



An
Bord
Pleanála

Inspector's Report ABP 311516-21

Development

Bridge over the River Liffey to facilitate farming. The bridge will consist of 3 spans of 30.1 m, 8.3 m and 28.4 m for a total length of 66.8 m, a deck width of 2.75 m and it will be supported by 4 no. abutment walls. It will contain railings on either side which will measure 2.26 m high and have a structural depth of 2.5 m. All associated site works including gravel access ramps.

Location

Friarstown, Straffan, Co. Kildare

Planning Authority

Kildare Co. Co.

Planning Authority Reg. Ref.

21455

Applicant(s)

Carl Farrar

Type of Application

Permission

Planning Authority Decision

Grant permission with conditions

Type of Appeal

Third Party

Appellant(s)

Martin Donovan

Observer(s)

None

Date of Site Inspection

24th February 2023

Inspector

Tom Rabbette

1.0 Site Location and Description

- 1.1. The application site is located straddling the River Liffey in the townland of Friarstown, approximately 2.2 km north-east of Straffan in Co. Kildare. The site is located in a rural area on lands in agricultural use. There is a bend in the river and the river splits forming an island at the site location. Lands either side of the river are relatively flat.

2.0 Proposed Development

- 2.1. The applicant is seeking permission to construct a bridge over the River Liffey. The bridge is for agricultural purposes. The total length of the bridge is stated as 66.8 m. There is a bend in the Liffey at the site location and the river splits creating a small island. The bridge is being constructed to provide access between the main landholding and a pocket of land to the north of the river. There are two supporting concrete abutment walls proposed on the island and two more such supporting abutment walls at each end of the bridge structure. The bridge structure is a square hollow section truss. There are ramps proposed at both ends. The development proposal also includes for the provision of compensatory flood storage areas for the bridge abutments and earth embankments along the ramps. The level of the bridge deck will be 58.52 m OD, the existing ground level adjacent the proposed ramps is 56.10 m OD.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 01/09/21, the PA decided to grant permission subject to 12 no. conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Report dated 27/05/21:

- FI recommended in relation to a Construction Management Plan and 3rd party submission.

Report dated 30/08/21:

- FI response noted and considered.
- Permission recommended subject to conditions.

3.2.2. Other Technical Reports

Environmental Office (report 29/04/21)

- Proposal acceptable subject to conditions.

Water Services (report dated 28/04/21):

- No objection raised, conditions recommended.

Inland Fisheries Ireland (report dated 17/05/21):

- The River Liffey is a nationally important salmonid system.
- A number of conditions recommended.

Heritage Officer (report dated 19/05/21):

- Permission recommended with conditions.

Transportation Department (reported dated 20/05/21):

- No objections.

Environmental Section (report dated 20/05/21):

- No objection, conditions recommended.

3.2.3. Third party observation

- A submission addressed to the PA objects to the making of the application.
- Ownership of the subject lands is in dispute.
- Legal proceedings have issued related to the ownership of the lands.
- Premature to make a decision pending the outcome of the legal proceedings.

4.0 Planning History

I am not aware of any directly relevant planning history pertaining to the application site.

5.0 Policy and Context

5.1. Development Plan

The operative plan for the area is the Kildare County Development Plan 2023-2029.

- Chapter 9 of the written statement is titled 'Our Local Economy'. Objective RD 02 states: 'Facilitate agriculture, horticulture, forestry, tourism, energy production and rural resource-based enterprise within the rural settlements and in appropriate rural locations subject to relevant development management standards.' Policy RD P2 states: 'Support the future and continued development of agriculture and the agri-food sector in County Kildare.'
- Chapter 12.10 of the written statement addresses 'Inland Waters: Lakes, Rivers, Streams and Groundwater'. Policy BI P7 states: 'Recognise and promote inland waters, natural environmental assets and to protect rivers, streams and other watercourses and, wherever possible, maintain them in an open state capable of providing suitable habitats for fauna and flora while discouraging culverting or realignment.' Objective BI 037 states: 'Ensure the protection of rivers, streams and other watercourses and, wherever possible, maintain them in an open state capable of providing suitable habitats for fauna and flora while discouraging culverting or realignment. Endeavour to re-open previously culverted streams and watercourses through any future development/redevelopment proposals.'
- Chapter 13 of the written statement addresses 'Landscape, Recreation & Amenity'
- The site is located within the 'River Liffey' Landscape Character Area as per Map ref. V1-13.1. This is classified as 'special sensitivity' as per Table 13.1 'Landscape Sensitivity Classification to Landscape Character Areas'.

- Table 13.3 addresses ‘Likely compatibility between a range of land-uses and Principal Landscape Areas’.
- S.13.4.4 of the CDP addresses ‘The River Liffey and the River Barrow Valleys’ and states, inter alia, that “The River Liffey and the River Barrow valleys are of significance in terms of landscape and amenity value and as such are sensitive to development...”
- S.13.5 addresses ‘Scenic Routes and Protected Views’ and within that section 13.5.2 refers to ‘Views to and from Waterways’ including the River Liffey. Protected views to/from the Liffey are listed in Table 13.7.

5.2. Natural Heritage Designations

There are no European designated sites within the immediate vicinity of the site.

The nearest designated sites are:

- Ballynafagh Bog SAC (000391) c.13.1 km from the application site
- Ballynafagh Lake SAC (001387) c.14 km from the application site
- Red Bog SAC (000397) c.13.1 km from the application site
- Rye Water Valley/Carton SAC (001398) c.7.4 km from the application site

5.3. EIA Screening

The proposed development is not of a class of development specified in Schedule 5 of the Planning & Development Regulations 2001 (as amended). Therefore, no EIAR or preliminary examination is required.

6.0 The Appeal

6.1. Grounds of Appeal – Martin Donovan

- The applicant has not demonstrated sufficient legal interest in the entirety of the subject lands to submit a planning application.
- The application is thus invalid.

- The appellant contends that he is the owner of part of the subject lands, this issue, amongst others, is currently the subject of Court proceedings.
- The application is not in the interests of the proper planning and sustainable development of the area.
- It would set an undesirable precedent for similar developments.
- An area of c. 2.6 acres located north of the Liffey has been actively farmed by the appellant since he acquired the lands in 2018, prior to that they were farmed by the previous owner since 1933.
- The appellant has spent considerable amount of time and money improving this land.
- An aerial photograph with annotations seeks to summarise the land ownership of the lands around the subject site.
- With reference to historic maps and more recent satellite/aerial photography the appellant holds that it is apparent that the natural flow of the river has moved and with it the centre of the river bed.
- The granting of permission would be premature pending the outcome of the legal proceedings regarding the ownership of the site.
- The provision of a large bridge is disproportionate with the agricultural need of the 2.6 acre site.
- The lands to the north of the river are substantially lower than the applicant's landholding to the south.
- A grant of permission would be a precedent set for more private bridges over the Liffey. The appellant refers to ABP Ref. 236613 for a refusal of permission for a bridge over the Liffey in Celbridge.
- The project's economic viability is questioned, it connects a large c. 101 ha landholding to a 0.263 ha plot.
- The bridge will not be used for several months of the year as the land will be submerged.

- The proposed development will infringe on the sensitive landscape character of the river due to its length and height. The appellant cites policies LA2, LA 3 and WC 8 of the CDP.
- The development will have a negative impact on the amenity of the area.
- The Board is requested to overturn the PA decision.

6.2. Applicant's Response

The applicant's response to the grounds of appeal can be summarised as follows:

- The proposed development is very different to the bridge proposal in Celbridge cited by the appellant, it was in an entirely different context and the Board's refusal reason in that instance is not applicable in this instance.
- The cost of the bridge is a matter for the applicant and not a planning matter.
- The appellant has not submitted any evidence to support the allegation that the land will be submerged and the bridge unusable.
- It will not have an adverse impact on the visual amenity of the area.
- It is not the function of ABP to be arbitrator of property disputes.
- It is perfectly normal practice to obtain a planning permission and then seek a s.50 consent from the OPW.
- The Board is urged to grant permission.

6.3. Planning Authority Response

PA submission (dated 26/10/21)

The PA has no further comment to make.

7.0 Assessment

The PA have adopted the 'Kildare County Development Plan 2023-2029' since the making of the planning decision on the subject application. This assessment has given full consideration to that new CDP.

The main issues are those raised in the third party grounds of appeal and the Planning Report, 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:

- Principle of development
- Ownership dispute
- Precedent set
- Feasibility of the development
- Information submitted at application stage
- Section 50 application
- Visual impact
- Flood risk
- Appropriate Assessment

Principle of development

The applicant is seeking permission to construct a bridge for agricultural purposes. The structure is located outside of a designated urban development boundary, it is located in a rural area where the existing primary land use is agricultural. There are a number of policies and objectives in the statutory plan for the area that support agricultural use in such locations, including Objective RD 02 and Policy RD P2. The site is located on a large landholding that has a long-established agricultural use. I am satisfied that the proposed bridge for agricultural use is compatible with the established land-use of the area and is supported in principle in the statutory plan for the area.

Ownership dispute

At the heart of this appeal lies a dispute as to the ownership of part of the application site.

The appellant holds that he owns that part of the site located on the northern side of the River Liffey. The applicant strongly refutes this contention. Both sides have submitted various documentation including aerial images, land ownership maps, historic maps, extracts from land registry maps, photographs, auctioneer's sales brochure, statutory declaration, history of land purchases in the area and solicitors' letters.

Reference is made on file to legal proceedings around the disputed ownership issue (it appears it is the planning applicant who initiated the legal proceedings in relation to, *inter alia*, alleged trespass). The 3rd party appellant considers that the granting of permission would be premature pending the outcome of the legal proceedings regarding the ownership of the disputed lands.

I draw the Board's attention to s.5.13 of the 'Development Management Guidelines for Planning Authorities' (DoEH&LG 2007 issued under s.28 of the P & D Act 2000 as amended) where 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. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not

have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”

I note that the PA did seek further information (FI) and did raise the 3rd party's claims regarding ownership of part of the site with the applicant via that FI request. Having considered the applicant's response the PA granted permission. I consider that the PA have acted reasonably in this regard and in line with advice given in the above-mentioned s.28 Guidelines.

Having regard to the foregoing, I would consider it unreasonable at this stage to refuse permission on the grounds of the disputed ownership issue or to effectively delay a decision by way of refusal on prematurity grounds pending the outcome of Court proceedings (in that regard I note that the applicant lodged the application with the PA in April 2021).

Should the Board grant permission and it subsequently transpires that the applicant does not own the disputed lands, such a grant of permission does not bestow ownership rights on the applicant, nor can it usurp any Court findings on the ownership issue. It is a matter for the applicant to satisfy himself that he does indeed have sufficient rights over the lands before he commences construction of the proposed development. In that regard, and having due regard to the above quoted s.28 Guidance, I would recommend that, should the Board grant permission, it give consideration to the inclusion of a reference to s.34(13) of the 2000 Act in its Direction and issue the Direction along with the Order to the parties.

Precedent set

The appellant has raised concerns that a grant of permission in this instance would set a precedent for more private bridges over the Liffey and he considers this to be against the interests of proper planning and sustainable development. He cites a refusal by An Bord Pleanála for a development adjacent the Liffey that included a bridge over the river in that development also - ref: 236613.

Each application is considered by the Board on a case-by-case basis. I have reviewed the Board's Order and Inspector's Report in relation to appeal ref. 236613. There are a number of material differences between the development proposal now before the Board and the development subject of 236613, I do not think the development proposals to be directly comparable. The development proposal under 236613 was not agricultural related, it was within a designated development boundary, it related to the provision of roads and service infrastructure to facilitate the future expansion of Celbridge town centre.

As indicated above I am satisfied that the applicant's bridge is required for agricultural purposes and such a use at this location does not conflict with the statutory plan for the area. The appellant's submission itself noted that a search of the PA planning register revealed no other planning applications for similar development for bridges to agricultural lands, this suggests to me that the somewhat unique locational and access challenges has generated the need for the bridge, in such circumstances I would not be concerned that it would set a precedent.

Feasibility of the development

The appellant questions the economic viability of the proposed bridge, it is held that the project would be unfeasible due to the cost of the structure for low return. I am satisfied that the financial viability of the proposed development is not a matter for the Board to make a determination on.

Information submitted at application stage

The appellant holds that misleading information was submitted at application stage. Reference is made to, again, disputed ownership claims around a demesne wall, works to the wall and allegations regarding removal of vegetation.

Notwithstanding these claims, I am satisfied that there is sufficient information on file for the Board to make a fully informed decision on the application. Any matters pertaining to unauthorised development (if such development was carried out) is a matter for the PA as the planning enforcement authority to address in the first instance and the works referred to in the appellant's submission are not the subject of the current planning application. In the circumstances I would not recommend refusal in relation to this matter.

Section 50 application

The appellant refers to the need for a Section 50 application to the OPW. This would appear to be referring to the possible need for consent under section 50 of the Arterial Drainage Act 1945. The appellant holds that it would be inappropriate for permission to be granted before such consent or entitlement has been finalised.

Again, I would refer the Board to s.34(13) of the 2000 Act, *if* the applicant needs consent under other legal codes, a grant of planning permission does not obviate such a requirement.

Visual Impact

The appellant has raised concerns about potential impact on the character of the receiving landscape. It is stated that the proposed development will infringe on the sensitive landscape character of the river due to its length and height.

The site is located within the 'River Liffey' Landscape Character Area as per the Kildare CDP 2023-2029. Such areas are described as having 'special sensitivity' in terms of landscape sensitivity classification as indicated in Table 13.1 of the CDP. Table 13.3 addresses 'Likely compatibility between a range of land-uses and Principal Landscape Areas'. Within that table 'agricultural' land-use, which is what is proposed in this instance, is deemed to be 'most compatible'. Section 13.4.4 of the CDP in relation to the River Liffey states, inter alia, that while views of the river are available from local roads in certain circumstances landscape sensitivities may be localised or site-specific. I am of the opinion that the application site is not particularly sensitive.

I also have had regard to Table 13.7 and the protected views listed there to and from the Liffey, I have also had regard to the associated Map ref. V1-13.3 'Scenic Routes and Viewpoints'. The nearest protected views are RL3 and RL4. I have considered these and having regard to: the distances from these locations to the application site; the nature and scale of the development, and the nature of the intervening environment, I am satisfied that there will be no adverse impact on these views.

Flood Risk

The application was accompanied by a Flood Risk Assessment (FRA). The bridge is located in Flood Zone A as per the 'The Planning System and Flood Risk Management Guidelines' (2009). While the proposal is located on lands that are susceptible to flooding, the development itself would be classified as a 'less vulnerable development'. The proposal was analysed for flood risks arising from fluvial, ground water and human error, the 'receptor' for the purposes of the risk analysis are the proposed bridge and the paths/ramps leading to the bridge. The bridge is considered non-critical infrastructure, it will not be used during flood events as the adjacent agricultural lands it intends to serve would be flooded. The FRA

proposes a number of mitigation measures including the bridge deck level designed above the 1:100 and 1:1000 year flood events. The FRA indicates that it is extremely unlikely that a blockage will occur under the bridge as there is a 2.3 m freeboard proposed between the 1:1000 year flood event and the deck of the bridge. Mitigations measures also include the creation of compensatory storage to eliminate any additional flooding potential caused by the construction of the 2 access ramps.

The contents of the FRA appear robust, there is nothing on file that would indicate the proposal would give rise to an unacceptable risk of flooding to lands/property adjacent the application site. The 'Water Services' section of the PA have indicated no objection to the proposal subject to conditions (ref. Report dated 28/04/21).

I note the report on file from Inland Fisheries Ireland (ref. Report dated 17/05/2021) and their recommendations regarding the protection of the River Liffey. In the event that the Board decides to grant permission I would recommend conditions, including the submission of a Construction Environmental Management Plan (CEMP), that seek to protect the Liffey during both the construction and operational phases. In addition, given the construction methodology being proposed, which includes craning into position large pre-fabricated elements, I would recommend that the CEMP address the timing, routing and other details relating to the construction traffic. (I note that the Transportation Department of the PA indicated no objection to the proposal [ref. Report dated 20/05/2021].)

Appropriate Assessment

The application was accompanied by a document titled 'Screening for Appropriate Assessment stage 1 for a New Bridge over the River Liffey at Friarstown, Straffan, Co. Kildare'. I have considered the contents of same. I note that the appellant did not raise any issues with regards to appropriate assessment.

The proposed development site is not located within or immediately adjacent to any site designated as a European Site.

Four Natura 2000 sites are located within a potential zone of influence of the proposed development. These are:

- Ballynafagh Bog SAC (000391) c.13.1 km from the application site
- Ballynafagh Lake SAC (001387) c.14 km from the application site
- Red Bog SAC (000397) c.13.1 km from the application site
- Rye Water Valley/Cartron SAC (001398) c.7.4 km from the application site

Having regard to:

- the small scale and nature of the proposed development;
- the Conservation Objectives of the Natura 2000 sites listed above;
- the significant separation distances between the development site and all of the Natura 2000 sites listed above;
- the fact that there are no hydrological connections (or any other potential source-pathway-receptor connections) between the development site and Ballynafagh Bog SAC or Ballynafagh Lake SAC or Red Bog SAC;
- the fact that the Rye Water Valley/Cartron SAC is upstream of the confluence of the River Rye and River Liffey, and
- the dilution factor should materials/pollutants enter the Liffey adjacent the proposed development at construction stage,

I would conclude that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site. (No mitigation measures were taken into consideration in this Appropriate Assessment screening.)

8.0 Recommendation

Having regard to the foregoing I would recommend that the PA decision be upheld and permission be granted subject to the conditions as recommended below.

I would also recommend that, should the Board grant permission, it give consideration to the inclusion of a reference to s.34(13) of the 2000 Act in its Direction and issue the Direction along with the Order to the parties

9.0 Reasons and Considerations

Having regard to the established agricultural use on the application site and associated landholding, the proposed use of the bridge, the nature and design of the proposal, and the character of the local receiving environment in this rural area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the visual amenities of the area, would not pose an unacceptable risk of flooding and would not set an undesirable precedent for similar developments in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

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 received by the planning authority on the 5th day of August 2021, 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The construction of the bridge shall be managed in accordance with a Construction Environmental Management Plan (CEMP), which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of, inter alia, the intended construction practice for the development, including measures to prevent any polluting matter, suspended solids or silt being discharged to the River Liffey. The CEMP shall also provide details of the timing and routing of construction traffic to and from the application site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site.

Reason: In the interests of protecting the River Liffey and traffic safety.

3. The bridge deck shall be designed and constructed in such a way as to prevent deleterious material entering the River Liffey at operational stage. Detailed design proposals indicating compliance with this requirement shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: In the interests of protecting the River Liffey.

Tom Rabbette
Inspectorate

27th February 2023