

An
Bord
Pleanála

Board Direction
BD-008179-21
ABP-306270-19

At a meeting held on 07/05/2021, the Board considered the objections made to the proposed development, the report of the Inspector and her addendum report, and the documents and submissions on file generally.

The Board decided to approve the proposed development in accordance with the said documentation based on the following reasons and considerations and subject to the conditions set out below.

Reasons and Considerations

In coming to its decision, the Board had regard to a range of matters including:

European legislation, including of particular relevance:

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,

Directive 2000/60/EC for establishing a framework for Community action in the field of water policy,

National legislation, including of particular relevance:

Section 175 of the Planning and Development Act 2000, as amended, which sets out the provisions in relation to local authority projects which are subject to Environmental Impact Assessment (EIA),

Section 177AE of the Planning and Development Act 2000, as amended, which sets out the provisions in relation to local authority projects which are subject to Appropriate Assessment (AA),

National and regional planning and related policy, including:

Project Ireland 2040 - National Planning Framework which seeks, in line with the collective aims of national policy regarding climate adaptation, to address the effects of sea level changes and coastal flooding and erosion and to support the implementation of adaptation responses in vulnerable areas,

Climate Action Plan 2019 which seeks to develop effective climate adaptation to minimise risks and costs and to protect lives and property by building resilience into existing systems,

Regional Spatial and Economic Strategy for the Southern Region which supports the national policy objectives in respect of the implementation of adaptation responses in vulnerable areas, and

Local planning policy including:

the policies and objectives in the Limerick City Development Plan, 2010-2016 as extended,

The following matters:

- a) the documentation that accompanied the application for approval and reports and submissions from observers and prescribed bodies and the further submission made by the applicant including the Addenda to both the Environmental Impact

Assessment Report and Natura Impact Statement during the course of the application and responses to same,

- b) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on a European Site,
- c) the conservation objectives, qualifying interests and special conservation interests for the Lower River Shannon SAC (002165), the River Shannon and River Fergus SPA (004077),
- d) the policies and objectives of the Limerick City Development Plan, 2010-2016 as extended,
- e) the nature and extent of the proposed works as set out in the application for approval,
- f) the range of proposed mitigation measures set out in the submitted Environmental Impact Assessment Report and Natura Impact Statement (incorporating Appropriate Assessment Screening) and Addenda to same;
- g) the submissions and observations received in relation to the proposed development, and
- h) the report, including addendum report, and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment

The Board agreed with and adopted the screening assessment and conclusion carried out in the inspector's report that the Lower River Shannon SAC (002165) and the River Shannon and River Fergus SPA (004077) are the European Sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement, the Addendum to same and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposal for the Lower River Shannon SAC (002165) and the River Shannon and River Fergus SPA (004077), in view of the sites' Conservation

Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the Appropriate Assessment, the Board considered, in particular, the

- i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the Lower River Shannon SAC (site code: 002165) and the River Shannon and River Fergus SPA (site code: 004077)
- ii. Mitigation measures which are included as part of the current proposal,
- iii. Conservation Objectives for these European Sites, and
- iv. Views of the Department of Culture Heritage and the Gaeltacht.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

Environmental Impact Assessment

In accordance with the requirements of Section 172 of the Planning and Development Act 2000, as amended, the Board completed an Environmental Impact Assessment of the proposed development taking account of:

- (a) the nature, scale, location and extent of the proposed development on the site,
- (b) the Environmental Impact Assessment Report (EIAR), the Addendum to same, and the associated documentation submitted in support of the application,
- (c) the submissions received from the observers and prescribed bodies, and
- (d) the Inspector's report.

The Board considered that the EIAR, supported by the documentation submitted by the applicant including the response to the further information request, adequately considers alternatives to the proposed 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 EIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the EIAR and associated documentation including the EIAR Addendum report (Vol's 1-3) submitted by the applicant and submissions made in the course of the application for approval.

Reasoned Conclusion on Significant Effects on the Environment

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- Benefits/positive effects with regard to **population & human health, material assets** and **soils, geology & land** as it will make King's Island less vulnerable to flooding thereby protecting the area from future flood events, improving the quality of life and residential amenity. The proposal will also provide additional recreational amenities for the area and an improved public realm.
- A potential significant direct effect on **biodiversity** in respect of the loss of a drainage ditch which was previously found to have *Groenlandia Densa* (Opposite-leaved Pondweed), a protected species. The impacts would be mitigated by the proposed translocation of the protected species if it is found to survive following efforts proposed to rejuvenate the previously recorded specimen.
- Risk of pollution of the **surface water environment** as a result of silt mobilisation and accidental spillages of chemicals, hydrocarbons or other contaminants during the construction and operational phases. The impacts would be mitigated by measures within a Construction and Environmental Monitoring Plan (CEMP), adherence to best practice construction measures and incorporation of appropriate drainage facilities. Monitoring of watercourses, including drainage ditches in the operational phase, as well as regular maintenance of same would mitigate any potential impact.

- Potential effects on the **road network** during the construction phase that would be mitigated by the Construction Traffic Management Plan and appropriate construction site management measures as outlined in Appendix 4.1 of the EIAR.
- Impacts arising on **soils, geology & land** as a result of spread of invasive species present on the site which would be mitigated by the continuation of the implementation of an Invasive Species Management Plan and method statement for the control of disturbance of soils containing invasive species, the requirement that a suitably qualified ecologist would be engaged to oversee the undertaking of a pre-construction survey, and monitoring of the success of the mitigation measures post-construction.
- Impacts arising on **cultural heritage** as a result of the works in the vicinity of the quay wall and former mill structure which would be mitigated by the design proposed for the proposed defences and the extensive mitigation proposed to facilitate the preservation of features of archaeological interest.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures included in the Schedule of Environmental Commitments set out in Appendix A of EIAR Addendum Report (Vol. 1), and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report, addendum report, and conclusions of the Inspector.

The Board is satisfied that this reasoned conclusion is up to date at the time of taking the decision.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would have significant benefits and positive effects on the community in the vicinity including in respect of health, material assets and residential amenity brought about by protection from future flooding, would not have significant negative effects on the environment, would not give rise to a risk of

pollution or negative impact on biodiversity, would not be detrimental to the visual or landscape amenities of the area, would not adversely impact on the cultural, archaeological or built heritage of the area, and would not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1.	<p>The proposed development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Environmental Impact Assessment Report and Natura Impact Statement, submitted with the application to An Bord Pleanála on the 20th day of December, 2019 and in the Further Information Response submitted to An Bord Pleanála on the 30th day of October, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development and retained as part of the public record.</p> <p>Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.</p>
2.	<p>(i) The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report (including the Addendum to same) and other plans and particulars submitted with the application shall be carried out in full except as may otherwise be required in order to comply with other conditions.</p> <p>(ii) A Construction Environmental Management Plan shall be prepared and placed on the public record.</p> <p>Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.</p>
3.	<p>The mitigation measures and monitoring commitments identified in the Natura Impact Statement including the Addendum to same, and other plans and particulars submitted with the application shall be carried out in full</p>

	<p>except as may otherwise be required in order to comply with other conditions.</p> <p>Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.</p>
4.	<p>Prior to commencement of development, Limerick City and County Council and any agent acting on its behalf shall undertake a pre-construction invasive species survey and following same shall update the Invasive Species Management Plan for the development site. The Plan shall be placed on the file prior to commencement of development and retained as part of the public record.</p> <p>Reason: In the interest of protecting the environment and in the interest of public health.</p>
5.	<p>Limerick City and County Council and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.</p> <p>Reason: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.</p>
6.	<p>Limerick City and County Council and any agent acting on its behalf shall ensure that all imported soils to the site are thoroughly screened for the presence of invasive species prior to the delivery to the site to prevent the spread of invasive species. The Council shall also ensure that all excavations carried out within the site are monitored for the presence of invasive species and if encountered disposed of in a manner which will not give rise to further spread of the species.</p> <p>Reason: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the European sites.</p>
7.	<p>Limerick City and County Council and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site.</p>

Prior to the commencement of development, and in consultation with the National Monuments Service, the following matters shall be addressed and a report prepared outlining the pre-construction strategy which shall be placed on the file prior to commencement of development and retained as part of the public record:

(a) A strategy for further archaeological investigation, particularly where the water storage tanks are to be located and where archaeological testing results identified elements of the medieval harbour, including quay walls/town wall, etc. (Area 5 in the Archaeological Testing Report/Area B3 in the EIAR Addendum Report Volume 1) shall be agreed with the NMS.

(b) Preparation of a finds retrieval strategy that addresses the spreading of estuarine silts and includes provision for temporary and long-term storage of waterlogged finds.

(c) Detailed design drawings of the works proposed in the vicinity and above the remains of a mill in the river identified between King John's Castle and Curragour Boat Club (Area 1 in UAIA report; Area B3 in EIAR Addendum Report Volume 1) to ensure there will be no impact on submerged remains.

(d) All other works into either the Abbey River or intertidal/River Shannon, as identified by the UAIA will be subject to archaeological monitoring by a suitably qualified and experienced underwater archaeologist (i.e. works for outfalls, etc.) and a Method Statement accompanying the licence application should detail the strategy for such monitoring (including the spreading and metal detection of all silts removed from the river or estuarine environment).

(e) Further detail shall be provided on the proposed works for the demolition of the river walls in Areas 9 and 10 including how the work is to take place and how will it be archaeologically monitored.

(f) The final archaeological mitigation proposal shall be agreed with the NMS and form part of any tender documents for the Contract of Works so that the archaeological requirements for all works are understood from the

	<p>outset by all contractors engaged for the main works (e.g. Main Works Contractors, Sub-Contractors, Archaeological Contractors, etc.).</p> <p>(g) As part of the archaeological works strategy for the scheme, post-excavation shall be addressed and integrated into the Archaeological Mitigation for the Contract of Works.</p> <p>In default of agreement between the applicant and NMS regarding compliance with any of the requirements of this condition, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
8.	<p>All works shall have regard to Inland Fisheries Ireland’s published 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.</p> <p>Reason: In the interest of the protecting of receiving water quality, fisheries and aquatic habitats.</p>
9.	<p>Prior to commencement of construction the following shall be undertaken:</p> <p>(a) a detailed survey of the open drainage ditch to the northwest of the island for the protected opposite-leaved pondweed (<i>groenlandia densa</i>) will be carried out, at the appropriate time of the year, by a competent experienced botanist acting on behalf of the Local Authority.</p> <p>(b) The provisions of the licence application Methods Statement in Appendix 3 of the EIAR will be revised as a Construction Management Plan in consultation with the appointed contractor and with the NPWS.</p> <p>(c) Storage times of translocated plants or wetland soil will be minimised wherever feasible.</p>

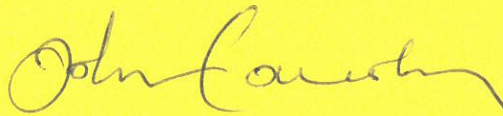
	<p>(d) The Habitat enhancement and management of two existing sites, which have declining subpopulations of existing opposite-leaved pondweed, shall be agreed with the NPWS.</p> <p>(e) The success of translocation will be monitored and if it is found to fail, then four years after creation of the new drainage ditch, habitat creation and re-introduction at the new drainage ditch will be carried out, under licence from the NPWS. This will also be monitored and managed two years after completion. If it too is not successful, the habitat enhancement at the two sites will be continued.</p> <p>Reason: In the interest of the protecting the Groenlandia Densa Species.</p>
10.	<p>Trees shall be examined prior to felling to determine the presence of bat roosts. Any works shall be in accordance with the TII Guidelines for the Treatment of Bats during the construction of National Road Schemes.</p> <p>Reason: In the interest of wildlife protection.</p>
11.	<p>Prior to commencement of development, Limerick City and County Council and any agent acting on its behalf shall agree the timing of in-stream works with Inland Fisheries Ireland. The agreement for the programme of works shall be placed on the file prior to commencement of development and retained as part of the public record.</p> <p>Reason: In the interest of protecting the environment.</p>
12.	<p>Limerick City and County Council and any agent acting on its behalf shall:</p> <p>(a) Ensure that a Grade 1 Conservation Architect, with appropriate experience, be engaged to detail final specifications and methodologies, particularly where the project interfaces with built heritage assets of architectural, artistic, archaeological, historical, cultural, social, technical, and/or scientific interest.</p> <p>(b) Ensure appropriate records are kept of all works undertaken and shall include:</p> <p>(i) Archival Standard Photographs taken before, during and after the completion of each stage of the work;</p>

(ii) Specifications; Schedule of Works undertaken; Difficulties encountered and their resolution; Modifications to Method Statements.

The records shall be placed on the file and retained as part of the public record.

Reason – In order to conserve the architectural heritage of the site.

Board Member:



Date: 07/05/2021

John Connolly