



An
Bord
Pleanála

Board Direction
BD-002592-19
ABP-301220-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on 14/03/2019.

The Board decided to make a split decision, to

- (1) grant permission, for the section of the route within County Kildare between Ch.00,000m (Lowtown as indicated on Drg.T01/EBN/AA309/P/K09) and Ch. 46,350m (immediately to the south east of Horse Bridge in Athy as indicated on Drg.T01/EBN/AA309/P/K34) for the following reasons set out at Reasons and Considerations (1) and subject to the attached conditions set out at Conditions (1) below,

and

- (2) refuse permission for the section of the route to the south of Ch. 46,350m (immediately to the south east of Horse Bridge, Athy) for the reasons set out at Reasons and Considerations (2) below,

generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

REASONS AND CONSIDERATIONS (1)

Having regard to:

- (a) The nature and extent of the proposed development and the existence of a National Waymarked Trail, The Barrow Way, along the alignment of the route,

- (b) The provisions of the *Project Ireland 2040 National Planning Framework* which promotes the development of an integrated network of blueway's, the promotion of a sustainable form of travel and activity based tourism and the diversification of rural and regional economies, and particularly the provisions of National Policy Objective 22 which seeks to facilitate tourism development and in particular a national greenways, blueway's and peatway's strategy, and the development of an integrated network of such routes,

- (c) National policies aimed at promoting walking, cycling and physical activity, including the *National Cycle Policy Framework, 2009-2020*, the *Get Ireland Walking Strategy and Action Plan, 2017-2020*, and *Get Ireland Active, 2016*.

- (d) The provisions of the *Regional Planning Guidelines for the Greater Dublin Area, 2010-2022* and specifically Strategic Recommendation GIR9 which seeks the enhancement of heritage transportation routes including water corridors,

- (e) The provisions of the *Kildare County Development Plan, 2017-2023*, including town, village and local area plans that are constituent parts of the County Plan which support the principle of the development of the Barrow Blueway as a walking and cycling resource, including specifically Objectives EO49, EO52 and Policies CR7, CR11 and RAO13.

- (f) The potential economic benefits arising from the proposed development,

- (g) The proposals for improved car parking, route access and signage along the existing Barrow Way,

- (h) The nature, design and layout of the proposed development which involves a limited amount of intervention in the existing environment and the use of an unbound surface over the majority of this section of the route that is appropriate to a rural area and not such as to have a high landscape impact,

- (i) the existing landscape and visual character of this section of the route of the proposed development which is not such as to have a high landscape sensitivity,
- (j) the provisions of the Environmental Impact Statement and Natura Impact Statement submitted, and
- (k) the submissions on file,

it is considered that, subject to compliance with conditions set out below, the proposed development

- (i) would not seriously injure the visual amenities or character of the area or be such to have a significant negative impact on residential amenity,
- (ii) would not result in significant impacts on water quality, hydrology or flooding,
- (iii) would not have a negative impact on ecology or be such as to have an adverse effect on the integrity of any European site,
- (iv) would not be prejudicial to public health, and
- (v) would be generally acceptable in terms of pedestrian and traffic safety.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment: Stage 1 Screening

The Board completed a Stage 1 Screening for Appropriate Assessment in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, the Appropriate Assessment Screening Report submitted with the application and the Inspector's report and submissions on file. In completing the Stage 1 Screening for Appropriate Assessment, the Board, accepted and adopted the screening

assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites Conservation Objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Moulds Bog SAC (Site Code:002331), the Pollardstown Fen SAC (Site Code:000396) the Blackstairs Mountains SAC (Site Code:000770) and the River Nore SPA (Site Code:004233) in view of the site's Conservation Objectives. However, the Board agreed with the screening assessment and conclusion contained in the Inspectors report that the River Barrow and River Nore SAC (Site Code:002162), is a European site for which there is a likelihood of significant effects.

Appropriate Assessment: Stage 2

The Board considered the submitted Natura Impact Statement (NIS) and the revised NIS and all other relevant submissions, and carried out an Appropriate Assessment (AA) of the implications of the proposed development for European Sites in view of the conservation objectives of the River Barrow and River Nore SAC (Site Code:002162). The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the assessment for the section of the route within County Kildare between Chainage 00,000 metres (Lowtown as indicated on Drg.T01/EBN/AA309/P/K09) and Chainage 46,350 metres (immediately to the south east of Horse Bridge in Athy as indicated on Drg.T01/EBN/AA309/P/K34), the Board considered, in particular, the

- i) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii) the location of this section of the proposed development from the northern end of the route at Lowtown, through Rathangan and south to the outskirts

of Monasterevin, which is not located within or close to the River Barrow and River Nore SAC (Site Code:002162), with the exception of a point c.1km to the south of Vicarstown, where the canal crosses the River Barrow and River Nore SAC (Site Code:002162), and a point at Kilberry to the south east of Vicarstown where the Blueway route comes within c.30 metres of the River Barrow and River Nore SAC (Site Code:002162), and at Monasterevin where the proposed Blueway route crosses the line of the River Barrow and River Nore SAC (site code 002162) at Bell Harbour. Thereafter, the proposed development is not in close proximity to the SAC until it reaches Athy. South of Athy, the proposed Blueway route is located either within or immediately adjoining the River Barrow and River Nore SAC site for the distance south to the boundary with County Carlow in the general vicinity of Jerusalem townland.

- iii) the mitigation measures, during the construction and operational phase, which are included as part of the current proposal, and,
- iv) the conservation objectives of the European Sites.

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspectors report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the sites conservation objectives.

In overall conclusion, the Board is satisfied that the proposed development would not adversely affect the integrity of the River Barrow and River Nore SAC (Site Code:002162) or any other site in view of the sites' Conservation Objectives between Chainage 00,000 metres and Chainage 46,350 metres. However, the board is not satisfied, beyond reasonable scientific doubt, that the section of the proposed development to the south of Ch. 46,350m (immediately to the south east of Horse Bridge, Athy) individually, or in combination with other plans and projects would not adversely affect the integrity of the River Barrow and River Nore SAC (Site

Code:002162) in view of the sites conservation objectives. Therefore, the Board is precluded from granting permission for this section of the proposed development.

Environmental Impact Assessment

The Board considered that as the scoping process for the environmental assessment and the date of the submission of the original Environmental Impact Statement (EIS) submitted with the application predate the coming into effect of *EIA Directive 2014/52/EU* on 16th May, 2017 the application was accompanied by an EIS in compliance with the provisions of the *2011 EIA Directive (Directive 2011/92/EU)* and not an EIAR. As the process relating to the consideration of the applications had commenced prior to the coming into effect of the 2014 Directive on 16th May, 2017 and having regard to the content of Circular Letter 1/2017 regarding the implementation of the 2014 Directive by Planning Authorities and An Bord Pleanala, it is considered that the provisions of the 2011 Directive remain applicable in the assessment of the content and scope of the submitted revised EIS

The Board considered the EIS submitted with the application, the revised EIS, the submissions on file and the inspector's assessment of the environmental impacts, which it noted. The Board considered that this documentation identified and described adequately the direct, indirect, secondary and cumulative effects of the development on the environment. The Board adopted the Inspectors report and concurred with its conclusions, and accordingly completed an Environmental Impact Assessment of the development. The Board concluded that the effects on the environment of the proposed development would be acceptable by itself and cumulatively with other development in the vicinity, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out below.

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 submitted on the 13th day of December 2017, 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.
 - a. The mitigation measures identified in the Environmental Impact Statement and Natura Impact Statement and Outline Construction and Environmental Management Plan submitted to the Planning Authority on 13th December, 2017 shall be complied with in full by the developer, except where conditions hereunder specify otherwise.
 - b. Prior to the commencement of development, the developer shall submit a schedule of environmental commitments to the Planning Authority setting out all mitigation measures as contained in the EIS, NIS and Construction and Environment Management Plan.

Reason: In the interests of clarity and to ensure the satisfactory mitigation of potential environmental impacts.

3. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- 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, and
- b. 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:

- i. the nature and location of archaeological material on the site, and
- ii. the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

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.

4. All works impacting on any protected structure along the route shall be supervised by a suitably qualified Conservation architect.

Reason: In order to protect the architectural heritage of protected structures along the route.

5. Works in the vicinity of watercourses shall comply with the requirements of '*Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters*', Inland Fisheries Ireland, 2016.

Reason: To ensure the protection of fish habitat during construction.

6. Prior to the commencement of development, the developer shall consult with, and achieve the agreement of Iarnród Eireann, for the following:
 - a. any wayleave agreements required to facilitate works in the vicinity of the railway,
 - b. licences required to undertake works, including the erection of signage, on lands that are in the ownership of CIE.

Reason: in the interests of proper planning and sustainable development of the area and in recognition of the proposed undertaking of works on CIE lands.

7. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the Planning Authority the following:
 - a. A detailed design for all new and existing controlled and uncontrolled crossing points (as identified at paragraph 11.1.4 of the revised EIS received by the Planning Authority on 13th December, 2017) and traffic signals on public roads. Such detailed design shall include, but not be limited to details of shared pedestrian and cycle paths and new and amended footways; raised crossing points; traffic calming measures; guard rails and barriers; road markings; signage; materials; kerbing; tactile paving; anti-skid surfacing; lighting and traffic signals. The cost of the design, supervision, implementation, and site supervision of these works shall be borne solely by the developer.
 - b. Proposals for the ongoing maintenance and financing of maintenance works on the public road, the costs of which shall be shared between the developer and the local authority.
 - c. Details of the location and design of proposed passing bays along the route of the Blueway.

- d. Pre and post construction road condition surveys shall be undertaken of all areas in the vicinity of construction site accesses. The scope of such surveys shall be agreed in advance with the Planning authority and the costs of any repairs or reinstatement works identified as being required shall be borne by the developer.
- e. Details of all works in the vicinity of Rathangan waste water treatment works and measures to ensure uninterrupted access to the treatment works for the duration of the construction period.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interests of pedestrian, cycle and traffic safety.

- 8. Drainage works at all surface car parks as identified at paragraph 11.1.6 of the revised EIS received by the Planning Authority on 13th December, 2017 shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.

Reason: In the interests of traffic safety, public health and protection of ground and surface waters.

- 9. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the Planning Authority a detailed design for the section of public road between Ch.22,250m at Sheppard's Bridge (High Bridge) and Ch.23,150m at the lifting bridge on the R424. The detailed design submitted shall include, but not be limited to, details of the following:

- a. new cycleways; new and amended footpaths; any widening of the existing road; pavement repair and overlay where necessary; additional traffic calming measure; guardrails / barriers; road markings; signage; materials; provision for new services; diversions of existing services as required; drainage; kerbing; tactile paving; anti-skid surfacing; surface water drainage and public lighting.

- b. Shuttle traffic signals at the railway bridge, including details of the phasing and control of the signals.

Reason: In the interest of pedestrian, cyclist and traffic safety.

10.

- a. Prior to the commencement of development, the developer shall submit a Stage 2 Road Safety Audit, undertaken by an independent, approved and certified auditor, on the public roads directly affected by the proposed development. The recommendations of the audit shall be incorporated into the design and shall be submitted to, and agreed in writing with, the Planning Authority prior to the commencement of development.
- b. On completion of the development, and in advance of the taking in charge of all public roads infrastructure, the developer shall complete a Stage 3 Road Safety Audit to be carried out by an independent approved and certified auditor. Any recommendations contained in the safety audit and agreed actions shall be subject to the written consent of the Roads Authority.

Reason: In the interest of pedestrian, cyclist and vehicular safety.

11.

- a. Prior to the commencement of development, the developer shall submit a Stage 2 Road Safety Audit, undertaken by an independent, approved and certified auditor on the parts of the development located on lands within the control of Waterways Ireland. The recommendations of the safety audit shall be considered by Waterways Ireland for incorporation into the design and decisions made on this issue documented and recorded and made available for inspection by the planning authority on request.
- b. Upon completion of the development, the developer shall complete a Stage 3 Road Safety Audit undertaken by an independent, approved and certified author on the parts of the development located on lands that are within the control of

Waterways Ireland. The recommendations of the Safety Audit shall be considered by Waterways Ireland for incorporation into the design and decisions made on this issue documented and recorded and made available for inspection by the planning authority on request.

Reason: In the interest of pedestrian, cyclist and vehicular safety.

12. A dedicated resident engineer shall be appointed and funded by the developer to supervise all proposed road works and to liaise with the local authority, adjacent land owners and all other relevant stakeholders.

Reason: In the interest of pedestrian, cyclist and vehicular safety.

13. The construction of the development 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, traffic management, phasing and programming of works, hours of working, noise management measures, details of construction compounds including hording / fencing, measures to ensure the protection of the public road in the vicinity of construction compounds and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

14. Prior to the commencement of development, the developer shall submit to and agree in writing with the Planning Authority, proposals for the monitoring of noise and dust in the vicinity of the works area. Details to be submitted shall include proposals for monitoring locations, methodology for measurement and reporting of results to the Planning authority.

Reason: In the interests of amenity, protection of the rural environment and minimising the impact of construction on ecology.

15. Prior to the commencement of development, the developer shall submit to, and agreed in writing with, the planning authority a maintenance schedule for the Blueway. This schedule shall include details of the proposed ongoing measures for

the maintenance of the unbound surface, signage and verges and shall provide for proposals for the review of the maintenance schedule based on experience of the operation of the route.

Reason: In the interest of pedestrian and cyclist safety and the protection of ecology and habitats.

16. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the Planning Authority a finalised Invasive Species Management Plan. This plan shall include updated details of invasive species surveys, the location of such species, and the proposed method of managing these species during the construction and operational phase of the development.

Reason: To ensure that the spread of invasive species is minimised.

17. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the Planning Authority details of the following:

- a. A planting plan for the re vegetation of exposed or bare verges and grassed area in the vicinity of the proposed path.
- b. Proposals for the identification and agreement of areas where there are exposed tree roots or roots are encountered within the area to be excavated and a detailed methodology for construction in these locations. Such a methodology should include a requirement for hand rather than mechanical excavation in such instance.

Reason: In the interests of visual amenity, the protection of existing trees adjoining the route and minimisation of the ecological impacts of the development.

18. Prior to the commencement of development, the developer shall submit to and agree in writing with the Planning Authority proposals for the ongoing monitoring and operation of parking and facilities along the route. By the end of the first October following completion of the proposed works, and again at the end of October after the second summer of operation of the Blueway the developer shall submit an

updated parking and trailhead facilities report to the Planning Authority. This report shall include the following:

- a. The results of parking surveys and trail user questionnaires,
- b. Record of observations and complaints in relation to nuisance parking,
- c. Identification of measures to address any issues of nuisance parking arising,
- d. Identification of proposed improvements to trail head facilities and timeline for implementation,
- e. Identification of locations requiring additional parking and potential areas to meet identified need and timescale for implementation of proposals,
- f. Updates on ongoing development of new parking / trailhead facilities.

Reason: In the interest of proper planning and sustainable development and pedestrian, cycle and vehicular safety.

REASONS AND CONSIDERATIONS (2)

1. Article 6(3) of the EU Habitats Directive requires that the competent authority shall only agree to a plan or project if it determines that it would not adversely affect the integrity of any European site having regard to the conservation objectives of the site. Having regard to the information submitted by the parties in this case, including the revised Environmental Impact Statement and Natura Impact Statement, the submissions received from third parties and the first party response to the appeals, the Board is not satisfied that the first party has satisfactorily demonstrated that the proposed development incorporating the use of an unbound surface of compacted stone and dust (Surface Type A) within an identified flood zone along the River Barrow would not significantly impact on the conservation objectives of the River

Barrow and River Nore SAC (site code 002162). The Board is also not satisfied that the proposed development would not impact negatively on otter, an Annex I species under the Habitats Directive and a qualifying interest of the River Barrow and River Nore SAC by virtue of the uncertainty regarding the location of otter holts, the potential loss of holts and the proposed removal of any holts encountered during the development. In view of this, and in accordance with the requirements of Article 6(3) of the Habitats Directive, the Board is not satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of the River Barrow and River Nore SAC (site code 002162), in the light of its conservation objectives.

Note: The Board noted the proposal submitted by the first party as part of the First Party Grounds of Appeal for the provision of an alternative Type E 'tar and chip' bound surface in place of the originally proposed Type A unbound surface. The Board note the contents of section 4.0 of the first party appeal and the assessment contained therein regarding the potential impacts arising from the proposed alternative Type E surface on the environment. Notwithstanding the content of the first party appeal, the Board considered that the introduction of such an alternative surface would result in additional adverse impacts in terms of landscape and visual impact and would give rise to increased cyclist speeds that, combined with the concerns regarding the level of detail provided regarding projected usage and accommodation of the design path width of 2.5 metres, could potentially increase conflicts between users. It is not considered that these concerns have been adequately addressed in the information submitted. The Board is also not satisfied that, on the basis of the information presented, it can be concluded beyond reasonable scientific doubt, that the proposed alternative Type E surface would not have an adverse effect on the River Barrow and River Nore SAC, having regard to the conservation objectives of the site. Further information is considered required before the Board could reach such a conclusion. In view of these concerns it was decided not to further consider the alternative Type E surface and not to request that the development would be the subject of revised public notices.

Board Member:

Stephen Bohan

Date: 14/03/2019

[Please issue a copy of this Direction with the Board Order to the parties.]