

Neutral Citation No: [2026] NIKB 37

*Judgment: approved by the court for handing down
(subject to editorial corrections)**

Ref: OHA13079

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Delivered: 19/06/2026

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

Between:

JACQUELINE CAREN

Plaintiff

and

DEPARTMENT FOR INFRASTRUCTURE

Defendant

Mr P Lyttle KC with Mr D Hamill (instructed by JMK Solicitors) for the Plaintiff
Mr D Reid (instructed by the Departmental Solicitor's Office) for the Defendant

O'HARA J

Introduction

[1] The plaintiff who is now 70 years old, tripped and fell close to her home at Prospect Hill, Ballygowan, Co Down, on 16 July 2020 at about 9:30pm. The defendant accepts that the plaintiff fell and does not allege any contributory fault against her. Damages have been agreed between the parties at £55,000. The only questions to be decided are:

- (i) Whether the part of the road at which she fell was dangerous.
- (ii) If, contrary to the defendant's case, the road was dangerous, does the defendant have a defence by reason of the provisions of Article 8 of the Roads (NI) Order 1993?

Evidence

[2] Prospect Hill is a quiet cul-de-sac in which the plaintiff's family home, No.10, is towards the top of a slope. The small number of houses in this development were built around 1991 with the bitmac being laid as the road surface around 1993. The

road was adopted by the defendant in 1998 with the Department being satisfied at that time that it had been completed and maintained satisfactorily. At the part of the road where the accident occurred there are no footpaths so pedestrians can only walk on the roadway.

[3] The plaintiff has lived in the development since 1991. On 16 July 2020, during Covid, she had gone at about 8:30pm to deliver groceries to her friends and neighbours, the Hunters, who lived at No.8. After she left them, approximately an hour later, she came out of their house and turned left to walk the short distance up the slope to her home. At this point she was walking on a roadway which she had walked on many times before and one where she had never noticed anything wrong or anything dangerous. Regrettably on this particular occasion, she tripped on bitmac which was slightly raised around a grating near the kerb. She sustained nasty injuries to her face, mouth, chin, wrist and knee.

[4] Mr Andrew Hunter gave evidence that he and his wife were at the front door as the plaintiff left. He heard a noise as if there had been a fall so he ran out and saw the plaintiff lying on the ground. As he reached her, he too stumbled at what he believed was the same spot. Like the plaintiff, Mr Hunter had lived in this development from approximately 1991 and, like her, he had never noticed the gully or grating before nor had he noticed any problem or defect in the road surface.

[5] For the plaintiff, expert evidence was given by Mr Gavin McGill, a Civil Engineer with a specialist qualification in "street works excavation and reinstatement." He inspected the scene in February 2021, but it is common case that the area where the plaintiff fell was unchanged then and remains so now. In Mr McGill's opinion, the grating beside the raised area of bitmac had not been laid to a proper standard because it should have been laid to match the gradient of the road. Instead, it had been laid flat. He suggested that as a result of that the crew which laid the bitmac would have had to "ramp up" the bitmac around the gully so that the metalwork would not be exposed. This would avoid a sharp edge or tripping point. Other gullies and gratings on the same road had been laid properly, just not this one. On Mr McGill's measurements the rise in the tarmac was close to 30 millimetres which in his opinion represented a hazard.

[6] In cross-examination he accepted that there was no fracture of any significance in the bitmac, that the gully frame was secure and that there was no additional material causing a danger. He accepted that his measurement of 30 millimetres was not of a lip or sharp edge but was measured across a "sloping contour." When it was suggested to him in cross-examination that in this case there was no sudden or sharp upright edge, he queried the appropriateness of using the words "sudden" or "abrupt." His position was that the criteria do not require a tripping point or a potential tripping point to be sudden or abrupt. He also rejected the suggestion that the area around the gully represented a depression.

[7] Mr McGill also rejected the suggestion made to him on behalf of the Department that the bitmac had settled following it being laid. He strongly disagreed with that. He said if that was the case he would have expected other areas of the carriageway to have “settled” in a similar way but that was not the case. His evidence was to the effect that whatever guidelines or standards one applied, this spot where the plaintiff fell constituted a hazard.

[8] For the defendant, expert evidence was given by Mr Samuel Megarry, a Forensic Engineer qualified in civil engineering since 1989. He described the location as one where the bitmac around the gully frame is level with the frame but a small distance out from the frame there is a depression of approximately 26 millimetres progressing from the straight edge of the gully. He likened this to a ramp of 4-5 inches from the lowest point to the highest point.

[9] In Mr Megarry’s view, this was significant because his analysis is that the guidelines properly read and understood focus on abrupt or sudden edges rather than depressions. Another word which he used to describe this spot is “undulation.”

[10] In his view, the explanation for the roadway being in that state is some limited settlement, most probably at a point after the roadway had been adopted in 1998. He would not expect any complaint to have been made in relation to this, his view being that everyone comes across things which are worse than this which do not require any intervention by the Department.

[11] In cross-examination by Mr Lyttle, he adhered to this view and entirely disagreed with Mr McGill’s suggestion that the bitmac had been somehow “ramped up” when it was laid, a step which had to be taken because the gully had been laid straight instead of on the incline. In his opinion, that would not have been physically possible, the bitmac team could not have laid the bitmac like that. For that reason it was entirely more likely, he believed, that the bitmac had settled at some point after it had been laid, perhaps well after it had been laid. Mr Megarry also opined that it has always been regarded as relevant to whether a hazard or danger exists or not, whether the edge is abrupt or sharp. He did not consider the location of the plaintiff’s accident to be of that nature.

[12] The final witness for the Department was Mr Richard Wilson, a Highway Safety Inspector. He had been responsible for Prospect Hill in 2020, an area which he described as a low traffic cul-de-sac in good condition and one where he had found very few defects over the previous 13 years. He testified that he carried out inspections by driving the area, parking his car and by walking up and down the cul-de-sac looking for potholes, tripping hazards and other problems in accordance with the guidelines. He explained the training courses which he had been on and the inspection routine which he regularly followed.

[13] In cross-examination by Mr Lyttle he accepted that there were different standards to be applied as between roads and footpaths with the level of intervention greater in the case of footpaths. In this cul-de-sac he said that he had applied the road standard despite the fact that there was no footpath which meant that pedestrians would have to walk on the road. Notwithstanding that, he said that even if this depression at the gully had been on a footpath he would not have regarded it as a hazard.

Consideration

[14] The first and central issue in this case is whether the area where the plaintiff fell should be regarded as dangerous. If it was not, the inspection defence afforded to the Department by Article 8 does not arise. But what is meant by dangerous? It is well-established that a road does not have to measure up to the standards of a bowling green. And while the 20 millimetre criterion is a guideline, it is not a rule and much depends on the whole surroundings.

[15] In *Keenan v DoE* [1995] NI 342, Givan J said as follows:

“[4] The determination of the question whether the road was dangerous is a question of fact and degree, the test of dangerousness being objective (see [1995] NI 343 at 348, *Rider v Rider* [1973] QB 505). Judicial minds may legitimately differ on whether an alleged defect makes a road dangerous provided that the proper test is applied (see *White v DoE* [1988] 5 NIJB 1 and *Rider v Rider*). The fact that a plaintiff falls and sustains a serious injury does not per se condemn the road as dangerous (per MacDermott LJ in *Doggett v Department of the Environment for Northern Ireland* (25 March 1988, unreported). The fact that a road is “potentially hazardous” likewise does not in itself lead to the conclusion that the road is dangerous for the purposes of applying the test (see *Frazer v DoE*). The test of dangerousness has been variously expressed by the courts. ... For my part, the most comprehensible and workable formulation of the test is that stated by Denning LJ in *Morton v Wheeler* [1956] Times 1 February, cited in *Dymond v Pearce* [1972] 1 QB 496 and approved by the Court of Appeal in *Rider v Rider* where he stated:

‘If a reasonable man, taking such contingencies into account and giving close attention to the state of affairs, would say ‘I think there is quite a chance that someone going along the road may be injured if this stays as it is’, then it is a danger; but if the possibility of injury is so

remote that he would dismiss it out of hand, saying 'of course it is possible, but not in the least probable', then it is not a danger.'

[5] The question of what constitutes dangerousness is not answered by the application of an absolute standard. In *Mills v Barnsley Metropolitan BC*, Steyn LJ discouraged the development of 'mechanical jurisprudence' in this context. The locus of the relevant part of the road is a relevant factor. As pointed out by Lawton LJ in *Rider v Rider* at 518:

'A stretch of uneven paving outside a factory probably would not be a danger for traffic but a similar stretch outside an old people's home and much used by the inmates (sic) to the knowledge of the highway authority might be.'"

[16] On the defendant's submission, stress was placed on the following points in particular:

- (i) The character of the locus - a cul-de-sac in a low traffic residential carriageway in a private development.
- (ii) The nature of the defect - this is not a pothole, there is no fractured bitmac and no abrupt vertical trip edge. Instead, this was a gradual depression beyond the gully.
- (iii) The Department's 20 millimetre policy relates to abrupt vertical differences and is not determinative of dangerousness.
- (iv) The absence of prior accidents or reports over a period of almost 30 years suggests that this is an area which was not regarded as dangerous in any way.

[17] For the plaintiff, it was submitted that the Department's "huge mistake" was to treat Prospect Hill as a road when, in fact, it is also a footpath. Mr Lyttle submitted that when it was being used as a footpath, the natural inclination would be to stay close to the kerb, exactly where the accident happened.

Conclusion

[18] Having considered these helpful submissions and read again through the case law and the relevant guidelines, my conclusion is that the plaintiff's case must fail because the spot where she fell was just not dangerous. When I look at the photographs which are included in the trial bundle, in particular the photographs at

pages 297-299, I do not form the view that there was quite a chance that someone going along the road might be injured. On the contrary, looking at those photographs and considering all the evidence, I conclude that the possibility of injury was remote in the sense that it was possible but not in the least probable.

[19] In these circumstances, the plaintiff's case must fail. It was not in any way her fault that she fell but nor, in my judgment, was it in any way the fault of the Department.

[20] In case I am wrong on the question of whether the condition of the road was a danger, I should record the fact that I am satisfied that the defendant has established a defence under Article 8(2) of the 1993 Order. Notwithstanding the unfortunate attack by Mr Lyttle on the credibility of Mr Wilson, the Highway Safety Inspector, I conclude that he was a competent, experienced, qualified and properly trained person to carry out road inspections. I am further satisfied that he did inspect the road, that he identified other issues from time to time but that he properly concluded that the part of the roadway where the plaintiff fell was not dangerous. In doing so, he took account of the character of the road and the very limited traffic which was expected to use it, the standard of maintenance appropriate for a road of that character, and the state of repair in which a reasonable person could have expected to find the road.

[21] Finally, an argument was advanced on behalf of the plaintiff that in the alternative the defendant is liable for misfeasance because if Mr McGill's evidence is correct, it adopted a road which had not been properly laid and maintained by the developer prior to adoption. On this approach, the misfeasance was failing to require the contractor to fix the road before adoption.

[22] I do not believe that that argument can succeed. It was considered by Girvan J in *Keenan v DoE*, cited above, and it was held that the road authority is not liable in succession for dangers created by the person who was responsible for its condition before its adoption. What was stated in *Keenan* is as follows:

“In the circumstances of this case, the plaintiff argues that because the original laying of the pavement was negligently done, the Department, having adopted the road is liable in negligence as successor to the Northern Ireland Housing Executive which was responsible for the original laying of the path. I consider that the plaintiff's argument fails on this issue. It has not been demonstrated that the Department as a public authority adopting the road with defects therein takes on by succession of liabilities the liability of the original contractor which laid the pavement for another party (in this case the Northern Ireland Housing Executive). The

department clearly undertakes a continuing repairing obligation after adoption.”

[23] The repairing obligation after adoption is only to maintain the fabric of the highways – it does not extend to improving or perfecting it. And as was submitted on behalf of the defendant adoption does not convert a minor construction irregularity into something which is actionable because it is dangerous. The statutory duty is to maintain the fabric of the highway, not to guarantee the perfection of its original construction.

[24] For all these reasons, the plaintiff’s claim fails.