



An
Bord
Pleanála

Inspector's Report

ABP-312482-22

Development	Construction of livestock underpass under public roadway
Location	Ballinoroher & Carhoo, Timoleague, Co. Cork.
Planning Authority	West Cork County Council
Planning Authority Reg. Ref.	21609
Applicant(s)	Thomas Griffin
Type of Application	Permission
Planning Authority Decision	Grant subject to conditions
Type of Appeal	Third Party
Appellant(s)	Brian & Mary Sexton
Date of Site Inspection	5 th May 2022
Inspector	Liam Bowe

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 1.806 hectares, is located approximately 5km to the east of Clonakilty and 3km to the west of Timoleague village in West Cork. The site is immediately to the north of the R600 regional road, is part of an agricultural landholding and consists of a section of the L96003-1 and the agricultural lands either side of it. There is presently a crossing point on the public road from the part of the agricultural holding to the east of the farmyard complex. There is also an underpass at the southwest corner of the farmyard complex linking the farmyard to the lands to the south of the R600 regional road. The site comes from a total agricultural landholding of 79 hectares.

2.0 Proposed Development

2.1. Permission is sought for a livestock underpass that would connect agricultural lands to the east of a public road to a farmyard to the west of the public road. The underpass would be constructed from concrete and would be 3.0m wide, 2.0m high and 10.12m long. Other works (ramps and railings) associated with access /egress of the underpass would be 123.33m in length.

3.0 Planning Authority Decision

3.1. Request for further information

3.1.1. Prior to its notification of decision, the Planning Authority issued a further information request on 27th October 2021 requiring details of the water supply for the site, how surface water is disposed of from the land, and clarifying what measures are in place to protect ground water quality.

3.1.2. In response, the first party submitted a revised site layout plan clarifying the location of the water supply for the farm, confirming that surface water is disposed of by means of natural soakage, and highlighting the contained nature of the tunnel being no threat to ground water quality.

3.2. Decision

By order dated 9th December 2021 Cork County Council issued a notification of decision to Grant Permission for the proposed development subject to 19 no. standard condition. Of note are the following conditions:

Condition No.10: A suitable buffer zone shall be established around CO136-005 *Enclosure* in advance of the development by a suitably qualified archaeologist. The extent of the buffer zone shall be agreed with the Local Authority Archaeologist in advance of the development. No construction works, stockpiling, of topsoil, etc..., or any development, or landscaping and/or planting should take place within the buffer zone. Subsequent to the completion of the development the buffer zone shall remain around the Archaeological Monument. Planting within this buffer zone shall be limited to shallow-rooted plants and/or grass.

Reason: To preserve items of archaeological importance.

Condition No.17: Prior to commencement of development, the developer shall enter into an agreement with the Planning Authority, under Section 47 of the Planning Acts, to maintain the structural integrity of the proposed underpass and associated works in perpetuity.

Reason: To ensure the on-going maintenance of the structure.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the Planning Officer dated 26th October 2021 outlines the relevant planning policy under the West Cork Municipal District Local Area Plan 2017, notes the objections received and raises concerns regarding water supply, surface water run-off and ground water quality.

Appropriate Assessment Screening was carried out and concluded that there was no likely potential for significant effects to any Natura 2000 site.

A second report, subsequent to the submission of a response to further information, recommends a grant of permission consistent with the notification of decision which issued.

3.3.2. **Other Technical Reports**

Area Engineer: The Area Engineer's initial report dated 12th October 2021 sought details regarding the water supply and surface water run-off in relation to the overall landholding, measures to protect ground water, and an archaeological assessment. A second report dated 8th December 2021 recommends granting permission subject to conditions.

Archaeologist: No objection. Conditions recommended.

Environment: No objection. Conditions recommended.

3.4. **Prescribed Bodies**

None

3.5. **Third Party Observations**

A submission on the proposal was received from Brian & Mary Sexton, Carhoo, Timoleague, Co. Cork. The submission reflects the principal issues raised in this appeal and these include concerns regarding flooding, contamination of water bodies, damage to shared boundary, incorrect information on the application form and removal of hedgerows.

4.0 **Planning History**

4.1. **Appeal site:**

P.A. ref. no. 2100049 – Permission granted for: 1) The construction of an agricultural building to include a robotic milking parlour and ancillary rooms, livestock housing with feed passage and slatted storage tanks, and 2) The erection of a meal bin and water storage tank along with associated site works.

5.0 Policy Context

I draw the Board's attention to the adoption of the Cork County Development Plan on 25th April 2022, which came into effect as the statutory plan for the county on 6th June 2022.

5.1. Cork County Development Plan 2022-2028

The site is located in the open countryside within Co. Cork and is for an agricultural development.

Section 8.16 of the Plan deals with Agriculture and Farm Diversification and states:

Objective EC 8-15:

- a) Encourage the development of sustainable agriculture and related infrastructure including farm buildings,
- b) Prioritising the development of sustainable rural housing to support working farmers and their employees),
- c) Encouraging farm diversification through the development of other sustainable business initiatives appropriate to the rural area, and
- d) Supporting appropriate proposals for sustainable tourism development.

Section 16.2 of the Plan deals with Archaeological Heritage

Objective HE 16-2: Protection of Archaeological Sites and Monuments

Secure the preservation (i.e., preservation in situ or in exceptional cases preservation by record) of all archaeological monuments and their setting included in the Sites and Monuments Record (SMR) (see www.archaeology.ie) and the Record of Monuments and Places (RMP) and of sites, features and objects of archaeological and historical interest generally.

Objective HE 16-5: Zones of Archaeological Potential

Protect the Zones of Archaeological Potential (ZAPs) located within historic towns, urban areas and around archaeological monuments generally. Any development within the ZAPs will need to take cognisance of the upstanding and potential for subsurface archaeology, through appropriate archaeological assessment.

5.2. Natural Heritage Designations

The site is not located within any designated site. The site is located approximately 2.6km to the west of Courtmacsherry Bay SPA (Site Code: 004219) and Courtmacsherry Bay SAC (Site Code: 001230), and it is located approximately 3.8km to the northeast of Clonakilty Bay SPA (Site Code: 004081) and Clonakilty Bay SAC (Site Code: 000091).

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

6.1.1. A third-party appeal was submitted by Brian & Mary Sexton, residents of a dwelling to the east of the site. The issues raised are as follows:

- Contend that watercourses have been changed and ditches removed on the First Party's farm causing flooding to their home.
- Contend that damage has been caused to the nearby archaeological monument.
- Concerned about pollution to an open well that feeds into their well.
- Contend that the proposed underpass will compound these issues.

6.2. Applicant Response

6.2.1. A response to the appeal was submitted by the First Party, Thomas Griffin. The issues raised are as follows:

- States that lands to the rear of the appellants' house were purchased by his father before the appellants' house was built.
- States the road safety and operational reasons for requiring an underpass on his dairy farm.
- Confirms that he stored dung in the field to the north of the appellants' house and no issue or offence arose.
- Confirms that he will have 170 no. cows milking during the summer.
- States that a ditch / hedgerow was removed from the field to the north of the appellants' house approximately 20 years ago.
- Accepts the erroneous inclusion of a folio number with his landholding details.
- Confirms that parlour washings are collected in a slatted tank.
- Confirms that there was an incident some time ago when cows escaped from the farmyard onto the public road and neighbouring properties and expresses regret for this.

The First Party also includes a number of newspaper articles in support of his response to the grounds of the appeal.

6.3. Planning Authority Response

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

7.0 Assessment

I consider that the main issues in the assessment of this appeal are as follows:

- Principle of the development
- Flood risk
- Risk to ground water
- Archaeology
- Appropriate Assessment

7.1. Principle of the development

- 7.1.1. The subject site is located in a rural area of Co. Cork and the proposed development relates to agricultural works. In principle, I have no objection to the proposed development. 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, to / from the existing farmyard. 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 3.0m and a height of 2.0m. 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. In the context of the site, I am satisfied as to the need for an underpass, and I consider that the principle of the development is acceptable and consistent with Objective EC-15 of the Development Plan, subject to an assessment of the impact of the proposed development on surface water, ground water and a national monument in the vicinity of the site.

7.2. Flood risk

- 7.2.1. The appellants contend that their property experiences flooding as a result of changes to watercourses and the removal of ditches by the First Party. They are concerned that the proposed development will exacerbate this flooding.

- 7.2.2. I have reviewed the OPW Flood Maps¹ and I am satisfied that the appeal site is located outside of the areas designated for possible flooding. I have also reviewed the drawings submitted by the First Party and the proposed levels of all the structures proposed as part of the underpass. Although the appeal site is at a higher level than the lands to the south and the appellants' house, the proposed development has been designed so that the levels within the underpass and associated ramps fall generally from east to west. This is clearly annotated on the section (Drawing no.206 refers) of the underpass submitted to the Planning Authority on 3rd September 2021 where the levels fall from 79.000 OD to 76.027 OD.
- 7.2.3. Further to this, it is also demonstrated that surface water collected on either side of the proposed underpass will be collected via land drains and directed to a soakaway to the west of the farmyard. I am satisfied that the appellants' house would not be impacted by the disposal of surface water from the appeal site would not be likely to be affected by flooding as a result of the proposed development.

7.3. Risk to ground water

- 7.3.1. The appellants are concerned about pollution to an open well that feeds into their well and contend that the proposed underpass will compound this. The First Party confirmed that he stored dung in the field to the north of the appellants' house and no issue or offence arose when this was investigated.
- 7.3.2. I am satisfied that there is no direct link between the proposed underpass and the well referenced in the appeal. There appears to have been historical context to the issue, which was investigated by the local authority and no issues arose out of the investigation.
- 7.3.3. As per the flooding issue, I am also satisfied that the proposed development has been designed so that the levels within the underpass and associated ramps fall generally from east to west i.e., away from the appellants' property, and I would not consider that the development will give rise to any additional water quality issues.

¹ <https://www.floodinfo.ie/map/floodmaps/>

7.4. Archaeology

- 7.4.1. I note Cork County Council's archaeologist's report identifying a national monument (CO136 - 005 – *Enclosure*) to be within / close to the site. Accordingly, I have examined the National Monuments Service (NMS) maps for records of monuments and places of archaeological interest. This clearly identifies the aforementioned recorded monument in proximity to the appeal site. The zone of influence associated with the monument clearly overlaps the site edged red of the planning application / appeal.
- 7.4.2. Even though I consider that the statutorily protected archaeological zone of influence extends into the appeal site, the area of the proposed ground works for the ramp associated with the underpass at the southeasternmost part of the proposed development is located approximately 26m from the field boundary immediately to the north of the monument. Similarly, the archaeological zone of influence associated with the monument extends approximately 26m northwards from this field boundary. Therefore, I consider that the area where groundworks are proposed to commence to be on the edge of the archaeological zone of influence.
- 7.4.3. This archaeological zone of influence is clearly presented on the NMS's digitised map and, more particularly, the archaeological zone of influence on the original maps of the records of monuments and places² extends over a larger portion of the appeal site at this location (I have attached a copy of both maps to this planning report).
- 7.4.4. Cork County Council's policy in this regard is outlined in Section 5.1 above and objectives for the protection and preservation of the archaeological heritage of the county are clearly enunciated under Objectives HE 16-2 and HE 16-5. Consequently, I consider it necessary to include archaeological conditions for a buffer zone and monitoring per Cork County Council's archaeologist's recommendation. With these mitigation measures, I consider that with it can be concluded that the proposed development would not have an adverse impact on the archaeological heritage of the area and the proposed development would be consistent with these objectives.

² www.archaeology.ie , NM/RMP Map 136

7.5. Appropriate Assessment

- 7.5.1. The closest European sites are Courtmacsherry Bay SPA (Site Code: 004219) and Courtmacsherry Bay SAC (Site Code: 001230), and Clonakilty Bay SPA (Site Code: 004081) and Clonakilty Bay SAC (Site Code: 000091). There is no known hydrological link to the bays or the SAC / SPA. Given the small scale of the development, the distances involved, and the absence of any indication of a hydrological link to the European sites, it is considered that Appropriate Assessment issues can be ruled out at this stage.

8.0 Recommendation

I recommend that planning permission should be granted based on the following reasons and considerations and subject to the attached conditions.

9.0 Reasons and Considerations

Having regard to the design, scale and layout of the proposed development, its relationship to surrounding properties, to the existing agricultural use on the land, and the pattern of development in the area, it is considered that subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. 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 retained and works completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19 th day of November 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 and the
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	<p>development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health.</p>
3.	<p>A suitable buffer zone shall be established around the national monument CO136-005 Enclosure by a suitably qualified archaeologist in advance of any development. The extent of the buffer zone shall be agreed with the Local Authority Archaeologist in advance of the development. No construction works, stockpiling of topsoil, landscaping and / or planting shall take place within the designated buffer zone. Subsequent to the completion of the development, the buffer zone shall remain around the national monument. Planting in this buffer zone shall be limited to shallow-rooted plants and / or grass.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
4.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –</p> <ul style="list-style-type: none"> a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

	<p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
5.	<p>The retaining walls along the roadside shall be faced with local natural stone or sod and stone construction or earth mound. Precise details of this shall be agreed in writing with the Planning Authority prior to the commencement of development.</p> <p>Reason: in the interest of the visual amenity of the area.</p>

Liam Bowe
Planning Inspector

13th June 2022