



An
Bord
Pleanála

Inspector's Report ABP-304327-19.

Development	Permission for the construction of a cattle underpass beneath the public road, new farm roadway and retaining wall along with all associated site works.
Location	Islandbawn, Rathfalla, Nenagh, Co. Tipperary.
Planning Authority	Tipperary County Council.
Planning Authority Reg. Ref.	18/601487.
Applicant(s)	Joseph Sheehy.
Type of Application	Permission.
Planning Authority Decision	Grant subject to conditions.
Type of Appeal	Third Party.
Appellant(s)	David & Lisa Rooney.
Observer(s)	None.
Date of Site Inspection	6 th August, 2019.
Inspector	A. Considine.

1.0 Site Location and Description

- 1.1. The subject site is located approximately 3km to the east of the town of Nenagh and approximately 1.2km to the north of the M7 motorway in Co. Tipperary. The wider area is quite rural in character with a small number of farms and one-off houses. The site has a stated area of 0.341ha² and is accessed over the L1216 local road.
- 1.2. There is a ribbon of one-off houses located to the north and west of the proposed underpass site. There is a single storey house located immediately along the northern boundary of the proposed development site. The planning application indicates that the applicant is the owner of the land.

2.0 Proposed Development

- 2.1. Permission is sought for the construction of a cattle underpass beneath the public road, new farm roadway and retaining wall along with all associated site works all at Islandbawn, Rathfalla, Nenagh, Co. Tipperary.
- 2.2. The underpass is proposed to connect farm lands which front the local road. If permitted, it is indicated that the cattle will no longer need to be moved over the public road between fields.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant permission for the proposed development, subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report considered the detail and nature of the proposed development, together with submissions made in relation to the proposal, as well as policy requirements. Following a request for further information, the report formed the basis of the Planning Authority's decision to grant permission.

3.2.2. Other Technical Reports:

Roads Section: Following the submission of FI, the report notes no objection subject to compliance with conditions.

3.2.3. Prescribed Bodies;

None.

3.2.4. Third Party Submissions:

There was 1 third party submission from the immediate neighbour in relation to the proposed development. The issues raised reflect those issues raised in the appeal and are summarised as follows:

- The proposed underpass is located too close to residential property.
- The development will impact on the tranquillity and enjoyment of the property by reason of noise and smells.
- The development will impact on the health of family members who have respiratory problems.
- The underpass is not necessary as there is already an entrance to the field.
- Issues raised in relation to the holding tank.
- The development will devalue their property.

Following the submission of the response to the further information request, the third party submitted a further objection, summarised as follows:

- The site layout map included an area of property outside the applicants ownership.
- The site layout plan did not identify the location of the objectors property.
- The development will involve excavation works within 20m of the objectors house which has potential to compromise the structure of the house.
- The development works will cause significant disruption.
- The location of the proposed holding tank is in an area which is subject to pooling and ponding after rain.

4.0 Planning History

None pertaining to the subject site.

Adjacent site:

PA ref 06/510497: Permission granted for an extension to bungalow on the site to the north west of the site on the 14/06/2006

5.0 Policy Context

5.1. Development Plan

The site is located in the open countryside within Co. Tipperary and is for an agricultural development. The North Tipperary County Development Plan 2010 (as varied) is the relevant policy document.

Chapter 5 of the Plan deals with Economic Development and section 5.6 deals with Rural Economy while Chapter 9 deals with Transport, Water Services and Environmental Management.

5.2. Natural Heritage Designations

The site is not located within any designated site. The site is located approximately 6km to the east of the Lough Derg (Shannon) SPA, Site Code 004058, approximately 7km to the North of Slievefelim to Silvermines Mountains SPA, Site Code 004165, and approximately 10km to the north of the Lower River Shannon SAC, Site Code 002165.

5.3. EIA Screening

Having regard to nature of the development comprising an agricultural underpass, 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

This is a third party appeal against the decision of the Planning Authority to grant permission for the proposed development. The grounds of appeal are similar to those raised with the Planning Authority and are summarised as follows:

- The location of the underpass is adjoining the shared boundary of the appellants dwelling house and stream and is inappropriate in terms of the flooding potential of the site. Concerns raised in relation to the test hole details submitted with the application.
- There is adequate land available to the applicant to locate the underpass closer to the farm yard.
- The development will cause nuisance to residential amenity and family life due to noise and smells, with potential impacts affecting the health of family members.
- There is an existing access to the field and the necessity for the development is questioned.
- Health and safety issues raised in relation to the location of the holding tank.
- Issues raised in relation to the planning documents and plans submitted which exclude the location of the appellants property.
- Concerns raised in relation to the excavation works required so close to the appellants home.
- The effluent storage tank is not located within exempted distance limits to the house and permission should have been sought by the applicant.
- Environmental issues raised.
- The application should have been deemed invalid in terms of the plans submitted and public notices. Inadequate response to the FI request.
- Contrary to what is implied, there was no agreement to the proposal.

It is requested that planning permission be refused.

6.2. First Party Response

The applicant submitted a response to the third party appeal on the 28th day of May, 2019. The submission is summarised as follows:

- There is no stream adjacent to the proposed road, it is a land drain and images of water logging were taken when the outlet was blocked. There is no water in the drain for most of the year.
- The test hole investigations were carried out by professionals.
- The location of the underpass has been purchased as a right of way from the owners of the field which is not in the applicants control. This is the only option for access to the lands.
- In relation to the nuisance implications, it is submitted that farming activity in the rural area is the reality of living in the countryside.
- In the interests of health and safety, it is not ideal that cows have to walk 0.5km on the public road to access the field.
- In terms of slurry storage, it is submitted that this is only an issue where animals are housed or penned for a considerable length of time. The underpass does not come under this classification. The provision of the holding tank is to collect any waste that could flow with rainwater and to act as a collection point for any cleaning process.
- It is submitted that the appellant agreed to the underpass as the most appropriate option.
- If permission is not granted, the applicant will continue to move cattle by the public road.

6.3. Third Party Response to First Party Response to Third Party Appeal

The appellant submitted a further response to the first party response to the appeal. The submission is summarised as follows:

- Stream or land drain, the site floods.

- The ground levels at the site of the proposed underpass is below the level of the road and will therefore flood.
- The development will interfere with existing road drains. No details as to how this issue will be dealt with.
- No details as to the location of where the applicants photographs are taken is provided. Flooding is a regular occurrence and not a one off two/three day event as stated.
- The test hole report is not signed and details of who carried out the test is not provided.
- The original application indicated that the applicant owned a large mass of land on both sides of the road. The response to this appeal indicates that he only has right of way over the area. The issue of ownership/rented land raises issues in relation to the validity of the application as no letter of consent of the landowner has been submitted at application stage.
- The appellants have no objections to farming activities and do not accept that the cows will not create waste in the underpass.
- The applicant can walk cows across his own land to within 300m of the existing entrance to the field.
- The applicant has not commented on a number of issues raised in the appeal.
- The appellant restates concerns in relation to the proximity of the site to their home as well as issues in relation to the applicants landholding.

It is requested that permission be refused.

6.4. Planning Authority Response

The Planning Authority has not responded to this third party appeal.

6.5. Observations

None.

7.0 Assessment

I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Procedural issues
2. Principle of the development
3. Other Issues
4. Appropriate Assessment

7.1. Procedural Issues

The Board will note the concerns raised by the third party appellant in relation to procedural issues, relating to public notices and the information submitted.

7.1.1. In terms of Site notices, the appellant submits that it was not erected on the site on the date stated in the planning application form and was not erected for a number of weeks contrary to the requirements of Article 19 of the Planning & Development Regulations, 2001 as amended. While I acknowledge the submission and would agree that such an omission runs contrary to the regulations, I am satisfied that the appellant submitted their objections within the prescribed timeframe and therefore, while the time to submit may have been reduced, the public were notified about the proposed development.

7.1.2. In terms of the plans and particulars submitted in support of the proposed development, and in particular the requirements of Article 22(b) of the Regulations, I would have some concerns. The submitted site location map, scale 1:10,560, identifies an extensive landholding outlined in blue, which would indicate that the applicant has ownership or control over the identified area. However, I would note that the sites of a number of one-off houses are included in the lands outlined in blue. The Board will note that the application form indicates that the applicant is the owner.

7.1.3. Submissions through the appeal process, together with my brief encounter with the applicant on my site inspection, would suggest however, that the applicant does not actually own the lands the subject of the application, rather, he has a right

of way across part of the current proposed site. A letter of consent from the appropriate land owner has not been included. In addition, the site location map, scale 1:2,500 identifies only the subject site, and not the adjacent lands within the ownership or control of the applicant. I further note that part of the proposed development site would appear to include an area of the appellants residential site.

7.1.4. In terms of the site layout plan submitted, I am satisfied that the details as required in Article 23(1)(a) of the Regulations have not been adequately provided. The plan does not identify clearly, boundaries, buildings, roads, the septic tank and percolation area of the adjacent house or other features as required. In addition, the site layout plan does not clearly identify the existing land drain which is located in proximity to the proposed new farm roadway and I would note that the development, if permitted is likely to impact the functioning of the drain.

7.1.5. Should the Board be minded to grant permission in this instance, I would recommend that further information be sought to address the above concerns.

7.2. Principle of the development:

7.2.1. The subject site is located in a rural area of Co. Tipperary and the proposed development relates to agricultural works. In principle, I have no objection to the proposed development.

7.2.2. I note the location of the site on a very quiet and lightly trafficked local rural road. Currently, it is submitted that the applicant moves his herd over the public road, which includes a number of turns, from the existing farm yard, over a distance of approximately 500m. The proposed underpass, would remove the need to move the cattle over the public road. The structure itself is essentially a concrete box with a width of 3.6m and a height of 2.1m. The submitted documents suggest that the underpass would lie just under the existing road level – with plans noting that the road will be reinstated in accordance with the County Council requirements. An effluent holding tank is also proposed to be installed with a capacity of approximately 12.5m³.

7.2.3. In the context of the site, I would consider that while the principle of the development is acceptable, I am unsure as to the need for the underpass, given the lightly travelled nature of the road, the potential impact on the surface water drainage

network in the area and lack of clarity on a number of issues, including land ownership, consent to carry out the works and inadequate information on the application details.

7.3. Other Issues

7.3.1. The Board will note the concerns of the appellant in terms of the location of the proposed underpass, and potential impacts on their property. Certainly, I consider that the original site location map encroached on third party property. The quality of the plans, and lack of clear details, was not fully addressed following the submission of the response to the further information request. I have addressed my concerns in this regard above in this report.

7.3.2. With regard to the potential for nuisance, I accept that the construction of the underpass would likely have an impact on road users during the construction phase, which, given its limited timeline, would be acceptable. With regard to the concerns of the appellants and the impact of the movement of the animals in terms of noise, smells and lighting, I note the very rural location of the site, and appellants property. I also note that the applicant currently uses the adjoining fields as pastures for the animals so it is already an established use, in my opinion. The movement of the animals off the public road may be seen as a benefit to the wider area. That said, I would acknowledge the concern regarding the provision of the holding tank, which appears to be located within 10m of the appellants property. It is submitted that the holding tank is not classified as a slurry tank as cattle are not housed in the underpass and therefore it might be reasonably considered that the proposal is acceptable in this regard. I would not consider that the development will give rise to any additional noise, light or smell issues.

7.3.3. In terms of flood risk, I note the presence of a land drain which will be impacted by the proposed development if permitted. The applicant states that the land drain carries water to the Ollatrim River. The response to the further information request provides details of 'box culvert design' which relates to the underpass itself and with no comment on the impact of the development on the land drain. While I do not consider that the development if permitted will result in any significant flood risk of adjacent properties, I do consider that the matter should be addressed by the developer.

7.4. Appropriate Assessment

The site is not located within any designated site. Having regard to the location and nature of the subject site, I am satisfied that there is no potential for impact on any Natura 2000 site, warranting AA.

8.0 Recommendation

It is recommended that planning permission be refused for the proposed development for the following reasons and considerations.

9.0 Reasons and Considerations

1. On the basis of the submissions made in connection with the planning application and appeal, the Board is not satisfied that the application has been made by a person who has:
 - (a) sufficient legal estate or interest in the land the subject of the application to enable the person to continue the existing use of, or carry out the proposed works on the land, or
 - (b) the approval of the person who has such sufficient legal estate or interest.

In addition, the Board is not satisfied that the plans and particulars as submitted comply with the requirements of Article 23(1)(a) of the Planning and Development Regulations, 2001, as amended.

In these circumstances, it is considered that the Board is precluded from giving further consideration to the granting of permission for the development the subject of the application.

A. Considine

Planning Inspector

7th August, 2019