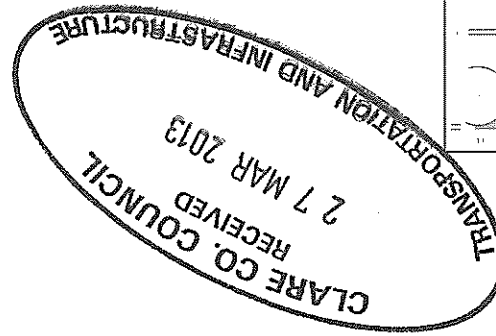
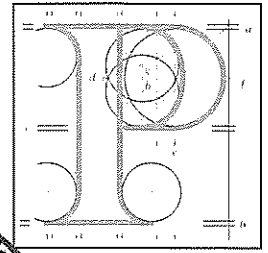


Our Ref: 03.HA0038

An Bord Pleanála

Your Ref:



Barry Keating
Clare County Council
Planning, Land Use & Transportation
Áras Contae an Chláir
New Road, Ennis
Co. Clare

Date: 26 MAR 2013

Re: Killaloe Bypass, Shannon Bridge Crossing and
R494 Improvement Scheme

Dear Sir,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act, 2000 the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

K. Carline Treay

Kieran Doherty
Executive Officer
Direct Line:01-8737248

ER17.LTR

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

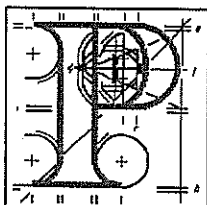
The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

An Bord Pleanála



ROADS ACTS 1993 to 2007

PLANNING AND DEVELOPMENT ACTS 2000 to 2011

Clare County Council

An Bord Pleanála Reference Number: 03.HA0038

APPLICATION by Clare County Council for approval under section 51 of the Roads Act, 1993, as amended, in accordance with documentation, including an environmental impact statement and Natura impact statement, lodged with An Bord Pleanála on the 7th day of February, 2012.

PROPOSED ROAD DEVELOPMENT: A bypass of Killaloe, a bridge crossing of the River Shannon and an upgrade of the R494 regional road in Ballina, in the townlands of Ballyvally, Knockyclovaun, Creeveroe, Shantraud, Killestry and Moys, County Clare; and Roolagh, Kilmaglasderry, Garrynatineel, Lackenavea (Egremont), Knockadromin, Coolnadornory and Gortybrigane, County Tipperary comprising inter alia:-

- (i) The construction of a bypass of Killaloe of approximately 2.0 kilometres of Type 2 Single Carriageway.
- (ii) The construction of the bridge crossing approximately 170 metres long which includes 0.9 kilometres of Type 2 Single Carriageway between the R494 regional road and the R463 regional road.
- (iii) The upgrade and realignment of approximately 3.3 kilometres of the existing R494 regional road to a Type 3 Single Carriageway.
- (iv) The provision of cycling and pedestrian facilities along the length of the proposed road development.
- (v) The construction of two number new bridges along the R494 regional road over the Kilmastulla River and the Limerick to Nenagh railway line.

- (vi) The construction of three number roundabout junctions where the proposed road development intersects existing regional roads.
- (vii) The construction of two number at-grade major/minor priority staggered junctions along the bypass section of the proposed road development.
- (viii) The upgrading and realignment of some sections of existing regional and local roads.
- (ix) Associated ancillary and consequential works.

DECISION

APPROVE the above proposed road development in accordance with the said documentation based on the reasons and considerations under and subject to the conditions set out below.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board has regard to the following:

- (a) the regional and local strategic road policies and objectives, inclusive of those set out in the Mid-West Regional Planning Guidelines 2010-2022, the Clare County Development Plan 2011-2017, the East Clare Local Area Plan 2011-2017 and the North Tipperary County Development Plan 2010-2016;
- (b) the sub-standard nature of the existing R494 regional road between Ballina and the junction with the R445 regional road (old N7 national road);
- (c) the significant traffic delays and congestion at peak times at the existing Killaloe Bridge and the traffic congestion and environmental impacts that result in Killaloe and Ballina;
- (d) the design, layout and alignment of the proposed road development minimising the impact of the proposed road development on the Lower River Shannon candidate Special Area of Conservation,
- (e) the range of mitigation measures set out in the environmental impact statement received by An Bord Pleanála on the 7th day of February, 2012, and in the response to additional information received by An Bord Pleanála on the 25th day of May, 2012, and
- (f) the submissions on file and the report of the Inspector who held the oral hearing.

Having regard to the nature, scale, design and location of the proposed road development, the environmental impact statement submitted with the application, the submissions on file and the Inspector's assessment of environmental impacts, which is noted and adopted, the Board completed an environmental impact assessment and concluded that the proposed road development would not be likely to have significant adverse effects on the environment.

Having regard to the nature, scale and design of the proposed road development, the Natura impact statement submitted with the application, the submissions on file and the Inspector's assessment, which is noted, the Board completed an appropriate assessment of the impacts of the proposed road development on the Lower River Shannon candidate Special Area of Conservation. The Board concluded that the proposed road development, in itself or in combination with other plans or projects, would not adversely affect the integrity of the European site in view of the conservation objectives for that site.

It is considered that, subject to compliance with the conditions set out below, the proposed road development would not have significant negative effects on the farming and business community in the vicinity, would not have a significant negative long term impact on ecologically important sites along the route or on flora and fauna which are identified for protection, would not give rise to a risk of pollution, would not have a detrimental impact on archaeological heritage, would be acceptable in terms of its impacts on architectural heritage, on the character and setting of protected structures, and on the amenities of the area and of residential property in the vicinity, and would be acceptable in terms of the resulting visual and landscape impacts. The proposed road development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The proposed road development shall be carried out in accordance with the plans, drawings and documentation submitted with the application, as amended by the further information submitted to the Board on 25th day of May 2012, and at the oral hearing, including the environmental impact statement and Natura impact statement and supporting documentation, except as may be otherwise required in order to comply with the conditions set out below.

Reason: In the interest of clarity.

2. The proposals, mitigation measures and commitments set out in the environmental impact statement and Natura impact statement received by An Bord Pleanála on the 7th day of February, 2012, and in the response to additional information received by An Bord Pleanála on the 25th day of May, 2012, and as further stated and clarified in the Schedule of Mitigation submitted by the road authority to the oral hearing on the 18th day of October, 2012, shall be implemented as part of the proposed road development.

Reason: In the interest of clarity and to mitigate the environmental effects of the proposed road development, and to protect the amenities of the area and of properties in the vicinity.

3. The design and layout of the proposed road development shall be amended as follows:
 - (a) The embankment supporting the western end of the proposed bridge shall be reduced in length so that it does not obtrude eastwards beyond the western boundary of the canal (approximately chainage 0+600 S). The embankment, therefore, shall not be constructed over the canal or on the island separating the canal from the River Shannon. A bridge pier may be introduced on the island in place of the embankment, which shall not obstruct the historical towpath alongside the canal. The soffit level of the bridge shall maintain a minimum air draft of four metres.
 - (b) The proposed set down area to the rear (south) of Saint Anne's Community College shall be omitted from the proposed road development. The area shall be landscaped and provision shall be made for a connection between the cycleway along the northern side of the bypass in this location and the local access road to the north at circa chainage 0+430 S.

Reason: To preserve the special character of the protected canal structure and its towpath, and in the interest of traffic safety.

4. The works proposed in the wet woodland area on the western side of the River Shannon shall be overseen by a qualified ecologist and this shall be additional to the mitigation measures set out at Section 4.1 of the Schedule of Mitigation submitted by the road authority to the oral hearing on the 18th day of October, 2012.

Reason: In the interest of clarity and to mitigate the environmental effects of the proposed road development.



5. In addition to the mitigation measures relating to otter, as set out at Section 1.3.4 of the Schedule of Mitigation submitted by the road authority to the oral hearing on the 18th day of October, 2012, the following shall be complied with in the proposed road development:
- (a) The design of mammal fencing shall be in accordance with the CIRIA Wildlife Fencing Design Guide (2006) and the area within and adjacent to the candidate Special Area of Conservation shall be thoroughly fenced.
 - (b) Otter fencing and under road passes shall be inspected within the first six months of operation of the road and results of the inspection shall be reported to the National Parks and Wildlife Service. Fencing and road passes shall be inspected every six months thereafter and, in the event of any blockage or damage, shall be repaired within a maximum of two months from identification of any issues identified.

Reason: To protect the ecological diversity of the area.

6. Separate mammal underpasses shall be provided where culverts are unsuitable to facilitate adequate mammal passage.

Reason: To protect the ecological diversity of the area.

7. The road authority shall facilitate the archaeological appraisal of the site, including underwater archaeology in watercourses, and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within or in the vicinity of the site. In this regard, the road authority shall employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:

- (a) the nature and location of archaeological material on the site, and
- (b) the impact of the proposed road development on such archaeological material.

A report, containing the results of the assessment, shall be prepared and, arising from this assessment, the road authority shall set out in writing details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

8. Works at Fort Henry shall be undertaken under the supervision of a conservation architect qualified to a standard of at least RIAI Grade II or equivalent. A full architectural survey at the location of works proposed at Fort Henry shall be carried out prior to the commencement of development. Archive standard drawings and a photographic survey shall be prepared in accordance with the requirements of the document: "Architectural Heritage Protection – Guidelines for Planning Authorities", issued by the Department of Arts Heritage and the Gaeltacht, 2011.

Reason: In order to facilitate the conservation, preservation and/or recording of the architectural heritage of the site.

9. Landscaping shall be carried out using only indigenous deciduous tree and hedging species.

Reason: In the interest of ecological diversity.

10. Prior to the commencement of construction, construction protection measures in respect of mature trees and hedgerows being retained shall be prepared by a suitably qualified and experienced arborist.

Reason: In the interest of visual amenity.

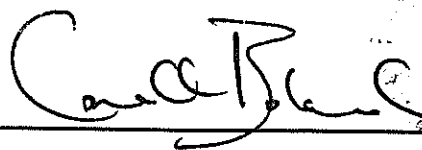
11. The construction of the proposed road development shall be managed in accordance with a construction management plan, which shall be prepared prior to commencement of development. This plan shall provide details of intended construction practice for the proposed road development as set out in the environmental impact statement, including:

- (a) construction stage method statements for the proposed road development;
- (b) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (c) location of areas for construction site offices and staff facilities;
- (d) details of site security fencing and hoardings;
- (e) details of on-site car parking facilities for site workers during the course of construction;
- (f) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;

- (g) measures to obviate queuing of construction traffic on the adjoining road network;
- (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (i) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;
- (l) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (m) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the construction management plan shall be kept for inspection by the road authority.

Reason: In the interest of amenities, public health and safety.



**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 25th day of March 2013.

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