



An
Bord
Pleanála

Inspector's Report PL16. 247020

Development	Construct cattle underpass and effluent tank at Behy Beg, Ballina, Mayo
Planning Authority	Mayo County Council
Planning Authority Reg. Ref.	15/301
Applicant	Sean O'Donnell
Type of Application	Permission
Planning Authority Decision	Refuse permission
Appellant	Sean O'Donnell
Observers	None
Date of Site Inspection	11 th October 2016
Inspector	Stephen J. O'Sullivan

1.0 Site Location and Description

1.1. The site is in a rural area on the regional road R294 c4km east of Ballina. The road at this location is straight and level, which facilitates high traffic speeds. There are numerous one-off houses along this road. The site has a stated area of 750m². It consists of part of that road and land on either side close to existing farm gates. The land is part of a dairy farm owned by the applicant, the farmyard for which is on the southern side of the road. The Black River runs through the farm and under the road at Behy Bridge, which is c60m east of the site.

2.0 Proposed Development

2.1. It is proposed to provide an underpass beneath the road to allow cattle to be brought from one part of the applicant's farm to the other. The underpass would be in the form of a concrete box, the floor of which would be 3m wide and 3m below the existing surface level of the road. An effluent tank of 9m³ would be installed at the southern end of the underpass. The ground on either side of the underpass would be excavated to allow access by cattle. The construction method statement that was submitted to the planning authority as further information stated that the carrying out of the development would take 5 days. It proposed the diversion of traffic to county roads to the south of the regional road for a distance of c7km between the village of Bonniclan and the outskirts of Ballina.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to refuse permission for four reasons

Reason no. 1 stated that the development would cause traffic hazard and obstruction to road users as the detour route was substandard in width, alignment and structure strength to cater for two-way traffic during construction.

Reason no. 2 stated that adequate design information had not been submitted to ensure that the structure took account of current and future traffic loading.

Reason no. 3 stated that the planning authority was not satisfied on the basis on the submitted information that the proposed development would not, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the River Moy SAC.

Reason no, 4 stated that the site was in flood zone A on the CFRAM mapping system and that the planning authority was not satisfied that the development would not give rise to possible flooding or that the surface water could be adequately disposed of.

3.2. **Planning Authority Reports**

The **planner's report** stated that an inadequate proposal had been made for traffic detours during the construction. The only indicated proposal is for a route to the south through Bonniconlan village on a road which could not cater for passing cars or HGVs. A precautionary approach is required regarding appropriate assessment and flood risk. It was recommended that permission be refused.

The **Road Design Section** stated that the proposed detour route to the south was inadequate to safety cater for two-way traffic during construction.

The **Area Engineer** also stated that the detour route was inadequate, and that it was not clear that the design of the underpass took account of future traffic loading and other queries. It was recommended that permission be refused.

4.0 **Planning History**

No previous planning applications were cited by the parties.

5.0 Policy Context

Under the *Guidelines for Planning Authorities on the Planning System and Flood Risk Management* the proposed development would be classified as less vulnerable, while the site would be within flood zones A and B with a high or moderate probability of flooding. That class of development would be acceptable in flood zone B, but would require justification in flood zone A unless it is regarded as minor development under section 5.28.

6.0 Development Plan

The Mayo County Development Plan 2014-2020 applies. Objective AG -01 of the plan is to support the sustainable development of agriculture.

7.0 Natural Heritage Designations

The Black River near the site is a tributary of the Brusna River, which is part of the Special Area of Conservation for the River Moy, sitecode 002298. The closest part of the SAC is c130m west of the site.

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of appeal can be summarised as follows:

- With regard to reason no. 1 of the planning authority's decision, the construction of the proposed development would take no more than 5 days and the road would be useable at all times by traffic. The submitted detour and traffic management plan can be expanded upon.
- With regard to reason no. 2 the box culverts to be used are designed to carry the maximum load of the road including that of future traffic. The company supplying the box culverts have installed a significant number of similar

structures in Ireland and the UK. The specifications of the design will be in keeping with the roads authority's specifications.

- With regard to reason no. 3, there will be minimal disturbance to lands and environment surrounding the site. It is not in the applicant's interest to have any long term impact on the River Moy SAC.
- With regard to reason no. 4, the design and construction of the proposed development will take account of its positioning in relation to the Black River. The site will be fitted with a sump tank to over the unlikely risk of a flood. A pump shall move any surface water to a larger tank on the farm.
- The applicant current crosses the R294 with his dairy herd over 45 times per month from April to October, with implications for traffic safety as well as his own and that of his herd.

8.2. **Planning Authority Response**

The planning authority did not respond to the appeal.

8.3. **Observations**

The **Office of Public Works** stated that the guidelines on flood risk management should be applied.

Inland Fisheries Ireland noted the proximity of the development to the River Moy SAC and salmonid rivers. It recommended conditions to be attached to a grant of permission.

9.0 Assessment

9.1. I consider the key issues in determining this appeal are as follows:

- The principle of development
- Appropriate assessment
- Flood risk
- Impact on roads and traffic

9.2. The principle of development

The proposed development would support the operation of a dairy farm in the countryside. This would be in keeping with objective AG-01 of the development plan, and with the general concepts of sustainable planning. The principle of the proposed development is therefore accepted.

9.3. Appropriate Assessment

The proposed development is near a watercourse and less than 150m upstream from the River Moy SAC. The conservation objectives of the SAC relate to the following Annex I habitats –

7110 Active raised bogs*

7120 Degraded raised bogs still capable of natural regeneration

7150 Depressions on peat substrates of the Rhynchosporion

7230 Alkaline fens

91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles

91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnionincanae, Salicion albae)*

and the following Annex II species –

1092 White-clawed Crayfish *Austropotamobius pallipes*

1095 Sea Lamprey *Petromyzon marinus*

1096 Brook Lamprey *Lampetra planeri*

1106 Salmon *Salmo salar*

1355 Otter *Lutra lutra*

The conservation objectives published by the National Parks and Wildlife Service include maps of the above bog habitats and of the prevalence of Crayfish and otter species. None or shown in the vicinity or downstream of the appeal site.

As the proposed development is outside the SAC it would not be likely to give rise to any direct effects upon it, either individually or in combination with other plans or projects. However, the proposed development would involve significant excavations and earthworks near a river which itself is only a short distance upstream of a river in the SAC. Therefore, it could give rise to the release of matter that would have a negative impact on the quality of waters within the SAC, either as suspended solids or chemical pollutants. A deterioration in the quality of those waters would be a significant effect for the species referred to in the SAC's conservation objectives. A likely significant effect on the River Moy SAC from the proposed development cannot be ruled out. Therefore a stage 2 appropriate assessment of the proposed development in light of the conservation objectives of the River Moy SAC is therefore required.

The proposed development would not be likely to have any significant direct or indirect effect upon any other Natura 2000 site, either in itself or in combination with any other plan or project.

A Natura Impact Statement was submitted to the planning authority as further information. Section 5 of the statement described measures to be implemented to

mitigate the effects of the proposed development on downstream water quality that would otherwise be likely. These include compliance with the guidance on works in the vicinity of rivers published by Inland Fisheries Ireland, those issued on effluent tanks and the spreading of effluent by the Department of Agriculture, the protection of riverbanks, and avoiding the storage or deposition of materials near the river. These mitigation measures represent good construction practice, and the efficacy is established. Their implementation would be sufficient to avoid the development having a negative effect on water quality in the SAC, which is the only significant effect upon the SAC that would be likely to arise from the development. It is therefore reasonable to conclude, on the basis of the information available on the file which is adequate to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the SAC at the River Moy, sitecode 002298, or any other European site, in view of the site's conservation objective.

This conclusion is consistent with the Natura Impact Statement submitted in the course of the application, and with the advice from Inland Fisheries Ireland who have statutory responsibility for the conservation of salmon and the quality of waters upon which they depend. Reason no. 3 of the planning authority's decision is not considered to be justified.

9.4. Flood Risk

The proposed development would not change the use of the site or the surrounding land. It would not result in the occupation of that land by people. The flooding of the underpass would not represent a threat to public safety, nor would it interfere with activities of people other than the occupier of the site who is proposing the development for his own benefit. The carrying out of the development would not interfere with the flow of the watercourses around the site, and would tend to increase the flood storage available there. It would not, therefore, exacerbate the risk of flooding on other land. The proposed development should therefore be

regarded as minor development under section 5.28 of the flood risk management guidelines. Alternatively, the location of the proposed underpass within flood risk zone A could be regarded as justified by the location and layout of the existing dairy farm, and the risk caused the requirement to drive cattle across the regional road. Either way, the proposed development would not give rise to an undue risk of flooding and would not contravene the flood risk management guidelines. Reason no. 4 of the planning authority's decision is not considered to be justified, therefore.

9.5. Impact on roads and traffic

Reason no. 2 of the planning authority's decision stated that it was not evident that current and future traffic loading had been taken into account in the design of the proposed underpass. The construction of agricultural underpasses beneath roads does not require unprecedented technology or building methods. It would be open to the council, as the roads authority, to require such specifications as it sees fit in this regard. It would also be appropriate for the board, if it were minded to grant permission for the development, to specify that such technical details be agreed pursuant to a condition. It would also be appropriate for a condition to require an agreed bond to be put in place before the commencement of development to ensure its satisfactory completion.

The leaves the issue raised in reason no. 1 of the planning authority's decision: the hazard and obstruction that would arise during construction when the traffic on the R294 was diverted to the county roads to the south. According to the method statement submitted to the planning authority as further information, this would occur for a period of 5 days while the site was excavated, the precast concrete box installed, and then the road reinstated. The county roads to which the traffic would be diverted would generally allow two cars to pass. However it is not clear that they would allow HGVs to do so. The diversion would be for a distance of c7km and would pass a national school. It would therefore be likely to cause a significant level of inconvenience for road users, and a high level of traffic management and control

to would be needed to avoid hazards. The appeal turns on the question as to whether this would be justified by the remedy of the traffic hazard that arises from the current requirement that the applicant's dairy herd cross the regional road 45 times per month from April to October. I would consider that it is, having regard to the extraordinarily high traffic speeds that were observed on the regional road, the permanent nature of the benefit as opposed to the temporary nature of the costs, and the clearly stated objective by the planning authority in its development plan to support agriculture.

10.0 Recommendation

10.1. I recommend that planning permission should be granted for the reasons and considerations and subject to the conditions set out below.

11.0 Reasons and Considerations

Having regard to objective AG-01 of the Mayo County Development Plan 2014-2020 and to the traffic hazard that results from the existing operation of the dairy farm at this location and the requirement for cattle to cross the Regional Road R294 where traffic volumes and speeds are high, it is considered that the proposed development, subject to the conditions set out below, would be acceptable in terms of traffic safety and convenience, would not threaten natural heritage and would not give rise to an undue risk of flooding. It would therefore be in keeping with the proper planning and sustainable development of the area.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Special Area of Conservation(SAC) for the River Moy, sitecode 002298, is the European site for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the

proposed development for the Special Area of Conservation for the River Moy in view of the site's Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered in particular –

- i) the likely indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically the impact on the quality of waters downstream of the appeal site,
- ii) the mitigation measures which are included as part of the current proposal and set out in the Natural Impact Statement, and
- iii) the Conservation Objectives for the said SAC,

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the SAC, having regard to its Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European site in view of the site's Conservation Objectives.

12.0 Conditions

- 1 The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 5th day of May 2016 and the 14th day of June 2016, 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 Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority details of the materials and specifications for all elements of the authorised development.

Reason: In the interests of orderly development and public safety.

- 3 The mitigation measures set out in section 5 of the Natura Impact Statement shall be complied with in full in the course of the development. The *Requirements for the Protection of Fisheries Habitats during Construction and Development Works at River Sites* issued by Inland Fisheries Ireland shall be complied with, and there shall be no discharge of silt, sediment or concrete washings to the Black River during construction. All waste and runoff from the underpass and effluent tank shall be collected and disposed of in accordance with the European Communities (Good Agricultural Practice for Protection of Waters) Regulations, 2014 (SI no. 31 of 2014), and measures shall be put in place to ensure the holding tank is not flooded if the river overtops its banks. Furthermore, cattle shall not be allowed to travel through the Black River as a result of the development.

Reason: To prevent deterioration in the quality of waters and any impact on the River Moy SAC downstream of the site

- 4 The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of construction practice for the

development, including traffic management, dates and times of working, noise management measures, management and disposal of construction materials and waste.

Reason: In the interests of public safety and residential amenity

- 5 Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance of the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion and maintenance of the development

. Stephen J. O'Sullivan
Planning Inspector

4th November 2016