



An
Bord
Pleanála

Inspector's Report

ABP-303970-19

Development	Indefinite retention of a pedestrian gateway access to existing graveyard grounds and planning permission for a traffic bollard. The works within the curtilage of a protected structure.
Location	St. Abigail's Church, Kilgobnet, Dungarvan, Co. Waterford.
Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	18880
Applicant	Fr. Michael Kennedy P.P.
Type of Application	Retention Permission & Permission.
Planning Authority Decision	Grant Retention Permission & Permission.
Type of Appeal	Third Party v. Decision.
Appellant	Rosie Dobbin.
Observer(s)	None.
Date of Site Inspection	21 st May 2019.
Inspector	Susan McHugh

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1.0 Site Location and Description

- 1.1. The appeal site is located within the grounds of St. Abigail's Church, Kilgobnet, within a rural area approximately 3.5km to the north of Dungarvan, Co Waterford. There are a number of dwellings adjacent to the east, south and west.
- 1.2. St. Abigail's Church a protected structure, is located at the higher northern part of the site and addresses the graveyard which slopes steeply down to the south. The graveyard has two distinct sections, the older part to the west which is a national monument with the newer part to the east.
- 1.3. Vehicular access to the church and grounds is provided from local road L3002 to the east and is level with the church.
- 1.4. There are a number of pedestrian entrances and access routes, steps, ramps and pathways to the church from the adjoining access roads via the graveyard. Two are located along the lower southern boundary with the L3003 from a recessed parking area. Another is provided from local road L3002 to the east, and two are from local tertiary road L30032 to the west.
- 1.5. The pedestrian gateway subject of the current appeal is located along the western boundary wall within the oldest part of the church grounds. The L30032 is a cul de sac and serves an existing dwelling and is home to the appellant.
- 1.6. The gateway opening is 1m wide, includes a metal gateway and two entrance piers 450mm x 450mm either side. The pier on the northern side is finished in stone, while the pier on the southern side is finished in a smooth render finish, both are capped with concrete.
- 1.7. The overall site has a stated area of 0.885 hectares.

2.0 Proposed Development

- 2.1. Permission is sought for the retention of a pedestrian gateway access to the existing graveyard, and for permission to erect a traffic bollard in front of the entrance.
- 2.2. The application was accompanied by a covering letter from the applicant's agent Enda Kirwan Consulting Engineering Ltd., and a letter from the applicant Fr. Michael Kennedy P.P. Two letters of support and signed petition from approx. 450 no. parishioners in favour of the application also accompanied the application

3.0 Planning Authority Decision

3.1. Decision

The planning authority granted permission for retention and permission subject to two no. conditions.

Condition No.1: Plans and particulars.

Condition No. 2: Requirements in respect of the type and location of two no. bollards.

3.2. Planning Authority Reports

3.2.1. Planning Report (dated 18/02/2019)

Basis for the planning authority decision. It includes;

- Works fall within the curtilage of a protected structure under RPS No.88 and NIAH No. 22903103.
- Applicant contends that there was previously a pedestrian access at this location by means of a stile but was removed in the late 1960's.
- Access is required to allow access to graves in this part of the graveyard which are not accessible to all.
- Proposed bollard is placed forward and up gradient of the access at the public road edge to prevent haphazard parking.
- Works and finishes to open formed are not of a high quality visually but consider that they will weather in time and that reversing or upgrading of the works will not achieve any significant improvement.
- The proposal does not detract from the character and setting of the protected structure and while minimal groundworks would have been carried out there is no indication that archaeology was lost or that the retention of the proposed development for retention would impact on the recorded monuments at this location.

3.2.2. Other Technical Reports

The Heritage Officer: No report on file. Planners report refers – 'The pedestrian gateway is located in the boundary wall of a recorded monument WA031-001002 –

Kilgobnet Graveyard which also contains WA031-001004-font. Saint Abigails Catholic Church is a protected structure and is rated as being of Regional Importance in the NIAH. Given the scale of the pedestrian gate it is not considered it materially affects the elements of archaeological interest in the historic graveyard which are the remains of the early medieval church, architectural fragments associated with same and the Holy Water Font or that it significantly alters the character of the curtilage of the protected structure of St. Abigail's Church.'

District Engineer, Dungarvan/Lismore: No report on file. Planners report refers – no concerns regarding the access but has sought 2 no. cast iron bollards to be installed and the formal designation/lining of a disabled parking place to address any traffic management issues.

Conservation Officer: No report received.

3.3. Prescribed Bodies

- 3.3.1. The application was referred by the planning authority to An Taisce, the Development Application Unit, Department of Culture, Heritage and the Gaeltacht, OPW, Fáilte Ireland, The Heritage Council, and An Comhairle Ealaíon, but no reports were received.
- 3.3.2. The Board also referred the application to An Taisce, the Development Application Unit, Department of Culture, Heritage and the Gaeltacht, and The Heritage Council, but no reports were received.

3.4. Third Party Observations

- 3.4.1. One third party objection to the proposal was lodged with the planning authority from Rosemary Dobbin, Tommy Hallinan's, Kilgobnet.
- 3.4.2. This has been forwarded to the Board and is on file for its information. The issues raised are comparable to those raised in the third-party appeal and are summarised in section 6 below.

4.0 Planning History

Concurrent Application

P.A. Reg.Ref.18/876: Application for permission for proposed graveyard to extend from St. Abigails Church grounds and associated footpaths, access ways and

landscaping, by Fr. Michael Kennedy P.P. Request for further information (February 2019). No response to further information request or decision, at time of writing this report.

This application included the entrance gate subject of the current application for retention.

5.0 Policy Context

5.1. Development Plan

5.1.1. The County Waterford Development Plan 2011 -2017 as varied refers.

Chapter 8 refers to Environment and Heritage

Section 8.29 refers to Architectural Heritage and Archaeology

Section 8.31 refers to Protected Structures

Section 8.38.1 refers to Record of Monuments and Places

Section 8.39 refers to Historic Graveyards

Policy AH 16 'It is the policy of the Council to apply best practice in the care and management of historic graveyards as detailed in the guidance document on the "*Care, Conservation and Recording of Historic Graveyards in County Waterford*" published by Waterford County Council in 2009.'

Appendix 13 Record of Protected Structures (RPS)

No. 88 NIAH Reg. No. 22903103 Kilgobnet St. Abigails Catholic Church.

Appendix 15 Record of National Monuments and Places (RMP)

Monument No. WA031-001 Kilgobnet - Church Site

Monument No. WA31-00101 Kilgobnet - Holy Well

5.1.2. Relevant National Guidelines and Designations

- Architectural Heritage Protection – Guidelines for Planning Authorities
- Record of Monuments and Places, National Monuments Service, Department of Culture Heritage and the Gaeltacht.

RMP No. WA031-00100 - Description: *'Situated towards the bottom of a severe S-facing slope. This is the parish church of Kilgobnet dedicated to St Gobnet of Ballyvourney, Co. Cork, within a subrectangular graveyard (dims. c. 70m N-S; c. 40-60m E-W). It was described by John O'Donovan c. 1840 as a nave (dims. c. 13.2m x 9.5m) and chancel (dims. c. 5.1m x c. 4.8m), of which the S nave wall, a pointed chancel arch and the E gable with a small pointed window survived (O'Flanagan 1929, 40-41). The remains of a Romanesque doorway (ibid.) in the S wall of the nave, which was reputedly the inspiration for the W doorway of the RC church now just to the E, is no longer present.*

The nave is now reduced to a consolidated cairn of rubble (dims. 14.25m x 9.1m) and a fragment of the E gable survives. Cut-stone fragments, some with keel-moulding, and an octagonal font (dims. 0.58m x 0.58m; H 0.48m) with a circular basin (diam. 0.44m; D 0.21m) are at the site.'

RMP WA031-001002 - Description: *'Situated towards the bottom of a severe S-facing slope. The parish church of Kilgobnet (WA031-001001-) is within a subrectangular graveyard (dims. c. 70m N-S; c. 40-60m E-W).'*

- National Inventory of Architectural Heritage (NIAH)

NIAH Reg. No. 22903103 - Description: *'Detached four-bay double-height Catholic church, built 1883, on a rectangular plan comprising two-bay double-height nave opening into single-bay (single-bay deep) double-height transepts centred on single-bay double-height chancel to crossing (east).'* (Details attached)

5.2. Natural Heritage Designations

None of relevance.

5.3. EIA Screening

Having regard to the nature of the proposed alterations to be retained and proposed, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The Third-Party appeal against the decision of the planning authority to grant permission for retention and permission was lodged by Rosemary Dobbin, the owner of the adjoining property to the west. The grounds of appeal can be summarised as follows;

- *Former Stile* - No evidence that this was the historic site of a stile, and highly unlikely given that historically the area which it is situate was not a road.
- *Insufficient legal consent* - As the landowner of the area which is the road to the party wall, consent will be refused to the destruction of this historical monument and for lands to be used as a parking area serving the church and graveyard.
- *Ownership* – Disputes the applicant’s ownership of this area. The National Monument relates to the ancient St.Abigail/St.Gobnait’s Church of Ireland and its graveyard and is not in the jurisdiction of the Catholic Church which he is employed. Applicant had no right to carry out the works.
- *Capacity of the Old Graveyard* – The parish committee were informed 10 years ago by the planning authority that the old graveyard was at capacity.
- *Guidelines on Historic Graveyards* - Notes planning authority guidelines on graveyards, and training provided to the Parish Committee by National Monuments. They advised against putting in any more graves, roads, removal of any old head markers, or creation of any new access routes into the graveyard.
- *Proximity of Burials* – The law states that no burials are permitted within 200 yards of a dwelling unless a letter of consent is provided, and no consent has been given.
- *Works Carried out* – Provision of access over the appellants property unwelcome. Parked vehicles and use of the graveyard throughout the night, in addition to lights and ornaments is inappropriate.
- *Proximity of the Grave* – Lies within 10m of appellants property and loss of privacy.

- *Roads Department Works* – The works were undertaken by a business previously engaged by the Roads Department to carry out road works.
- *Finishes / Design* – The gate, wall and piers constructed are out of keeping with the character of the area and is unsightly.
- *Unauthorised Works* – The gate is unauthorised, and the current application tacitly relies on the retention of unauthorised works.
- *Security* – Requests that the standard graveyard requirement for walls to be at least 8-foot-high be enforced, that the graveyard is closed at night, and that adequate gates be fitted to the church access points.

Adequacy of parking/loading/turning

- *Adequacy of Roads* – Roads are inadequate from all directions, with no turning or adequately sized parking facilities to the church, on the cul de sac in the appellants ownership. Gate to appellants property is frequently obstructed which is unacceptable.
- *Right of Way* – Notes a right of way over appellants land for the purposes of passing and repassing, but no approval given for parking which would restrict access to their property. Expresses a wish that the right of way be extinguished, and thereby remove the issue of car parking associated with the church and graveyard.
- *Gradient of the road* – Is steep and challenging and unsuitable for parking and pedestrians.
- *Gate closure* – Request that the gate on this side of the church be permanently closed and blocked up. The cul de sac was not designed for trucks with trailers, and at the point where the abandoned vehicle lies is in excess of 5.5m wide and widens again at the corner.

Noise and disturbance

- *Loitering and loss of privacy* – Associated with the use of the gate and abandoned vehicle. Concern in relation to antisocial behaviour and visitors to the graveyard during the night are unwelcome.
- *Traffic Bollard* – Located on appellants property unacceptable.

Impact on listed building and conservation area.

- *Gate* – Located within the curtilage of the remains of St. Abigals Church and graveyard are a National Monument. St. Abigals Church is a protected structure. Notes the history of the graveyard over 1400 years dating back to pre-Christian times, and the active and continued use of the burial plots.

Design, appearance and materials

- *Requirement for Design Schedule* – in accordance with Conservation Graveyard Guidelines, and requirement to be managed by a suitable qualified archaeologist and conservation accredited landscape architect.

Road Access

- *Access* – Abandoned vehicle at appellants property and regularly park in a manner which blocks the entire boreen.

Request the Board to refuse retention permission and permission.

6.2. **Planning Authority Response**

None.

7.0 **Assessment**

7.1. The main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings;

- Architectural Heritage
- Access and Parking
- Other Matters
- Appropriate Assessment

7.2. **Architectural Heritage**

7.2.1. The proposed development for retention comprises a new pedestrian gate, and pillars, providing access to a graveyard and St. Abigail's Catholic Church. It is also proposed to erect a bollard outside the gate.

- 7.2.2. The Third Party has raised concern in relation to the impact of the proposed development for retention on St. Abigail's Church a protected structure and the graveyard which is a National Monument. In particular, they contend that the design and finishes are unsightly and out of keeping with the character of the area. It is also asserted that in the absence of the works being overseen by a qualified archaeologist and conservation accredited landscape architect that the works carried out are contrary to the guidelines issued by the planning authority in respect of Historic Graveyards.
- 7.2.3. The report of the Heritage Officer of the planning authority notes the scale of the pedestrian gate to be retained and considers that it does not materially affect the elements of archaeological interest of the graveyard, or that it significantly alters the character of the curtilage of the protected structure.
- 7.2.4. I also note that no reports were received by the planning authority or the Board from any of the prescribed bodies to which it was referred.
- 7.2.5. I concur with the assessment by the planning authority that the works and finishes are not of a high quality visually. The planning authority have however, taken a pragmatic view in considering that the works will weather in, and that the reversing or upgrading of the works would not achieve any significant improvement. I tend to concur with this view at this juncture.
- 7.2.6. I accept that works are not especially sensitive to its setting but would further note the variety of treatments to the other pedestrian entrances within the church grounds, some of which are far less sympathetic.
- 7.2.7. I also note Section 8.29 of the County Development Plan in relation to Architectural Heritage and Archaeology, where it is noted that '*Buildings by their very nature change over time (use, function, etc) and conservation can be considered the management of change.*'
- 7.2.8. In my opinion, the works carried out are relatively minor in the context of the overall site area. I consider on balance, given that the entrance gate to be retained is a considerable distance from the public road to the south, and so not clearly visible from the main public road or within the graveyard, that it does not seriously detract from the setting of the protected structure, national monuments, or the character of the area.

7.2.9. I am satisfied, therefore, that the entrance to be retained and proposed bollard will not adversely impact on the integrity of the protected structure, national monuments, or the character of the area.

7.3. Access and Parking

- 7.3.1. The pedestrian gate to be retained is located along the western boundary of the church grounds and abuts the local tertiary road L30032. The pedestrian gate provides almost level access to St. Abigail's Church and the upper section of the graveyard.
- 7.3.2. The L30032 serves a single dwelling which is the home of the appellant. It has a very steep gradient and is a cul de sac. It is also proposed to erect a bollard, outside the church grounds, in an area in front of the gate, on the L30032.
- 7.3.3. The third party has raised concern in relation to the creation of the gateway and the proposal to erect a bollard on the road way.
- 7.3.4. In this regard, the applicant's agent refers in the covering letter accompanying the application to a previous stile at this location which was blocked up circa 1968 and infilled with a masonry wall. This is disputed by the third-party appellant.
- 7.3.5. The applicant's agent has also presented a rationale in respect of the carrying out of the works, which it is asserted provides direct access to the graveyard for elderly and immobile persons. The applicant has also submitted a petition from parishioners and letters from families in support of the application.
- 7.3.6. From my site inspection, albeit early morning on a weekday when no services were taking place, I noted the main area for car parking to serve the overall church grounds is located along a recessed area on the southern boundary of the overall site on the L3003. Pedestrian access from this car parking area to the church grounds is provided via two separate routes. The first route is via a gate and steps through the old part of the graveyard. The second route is located directly parallel and is via a pedestrian barrier and ramp in the newer part of the graveyard.
- 7.3.7. Given the significant change in site levels from the principal car parking area and pedestrian entrances to the south, I am of the opinion that the provision of an alternative pedestrian access/drop off point outside this elevated section of church grounds is warranted. I am satisfied that the proposed development which facilitates universal access is appropriate and acceptable.

- 7.3.8. The appellant has also raised concern in relation to parking at the entrance gate by visitors to the church grounds, and to the restricted turning area for vehicles to manoeuvre. In my opinion this is the crux of the appeal.
- 7.3.9. I note the report of the District Engineer of the planning authority and requirement to erect 2 no. bollards, outside the entrance gate to address the issue of parking. A condition was attached to the grant of permission for retention and permission accordingly.
- 7.3.10. From my site inspection I noted the narrow width and steep gradient of this local tertiary road L30032. I also noted a car parked at the location of the pedestrian gate and that the turning area at this point is very tight.
- 7.3.11. I am however, reasonably satisfied that the erection of two bollards as required and conditioned by the planning authority, will act as a deterrent to parking and thereby ensure that there is sufficient turning area for cars using the road.
- 7.3.12. I conclude, therefore that there is no substantive basis to this ground of appeal and that the decision of the planning authority should be upheld.

7.4. **Other Matters**

- 7.4.1. *Sufficient legal interest / Right of Way*– The appellant has raised concern in respect of the applicant's legal interest to carry out and retain the works, as they have not submitted a letter of consent from the owner of the area which is the road to the party wall. The appellant does however acknowledge that there is an existing right of way along the road, which it is asserted should be extinguished.
- 7.4.2. It is of note that the issue of ownership/rights of way are civil matters and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: 'A person shall not be entitled solely by reason of a permission under this section to carry out any development'. Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management – Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: 'The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...'
- 7.4.3. *Capacity and Proximity of the Graveyard* – Issues raised by the third-party appellant in relation to the capacity of individual grave plots, and proximity of new burials to the

appellants property particularly in the older part of the graveyard, are considered to be matters relating to the overall management of the graveyard by the church authorities, and not planning related matters.

- 7.4.4. *Noise and Disturbance* – Issues raised by the third-party appellant in relation to anti-social behaviour, access to the graveyard at night and security are also considered to be matters relating to the overall management of the graveyard by the church authorities, and not planning related matters.

7.5. **Appropriate Assessment**

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

8.0 **Recommendation**

- 8.1. I recommend that planning permission for retention permission and permission should be **granted** for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the location and objectives pertaining to the site of the development, the pattern of development in the area, the design and layout of the development proposed for retention and proposed, it is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely impact on the integrity of the protected structure, national monuments, or seriously injure the residential or visual amenities of property in the vicinity or character of the area, and would be acceptable in terms of traffic safety and convenience. The development proposed for retention and proposed would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application. Reason: In the interest of clarity.
2.	Two no. bollards shall be placed forward of the two entrance piers on the roadway to the west. Details of finishes and materials shall be submitted to and agreed in writing with the planning authority prior to commencement of development. Reason: In the interest of traffic management.

Susan McHugh
Planning Inspectorate

9th July 2019