



An
Bord
Pleanála

Inspector's Report ABP-300545-18

Development	Amenity works
Location	Buttevant Castle land, east of Buttevant town centre.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	17/6539
Applicant(s)	Buttevant Muintir Community Council Ltd. & Buttevant Heritage Group
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	John Maloney
Observer(s)	None
Date of Site Inspection	27 th March, 2018
Inspector	Kevin Moore

1.0 Site Location and Description

1.1. The site of the proposed development is located to the east of Buttevant town centre. It is linear in form, adjoins the medieval townscape, and is 0.56 hectares in area. It comprises the western edge of the River Awbeg and adjoining lands, which comprise the sloping river banks. The linear plot would adjoin the town's medieval defences and the Franciscan Friary, the former Fever Hospital, the Corn Mill, and rear gardens of town centre properties. With the exception of the latter, each of these structures are Recorded Monuments, with the Franciscan Friary and Town Defences also being designated National Monuments. Buttevant Corn Mill, the Friary, the Fever Hospital and Old Church are protected structures, listed in the planning authority's Record of Protected Structures. The River Awbeg forms part of the Blackwater River Special Area of Conservation (Site Code: 002170).

2.0 Proposed Development

- 2.1. The proposed development would comprise the development of access to the medieval Town Walls of Buttevant and the River Awbeg to include a riverside amenity area. Two accesses would be provided – one from Mill Lane to the south and one from School Lane to the west. The accesses would lead to a 1.8m wide timber boardwalk constructed on piled steel supports. Signage and seating are also proposed. A retention basin would be provided to the north of the site to allow for an indigenous planting scheme to be developed.
- 2.2. Details submitted with the application included a Landscape Design Statement, a Flood Risk Assessment, an Appropriate Assessment Screening report, an Ecological Impact Statement, an Archaeological Assessment, and a Structural Engineer's Report.

3.0 Planning Authority Decision

3.1. Decision

On 23rd November 2017, Cork County Council decided to grant permission for the proposed development subject to 18 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner noted development plan provisions, planning history, reports received and the third party observation made. The proposal was seen to enhance accessibility to the riverbank and the heritage value of this part of the town and was accepted in principle. It was considered to have been sensitively designed and it was determined that there would be no significant adverse impact on amenities of properties to the west. In reference to the third party submission, it was stated that the proposed fence would be temporary, evidence of a right of way was not provided, and there would be no significant overlooking impact. In relation to the issue of flooding, it was noted that the development would comprise a category of a water compatible development. A grant of permission subject to conditions was recommended.

3.2.2. Other Technical Reports

The Area Engineer had no objection from a roads viewpoint and requested that a Structural Engineer signed off on the design and construction.

The Ecologist was satisfied the proposed works would not give rise to any significant negative impacts on the adjoining SAC or any other ecological receptors. It was recommended that permission be granted subject to a schedule of conditions.

The Environment Officer had no objection to the proposal subject to a schedule of conditions.

The Conservation Officer noted the proposed development would be located within an Architectural Conservation Area (ACA). The development was seen to be an exceptionally positive proposal and was regarded as being of a very high standard. A grant of permission was recommended.

The Archaeologist noted the site is located within the Zone of Archaeological Potential for Buttevant and noted development plan objectives. The proposal was considered to be a positive development, positively highlighting the location and setting of the historical town walls and medieval Friary. Proposed archaeological mitigation was accepted. The proposed temporary fence was also seen to be acceptable. A grant of permission subject to conditions was recommended.

3.3. **Prescribed Bodies**

Inland Fisheries Ireland had no objection to the proposal.

Irish Water had no objection to the proposal.

3.4. **Third Party Observations**

One observation was received from John Maloney. The grounds of the appeal reflect the concerns raised.

4.0 **Planning History**

I have no record of any planning application or appeal relating to this site.

5.0 **Policy Context**

5.1. **Kanturk Mallow Electoral Area Local Area Plan**

Buttevant

Zoning

The site is zoned 'Open Space/Sports/Recreation/Amenity'.

General Objectives

These include:

BV-GO-03: The Awbeg runs through the town and forms part of the Blackwater River Candidate Special Area of Conservation. Development in the town will only be permitted where it is shown that it is compatible with the requirements of the Habitats Directive and the protection of the

River Blackwater SAC. Protection and enhancement of biodiversity resources within the receiving environment of the town will be encouraged.

BV-GO-06: Enhance the overall tourism product of the town, through protection of its built and natural heritage, rejuvenation of the town centre and public realm and provision of additional tourism and recreational infrastructure where appropriate.

BV-GO-07: Preserve and enhance the character of the historic town centre by protecting historic buildings, groups of buildings, the existing street pattern, plot sizes and scale and historic features such as stone walls and street furnishings that add to the character of the town.

Specific Objectives

These include:

BV-O-05: Protect the amenities and historic setting of the Castle and of this wooded and open area along the river and provide for a pedestrian route.

5.2. Natural Heritage Designations

5.3. The River Awbeg forms part of the Blackwater River Special Area of Conservation (Site Code: 002170).

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of the appeal may be summarised as follows:

- The appellant has concerns about the proposed boundary fence, the implications it has for the use of his land for which he has had sole use of for the past 25 years, his legal right of way to the river, and the use of the land on the boundary of his title.

- The appellant's consent is needed because the Minister, the local authority and the applicant have no legal title over the land they are developing.
- The fence impacts on the appellant's privacy and enjoyment of his land and garden.
- The applicant failed to consult the appellant at any stage until work had commenced. The applicant undertook unauthorised excavation, removed fencing and cut numerous mature trees.

The appeal includes a drawing of a sliding gate and stone wall which he would have consented to in relation to the development.

6.2. Applicant Response

The applicant's response to the appeal may be summarised as follows:

- Regarding legal title, the ownership of the land was discussed with the planning authority at pre-application stage and the details submitted with the application stated that the property was neither registered in Cork County Council or the Land Registry. The planning authority has determined the applicant has sufficient legal interest in the site.
- The appellant has provided no evidence of a legal right of way. Reference to the allowing OPW access to his garden and to the need for a gate are issues that are not relevant to the proposal.
- Unfortunately a 30m section of the town's medieval wall was removed along the appellant's boundary in the 1990s. A temporary fence has been proposed to re-establish the traditional line of the wall. The applicant has provided no evidence confirming any rights to the lands adjoining the river.
- The development will not occur until the applicant reaches an agreement with the planning authority in relation to the proposed boundary treatment and it is the intention of the community to revisit the reinstatement of the town wall when the OPW works to the Friary have been completed. This would be subject to a future planning application.

- Regarding reference to unauthorised development, no works that would require planning permission took place and the applicant did not disregard the planning process.

6.3. **Planning Authority Response**

The planning authority submitted that permission was recommended having regard to the nature of the proposal, its location and characteristics of the site, and the potential benefits and impacts. It was noted that this recommendation was informed by the assessments of the Area Engineer, the Archaeologist, the Conservation Officer, the Environmental Officer and the Ecologist. The Board were reminded of the provisions of section 34(13) of the Planning and Development Act.

6.4. **Further Responses**

Following a request by the Board for submissions from prescribed bodies, the Department of Culture, Heritage and the Gaeltacht requested the retention of Conditions 17 and 18 with the planning authority's decision to protect archaeological heritage.

7.0 **Assessment**

7.1. Introduction

7.1.1 I consider that the principal planning issues of relevance to this assessment are the proposal in the context of development plan provisions, the legal and property impacts as raised by the appellant, the impact of the development on the built heritage of this sensitive location, and the impact on the Blackwater River SAC.

7.1.2 Prior to this and for reasons of clarity, I wish to outline some of the features and describe the context of the proposed development as follows:

- The extent of the development will comprise the installation of a looped boardwalk around the perimeter of an amenity area, the creation of a small wetland area towards the northern end of the site, the provision of seating, erection of signage at six locations, and the installation of a steel fence 30 metres in length along the west side and to the immediate south of the Friary

where a section of wall is missing. The total length of the route would be 470 metres, which would include 112 metres of existing roadway providing access to the southern part of the site.

- It is understood that the land of which the site forms a part was largely flooded up to the mid-nineteenth century to create a mill pond for the corn mill to the south of the site. This has since been filled in.
- Most of the work associated with the construction of the walkway will be done by hand using manual tools.
- Protected structures such as the corn mill, church and fever hospital will not be affected by the amenity development.
- The Construction Phase Environmental Management set out in Section 3.1 of the applicant's Ecological Impact Statement is noted. This details the environmental controls proposed to safeguard water quality. A detailed Construction and Environmental Management Plan is proposed to be drawn up before commencement of construction and this would incorporate mitigation measures and compliance with planning conditions arising from a grant of planning permission.

7.2 The Proposal in the Context of Development Plan Provisions

7.2.1 Buttevant is listed as a 'Main Town' in the Kanturk Mallow Municipal District Local Area Plan 2017. There is a Plan with development provisions for Buttevant within the LAP. Several of the provisions are particularly relevant to the proposed development. It is noted that the site and riverside lands at this location are zoned 'Open Space/Sports/Recreation/ Amenity'.

7.2.2 There are a number of 'General Objectives' that relate to the nature of the proposed development. I first note BV-GO-03, which permits development in the town only where it is shown that it is compatible with the requirements of the Habitats Directive and the protection of the River Blackwater SAC. Protection and enhancement of biodiversity resources within the receiving environment of the town are encouraged under this objective. I will examine the impact of the proposed development on the existing SAC later in this assessment, but suffice to indicate at this stage that the

proposal and provisions being made in its development will protect the SAC. Furthermore, it is clear that the extent of the works will seek to enhance biodiversity at this location and so enhance the value of the natural resource. A second 'General Objective' is BV-GO-06, which seeks to enhance the overall tourism product of the town, through protection of its built and natural heritage, rejuvenation of the town centre and public realm and provision of additional tourism and recreational infrastructure where appropriate. The proposed development is evidently in sync with this objective, providing a significant amenity for the community of, and visitors to, Buttevant, while protecting and enhancing the built and natural heritage of the town.

7.2.3 Most importantly, in the context of the LAP and provisions relating directly to Buttevant, I note that there are 'Specific Objectives' in the Plan relating to Buttevant which clearly show an intent to develop the riverside for amenity and recreational uses. Objectives BV-O-04, BV-O-05, and BV-O-06 each apply to the development of amenities in proximity to the river. Specific Objective BV-O-05 relates wholly to the proposed development, whereby it is an objective to provide for a pedestrian route at this location. This proposal is linked to Objective BV-O-04 to the south, which is to provide open space to protect the amenity and setting of the Castle and Church, and to Objective BV-O-06, which is to develop a town park linking with a pedestrian route on the west side of the river. Thus, there can be no doubt that the proposed development is wholly in keeping with the Plan provisions for Buttevant.

7.3 Impact on the Appellant's Legal Rights and Property

7.3.1 Regarding the third party appeal, I first note that the appellant is not objecting in principle to the overall development. The concerns raised relate solely to legal title, rights of way and impact on the privacy of his property.

7.3.2 With regard to the issue of legal title, I note the applicant has submitted in response to the appeal that the ownership of the land was discussed with the planning authority at pre-application stage. It is apparent that there is no information to suggest that the property the subject of this appeal has been registered in Cork County Council or in the Land Registry. I further note that the appellant, while claiming rights over the land by way of adverse possession, has not produced any details which demonstrate his legal title over the land, any legal right of way over the

land or a right of way to the Awbeg River. At this time, and without information to the contrary, the challenge to the applicant having sufficient legal title allowing the making of the application appears unwarranted. Over and above this, I must acknowledge that the LAP provisions and specific objectives applicable to these lands alluded to above would clearly indicate that there is an understanding that the lands the subject of the appeal are intended to be developed for a use such as that now proposed, i.e. an amenity use open to public access.

7.3.3 In conclusion on this legal title issue, the Board will be aware of the provisions of section 34(13) of the Planning and Development Act, which states:

(13) A person shall not be entitled solely by reason of a permission under this section to carry out any development.

If the appellant contends that matters of legal title remain in dispute in the event of a grant of permission, his rights to seek recourse through the Courts are open to him.

7.3.4 With regard to the impact of the proposed development on the appellant's property, I note that the proposed fence at this location is intended to be a temporary boundary treatment. The intent is to establish the traditional line of the medieval town wall and it is apparent that the composition of this fence and the construction methodology are such that minimum impact at this potentially archaeologically sensitive location is being pursued. To this end, the temporary fence type is considered appropriate until such time as a long-term replacement is pursued in agreement with the planning authority and the Office of Public Works. The applicant has indicated that such works would be subject to a future planning application. Having regard to this, it is my submission that the proposed temporary measure is of merit and provides a sensible and sensitive approach.

7.3.5 In relation to adverse impacts on the appellant's property by way of loss of privacy, the existing site conditions and public accessibility to the lands at this riverside location are first noted. The routing of the proposed boardwalk are then noted and it is clear that the boardwalk would be sensitively placed away from the historic boundary walls and the boundary of the lands with the appellant's property. I do not consider that there would be any particular concerns arising from the amenity development of this publicly accessible land adjoining the appellant's holding. The

long-term development of a suitable boundary treatment will further protect the amenities of the appellant's property.

7.3.6 Finally on the appellant's concerns, I have no details on any unauthorised works that have allegedly been undertaken by the applicant at this location. Enforcement arising from any such works would lie with the planning authority.

7.4 Impact on the Built Heritage of the Area

7.4.1 I note that the site of the proposed development is located within a designated Architectural Conservation Area within the town of Buttevant, as referenced in the LAP. I further note the array of significant built heritage on and in the immediate vicinity of the appeal site, inclusive of National Monuments, Recorded Monuments, and Protected Structures. I also acknowledge the purpose of the proposed development which seeks to enhance the accessibility of this location and which seeks to inform the visitor of the significant historical and cultural value of this location.

7.4.2 In the understanding of the purpose of the proposed development, the high quality of the proposed product at the end of the development works process, and the lack of any adverse direct impact on the array of significant structures of heritage value at this location, I consider that it is reasonable to conclude that the proposed development would be a welcome development provision which will enhance public understanding and access to the heritage value of this location without adverse impact on the structures which the development seeks to promote.

7.4.3 Having regard to the above, it is clear that the proposed development would be wholly in keeping with the ACA designation as set out in the Plan, which recognises the historic, architectural and cultural importance of the area and which aims to protect the special townscape value of the area and ensure that the historic fabric and character is secured.

7.5 Impact on the Blackwater River Special Area of Conservation

7.5.1 One European Site potentially affected by the proposed development would be the Blackwater River SAC. This site supports populations of several species listed on

Annex II of the EU Habitats Directive and habitats listed in Annex I of the Directive, as well as important numbers of wintering wildfowl including some species listed in Annex I of the Birds Directive. The SAC includes the Awbeg River and the eastern section of grassland within which the walkway is proposed. It is estimated that the Qualifying Interests of the SAC that are likely to occur in proximity to the proposed development are Floating River Vegetation, Otter, Atlantic Salmon, White-clawed Crayfish, River Lamprey, and Brook Lamprey. The overall objective for this SAC is: “To maintain or restore the favourable conservation condition of the Annex I habitats and the Annex II species for which the SAC has been selected.”

7.5.2 It is reasonable to determine that the likely potential impacts arising from the proposed development would include:

a) Construction Phase:

- Loss of habitat associated with steel fittings for the boardwalk,
- Disturbance to birds and mammals by way of noise, vibration and light,
- Sediment-laden runoff entering the river, and
- Deterioration of water quality by way of runoff of hydrocarbons or other harmful substances.

b) Operation Phase

- Habitat alteration by way of shading of existing vegetation from the boardwalk, and
- Increased human activity.

7.5.3 I note that the proposed development would not directly impact on the river and adjacent linear woodland, i.e. the habitats of highest conservation value at this location. Notwithstanding the boardwalk being located within the SAC, its routing would be restricted to habitats of low ecological importance, mainly dry meadow and neutral grassland. Thus, the habitats that occur along the proposed walkway and in the vicinity of the associated amenity areas do not correspond with the Annex I habitats for which the SAC is designated. In addition, the affected habitats are not known to be of value to the Annex II species for which the SAC is designated.

- 7.5.4 The proposed landscaping associated with the development would include planting of wet woodland and the creation of a wetland area at the northern end of the site. I acknowledge the low ecological value of these areas at present and consider that the proposed development is likely to enhance biodiversity at this location through the introduction of woodland copses and herb wetland habitat.
- 7.5.5 In terms of impact on water quality, I note that there would be a minimum set back of 4 metres from the river bank, thus development along the edges of the Awbeg River would be avoided. I again note the Construction Phase Environmental Management that is set out in Section 3.1 of the applicant's Ecological Impact Statement. This details the environmental controls proposed to safeguard water quality. A detailed Construction and Environmental Management Plan is also proposed to be drawn up before commencement of construction and this would incorporate mitigation measures and compliance with planning conditions arising from a grant of planning permission.
- 7.5.6 I note that specific measures are proposed to prevent the spread and introduction of invasive species.
- 7.5.7 Overall, I submit to the Board that the proposed development is not likely to adversely impact on habitats of significant ecological value and that the project presents an opportunity to enhance the biodiversity of this location within the town centre of Buttevant. The development is, thus, likely to have a positive impact on the Blackwater River SAC.
- 7.5.8 Having regard to the above, I submit to the Board that it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on this European Site, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

8 Recommendation

- 8.1 I recommended that permission is granted subject to the following reasons, considerations and conditions.

9 Reasons and Considerations

Having regard to the zoning provisions for the site and to the specific open space and amenity objectives for the provision of a pedestrian route at this location as set out in the Kanturk Mallow Electoral Area Local Area Plan 2017 and to the design, character, layout and purpose of the development proposed, it is considered that the proposed development would not adversely affect the character and setting of the Buttevant Architectural Conservation Area and its associated National Monuments, Recorded Monuments and Protected Structures, would not adversely impact on the residential amenities of adjoining properties, would not unduly interfere with established rights of way and public access to the lands and the Awbeg River, and would otherwise be in accordance with the provisions of the Local Area Plan. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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. The construction of the development shall be managed in accordance with a Construction and Environmental 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:
 - a) measures to protect the water quality of the Awbeg River at the construction and operation phases;
 - b) biosecurity measures to prevent the introduction of Crayfish Plague;

- c) measures to eradicate Winter Heliotrope and to minimise the risk of the introduction or spread of other invasive alien species;
- d) ecological monitoring provisions;
- e) supervisory provisions of the construction works; and
- f) ongoing management and maintenance provisions of the overall scheme.

Reason: In the interest of environmental protection.

- 3. Details of the exact siting, the materials, colours and textures of the proposed temporary boundary treatment to the south of the Friary shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The provision of any permanent boundary wall or fence at this location shall be subject to a prior grant of planning permission.

Reason: In the interest of residential and visual amenity and to protect the historic fabric of the medieval town walls.

- 4. Details of the proposed signage shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interest of orderly development and visual amenity.

- 5. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

Kevin Moore
Senior Planning Inspector

3rd May 2018