



An
Bord
Pleanála

Board Direction
BD-005268-20
ABP-301890-18

The submissions on this file and the Inspector's reports were considered at a further Board meeting held on 28/02/2020.

The Board, decided to grant substitute consent for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In making its decision the Board had regard, inter alia, to the following:

a) EU legislation including in particular:

- The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment,
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.

b) National Legislation including in particular:

- the provisions of the Planning and Development Act 2000, as amended, and in particular, Part XA,

- the provisions of the Planning and Development Regulations 2001, as amended.
- c) Local Planning Policy including in particular:
- The provisions of the Clare County Development Plan 2017-2023.
- d) The following matters:
- The planning history and the pattern of development in the area,
 - the nature, scale and extent of the development the subject of this application for substitute consent,
 - the decision of the Board to grant leave to apply for substitute consent under section 177D of the Planning and Development Act, 2000 (as amended), – ref. 03.LS.0029, on the 12th day of January 2018,
 - the documentation and submissions of the Local Authority, including the revised remedial Environmental Impact Assessment Report, revised remedial Natura Impact Statement and associated documentation submitted with the application, and the range of mitigation and monitoring measures proposed,
 - other relevant guidance documents,
 - the submissions and observations made to An Bord Pleanála in connection with the application and the further submission received from the Local Authority,
 - the likely consequences for the environment and the proper planning and sustainable development of the area for which the development was carried out and the likely significant effects of the development on European sites.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the development, taking into account:

- a) The nature, scale and extent of the development which was carried out;

- b) The revised remedial Environmental Impact Assessment Report (rEIAR) and associated documentation submitted in support of the application;
- c) The submissions from the applicant and the prescribed body in the course of the application; and
- d) the reports of the Board's Inspector, including in relation to potential significant effects on the environment.

The Board considered that the revised remedial Environmental Impact Assessment Report (rEIAR), supported by the documentation submitted by the applicant, adequately considers alternatives to the development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the rEIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board concluded that, subject to the implementation of the mitigation measures proposed in Sections 5 – 12 of the rEIAR, and subject to compliance with the conditions set out below, the effects on the environment by the development which was carried out, by itself and in combination with other plans and projects in the vicinity, were and would be acceptable. In doing so, the Board generally adopted the report and conclusions of the Inspector.

The Board considered, and agreed with the Inspectors reasoned conclusions, that the main significant direct and indirect effects on the environment by the development which was carried out are as follows:

- **Population and Human Health:** These impacts on population and human health are substantially avoided by the limited number of sensitive receptors in close proximity to the site and mitigation measures including environmentally conscious construction management practices.
- **Biodiversity:** There will be a continued disturbance during the carrying out of remedial works which will be restricted to outside winter to prevent any impact on wintering birds. Impact on biodiversity will be mitigated mainly through the re-establishment of wetlands, mitigation measures outlined in the

Construction and Environmental Management Plan, and the revised remedial Environmental Impact Assessment Report, and through the appointment of a Project Ecologist.

- **Lands, Soil, Water, Air and Climate:** Inappropriate handling of waste and stockpiling of soil could increase suspended solids and sedimentation in streams with a direct impact on water quality and those habitats in the watercourses. Mitigation measures are detailed for the removal of waste and re-establishment of the wetlands as outlined in the Construction and Environmental Management Plan. Specific mitigation measures relating to the management of hydrocarbons are included.
- **Material Assets, Cultural Assets and Landscape:** Localised visual impact from waste fill along the R478, and on local properties therein, of the development which was carried out will be removed leading to a long-term positive impact on the surrounding area.

The Board concluded that, subject to the implementation of the mitigation measures set out in Sections 5 to 12 of the revised remedial Environmental Impact Assessment Report and, subject to compliance with the conditions set out below, the effects on the environment of the development which was carried out, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

Appropriate Assessment

The Board completed an Appropriate Assessment exercise in relation to the potential effects of the development which was carried out, and the remedial measures on the Natura 2000 site, namely the Inagh River Estuary Special Area of Conservation (00036) and, in doing so, took into account the nature, scale and location of the development, the revised remedial Natura Impact Statement, the submissions on file and the reports of the Inspector. In completing the Appropriate Assessment, the Board adopted the reports of the Inspector and concluded that the development

which was carried out, and the remedial measures would not be likely to have, or have had, a significant effect individually or in combination with other plans and projects, including the future completion of the roadworks, the boundary wall, the surfacing of the footpath adjacent to the R478 where that road has already been widened, and related ancillary works, on the environment, on the amenities of the area, or on the European sites referred to. The Board concluded that the development would not have an adverse effect on the integrity of the European sites, having regard to the Conservation Objectives for the sites.

Proper Planning and Sustainable Development

Having regard to the nature, scale and extent of the development which was carried out, and the remedial measures, and subject to compliance with the conditions set out below, the Board is satisfied that the subject development:

- has not and would not seriously injure the amenities of the area or of property in the vicinity,
- has not had and would not have an unacceptable impact on the ecology, landscape or visual amenities of the area,
- was and would be acceptable in terms of public health, traffic safety and convenience,
- was and would be in accordance with the Clare County Development Plan 2017-2023, and

was and would therefore be in accordance with the proper planning and sustainable development of the area.

Conditions

1. This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application, as amended by the further plans and particulars submitted to An Bord Pleanála on the 27th day of March 2019, including the revised remedial Environmental Impact Assessment Report and revised remedial Natura Impact Statement and other associated documentation, lodged with An Bord Pleanála on the 27th of March

2019, except as may otherwise be required in order to comply with the conditions set out below. Where any measures set out in the revised remedial Environmental Impact Assessment Report and revised remedial Natura Impact Statement or any conditions of this grant of substitute consent require further details to be prepared by or on behalf of the Local Authority, these details shall be placed on the file and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The substitute consent hereby granted relates solely to the development which has already been carried out and to the related remedial works including the removal of infill and the re-establishment of wetlands. The completion of the roadworks, the completion of the boundary wall, the surfacing of the footpath adjacent to the R478 where that road has already been widened, and related ancillary works shall be omitted.

Reason: In the interest of clarity, for the avoidance of doubt, and in the context of an application for substitute consent made further to an application for leave made pursuant to Section 177C(2)(b) and granted under Section 177D(1)(b) of the Planning and Development Act 2000, as amended.

3. The Local Authority and any agent acting on its behalf shall comply with the mitigation measures and associated monitoring outlined in the plans and particulars submitted with the application, including the revised remedial Environmental Impact Assessment Report (March 2019) and section 6 of the revised remedial Natura Impact Statement (March 2018), shall be carried out in full except as may otherwise be required in order to comply with other conditions.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of a European site during the carrying out of remedial works.

4. Prior to commencement of remedial works, a detailed environmental management plan for the remedial works and re-establishment stage shall be

submitted to and agreed with the Project Ecologist, generally in accordance with the proposals set out in the revised remedial Environmental Impact Assessment Report. The environmental management plan shall incorporate the following:

- a) detailed plan for the remedial works phase incorporating, inter alia, remedial works programme, supervisory measures, noise management measures, construction hours, the management of waste, use of silt curtains and impermeable membrane around all remedial works;
- b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the remedial works period and re-establishment of the wetlands;
- c) proposed procedures in the event of any levels of suspended solids exceeding 30 mg/l downstream;
- d) proposals in relation to public information and presentation of monitoring information. Monitoring reports should be made available on the Council website and any records of species of note should be sent to the National Biodiversity Data Centre.

A record of daily checks that the remedial works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of environmental protection and orderly development.

5. Prior to commencement of the remedial works, details of measures to protect fisheries and the water quality of the river systems shall be outlined and placed on file. Full regard shall be had to the IFI's published updated guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the Contractor, the Local Authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of protection of receiving water quality, fisheries and aquatic habitats.

COSTS

The Board determined the costs required to be paid under section 177M in accordance with the Board's standard policy in this regard, as follows:

- To be paid to An Bord Pleanála as a contribution towards the costs of consideration of the application. = € 400
- To be paid to the Planning Authority as a contribution towards the costs of consideration of the application. = €Nil

Board Member

Date: 28/02/2020

Stephen Bohan