting of the creation of an access road and entrance opposite our house at Rathmoylan, Dunmore East, Co. Waterford (Eircode reference X91D6Y0).**

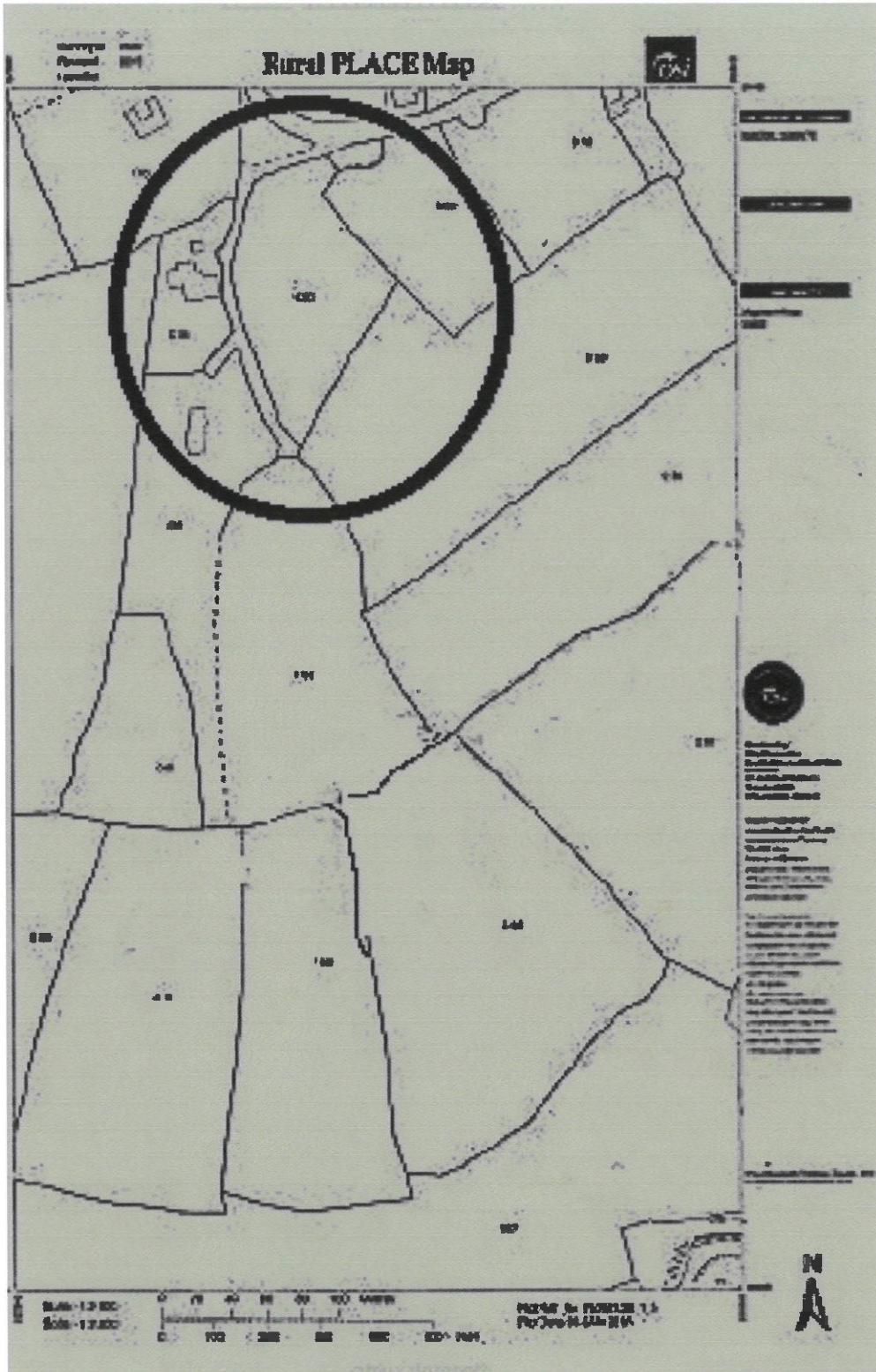
Dear Sir/Madam,

Pursuant to Section 5 (3) of the Planning and Development Act 2000 (as amended), we wish to refer the question as to whether recent works consisting of the creation of an access road and entrance opposite our house at Rathmoylan, Dunmore East, Co. Waterford (Eircode reference X91D6Y0) are, or are not, development and whether the said works are, or are not, exempted development. We enclose the acknowledgement by Waterford City and County Council of our request for a declaration (see also Appendix 2). We further enclose the sum of Euro 220 to cover the statutory fee for making this referral. We note that our referral is proceeding under sub-subsection 5 (3) (b) of the Act, as Waterford City and County Council did not make the requested declaration within the statutory timeframe.

The following photograph provides a view of the works in question:



The location of the new access road and entrance is circled on an image of the relevant rural place map below:



**AN BORD PLEANÁLA**

**27 MAR 2019**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ARP. \_\_\_\_\_



It is our view that these works are development and are not exempted development. It is certainly the case that they are substantial, as the photograph shows that the area outside our front door is now more reminiscent of a main carriageway than a rural lane.

We note that, under Article 6 (1) and Classes 9 and 13 of Schedule 2 of the Planning Regulations (as amended), the construction of entrances and paved roads (of width not exceeding 3 metres) on private land constitutes exempted development unless they would 'endanger public safety by reason of traffic hazard or obstruction of road users'. In such cases, under Article 9 (a) (iii) of the Regulations, such works do not constitute exempted development.

The key question to be decided is, therefore, whether these works have the potential to give rise to traffic hazard or obstruction of road users. It is our opinion that this is the case. We believe that the above photograph makes it clear that this entrance is hazardous: even in the daytime, never mind at night or in times of poor visibility, the junction created at the entrance would be likely to give rise to collisions between vehicles (including agricultural vehicles) using these roads. Whilst we acknowledge that ours is a rural area, we would point out that, due to the absence of public transport, there are enough vehicular movements on our lane for this new entrance to give rise to genuine concern for our own safety and that of others using our lane.

We note that the house that this entrance and new road were constructed for (see Planning Permission ref. 16/21) can also be accessed via the existing laneway and entrance. Furthermore, there exists a right of way to the house along the existing lane. Should there be any doubt as to whether the existing right of way extends to all the occupants of the house, then we would be willing to clarify this. We therefore consider that, not only are these works likely to cause a hazard, but that there is no need for them in the first place.

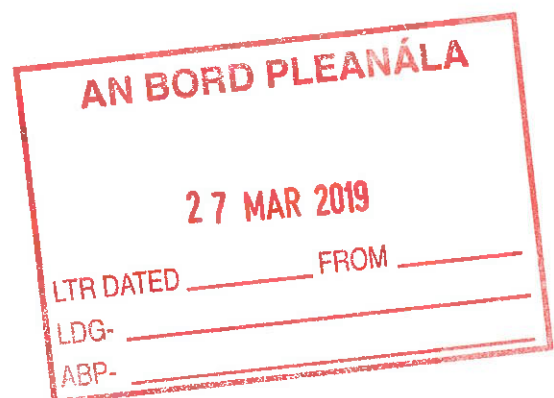
We have communicated our belief to Waterford City and County Council that these works are not exempted development and are not covered by any previous grant of planning permission. We attach the reply we received from Waterford City and County Council as Appendix 1. This may give some insight into the opinions of Waterford City and County Council on this matter.

We would earnestly hope that An Bord Pleanála will agree with us that these works are development and are not exempted development.

Yours sincerely,

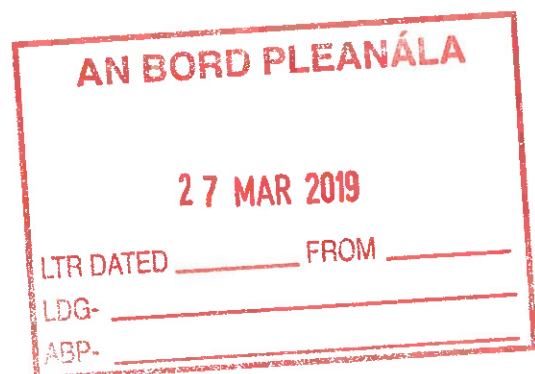
*Ciaran & Jane Bailey, 25/3/19*

Ciaran and Jane Bailey



# Appendix 1

Correspondence from Waterford City and County  
Council, dated 29<sup>th</sup> January, 2019





Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

AN BORD PLEANÁLA

27 MAR 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

29<sup>th</sup> January, 2019

Our Ref: JO/M/DP/2867

Mr & Mrs. Caran & Jason Bailey,  
Rathnoylan,  
Dunmore East,  
Co. Waterford,  
K91D6Y0

Re: Warning Letter WL 2867 relating to Permission Ref 16/21.

Dear Mr & Mrs Bailey,

I refer to your Email correspondence of 18<sup>th</sup> January 2019 to CE, OoS and SP and I wish to respond as follows.

To clarify the matter, WCCC served a Warning Letter on the J & P Lenihan on 16<sup>th</sup> Nov last, on the complaint that unauthorised work may have been or is being carried out on their lands. (A Warning Letter is the fore-runner to possible Enforcement Action and affords the person complained of, within a period 4 weeks, to make a submission explaining the substance of the complaint). J & P Lenihan responded to the complaint on 12<sup>th</sup> Dec 2018 and following consideration of their response and an inspection of the work carried out, the Planning Authority decided not to pursue the matter further.

The Enforcement File No. 2867 relating to the issue is not available for public inspection.

In coming to its decision the Planning Authority considered the following:

1. The minor readjustment of the entrance drive was necessitated to overcome a legal obstacle to passage over a small section of the existing laneway.
2. The new adjusted section of access drive does not impede the continued use of the existing laneway, for any user.
3. The readjusted section of access driveway is fully within the applicants' landholding. The remainder of the access drive (south of the existing laneway) is located on the applicants' landholding. The requested part of the access drive, from that originally shown on permission mapping, does not impact on sight lines at the junction with the public road; does not interfere with drainage onto the public road and does not create a traffic or public safety hazard for public road users.
4. The substantive development that being the permission for dwelling (located approximately 350m from the Public Road) is in accordance with permission 16/21 and the access drive exits onto the Public Road at the location permitted by condition No 6 of permission. The other requirements for entrance construction – Condition 6 (a) – (g) have been complied with.

Waterford City and County Council, City Hall, The Mall, Waterford.  
Comhairle Cathrach agus Contae Phort Láirge, Hala na Cathrach, An Meall, Port Láirge

contact@waterfordcouncil.ie

Tel: 0761 30 20 20

www.waterfordcouncil.ie



On the basis of the foregoing the Planning Authority has determined that the readjusted section of the access drive does not constitute unauthorised development.

In relation to the other matter of concern raised your phone call, the Planning Authority is aware of the numbers of "owners in common" – This issue was highlighted during the review stage of the planning application and Conditions are attached to permission restricting the use of the dwelling to the person managing the farm .

You are advised that you may pursue the matter further by making a formal submission to An Bord Pleanála for a "Section 5 Declaration and Referral on development and exempted development", under the Planning & Development Act 2000 (as amended).

Yours sincerely,

pp D. Powell  
J. O'Mahony,  
Senior Planner.

AN BORD PLEANÁLA

27 MAR 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

# Appendix 2

Acknowledgement by Waterford City and County Council, of our request for a Declaration

<b>AN BORD PLEANÁLA</b>	
<b>27 MAR 2019</b>	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	





Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

BO'K'OL/D5/2019 2

Ciaran & Jane Bailey,  
Rathmoylan,  
Dunmore East,  
Co. Waterford.  
X91D6Y0

4<sup>th</sup> February, 2019.


RE: Rathmoylan, Dunmore East, Co. Waterford.  
Section 5 Declaration

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Dear Sir or Madam:

I wish to acknowledge receipt of your application for Section 5 Declaration relating to the above mentioned property and enclose receipt herewith.

Yours faithfully,

  
B. O'Kennedy,  
Staff Officer.

AN BORD PLEANÁLA	
27 MAR 2019	
LTR DATED _____	FROM _____
LDG- _____	
ABP- _____	

Waterford City and County Council, City Hall, The Mall, Waterford.  
Comhairle Cathrach agus Contae Phort Láirge, Halla na Cathrach, An Meál, Port Láirge

contact@waterfordcouncil.ie

Tel: 0761 10 20 20

www.waterfordcouncil.ie





Waterford City and County Council  
 Planning Department  
 1st Floor, Menapia Building  
 The Mall

04/02/2019 09:20:54

Receipt No. : PLAN/0/625988

CIARAN AND JANE BAILEY  
 RATHMOYLAN  
 DUNMORE EAST  
 CO WATERFORD

EXEMPTION CERTIFICATES	80 00
GOODS	80.00
VAT Exempt/Non-vat. le	

Total : 80.00 EUR

Tendered :  
 CHEQUE 80.00  
 000706  
 CIARAN AND JANE BAILEY

Change : 0 00

Issued By : OONAGH LABF  
 From : PLANNING  
 Vat reg No.3263046AH

- The substantive development that being the permission for dwelling (located 350m from the Public Road) is in accordance with permission 16/21 and the exits onto the Public Road at the location permitted by condition No 6 of the other requirements for entrance construction – Condition 6 (a) – (g) have been met with.

Waterford City and County Council, City Hall, The Mall, Waterford.  
 Comhairle Cathrach agus Contae Phort Láirge, Halla na Cathrach, An Meall, P

contact@waterfordcouncil.ie

Tel: 0761 10 20 20

www.wate

AN BORD PLEANÁLA

27 MAR 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_ 29<sup>th</sup> January

ABP- \_\_\_\_\_

Application for Permission Ref 16/21.

of 18<sup>th</sup> January 2019 to CE, DoS and SP and I w

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 users.



Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

Our Ref: JO'M/DP/2867

Mr & Mrs Ciaran & Jane Bailey,  
Rathmoylan,  
Dunmore East,  
Co. Waterford.  
X91D6YO

AN BORD PLEANÁLA

27 MAR 2019

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

29<sup>th</sup> January, 2019.

**Re: Warning Letter WL 2867 relating to Permission Ref 16/21.**

Dear Mr & Mrs Bailey,

I refer to your Email correspondence of 18<sup>th</sup> January 2019 to CE, DoS and SP and I wish to respond as follows.

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The Enforcement File No. 2867 relating to the issue is not available for public inspection.

In coming to its decision the Planning Authority considered the following:

1. The minor readjustment of the entrance drive was necessitated to overcome a legal obstacle to passage over a small section of the existing laneway.
2. The new adjusted section of access drive does not impede the continued use of the existing laneway, for any user.
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4. The substantive development that being the permission for dwelling (located approximately 350m from the Public Road) is in accordance with permission 16/21 and the access drive exits onto the Public Road at the location permitted by condition No 6 of permission. The other requirements for entrance construction – Condition 6 (a) – (g) have been complied with.

Waterford City and County Council, City Hall, The Mall, Waterford.  
Comhairle Cathrach agus Contae Phort Láirge, Halla na Cathrach, An Meal, Port Láirge



On the basis of the foregoing the Planning Authority has determined that the readjusted section of the access drive does not constitute unauthorised development.

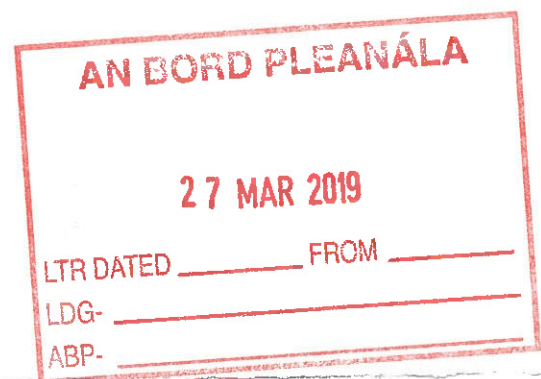
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You are advised that you may pursue the matter further by making a formal submission to An Bord Pleanala for a "Section 5 Declaration and Referral on development and exempted development", under the Planning & Development Act 2000 (as amended).

Yours sincerely,

D. Pinnell

PP J. O'Mahony,  
Senior Planner.





Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

BO'K/OL/D5/2019 2

Ciaran & Jane Bailey,  
Rathmoylan,  
Dunmore East,  
Co. Waterford.  
X91D6Y0

4<sup>th</sup> February, 2019.

RE: Rathmoylan, Dunmore East, Co. Waterford.  
Section 5 Declaration

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Yours faithfully,

B. O'Kennedy,  
Staff Officer.

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