

**An  
Bord  
Pleanála**

**Board Direction  
BD-012289-23  
ABP-306725-20**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 30/05/2023.

The Board decided to approve the proposed development generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

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

#### **European legislation including:**

- 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 sets out the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- Directive 2000/60/EC (Water Framework Directive) for establishing a framework for Community action in the field of water policy.
- Directive 2007/60/EC (Floods Directive) relating to the assessment and management of flood risk.

### **National legislation and guidance including:**

- 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).
- Guidelines on the Information to be contained in Environmental Impact Assessment Reports published by the EPA in June 2022.

### **National and regional plans and policy including:**

- Project Ireland 2040 – the National Planning Framework, particularly National Strategic Outcome 9 which seeks to coordinate EU Flood Directive and Water Framework Directive implementation.
- The Climate Action Plan 2023 which identifies risks to people and nature resulting from climate change, including risks associated with floods, and which also sets an action to develop options for the delivery of a National Implementation Strategy for Nature-Based solutions.
- Flood Risk Management Climate Change Sectoral Adaption Plan (2019).
- the objectives of the Catchment Flood Risk Assessment and Management (CFRAM) Programme.
- The Regional Spatial and Economic Strategy for the Eastern and Midlands Region which supports the national policy objectives in respect of the implementation of adaptation responses in vulnerable areas.

### **Local planning policy including:**

- The policies and objectives of the South Dublin County Development Plan 2022-2028.
- The policies and objectives of the Dublin City Development Plan 2022-2028.

**The following matters:**

- The documentation that accompanied the application for approval and reports and submissions from observers and prescribed bodies and the further submissions made by the applicant, including the additional information submitted and the responses to same.
- 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 European Sites.
- The Conservation Objectives, qualifying interests and special conservation interests for the European Sites.
- The nature and extent of the proposed works as set out in the application.
- The range of proposed mitigation measures set out in the submitted Environmental Impact Assessment Report and Natura Impact Statement (incorporating Appropriate Assessment Screening), as amended by the further information submitted.
- The submissions and observations received in relation to the proposed development.
- The report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

**Appropriate Assessment: Stage 1**

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), the South Dublin Bay Special Area of Conservation (Site Code: 000210), the North Dublin Bay Special Area of Conservation (Site Code: 000206) and the North Bull Island Special Protection Area (Site Code: 004006) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

## **Appropriate Assessment: Stage 2**

The Board considered the revised Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, the responses to further information and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), the South Dublin Bay Special Area of Conservation (Site Code: 000210), the North Dublin Bay Special Area of Conservation (Site Code: 000206) and the North Bull Island Special Protection Area (Site Code: 004006) 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 following:

- i. the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the Conservation Objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the screening and the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on 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**

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,

- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application, including the further information submitted,
- (c) the submissions received from observers and prescribed bodies, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, 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 agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. 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:

- Positive long-term impacts to population and human health from the provision of a flood alleviation scheme.
- Significant positive residual benefits on material assets entailing the protection of property (including homes) and zoned serviced lands.
- Long-term significant impacts at parks, including Tymon Park and Ravensdale Park, due to the loss of trees combined with the visual and landscape changes, which is mitigated by the design of the proposed development and replacement planting.
- Short-term construction-related disturbance which can be mitigated by measures to minimise emissions and to manage construction traffic, as set out in the Environmental Impact Assessment Report, and subject to the implementation of a Construction Environmental Management Plan incorporating a Construction Traffic Management Plan.
- Adverse impacts on biodiversity through the loss of trees and woodlands, which will be mitigated by replacement planting.

- Positive impacts on hydromorphology, water quality and biodiversity once the channel realignment at Whitehall Park and the Integrated Constructed Wetlands at Tymon Park are established.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, 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.

### **Proper planning and sustainable development**

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European, national, regional and local planning and related policy and would provide for the protection from flooding of the majority of houses in the Poddle catchment area. It is considered that the implementation of a flood alleviation scheme, which is of innovative design, by reason of its use of nature-based solutions in an established urban area, would be in accordance with objectives relating to biodiversity and the Water Framework Directive. The proposed development would not have an unacceptable impact on the environment, including water and ecology, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, would not have a significant adverse impact on local parks and would be acceptable in terms of cultural heritage impacts and traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Conditions**

1. 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 the revised Natura Impact Statement, as amended by the further plans and particulars received by the Board on the 19<sup>th</sup> day of October, 2020, , the 5<sup>th</sup> day of February, 2021, and the 29<sup>th</sup> day

of April, 2022 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 authorities, these details shall be placed on file prior to commencement of development 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 works at St. Martin's Drive/Poddle Park shall be in accordance with Option 1 as shown on Figure 7-2 of the response to further information which was received by the Board on the 19<sup>th</sup> day of October, 2020.

**Reason:** In the interest of minimising impacts on the river and biodiversity and in the interest of the proper planning and sustainable development of the area.

3. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, including the revisions 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 the conditions in this Order.

**Reason:** In the interest of clarity and the protection of the environment during the construction and operational phases of the proposed development.

4. The mitigation measures and monitoring commitments identified in the revised Natura Impact Statement, including the revisions 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 the conditions in this Order.

**Reason:** In the interest of clarity and the protection of the environment during the construction and operational phases of the proposed development.

5. The mitigation measures contained in the CSR Updated/Tree Survey Report and Arboricultural Impact Assessment shall be adopted in full and incorporated into the Schedule of Mitigation.

**Reason:** To minimise adverse effects on trees.

6. The recommendations of the Water Framework Directive Assessment Report shall be adopted in full and incorporated into the Schedule of Mitigation.

**Reason:** To ensure that the proposed development complies with the objectives of the Water Framework Directive.

7. The following matters shall be the subject of consultation with Inland Fisheries Ireland and shall apply in relation to the construction, detailed design, monitoring and operation of the proposed development:

- (a) The timing of in-stream works.
- (b) A programme of monitoring, including post-construction monitoring, to be prepared in consultation with the contractor, the local authorities and relevant statutory agencies and the programme to be implemented thereafter.
- (c) Works to be in accordance with a finalised Surface Water Quality Management Plan.
- (d) Detailed method statements in respect of the significant aspects of the proposed scheme.
- (e) Detailed design in respect of permanent channel replacement and replacement footbridges.
- (f) Post-construction monitoring to include a repeat of the baseline fish and invertebrate survey three years after completion.

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



8. A robust programme of maintenance, which shall include ongoing and exceptional maintenance, shall be agreed between the local authorities. The agreed programme shall be recorded and retained in a location accessible to members of the public, which may include a website. The implementation of the programme of maintenance shall be recorded.

**Reason:** To ensure the successful implementation of the proposed scheme and the availability of information to members of the public.

9. The local authorities, or any agent acting on their behalf, shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. Prior to commencement of development, and following 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) Archaeological monitoring of all ground disturbance and river disturbance works shall be undertaken. This archaeological monitoring shall be under licence and shall consist of the following:
- In order to ensure the preservation of potential archaeological sites and features, the local authorities shall engage the services of a suitably qualified archaeologist to monitor all disturbance works associated with the proposed development. The archaeological monitoring shall be licenced under the National Monuments Acts 1930-2004.
  - A detailed method statement shall accompany the licence application and shall include details of the proposed works, duration, monitoring team and a finds retrieval strategy.
  - Should archaeological material be found during the course of monitoring, the archaeologist shall have the work in that area suspended pending a decision as to how best to resolve the archaeology. The local authorities shall be prepared to be advised by the Department of Culture, Heritage and the Gaeltacht with regard to

any necessary mitigation action. The local authorities shall facilitate the archaeologist in recording any material found.

- The Department of Culture, Heritage and the Gaeltacht shall be furnished with a report describing the results of the monitoring.

(b) Pre-development testing shall consist of the following:

- The local authorities shall be required to engage the services of a suitably qualified archaeologist (licensed under the National Monuments Acts 1930-2004) to carry out pre-development testing at Cutlers Mill and Cutlers Weir as recommended in the Environmental Impact Assessment Report. No sub-surface works shall be undertaken in the absence of the archaeologist without his/her express consent.
- The archaeologist shall be required to notify the department in writing at least four weeks prior to the commencement of site preparations.
- The archaeologist shall carry out any relevant documentary research and may excavate test trenches at locations chosen by the archaeologist, having consulted the proposed plans.
- Having completed the work, the archaeologist shall submit a written report to the local authorities and to the Department of Culture, Heritage and the Gaeltacht.
- Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record and/or monitoring may be required. The Department of Culture, Heritage and the Gaeltacht shall advise the local authorities in these matters.
- No site preparation or construction works shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the Department of Culture, Heritage and the Gaeltacht.

(c) A Wade and Detection Survey shall be undertaken as follows:

- The local authorities shall be required to engage the services of a suitably qualified archaeologist to carry out a Wade and Metal Detection Survey in areas where the Poddle riverbed is disturbed by the proposed works. This shall be licensed under the National Monuments Act 1930 – 2004.
- The metal detection survey shall be carried out under licence granted under section 2 of the National Monuments Act 1987.
- Having completed the work, the archaeologist shall submit a written report to the Department of Culture, Heritage and the Gaeltacht for review.
- Where archaeological material or features are shown to be present, preservation in-situ, avoidance, preservation by record and/or archaeological monitoring may be required. The local authorities shall be prepared to be advised by the Department of Culture, Heritage and the Gaeltacht in this regard.

In default of agreement between the local authorities and the National Monuments Service regarding compliance with any of the requirements of this condition, the matter shall be referred to An Bord Pleanála for determination.

**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.

10. The location of the proposed artificial otter holts and their design shall be subject to consultation with the National Parks and Wildlife Service.

**Reason:** To enhance the habitat for otter and in the interest of biodiversity.

11. Any clearance of vegetation shall be within the period September to February inclusive.

**Reason:** To ensure that no clearance of vegetation takes place within the main bird nesting season and in order to avoid impacts on birds.


12. Prior to commencement of development, the local authorities, or any agent acting on their behalf, shall undertake a pre-construction invasive species survey and, following the completion of same, shall update the Invasive Species Management Plan for the proposed development site.

**Reason:** In the interest of the protection of the environment and in the interest of public health.

13. Prior to commencement of development, the local authorities, or any agent acting on their behalf, shall finalise a Construction Environmental Management Plan which shall incorporate a Traffic Management Plan.

**Reason:** In the interest of the protection of the environment and to minimise disturbance.

Board Member

  
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Patricia Calleary

Date: 30/05/2023