



An
Bord
Pleanála

Board Direction
BD-003609-19
ABP-304053-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on July 22nd, 2019.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

1. Having regard to the location of the subject development and the pattern of development in the vicinity, and having regard to the nature and scale of the subject development, it is considered that the development for which retention is sought would seriously injure the amenities of the area, including existing neighbouring commercial premises, and would represent an inappropriate form and scale of development at this location. The development for which retention is sought would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The site of the proposed development is located on a floodplain of the Clare River and is prone to flooding. The River forms part of the Lough Corrib Special Area of Conservation (site code 000297). Having regard to the Flood Risk Management Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in 2008, and notwithstanding the proposed flood management proposals, it is considered that the expansion of a waste management facility at this location, and the retention and expansion of retaining walls bounding the site, would be

inappropriate, would pose an unacceptable risk of serious environmental pollution and would exacerbate flood risk to adjoining properties and lands. The subject development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 3 Having regard to the nature, scale and extent of development and based on the documentation submitted with the application and appeal, it is considered that a determination, as to whether an environmental impact assessment would have been required if an application for permission had been made in respect of the development concerned prior to the carrying out of the subject development, is required. In such circumstances, and having regard to the fact that the present application is seeking to retain development, it is considered that, pursuant to Section 34 (12) of the Planning and Development Act 2000, as amended, the Board is precluded from considering a grant of planning permission for the development the subject of the application.

- 4 Based on the information provided with the application and appeal, and in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have, or have had, a significant effect on the Lough Corrib Special Area of Conservation (site code 000297), in view of the site's Conservation Objectives. In such circumstances, and having regard to the fact that the present application is seeking to retain development, it is considered that, pursuant to Section 34 (12) of the Planning and Development Act 2000, as amended, the Board is precluded from considering a grant of planning permission for the development the subject of the application.

Note: The Board decided to include the fourth reason for refusal, having regard to the legislative requirement on it as a Competent Authority to assess the subject development in the context of the Habitats Directive, and therefore did not consider the matter to represent a new issue. In addition, the Board, in considering the application documentation and in particular the Appropriate Assessment Screening

Report submitted on behalf of the applicant, had regard to the judgement of the European Court of Justice in the case of People Over Wind (C-323/17), and was of the view that the measures identified and proposed by the applicant were measures of the type referred to in that judgement, and accordingly could not be taken into account in deciding whether or not an Appropriate Assessment was required.

[Secretariat:- Please issue a copy of this Direction to the parties and to the observers with the Board Order.]

Board Member

Date: 19th July 2019

Philip Jones