



An
Bord
Pleanála

Inspector's Report ABP-302559-18

Development	Application for Retention for Livestock Underpass at Bantiss, Cloughjordan County Tipperary.
Location	Bantiss, Cloughjordan, County Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	17601382
Applicant(s)	Shay Kennedy
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	First Party
Appellant(s)	Shay Kennedy
Date of Site Inspection	22 nd November 2018
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.985 hectares, is located approximately 3km to the south west of Cloughjordan and in townland of Bantiss. The site is part of an agricultural landholding and consists of a section of the L5014-0 and the agricultural lands either side of it. There are two existing cattle underpasses linking grazing lands to the south of the public road to lands to the north, which include grazing lands and a farmyard complex. The site comes from a total agricultural landholding of 38 hectares.

2.0 Proposed Development

2.1. Permission is sought for retention of two livestock underpasses that connect agricultural lands to the south of a public road to a farmyard to north of the public road. The underpasses are constructed from concrete and are 1.8m wide, 1.5m high with one to the south of the farmyard being 11.7m long and the one to the south east of the farmyard 14.6m long.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 12 conditions. Of note are the following conditions.

Condition no. 2: Within 2 months of the date of the grant of permission, the works outlined in the submission s of the 7/06/2018 and 23/07/2018 which are required to complete the development shall be carried out and evidence of same submitted to the Planning Authority.

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

Condition no. 11: The applicant shall submit to the District Engineer for consideration, certification to confirm that the structure and additional works required

have been installed under the supervision of a Chartered Structural Engineer within 2 months of the grant of permission.

Reason: In the interests of public safety and human health.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (12/12/18): Further information required including details of supervising engineer, manufacturers certification and load bearing capacity, a ground investigation and hydrogeological report, proposals for a vehicle restraint system and a landholding map.

Planning Report (21/06/18): Clarification of further information required including a structural engineers report detailing structural stability of the underpass at present and the work required to complete the development.

Planning Report (16/08/18): The response to clarification of further information was considered acceptable and a grant of permission was recommended subject to the conditions outlined above.

3.2.2. Other Technical Reports

Road Design (25/01/18): Further information required including details of contractor and consulting engineer, details of load bearing capacity of underpasses, drainage details, details of waterproofing and proposals for a vehicle restraint system.

Area Engineer (20/06/18): Further information required regarding structural details of concrete block and lintel units added to underpass structures.

Area Engineer (14/08/18): No objection to retention.

4.0 Planning History

51/23446 (2001): Permission granted for a slated cattle house, silage base extension and ancillary concrete.

5.0 Policy Context

5.1. Development Plan

The relevant plan is the North Tipperary County Development Plan 2010 (as varied)

Policy ED7: Agriculture

It is the policy of the Council:

(a) To protect farms and high quality agricultural land from proposal for development where such would result in negative impacts upon their viability.

(b) To facilitate and encourage the development of alternative farm enterprises, including agri-tourism development and farm shops subject to compliance with development management standards set out in Chapter 10.

Policy ENV7: Groundwater Protection

It is the Council's policy to protect groundwater resources and drinking water catchments having regard to European Communities (Good Agricultural Practice and Protection of Waters) regulation SI376 of 2000 and the 'Groundwater Protection Plan' and any amendment/review thereof and Environmental Protection Agency guidelines applicable at the time.

Policy ENV17: Water Protection

Land uses shall not give rise to the pollution of ground or surface waters during the construction or operation of developments. This shall be achieved through the adherence to best practice in the design, installation and management of systems for

the interception, collection and appropriate disposal or treatment of all surface waters and effluents.

5.2. **Natural Heritage Designations**

None in the vicinity

6.0 **The Appeal**

6.1. **Grounds of Appeal**

A first party appeal has been lodged by Hogan & Associates on behalf of Shay Kennedy, Bantiss, Cloughjordan.

- The appeal is concerning condition no.s 2 and 11. Condition no.s 2 and 11 give a time period of 2 months to comply from the date of the grant of permission.
- The appellant notes that such is insufficient time with an outline programme of works attached that indicates 3-4 months minimum required to source and appoint necessary contractors and personnel to have the work completed
- It is noted that 3 conditions (no.s 3, 9 and 10) require actions to be carried out before the remainder of site works commence. An outline programme of works is attached of works to be completed prior to commencement of site/construction works and it is estimated that 16-17 weeks is required.
- It is noted that some of the actions to be carried out before the remainder of site works (conditions 3, 9 and 10) require agreement with Council Departments and such may be outside of the applicant's control.
- It is noted that given the date of grant of permission that the works may have to take place at a time when weather conditions are totally unsuitable.

6.2. **Planning Authority Response**

Response from Tipperary County Council

- The Planning Authority has no observations regarding this appeal.

7.0 Assessment

7.1 At the outset, I wish to point out that following consideration of the documentation on the appeal file and the site location and context, I am satisfied consideration of the proposal on a de novo basis, (that is as if the application had been made to the Board in the first instance), is unwarranted and that it is appropriate to determine the appeal in accordance with the provisions of Section 139 of the Planning and Development Act, 2000 as amended. Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Condition no.s 2 and 11

Appropriate Assessment

7.2 Conditions no.s 2 and 11:

7.2.1 The appeal concerns a proposal to retain two cattle underpasses under a public road that allows access between an existing farmyard complex and agricultural lands located on either side of county road L5014-0. Permission was granted, but was appealed on the basis of the terms of condition no.s 2 and 11.

Condition no. 2: Within 2 months of the date of the grant of permission, the works outlined in the submissions of the 7/06/2018 and 23/07/2018 which are required to complete the development shall be carried out and evidence of same submitted to the Planning Authority.

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

Condition no. 11: The applicant shall submit to the District Engineer for consideration, certification to confirm that the structure and additional works required have been installed under the supervision of a Chartered Structural Engineer within 2 months of the grant of permission.

Reason: In the interests of public safety and human health.

The grounds of appeal concern the length of time required to implement the terms of the condition with it noted that the nature of works required and arranging for such to be carried out necessitates a 3-4 month period.

7.2.2 Permission has been granted for retention of the underpasses, however additional works are required to such to finish them and the details of which were submitted by way of further information. Condition no. 3, 9 and 10 require agreement on a number of aspects of the proposal prior to commencement of works to complete the development and comply with conditions. The appellant has submitted a programme of works with the appeal submission, outlining the nature of the works required and the time scale required for such (Appendix B).

7.2.3 Condition no.2 requires the works to complete the development to be carried out and evidence of same submitted to the Council within 2 months of the date of grant of permission. I would consider it not unreasonable given the nature of works proposed (wing walls, attenuation, parapet walls and reinstating embankments) and the potential unforeseen difficulties that could delay such (weather, appointing contractors), to give the applicant/appellant a longer time period to comply with condition no. 2. The applicant/appellant is asking for 3-4 months. I would recommend that condition no, 2 be amended to give 4 months instead of the 2 months stated.

7.2.4 Condition no. 11 requires the applicant shall submit to the District Engineer for consideration, certification to confirm that the structure and additional works required have been installed under the supervision of a Chartered Structural Engineer within 2 months of the grant of permission. Given the extension of the time period of

condition no. 2, I would consider that in the interest of consistency and need to potentially complete works prior to certification, that condition no. 11 should be amended to extend the time period from 2 months to 4 months.

7.3 Appropriate Assessment

7.3.1 Having regard to the nature and scale of development proposed and to the nature of the receiving environment, namely an urban and fully serviced location, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

It is recommended that based on the reasons and considerations set out below, that the Planning Authority are directed under subsection (1) of section 139 of the Planning and Development Act, 2000, as amended to **AMEND** condition numbers 2 and 11 for the reason set out.

9.0 Reasons and Considerations

Having regard to the nature of the development proposed, to the needs of the developer to carry out additional works and the nature of such, it is considered an extended time period to comply with the conditions imposed is warranted and would be in the interests of the proper planning and sustainable development of the area.

10.0 Conditions

Condition no. 2: Within 4 months of the date of the grant of permission, the works outlined in the submissions of the 7/06/2018 and 23/07/2018 which are required to complete the development shall be carried out and evidence of same submitted to the Planning Authority.

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

Condition no. 11: The applicant shall submit to the District Engineer for consideration, certification to confirm that the structure and additional works required have been installed under the supervision of a Chartered Structural Engineer within 4 months of the grant of permission.

Colin McBride
Planning Inspector

06th December 2018