



An
Bord
Pleanála

Inspector's Report

ABP-314472-22

Development	Emergency repair works to a roadside embankment.
Location	The Former Castlebrand Factory Tyone, Nenagh South Thurles Road, Nenagh Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	211747
Applicant(s)	Brian Comerford.
Type of Application	Retention Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant	Iarnród Éireann.
Observer	None.
Date of Site Inspection	31 st July 2023
Inspector	Peter Nelson

1.0 Site Location and Description

- 1.1. The site is located south of Nenagh town centre on the Thurles Road (R4980). The site is a narrow strip of land directly south of a railway bridge. The site is part of a larger landholding which contains the former Castlebrand Factory. This building is being used for a number of uses, including offices, a gym, a physiotherapy clinic and a motor repair garage.
- 1.2. The site has a stated area of 0.031 hectares. The site contains a parking area, retaining wall, and stone boundary wall, which are the subject of this appeal. There are railings on the boundary from the site entrance to the stone boundary wall. The car parking area is lower than the Thurles Road and the boundary wall.
- 1.3. The adjoining railway bridge is included in the Record of Protected Structures in the Nenagh Town and Environs Development Plan 2013 (as extended).

2.0 Proposed Development

- 2.1. Retention permission is sought for emergency repair works to the roadside embankment.
- 2.2. The works involved:
 - I. Remove the existing unstable graded earth embankment on the southwestern side of the public road and construct a reinforced concrete and masonry retaining wall for a distance of approximately 59 m and backfill to stabilise that embankment.
 - II. Reconstruction and repair of a portion of the existing stone wall and tie into the adjacent railway bridge abutment; and.
 - III. Modification to the existing car parking arrangement within the former Castle brand factory site, consequent to the works mentioned above.

3.0 Planning Authority Decision

3.1. Decision

Tipperary County Council granted permission on the 3rd of August 2022, subject to two conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first planning report, dated the 27th January 2022, recommended that Further Information be submitted, including land registry details, details of the intended use of the land cleared, design calculations for the retaining wall to demonstrate that it fulfils the safety requirements required to support the Regional Road and details including an Architectural Heritage Impact Assessment to fully assess the impact of the proposed development on the Railway Bridge.

The second planning report, dated the 28th July 2022, responded to the Further Information submitted and can be summarised as follows:

- The applicant has submitted land registry details and any issues regarding ownership are a civil matter between the relevant parties.
- The use of the area inside the retaining wall for a turning area is considered acceptable.
- The District Engineer is satisfied with the revised proposal for ensuring the stability of the embankment.
- The schedule of works contained in the submitted Architectural Impact Assessment is considered acceptable.
- The Further Information submitted has no material bearing on the EIA and AA screening carried out on the 26th January 2022.

3.2.2. Other Technical Reports

The report on the Further Information response from the Senior Executive Engineer, Roads & Transportation, states that he is satisfied with the engineering aspects regarding the wall's stability.

3.3. Prescribed Bodies

Comments were received from Iarnród Éireann on the initial planning application.

The main points raised can be summarised as follows:

- This development was carried out on lands owned by CIE and assets owned by Iarnród Éireann.
- The applicant has sought no landlord's consent to apply for planning permission, and CIE has given none.
- The applicant intends to use Iarnród Éireann lands cleared of the earth embankment for car parking.
- It is not accepted that any emergency repair was required to the existing earth embankment or the masonry approach wall or that the earth embankment was unstable.
- It is the understanding of Iarnród Éireann that the masonry approach wall and embankment form part of a protected structure.
- Design and installation details of the retaining wall constructed have not been provided to Iarnród Éireann.
- Inadequate detailed information has been provided on the planning application.

Comments were also received from Iarnród Éireann on the Further Information submitted. The main points raised can be summarised as follows:

- This development was carried out on lands owned by CIE and assets owned by Iarnród Éireann.
- The applicant has sought no landlord's consent to apply for planning permission, and CIE has given none.

- The applicant intends to utilise Iarnród Éireann lands cleared of the earth embankment for the purposes of a turning area.
- As a landowner, Iarnród Éireann has not received any documentation that will provide assurances that the application will address any protected structures issues or any liability thereafter.
- Iarnród Éireann has had no sight of any design calculations and therefore is unable to comment on the suitability of the proposed retaining wall.

3.4. Third Party Observations

None recorded.

4.0 Planning History

P.A. Ref.: 21/1899 Permission granted on the 3rd August 2022 for (i) Change of use of part of former industrial manufacturing building to provide for use as 'office' including an area which was used previously as office space ancillary to the former manufacturing use of the building; (ii) minor alterations to elevations and to the existing surface parking arrangements to facilitate the proposed 'change of use' including the provision of access ramps to the building; (iii) provision of signage and (iv) all associated and ancillary site development works.

P.A. Ref.: 17600515 Permission granted on the 3rd of July 2017 for (i) Change of use of part of the former industrial building to provide for a new Class 11 use (indoor sports gymnasium) including modifications to the external facade and provision of related signage; and (ii) Revised onsite parking configuration and use of existing vehicular access and all ancillary site development works to facilitate the proposed development and (iii) Modification to existing vehicular entrance and, setback and replacement of existing roadside boundary wall to provide for improved geometry and footpath treatment. And retention permission for; (i) provision of additional floor space to Unit 2 Gym (Permitted under planning reference 15600720) by way of a new upper floor to provide for an exercise room and office ancillary to that permitted use; (ii) modified front facade; and (iii) and all associated works.

P.A. Ref.: 15600720 Permission granted on the 12th October 2022 (1) Retention of demolition of a derelict corridor on the northern elevation of the existing industrial building to make structure safe; and (2) Permission for (i) change of use of part of the existing industrial building to provide for; (a) a Class 4 light industrial unit to facilitate the use of same as a car body repair workshop; and (b) a Class 11 unit to facilitate the use of a gymnasium; (ii) Modifications to external elevations pursuant to the proposed change of use; (iii) Revised onsite parking configuration and use of existing vehicular access; (iv) Provision of new signage; and (v) All ancillary development works including provision of oil/petrol interceptor and use of existing drainage infrastructure

Enforcement

P.A. Ref: TUD-21-048

A warning letter was issued for the following works;

- The excavation and removal of the supporting earth bank to the wall along the roadside on the approach to the railway bridge in the curtilage of a protected structure. RPS 118.
- The construction of a mass concrete wall and backfilling in the curtilage of the protected structure RPS 118.
- The demolition and reconstruction of a stone wall in the curtilage of a protected structure. RPS 118.

5.0 Policy Context

5.1. Development Plan

The Tipperary County Development Plan 2022-2028 is the operative Development Plan for the area. This plan came into effect on 22nd August 2022.

Policy 12 – 1: Maintain and protect the safety, capacity and efficiency of Tipperary’s roads network and associated junctions in accordance with the Spatial Planning and National Roads Guidelines for Planning Authorities (DECLG, 2012) and the Trans-

European Networks Regulations and to avoid the creation of additional access points to national roads to which speed limits greater than 60km/h apply.

Policy 13 – 1: Encourage and support the sympathetic restoration, re-use and maintenance of protected structures, thereby ensuring their conservation and protection. In considering proposals for development, the Council will have regard to the Architectural Heritage Protection Guidelines for Planning Authorities, (DAHG 2011) or any amendment thereof, and proposals that will have an unacceptable impact on the character and integrity of a protected structure or adjoining protected structure will not be permitted.

Nenagh Town & Environs Development Plan 2013 (as extended)

As stated in the Core Strategy, the current Town Development Plans and LAPs will remain applicable until they are replaced with LAPs, in accordance with the framework and timeline as set out in Table 4.2 of the Tipperary CDP 2022-2028. This provides a Framework of Town Plans and Local Area Plans.

In the Nenagh Town & Environs Development Plan 2013 (as extended), the site is Zoned Town Centre: the objective of which is 'To provide and enhance for Town Centre Mixed Use Facilities'.

The site is also highlighted as an Opportunity Site in Appendix 2.

Record of Protected Structures:

The adjoining railway bridge is included in the Nenagh Town and Environs Development Plan 2013 (as extended) Record of Protected Structures (RPS No.118). Description: Double-span road bridge over railway, built c. 1862-3. Coursed rock-faced limestone piers and abutment walls, latter with cut stone parapet and string course, supporting reinforced concrete bridge with cast-iron parapet.

5.2. **Natural Heritage Designations**

5.3. None Relevant

6.0 **The Appeal**

6.1. **Grounds of Appeal**

The main grounds of appeal can be summarised as follows.

- This development was carried out on lands owned by CIE and to assets owned by Iarnród Éireann.
- The applicant has sought no landlord's consent to apply for planning permission, and none has been given by CIE.
- The applicant has provided no information with respect to the retaining wall constructed.
- The applicant has not provided any information to Irish Rail or Tipperary County Council to confirm that the retaining wall constructed is suitable for its expected purpose.
- As part of his submission for further information, the applicant provided details of a proposal to build an additional retaining wall. Putting land ownership issues aside, Iarnród Éireann would support this proposal as a technical solution to addressing the issues raised by the current retaining wall.
- It is clear from the application that the drawing and design calculations submitted for the additional retaining wall have been interpreted as referring to the existing retaining wall that is the subject of the retention planning application.
- By granting this retention planning application, Tipperary County Council has erroneously accepted that the retaining wall is fit to support a regional road when the applicant has not shown that this is the case.
- This has and will present a continued safety risk for rail users, road users and pedestrians.

6.2. Applicant Response

The main points of the applicant's response can be summarised as follows:

- The land ownership has not been verified by Iarnród Éireann and is disputed by the applicant under the advice of his solicitor.
- A Land Registry map and title details showing the applicant's ownership of the land in question were submitted to Tipperary County Council to address the further information request.
- Iarnród Éireann has failed to substantiate their claim to ownership.
- The reinforced concrete wall for retention was constructed as a design-build project, which has led to difficulties in having the walls certified as fit for purpose by an indemnified structural engineer.
- An additional detailed survey was carried out on the wall, and this information was used to provide detailed plan, elevation and cross-section details submitted on the planning drawings.
- It is intended to construct an entirely new reinforced concrete wall against the face of the existing reinforced concrete wall.
- The submitted structural design calculations referred to a proposed wall and not the existing retaining wall that is the subject of this retention application.
- Conservation matters have been addressed fully in the conservation report submitted as part of further information.
- All parties agree that the construction of a new reinforced concrete wall is a practical technical solution to address the situation where the existing concrete wall is deemed uncertifiable.

6.3. Planning Authority Response

The main points of the Planning Authority's response can be summarised as follows:

- The planning authority accepts that no design calculations were submitted for the as-constructed wall; however, the planning authority is satisfied that the new wall will act as a retaining wall.
- Design calculations were submitted for the new retaining wall, and the Planning Authority are satisfied the new wall will retain the as-built retaining wall.
- It is noted there is a dispute regarding land ownership, and this is considered to be a civil matter between the parties involved. The Land Registry indicates that the applicant is the owner of the land, and no evidence to the contrary has been provided.

6.4. **Observations**

- None

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Legal Interest.
- Retaining Wall Construction.
- Appropriate Assessment.

7.2. **Legal Interest**

7.2.1. The appellant, Iarnród Éireann, states that the development was carried out on land owned by CIE and to assets owned by Iarnród Éireann, namely the approach earth embankment to the Railway Overbridge and the masonry approach wall situated on top of the embankment. The appellant states that no consent has been given to the applicant for the planning application.

7.2.2. As part of further information, the applicant has submitted a Land Registry Map showing Folio TY5948F. This parcel of land which includes the site outlined in blue in the application also includes the embankment. While the ownership of the boundary of the boundary wall may be unclear, in terms of the legal interest, I am satisfied that the applicants have provided sufficient evidence of their legal interest for the purposes of the planning application and decision. In any case, this is a matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act.

7.3. **Retaining Wall Construction**

The initial application submission did not include detailed design calculations for the retaining wall to demonstrate that it fulfils the design criteria and safety requirements to support the regional road. The planning authority requested further information in this regard.

In response to the appeal, the applicant has stated that the specification details were not supplied by the contractor, which has led to difficulties in having the wall indemnified by Structural Engineer. In order to overcome this issue, in reply to the further information request, the applicant has submitted a proposal to construct a new reinforced concrete wall against the face of the subject reinforced concrete wall. Structural calculations for this new wall were also submitted.

In response to the further information, I note that the planning authority's senior executive engineer was satisfied with the engineering aspects regarding the stability of the wall and road embankment. I also note that the Iarnród Éireann have stated in their appeal that the proposed new wall would make the subject retaining wall redundant, and putting ownership issues aside, would be supportive of this proposal as a technical solution to address the issues raised by the current wall.

As there is no evidence in the appeal to question the structural integrity of the wall and as Iarnród Éireann support the revised solution, I consider that the proposal is acceptable subject to the attachment of a condition agreeing with the planning authority the construction details of the proposed retaining wall and the timeframe for completion.

7.4. **Appropriate Assessment**

Having regard to the proposed development, the site location within a built-up area outside of any protected site and the nature of the receiving environment, the availability of public services, and the proximity of the lands in question to the nearest European Site, it is my opinion that no appropriate assessment issues arise and that the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 **Recommendation**

8.1. I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

9.0 **Reasons and Considerations**

Having regard to the proposed additional retaining wall and the proposed conservation mitigation measures, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the architectural character of the railway bridge, would not be seriously prejudicial to traffic safety and would be in accordance with the provisions of the Nenagh Town & Environs Development Plan 2013 (as extended). The development to be retained and completed would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	The development shall be retained and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 7 th day of July 2022 except as may otherwise be required in order to comply with the following conditions.
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	<p>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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The construction of the proposed retaining wall shall be designed, supervised and certified by a Chartered Civil or Structural Engineer, and the works shall be subject to the written agreement of the Planning Authority.</p> <p>Reason: In the interests of clarity and to ensure a satisfactory standard of Development.</p>
3.	<p>The construction of the proposed retaining wall shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste. The plan shall also include a timeframe for completion of the works.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
4.	<p>All works to the protected structure, shall be carried out under the supervision of a qualified professional with specialised conservation expertise.</p> <p>Reason: To ensure that the proposed works are carried out in accordance with best conservation practice.</p>

5.	The external finishes of the proposed retaining wall shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Reason: In the interest of visual amenity.
6.	Surface water shall not be allowed to discharge onto the public road. Reason: In the interest of traffic safety.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Peter Nelson
Planning Inspector

17 August 2023