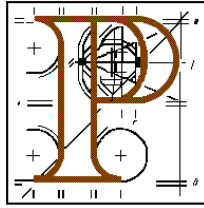


An Bord Pleanála



Inspector's Report

PL18. 246421

DEVELOPMENT: Retain bridge

ADDRESS: Cortolvin House, Clones Road, Monaghan

PLANNING APPLICATION

Planning Authority: Monaghan County Council

Planning Authority Reg. No.: 16/9

Applicant: Daniel Aughey

Application Type: Permission

Planning Authority Decision: Refuse permission

APPEAL

Appellants: Daniel Aughey

Type of Appeal: 1st party vs. refusal

Observers: Waterways Ireland

DATE OF SITE INSPECTION: 13th July 2016

INSPECTOR: Stephen J. O'Sullivan

1.0 INTRODUCTION

- 1.1 This report deals with a first party appeal against a decision by Monaghan County Council to refuse permission to retain a bridge over the Ulster Canal on a temporary basis.

2.0 SITE

- 2.1 The site lies between the N54 Clones Road and the Ulster Canal in a suburban area to the west of Monaghan town centre. It has a stated area of 3,674m² and mostly under grass. It also includes the northern half of the canal and the area occupied by a steel bridge that extends to its southern bank. The canal is watered at this point and a public path runs along its southern bank. Gates have been erected at either end of the bridge. There is a field on the southern side of the towpath that slopes steeply up from it. Cortolvin House lies on the same landholding to the south. It is registered on the NIAH as being of regional interest and dated to c1800. Access to the house from the Clones Road is by a stone bridge over the canal. Works were occurring at the house at the time of inspection.

3.0 PROPOSAL

- 3.1 It is proposed to retain a steel bridge that is 12m long, 3m wide and 300-400mm thick. It is painted green. The bridge is not fixed to the ground.

4.0 POLICY

- 4.1 The Monaghan County Development Plan 2013-2019 applies. The canal is zoned under objective H for recreation and amenity, while the area to its north is zoned existing residential and to the south as proposed residential. Objective ST04 of the plan is to encourage and accommodate the reopening of the Ulster Canal. Objective TO03 is The Ulster Canal is designated as an Area of Secondary Amenity Value. Objective SAP 1 of the plan is to limit development in those area to compatible amenity developments on unobtrusive sites. Policy TO03 is to resist development that would adversely affect the natural resources upon which tourism is based. The canal is a proposed Natural Heritage Area. Policy DSP 2 of the plan is to only permit development in these areas will only be permitted where it has been clearly demonstrated to the satisfaction of the Planning Authority that any such development will have no significant adverse effects on the integrity of these sites.

5.0 HISTORY

- 5.1 Reg. Ref. 13/30003 – The planning authority granted permission on 29th April 2013 for works to Cortolvin House on the application of the current applicant.

6.0 DECISION

6.1 The planning authority decided to refuse permission for three reasons.

The first reason stated that the development would compromise proposals to reopen the Ulster Canal contrary to objectives ST04 and TO03 of the development plan.

The second reason for refusal stated that the development is in an Area of Secondary Amenity Value designated in the development plan and within a proposed Natural Heritage Area. The development is not a compatible amenity development with the Ulster Canal and the applicant has failed to demonstrate that it does not have adverse effect on the integrity of the canal. It would therefore be contrary to policies SAP1 and DSP2 of the development plan.

The third reason stated that applicant has failed to demonstrate the necessary legal interest to carry out the development as he has not obtained consent from the landowner, which is the county council.

7.0 REPORTS TO THE PLANNING AUTHORITY

7.1 Office of Public Works – The office has no record of an application for consent for the bridge under section 50 of the Arterial Drainage Act 1945.

7.2 Waterways Ireland – Objects because the bridge would interfere with the opening of the Ulster Canal.

7.3 Transport Infrastructure Ireland – The proposed development would adversely affect the safety and operation of the national road network because it would be at variance with the policy set out in the Guidelines for Planning Authorities on Spatial Planning and National Roads issued in 2012.

7.4 Roads Section – No objection

7.5 Flood Risk Assessment – There is no recorded history of flooding on adjacent land. There is unlikely to be any further flood risk as a result of the retention of this structure.

7.6 Planner's report – The report stated that no time frame had been submitted for the removal of the bridge. The applicant is reported as stating that he had previously used an agricultural entrance from Cortolvin View to rear of Cortolvin House for the refurbishment of the house, but had agreed with the town engineer that he had no right of way there and to erect a fence following complaints from residents on Cortolvin View. Taking into account the submission from Waterways Ireland, the planning authority is of the opinion that the retention of the bridge would hinder proposals to reopen the Ulster Canal. The site is in a proposed Natural Heritage Area and an Area of Secondary Amenity designated in the development plan. Development in such areas is

prohibited unless it is shown to be compatible amenity development, i.e. to assist in the development of facilities for the purposes of sustainable community, recreational or tourist centres. The comments from TII are noted. The site entrance is within the 50kph speed limit zone and DMURS applies rather than the guidelines on spatial planning and national roads. DMURS would require sightlines of 45m by 2.4m. These have not been provided. The applicant stated that he is in full ownership of the site. However the structure lies over land owned by the council, so that information is incorrect. The development is not likely to have significant impacts on any Natura 2000 site and an appropriate assessment is not required. It was recommended that permission be refused for four reasons, including the 3 cited by the planning authority and a fourth regarding sightlines on the public road.

8.0 GROUNDS OF APPEAL

8.1 The grounds of appeal can be summarised as follows -

- The bridge is required to provide access to the applicant's land by vehicles and machinery used in the maintenance of an agricultural field and the refurbishment of Cortolvin House which is permitted under Reg. Ref. 13/3003. The house dates from c1800 and appears on the National Inventory of Architectural Heritage, although it is not currently a protected structure. The only other way of accessing the landholding is over a stone arch bridge dating from 1835 that also appears on the NIAH. The applicant understands that both the house and bridge are to be added to the recorded of protected structures. The bridge is narrow and was not designed to accommodate large vehicles. The applicant has observed signs of movement and minor damage to the old bridge. The new bridge is the only way to provide access to the landholding by heavy vehicles without damaging the old bridge. It is used infrequently but at short notice
- The bridge was put in place by crane two years ago in the belief that it did not require planning permission. It gives effects to a right of way held by the applicant. A planning permission for two houses was granted in 1988 that would have included a bridge over the canal.
- The bridge does not contravene the zoning of the site for recreation/amenity as that type of development does not appear in the use zoning matrix. The bridge is a simple and temporary structure and so would not contravene any policies in favour of the tourism, amenity and the restoration of the Ulster Canal. It is the smallest structure that could serve its intended purpose and is well screened and visually unobtrusive. The presence of the bridge would scarcely register with the users of the Greenway and the public road.

- The development would not create any new access to the public road and is within the 50kph speed limit zone for the town. The objection from TII therefore makes little sense.
- Waterways Ireland have not provided any time line for the restoration of the canal. Its submission does not acknowledge that the bridge would make a positive contribution to the setting of the canal by facilitating the restoration of an historic house without damaging and historic bridge.
- The OPW's response refers to section 50 of the Arterial Drainage Act. This is a separate legislative code from the planning system.
- The council planner's report does not adequately consider the temporary nature of the bridge.
- Reasons 1 and 2 of the planning authority's decision refer to the Ulster Canal as a tourism and heritage asset respectively. The temporary bridge would not have any adverse impact on the asset in those regards. There is no known plan or funding to have the operation of the canal restored. It is a long term ambition without a time frame for commencement or completion. There are many permanent bridges across the canal that would have to be removed to enable the restoration of navigation along the canal. It is not tenable that the temporary retention of this bridge would interfere with such a project. The existing bridge makes a minimal visual impact and its temporary retention would not impinge on the existing amenity value of the canal and greenway.
- With regard to reason 3, a right of way with consent to erect a bridge was granted by the council to the applicant in August 1998, documentary evidence of which is submitted. Land ownership disputes are outside the remit of planning control and are more appropriately addressed by other means.
- Section 7.5 of the guidelines for planning authorities on development management refers to the permissions for temporary development. It supports a grant of permission in this case because the applicant does not wish or intend the development to be permanent and it has a negligible impact on the current amenity of the area. The applicant wishes to retain the bridge for a further period of five years as there are substantial works to be carried out at Cortolvin House. However a minimum period of three years would be acceptable

9.0 RESPONSES

9.1 The planning authority did not respond to the appeal.

10.0 OBSERVATIONS

10.1 The submission from Waterways Ireland states its objection to the development and is of the view that no developments should be granted permission if they will add to the cost of waterway restoration or create additional issues that have to be resolved in a reconstruction project. Numerous studies have been undertaken with respect to the restoration of the Ulster Canal. Planning permission was secured in 2013 to restore the 13km length between Lough Erne and Clones, the first 2.5km of which is under construction. The Fresh Start agreement made at Stormont in 2015 included a commitment by the Irish Government and Northern Ireland Executive to identify options for future phases of the restoration of the canal

11.0 ASSESSMENT

11.1 The bridge whose retention is proposed is a low lying structure. However its character and form are alien to the historic form, function and character of the canal. It is clearly visible from the towpath. The bridge is visually obtrusive. Any attempt to screen it from view would disrupt the relationship between the canal and the towpath and would itself be visually obtrusive. The retention of the bridge would therefore injure the amenity value of the canal and would contravene several provisions of the development plan, including the 'H' zoning objective that applies to the canal and its designation as an area of secondary amenity value.

11.2 The bridge would hinder the restoration of the canal's navigation. The existence of other bridges that are a greater hindrance to the restoration of the canal does not alter this fact. The retention of the development would therefore contravene objective ST04 of the development plan.

11.3 The arguments made by the applicant in favour of the temporary retention of the bridge are not persuasive. The sympathetic restoration of an historic house is unlikely to require vehicle loads that would place extraordinary stresses on bridges. At the time of inspection significant damage to the stone bridge on the existing access to Cortolvin House was not observed. The applicant's reference to the maintenance of agricultural land is vague and would provide no specific justification for the retention of the steel bridge for any specific period. The bridge does not form part of a route that is discernible on the ground. Reasons 1 and 2 of the planning authority's decision are therefore justified.

11.4 The applicant is correct to state that disputes regarding ownership of land cannot be resolved by the board. However the applicant has not claimed that he owns all the land upon which the development was carried out, but that he has a right of way over the southern part of it and that the previous planning authority had agreed to the construction of a bridge there. Rights of way do not include the right to carry out works to the affected land to facilitate passage. A central purpose of the planning act is that proposals for development are considered in relation to the proper planning and sustainable development of

the area in a fair and proper manner with suitable opportunities for public consultation with a right of appeal. This purpose would be frustrated if agreements between officials of planning authorities and prospective developers that were made outside the procedures laid down in the act were accepted as material considerations when permission was sought under the act. Reason no. 3 of the planning authority's decision is therefore justified.

11.5 The development does not include the laying out or the retention of any access to the public road and the submission to the planning authority from TII was not pertinent to this case.

12.0 RECOMMENDATION

12.1 I recommend that permission be refused for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

1. The Ulster Canal is designated by the Monaghan County Development Plan 2013-2019 as an Area of Secondary Special Amenity Value and the part of the canal within the site is zoned under objective 'H' for recreation and amenity. The bridge whose retention is proposed is not in keeping with the historic form, function and character of the Ulster Canal, is visually obtrusive and seriously detracts from the amenity value of the canal. The development would therefore be contrary to the provisions of the development plan and to the proper planning and sustainable development of the area.
2. The retention of the bridge would militate against the reopening of the Ulster Canal and so would contravene objective ST04 of the development plan.
3. The board is not satisfied that the applicant had the requisite legal interest in land to carry out the development.

Stephen J. O'Sullivan
20th July 2016