



An
Bord
Pleanála

Inspector's Report ABP-318320-23

Development	(1) to remove the existing foundation to a section of the site boundary; (2) development of gabion baskets; (3) new boundary treatment; and (4) associated drainage management.
Location	Giantsgrave, Clonmel, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	2360297
Applicant(s)	Catriona O'Flynn.
Type of Application	Permission.
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Anne Green.
Observer(s)	None.
Date of Site Inspection	11 th October 2024.
Inspector	Peter Nelson

1.0 Site Location and Description

- 1.1. The site is located in Giantsgrave and is approximately 3km from Clonmel. The site is accessed from the L3276 local road.
- 1.2. On the site, there is a dwelling that has recently been extended following a grant of permission (P.A. Ref: 20/1609). The site works surrounding the dwelling have yet to be completed.
- 1.3. There is a dwelling directly to the east of the site. This dwelling is the appellant's property. This property is at a lower level than the appeal site. The boundary between these two properties consists of a timber fence and a hedge along part of the rear garden boundary. There is an agricultural field to the west of the site.

2.0 Proposed Development

- 2.1. Permission was initially sought to remove the existing foundation to a section of the site boundary to develop a 9.95m section of gabion baskets along the eastern boundary, for new boundary treatment and associated drainage management. After submitting further information and revised public notices the application includes the retention of gabion baskets on the western boundary.

3.0 Planning Authority Decision

3.1. Decision

On the 26th June 2023, Tipperary County Council requested the applicant to submit 5 points of further information. These related to potential unauthorised development, the existing fence on the eastern boundary, the need for the gabion baskets, the location of the soakaway and site levels.

On the 29th August 2023, Tipperary County Council, on foot of the submission of unsolicited information and further information that amended the application to include the retention of the existing gabions baskets, requested the applicant to publish further public notices.

On the 3rd October 2023, Tipperary County Council granted permission subject to 3 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The main points of the first planner's report dated the 22nd June 2023 can be summarised as follows:

- The application pertains to the modification of a shared boundary.
- The timber fence on the eastern boundary is in a poor state of repair.
- Gabions have already been provided on the western boundary for which permission has not been sought.
- Works are ongoing.
- When works conclude, the issue of surface water runoff may be addressed.
- Further information is required on the choice of gabions for the boundary.
- The location of the soakpit appears to be close to the wastewater infrastructure.
- Appropriate Assessment is not required.
- EIA is not required.

The main points of the second planner's report dated the 2nd October 2023 can be summarised as follows:

- The application has been modified to include the gabions on the western boundary, and there is no objection.
- A native hedge should be erected to consolidate the eastern boundary.
- The applicant states that the gabions are required to act as a retaining wall.
- The gabions will be set back to allow for planting.
- The gabions are acceptable.
- The site levels are as per those approved under planning ref: 20/1609.
- The surface water issue can be dealt with by condition.

3.2.2. Other Technical Reports

- District Engineer Report Dated 31st May 2023: No comments were made.

3.2.3. Conditions

- The permission was subject to three conditions.
- Condition No.2 requires the applicant to submit details for written approval for a revised eastern boundary consisting of the native hedge.
- Condition No.3 requires that surface water runoff not be allowed to discharge onto public roads or adjoining property.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

One observation was received from the appellant on the original planning file. The main points raised can be summarised as follows:

- The ground level of the application site slopes towards their property and does not comply with the original planning permission.
- The proposed land drain is sloped towards their property.
- The applicant has damaged their fence and has not yet repaired it.
- Waste building materials have been used to fill the back of the site and have pushed through to their property.
- Requesting their boundary be restored and a land drain be placed along the complete boundary.

An observation was received on the further information submitted also by the appellant. The main points raised can be summarised as follows:

- Requesting confirmation on the ground levels for the drive as it is now sloping towards their property.

- Requesting confirmation of the distance of the proposed soakway from the boundary.
- There never was an agreement for a gabion fence.
- No information was supplied on how the foundation of the demolished shed will be removed.

4.0 Planning History

P.A. Ref: 20/1609 Permission granted on the 25th February 2021 to demolish the existing rear extension and garage/shed area, to construct a new extension and carport area, to raise the roof of the existing house, and to amend the existing entrance and all associated site works

Enforcement:

TUD 22/147 Non-Compliance with Conditions 1,2 & 3 of planning permission Ref: 20/1609

5.0 Policy Context

5.1. Development Plan

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

The Clonmel and Environs Local Area Plan 2024-2030 sets out the local spatial planning framework for Clonmel to 2030. The Plan came into effect on 25th March 2024.

The site is in an area zoned 'Town Environs'.

Objective: Town Environs: To provide for agricultural needs and to protect and enhance the rural environment and setting of the settlement.

5.2. Natural Heritage Designations

The appeal site is located 4km from The Lower River Suir Special Area of Conservation (site code 002137).

5.3. EIA Screening

The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA, therefore, arises and there is also no requirement for a preliminary examination or screening assessment. Refer to Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

The main point of appeal can be summarised as follows:

- The ground level of the applicant site slopes towards the appellant's property rather than towards their entrance, as shown on the original permission P.A. ref: 201609.
- The back of the site has been filled with waste material that has pushed through the boundary ditch.
- Concern as to how the existing boundary foundation will be removed.
- A lot of damage has taken place to their boundary.
- Fear that removing the existing boundary will damage the house's structure.
- Appealing the decision allowing the applicant five years to carry out the development.
- There is still water coming into the appellant's property.
- Will the new boundary treatment and associated drainage run the entire boundary length?
- The damaged boundary has still not been repaired.

- Query relating to the ground level as built compared to that granted permission.

6.2. **Applicant Response**

- None

6.3. **Planning Authority Response**

- Letter dated 23 November 2023. The planning authority have no further observations.

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, including the reports of the planning authority, inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Surface Water
- Boundary Treatment
- Other Matters

7.2. **Surface Water**

I note that in the drawings submitted with the previous planning permission (file ref; 201609), the parking area's ground levels to the dwelling's eastern side were to be sloped towards the entrance.

I note that at the time of the planner's report, there was a live enforcement file relating to the non-compliance with Conditions 1,2 & 3 of planning permission Ref:

20/1609. Condition no. 2 requires that all surface water runoff from roofs, driveways and paved areas shall be collected and disposed of within the curtilage of the site by means of soak pits. It also requires that surface water runoff shall not be allowed to discharge onto the public road or adjoining properties.

The appellant states that water is entering their property from the applicant's site.

During my site inspection, it was clear that the site groundwork had not been completed. In the site plan submitted as further information, the ground level of the parking area is the same as shown on the site plan for the original grant of permission (20/1609).

I also note that the revised site plan shows a revised location for the surface water soakaway. The separation distance between the wastewater treatment plant and the soakaway complies with the minimum standards in the EPA Code of Practice- Domestic Wastewater Treatment Systems.

While I am satisfied that the proposed method of surface water collection is acceptable and will not be harmful to the amenities of the adjoining property, if the Board is minded to grant permission, I recommend a condition similar to Condition No. 2 of file ref: 20/1609 to be attached.

Any potential enforcement issues relating to non-compliant ground levels when finished or with the collection of surface water issues fall under the jurisdiction of the planning authority.

7.3. Boundary Treatment

Permission is sought to remove the existing foundation to a section of the boundary on the eastern boundary and replace it with gabion baskets and a new boundary treatment. The foundations were for a garage, which had been demolished as part of the development to extend the property.

The appellant is concerned that the removal of the existing foundation will negatively impact his existing boundary and claims that the works have already damaged his boundary fence to date.

The applicant stated in the further information submitted that the existing foundation is partially undermined and that the requirement for a retaining feature is to retain the existing difference in ground levels. The applicant also states that they are amenable

to setting back the gabion baskets approximately 500mm to allow the neighbouring property to plant a native hedge along the same.

I consider setting back the gabions by 500mm an acceptable solution that will create a retaining feature but will allow for a planted boundary. I consider, however, that the applicant should plant the hedge on his property as part of the overall development. Therefore, if the Board is minded to grant permission, in order to enhance the rural environment and setting of the extended dwelling, I recommend that a condition be attached requiring the applicant to set back the gabions by 500mm and a native hedge to be planted inside the gabions and forward to the site entrance.

I also consider that a hedge along the western boundary is required to lessen the visual impact of the gabions on the western boundary. Again, if the Board is minded to grant permission, I recommend that a condition be attached requiring the applicant to plant a native hedge on the western boundary.

I consider any issues relating to the damage of the existing neighbouring fence and property due to the redevelopment of the existing dwelling to be a civil issue.

7.4. Other Matters

The appellant has raised concerns that the filling of the site has caused waste material to push through the boundary ditch. I consider this to be an enforcement issue, and as stated above, any enforcement issues fall under the jurisdiction of the planning authority.

The appellant is concerned that the planning permission allows the applicant five years to complete the work.

As this is an application to amend planning permission ref 20/1690, if the Board is minded to grant permission, I recommend a condition be attached requiring the development to comply with the conditions of the parent permission save for any departures specifically authorised by this permission. This shall require the subject permission to expire on the same date as the parent permission.

8.0 AA Screening

I have considered the new boundary treatment in light- of the requirements S177U of the Planning and Development Act 2000 as amended.

The appeal site is located 4km from The Lower River Suir Special Area of Conservation (site code 002137).

The proposed development consists of alterations to the site boundaries and the site's surface water drainage.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small scale and nature of the development.
- Location-distance from the nearest European site and lack of connections.
- Taking into account screening report/determination by the planning authority.

I conclude that on the basis of objective information, the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

Likely significant effects are excluded, and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that permission for the proposed development be granted for the reasons and considerations set out below.

10.0 Reasons and Considerations

Having regard to the policies and objectives of the Clonmel Local Area Plan 2024-2030, it is considered that the proposed development will not have an adverse impact on the visual amenity of the area or the residential amenity of the surrounding properties and would be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be retained, 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 4th day of August 2023, 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.

Reason: In the interest of clarity.

2. Apart from any departures specifically authorised by this permission, the development shall comply with the conditions of the parent permission [Register Reference 20/1609] unless the conditions set out hereunder specify otherwise. This permission shall expire on the same date as the parent permission.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

3. Within two months of the date of this permission the following shall be submitted to the Planning Authority for written agreement:
 - a. Details of a revised eastern boundary treatment. The revised eastern boundary shall consist of a native hedge from the front entrance to the existing hedgerow. The gabion baskets permitted herein shall be set inside the planted boundary.
 - b. Details of a revised western boundary treatment. The revised western boundary shall consist of a native hedge from the front boundary wall to the existing hedgerow.

The agreed boundary treatment shall be implemented in the first planting season following the same.

Reason: In the interest of visual and residential amenity.

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
Senior Planning Inspector

21 October 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318320			
Proposed Development Summary	(1) to remove the existing foundation to the section of the site boundary; (2) development of gabion baskets; (3) new boundary treatment; and (4) associated drainage management.			
Development Address	Giantsgrave, Clonmel, Co. Tipperary			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	X	N/A		No EIAR or Preliminary Examination is required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____