



An
Bord
Pleanála

Inspector's Report

ABP-308758-20

Development	Retention of previously permitted milking parlour and completion of underpass and storage tank.
Location	Beagh (DED) Crossacre, Donaghmoyné, Carrickmacross, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	2032
Applicant(s)	Donal Gerrard McDaid.
Type of Application	Permission.
Planning Authority Decision	To refuse.
Type of Appeal	First Party
Appellant(s)	Donal Gerrard McDaid.
Observer(s)	None.
Date of Site Inspection	30 th March 2021.
Inspector	Deirdre MacGabhann

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DECISION QUASHED

1.0 Site Location and Description

- 1.1. The 0.1778ha appeal site lies c.6.5km to the north of Carrickmacross and c.2km to the west of the N2, in the townland of Beagh, Crossalare DED, County Monaghan. It lies in a rural area and drumlin landscape. Development is a mix of agricultural development and scattered rural housing.
- 1.2. Access to the site is from a minor county road (LT81012), with the farm yard straddling the road. The county road rises steeply from its junction with the LT81011, to the west of the farm. The minor road (LT81012) re-joins the LT81011 approximately 1km to the south east of the appeal site.
- 1.3. The appeal site comprises an agricultural structure (milking parlour) built on the northern side of the minor road and a partly constructed underpass, under the adjacent road. The agricultural building has been cut into the rising topography such that the main floor sits below the level of the adjoining road and aligns with the floor level of the existing structure to the west. At the time of site inspection, the underpass had been covered over and fenced and vehicular access to the LT81012, to the east of the site was precluded. In the vicinity of the farmyard, the public road is in a poor condition and is not defined.

2.0 Proposed Development

- 2.1. The proposed development comprises:
 - Retention of variation from the previously permitted milking parlour (c.13.3sqm) (PA ref. 07/1311).
 - Retention and completion of the underpass as constructed under local road LT81012 and the installation of effluent storage tank associated with this.
- 2.2. External materials for the milking parlour match the existing. Rationale for the development is to:
 - Reduce the movement of cattle on the public road, LT18011 (each day cattle are moved from fields to the east of the farmyard, along the LT18011, turn right into the farmyard roadway and up into the milking parlour). Cattle movements on the public road affects road users and gives rise to manure (pollutant and road safety issues). The proposed underpass and animal

manure collection tank are contained within the farmyard and animals would enter and leave the milking parlour from the field via the underpass thereby avoiding the need to travel on the public road.

- Adhere to condition no. 4 of PA 07/1311. This required that the finished floor level of the development match the adjoining farm shed. Consequently, the subject development has been constructed such that the majority of the milking parlour is below the ground level, with the eastern end of the building entirely below ground level. The proposed underpass is considered a reasonable solution, improving accessibility for the animals into the milking parlour and removing the need for animals to travel along the road and on the steep incline into the milking parlour.
- Bring farm management practices in line with section 12 notice in respect of animal manure handling (to prevent pollution entering roadside drains and watercourses).

2.3. The appellant maintains that the road running through the appeal site is not a public road and has never been maintained as a public road.

2.4. The planning application includes the following documents:

- A Planning Report – Refers to the location of the development on a family farm of 200 acres (c. 80ha).
- Engineers Report – Addresses technical design issues raised in respect of a previous planning application (PA ref. 14/483).
- Completed planning application form and supplementary planning application form for agricultural development. These provide details on the nature of the agricultural development, including:
 - Area of the farm, 68.26ha/38.28ha (both figures stated).
 - Capacity of waste storage facility – Covered tank, to accommodate soiled water, 38.40m³.
 - Dairy herd size – 301 (no change).
 - Waste to be disposed of – 3,838.5m² per annum (no change).
 - Capacity of slurry and effluent storage tanks – 3,838.5m².
 - Method of disposal – Slurry spreading on 68.26ha.

- Legal opinion - On the appeal statement submitted by Monaghan County Council in respect of ABP-306374-20 (withdrawn).
- Plans and particulars.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 29th of October 2020, the planning authority refused permission for the development. In summary, reasons are:

1. The applicant has failed to provide sufficient information to demonstrate that the development has been constructed in accordance with technical standards (TII Specifications for Roadworks and Associated Construction Details) and has not, therefore, demonstrated that the development would not endanger public safety by way of traffic hazard or obstruction.
2. The applicant has failed to demonstrate that the development would not adversely impact on the local road network and therefore would materially contravene Policy NNRP3 of the Monaghan County Development Plan 2019-2025.

3.2. Planning Authority Reports

Planning Reports

3.2.1. The PA report dated 29th October 2020 states:

- Design variation of constructed milking parlour building is considered acceptable in principle. Building intrinsically linked to underpass structure and therefore requires consideration in tandem. Underpass structure is considered unacceptable. Not designed to appropriate technical standards. Design cannot be rectified without removing the structure in its entirety. Development could have an adverse impact on traffic safety of the road network and its carrying capacity.

3.2.2. It recommends refusing permission for the development for reasons of traffic hazard and conflict with policy NNRP3 of the County Development Plan.

3.2.3. Other Technical Reports:

- **Environment** (15th October 2020) – Refers to waterbody and vulnerability; conflict in lands available for application of slurry, no. of slurry storage tanks proposed and capacity **relative** to herd size (i.e. over capacity). Notes **roadway** which divides the farm is heavily soiled. No objections subject to conditions.
- **Roads** (27th October 2020) – Appendix B of **the Engineers Report** (report on temporary slopes) refers to the installation of other structures and is dated September 2015, in advance of the installation of cattle underpass, late 2017. O'Reilly Ready Mix Design Cert dated 4th February 2019 and does not **correlate** to the **installation date** of the cattle underpass. Certificate does not meet technical requirements. Detailed design of the cattle underpass does not meet technical standards/requirements. Elements of the structure cannot be rectified or modified without removing the structure in its entirety. The report recommends **refusing** permission.

3.3. Prescribed Bodies

- None.

3.4. Third Party Observations

- None.

4.0 Planning History

- P/Ref. 07/1311 – Permission granted to demolish silage pit and construct an uncovered slatted shed and milking parlour.
- A/Ref. 19/483 (ABP-306374-20) – Permission refused by the planning authority for retention and completion of underpass for the movement of livestock, including the **installation of** an effluent holding tank and ancillary works, under the road (LT81012) which traverses the applicant's lands adjacent to the milking parlour. First party appeal withdrawn September 2020.

- Section 5 declaration, PA ref. EX19/44 – The planning authority determined that a culvert and all associated site works (for the purpose of moving cattle under the public road) was not a culvert as stated and was not exempted development (26th July 2019).
- Section 5 declaration, PA ref. EX19/22 and Board decision ABP-305540 – The Board decided, 5th September 2019, installation of box culvert/animal underpass for the purpose of moving animals, installation of animal effluent holding tank and all associated works, was development and not exempt development.

5.0 Policy Context

5.1. Monaghan County Development Plan 2019-2025

- 5.1.1. Policies of the Monaghan County Plan recognise the important role agriculture plays in the County and facilitates its modernisation in accordance with national guidelines and statutory responsibilities (section 4.6 and policies AGRP 1, AGRP3, 4 and 5).
- 5.1.2. Section 7 of the Plan deals with Transport and Infrastructure. Roads within county are classed as Local Primary, Local Secondary and Local Tertiary, depending on the levels of traffic and carriageway width, and are deemed to be *'of critical importance to the economic and social activity within the County given the County's low level of urbanisation and dispersed settlement pattern'* (section 7.11). Section 7.9.1 sets out policies in respect of Non-National Routes, these include policy NNRP 3 in respect of development proposals, *'To ensure that the traffic carrying capacity and the strategic nature of the County's road network is not adversely affected'*.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is c.3km from the nearest site of natural heritage interest, Lough Egish proposed Natural Heritage Area (site code 001605) (see attachments). European sites, in the Republic, are >15km.

5.3. EIA Screening

- 5.3.1. Having regard to the modest scale and extent of the proposed development, its location which is removed from any sites of natural heritage interest, the limited emission of waste or potential pollutants from the development and the proposed means to manage these, I consider that the need for environmental impact assessment can be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. First party grounds of appeal are:

General Comments

- The area available for land spreading is slurry is 68.28ha. The 38.28ha referred to is a typographical error. The family farm comprises 200 acres, but this includes 10 acres not included in the application or available for land spreading.
- No increase in livestock or new slurry storage tanks are proposed.
- The planning authority has not adjudicated on the issue of the milking parlour. It has been designed to very high standard in terms of modern technology and siting.
- The installation of the under pass represents best practice in terms of design and construction and provides for the prevention of water pollution and improvement in the visual amenities of the area.
- The development will avoid the need for cattle to travel on the roadways (LTN 1011) and farmyard right of way and deposition of manure on the roadway. The proposed animal manure collection tank will ensure collection and storage of animal effluent in line with AGRP 4. Animals would enter and leave the milking parlour from the field via the underpass and thereby avoid travelling on the road network.

- The road which runs through the farmyard is not a public road, despite it being given a road number (LT81012), as per the attached legal opinion. The road is not a national road and is not the responsibility of TII.
- The milking parlour and underpass have been designed to comply with the European Union (Good Agricultural Practice for Protection of Waters) Regulations, 2017.

Refusal No. 1 (Construction in accordance with technical standards)

- The reason is unreasonable as it refers to specifications for National Roads which do not relate to the proposed development. The LT81012 is a small road, used historically by 2-3 vehicles/day and has not been taken in charge or maintained by Monaghan County Council. The planning authority should have considered the principle of the development, as if the underpass were not in situ. All works were carried out in good faith and in the belief that they did not need permission. Structural stability is a matter for Building Control. The applicant is happy to accept any conditions attached to a permission regarding appropriate structural details to be submitted.
- Technical reports have addressed the matters raised by the planning authority (Engineers Report, November 2020).
- DMRB standards were not considered in other appeals determined by the Board for underpasses (PL16.247020; PL18.237686; PL27.247845). Similarly to those decisions made by the Board, the proposed development would remove livestock from the road, would represent an improvement in traffic safety and environmental health.

Refusal No. 2 (Material contravention of Development Plan).

The reason for refusal is unreasonable and fails to consider the minor nature of the road where the appeal site is located and its limited use (Traffic Report attached). The movement of cattle on the LT181011 has a far greater impact on the carrying capacity of the road network and public safety.

- The proposed development would result in the improvement of the environmental quality of the area, as recognised by Environment Section Report.

Milking Parlour

- The milking parlour could have been permitted, in the absence of retention of the underpass. Planning permission was originally granted for the milking parlour and the need for retention derives from the fact that it was not completed in the statutory period and the modifications to the design which arose from the imposition of conditions in respect of the finished floor level.

Status of the road

- The previous planning application was invalidated because the local road name was omitted. In the interest of progressing the application, it was decided to include the road name. However, the applicant does not accept that the road is, or ever has been, a public road. The application should be assessed on its merits, principle of development, traffic safety and environmental impact.

6.2. Planning Authority Response

6.2.1. The planning authority refers to the planning history of the appeal site and makes the following additional comments:

- Enforcement Ref. E18/1 – On receipt of complaint in respect of the construction of the underpass the planning authority took enforcement action. It was determined by the Circuit Court (18th April 2018) that the structure, which was not a culvert (as argued by the applicant) but an underpass (as argued by the planning authority) was unauthorised and should be removed. The Court's decision was appealed to the High Court, where the decision of the Circuit Court was affirmed (1st June 2019) on the grounds that the development could not be construed as a culvert and was unauthorised.
- Enforcement Ref. E16/20 – Warning letter issued (23rd September 2019) in respect of the construction of an agricultural structure that was not in accordance with PAref. 07/1311.
- Public Road:
 - No correspondence or discussions were had between the applicant and the planning authority in relation to the stated invalidation of the planning application by the PA (road number).

- The applicant refers to the road that traverses the site as the LT81012. Inclusion of the reference indicates the applicant's acceptance that the road is a public road. Documentation submitted by the applicant under PA ref. 07/1311 refers to the road as a public road (Appendix B).
- The High Court judge considered the appellant's submission to the effect in respect of the private nature of the road '*less than convincing*'.
- In accordance with section 11(5) of the Roads Act, there is a signed certificate by the roads authority (Monaghan County Council) that the LT81012 is a public road (Appendix A3).
- Notice issued to the appellant under section 13(10) of the Roads Act 1993 stating that it is an offence to excavate the public road without prior consent (Appendix C). The road has remained closed since 11th December 2017.
- Underpass
 - No independent certification/documentation has been provided to indicate that the underpass has been constructed in accordance with any best practice guidelines or statutory requirements. Report by Conor Furey Associates states that certificates can be provide on completion. Underpass will remove livestock from crossing the public road, this cannot override the potential safety of the carrying capacity of the public road.
- Reason No. 1

The DMRB and TII specifications for Road Works are the only standards available to the PA for determining design and installation compliance of road structures. Deviations from the standards are possible, with engineering justification and supporting evidence. No alternative standards have been submitted. The application of these standard was not contested under PA ref. 19/483. The other cases referred to by the appellant are not for in situ developments. The concerns consistently raised by the PA is that there is no independent qualified surveyors report or certification to indicate that the works have been carried out to an appropriate standard.

- Report by Conor Furey & Associates (November 2020) – The Building Regulations do not extend to an underpass which falls within the remit of road design requirements. Having regard to the history of non-compliance with planning legislation and its procedures, it is considered improper to authorise retention and completion of the development subject to compliance with a number of significant conditions which pertain to the safety of the structure of the public road. There are elements of the installed structure that cannot be confirmed, rectified or modified without the need to remove the structure in its entirety.
- Report by Transport Planning Services (December 2019) – No information on author, competencies, date or time of survey. Road is closed so no evidence possible for its use as a through route. Road closure has been obstructive, and the matter raised and discussed by elected members at Municipal District meetings.
- Retention of milking parlour – Building is intrinsically linked to underpass. It has been constructed to connect to the underpass and enable the crossing of livestock from the parlour to the remainder of the landholding. Issuing a split decision would be problematic as it would require modifications to the milking parlour to block up/close/disconnect the structure from the underpass.
- Comments by Roads Section – Reiterates comments made in the Planning Report and refers to technical matters set out in the Conor Furey & Associates Report.

6.3. Observations/Further Responses

None

7.0 Assessment

7.1. Planning Assessment

- 7.1.1. Having examined the application details and all other documentation on file, and inspected the site, and having regard to relevant planning policy and guidance, I consider that the main issues in this appeal are:

- Public safety
- Impact on local road network.

7.2. Public Safety

- 7.2.1. Status of the road. Parties to the appeal refer to the status of the road that passes through the appeal site, with the planning authority arguing that it is a public road and the applicant that it is not. The current OS map of the site does not identify the road traversing the farm complex as a road. However, it is indicated on all OS historic maps and in the Discovery series. Whilst the matter is primarily a legal one, which lies outside of the planning system, there is sufficient information on file to indicate that the road has served as a public route and that the matter of public safety, and the technical standards which govern construction of any underpass, is therefore relevant to the appeal.
- 7.2.2. Principle. The proposed development comprises retention of alterations to a milking parlour and construction of underpass to facilitate the movement of cattle from the milking parlour to agricultural fields, avoiding the use of the public road. the proposed development lies in a rural area and is brought forward on an existing agricultural holding with a view to removing cattle from the public road. Policies of the County Development Plan support the development of the industry and protect the carrying capacity of the road network. Within this context, the proposed development is acceptable in principle.
- 7.2.3. Relationship with milking parlour. As stated by the applicant, the milking parlour (to be retained) has been constructed to align with the floor level of the adjoining structure. Consequently, the milking parlour lies at a lower level than the adjoining road. The proposed underpass would allow cattle to be moved from this level, under

the adjoining road, to the agricultural fields to the south of the site. This would allow access within the field system to adjoining lands and remove the need for travel along public roads. This argument seems reasonable.

- 7.2.4. Currently cattle leave the milking parlour via the existing entrance to the agricultural structure, to the west of the proposed development. In the absence of the underpass, the milking parlour could still function, for example, with cattle exiting the milking parlour and moving either west, as currently, or east along the adjoining road to access agricultural lands. (At the time of site inspection, the field to the south of the public road was not fenced off from the road). I do not consider, therefore, that the milking parlour, to be retained, is dependent on the provision of the underpass.
- 7.2.5. Technical standards. The appellant states that there is no reference to DMRB standards (Design Manual for Roads and Bridges) in previous determinations by the Board in respect of agricultural underpasses (PL16.247020; PL16.257686; PL27.247845). It is also argued that the standards referred to by the planning authority are excessive and not applicable to the rural context of the road.
- 7.2.6. The planning authority's chief concern is that the underpass has not been and perhaps cannot be built to an appropriate technical standard without removal, as much of the work cannot now be viewed/certified. In their decision to refuse permission, they refer to TII standards and in response to appeal they state that these and the DMRB are the only standards to which they can refer. They also acknowledge, in response to the appeal, that there is scope for deviation from the DMRB/TII standards with engineering justification and supporting evidence.
- 7.2.7. In the course of the planning application and in response to the appeal, technical information has been provided by the appellant in respect of the underpass. Much of information provided refers to the provision of further testing or mitigation measures (Cons. Entry Report September 2020; AGL report 2015), to either demonstrate compliance or to enable compliance with standards.
- 7.2.8. Having regard to the foregoing, I would consider that it is entirely possible to construct an underpass at the subject location to the satisfaction of the planning authority and in accordance with technical standards, TII/DMRB, from which there may be appropriate deviation, given the context of the development, and subject to technical justification. In this instance, as the under pass is in situ, the applicant may

be required to carry out substantial remedial works, including where necessary complete demolition and reconstruction of the structure, and/or tests to demonstrate compliance with required standards. However, I consider that this matter can be addressed by conditions of a permission.

7.3. Impact on Local Road Network

- 7.3.1. The planning authority's second reason for refusal states that the development would materially contravene Policy NNRP3 on the grounds that the applicant has failed to demonstrate that the underpass as constructed would not adversely impact on the local road network.
- 7.3.2. However, as discussed above, I consider that it is technically possible for the proposed underpass development to be designed and constructed to appropriate standard and that the matter can be addressed by condition. Subject to this, I consider that the proposed development would therefore be in accordance with requirements of the County Development Plan and not comprise a material contravention of Policy NNRP3.
- 7.3.3. Section 37(2) of the Planning and Development Act, 2000 (as amended) permits the Board to grant permission in certain circumstances where a planning authority has determined that a development would be a material contravention to the development plan. These include having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.
- 7.3.4. The pattern of development in the area since the adoption of the Monaghan County Development Plan in 2019 has been its continued use principally for agricultural development, with little new development in the immediate area of the site. The proposed development is inherently agricultural in nature and is brought forward to reduce the movement of cattle on the public road. Consequently, I would consider that it is a development which is entirely consistent with the pattern of development in the area and in the interest of the proper planning and sustainable development of the area. Further, I am not satisfied that the use of the term 'materially contravene' is appropriate or justified in the planning authority's reason for refusal given the modest nature of the development and the absence of specific technical standards that apply in this instance.

8.0 Appropriate Assessment

- 8.1. Having regard to the modest scale of the proposed development and its location in a rural area which is substantially removed from any European site, 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.

9.0 Recommendation

- 9.1. I recommend that retention be granted for the proposed development subject to conditions.

10.0 Reasons and Considerations

- 10.1. Having regard to the nature and scale of the development, the history of on-site agricultural activity and to the existing character and pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not be endangered public safety by reason of traffic hazard and would be in accordance with the policies of the Monaghan County Development Plan 2019-2025. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

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| 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 8 th day of September 2020 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. |
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	Reason: In the interest of clarity
2.	<p>(i) Within 6 months of the date of this order, details of remedial works, including demolition and reconstruction if required, shall be submitted to the satisfaction of the planning authority, for written agreement.</p> <p>(ii) Use of the underpass shall not take place until the works, that are subject to written agreement, have been implemented in full to the satisfaction of the planning authority.</p> <p>Reason: In the interest of orderly development and traffic safety.</p>
3.	<p>Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to, and agreed in writing with the planning authority prior to use of the underpass.</p> <p>Reason: In the interests of environmental protection and public health.</p>


Deirdre MacGabhann
Planning Inspector

13th April 2011