



An  
Bord  
Pleanála

**Board Direction**  
**BD-006573-20**  
**ABP-307396-20**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 21/09/2020.

The Board decided to grant permission, 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:

- the zoning objective for the site,
- the policies and objectives of the Kerry Development Plan 2015-2021,
- the policies and objectives of the Killarney Town Development Plan 2009 – 2015 (extended and varied),
- the site's planning history,
- the nature and scale of the proposed development,
- the submissions and observations received,
- the decision of the planning authority
- the conclusion of the planning authorities' Ecologist
- the report of the inspector

### **Appropriate Assessment Screening**

The Board has carried out an Appropriate Assessment Screening relating to the proposed development, having regard to the AA screening prepared by the applicant and that prepared by Kerry County Council's biodiversity Officer. The Board is

satisfied that the authors of these reports have adequate expertise to allow their findings and conclusions to be relied upon in the preparation of the Board's Appropriate Assessment.

### **AA Introduction**

This assessment has had regard to the submitted "AA Screening Report" submitted by the applicant and that prepared by the Planning Authority. It is submitted that the reports contain sufficient information required for the Board to undertake Stage 1 Screening for AA (in light of comments made by previous ABP inspector under 304968-19) and that Stage 2 Appropriate Assessment is not considered necessary in respect of the development. This report was assessed by the PA Biodiversity Officer and includes clarification of particular elements of the proposed development, in particular in respect of the operations associated with the proposed development. The Board has had regard to the contents of same. The reports conclude that the proposed development individually or in combination with other plans/projects is not likely to have a significant effects on any European Sites and that an appropriate assessment under section 177V of the planning and development Act 2000 (ie an NIS) is not required.

The Board is satisfied that adequate information is available in respect of the baseline conditions, potential impacts are clearly identified, and sound scientific information and knowledge was used.

### **The Project and Its Characteristics**

See the detailed description of the proposed development in section 2 of the Inspector's report.

### **The Development Site and Receiving Environment**

There are no designated sites within or immediately adjacent to the development. The development site lies within the development boundary of Killarney Town and is sited within an existing building on site.

It is noted that the site is close to the River Flesk, which runs to the south of this site and which flows into Lough Leane. This River lies within the Killarney National Park,

MacGillycuddy's Reeks and Caragh River Catchment SAC (000365) and this Lough lies within this SAC and the Killarney National Park SPA (004038).

There are no surface water features within the development site or hydrological connections, such as would constitute or result in a pathway-source-receptor route.

The initial portion of this access road is tree lined and a hedgerow runs along the adjacent boundary between the racecourse and the Castle Falls housing estate to the east. It should be noted that this route does not provide a continuous tree/hedgerow linear pathway. Its alignment is roughly parallel to an existing spine road to the housing estate, which is the subject of streetlighting.

One of the qualifying species for the said SAC, is the Lesser Horseshoe Bat. The Conservation Objective for this species is to maintain its favourable conservation. The accompanying Map 10 identifies two roosts, bat site codes 296 and 623, within 2.5 km of the site, i.e. the distance within which foraging tends to occur. This Map also shows potential foraging grounds, some of which are close to the site. The commentary to the aforementioned Conservation Objective sets as targets no significant loss in linear features within the said radii, such as hedgerows and treelines, which provide connectivity to this species, and no significant increase in artificial light intensity, as "lighting along commuting routes may cause preferred foraging areas to be abandoned, thus increasing the energetic cost for bats."

The applicant's Stage 1 Screening for AA notes the aforementioned bat sites and it notes, too, that the identified potential foraging grounds do not occur on the racecourse lands. The applicant's screening report does not explicitly address linear features that may provide connectivity between foraging grounds and it does not address the operational phase of the proposal. However, this issue is explicitly considered in the PA screening report and the possibility that the above cited lines of trees and hedgerows to provide such connectivity is not considered to be significant as its not a continuous linear feature and is already subject to light spillage. It is further noted that there will be further loss or disruption to this pathway/linear feature as a result of the development and its operation is for limited periods only and outside of night time hours, further limiting its potential impact on a nocturnal species. Furthermore, LHS bats are not unduly impacted upon by noise along commuting routes.

## Stage I Appropriate Assessment

In determining the zone of influence the Board has had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the development site to a European Site, aided in part by the EPA Appropriate Assessment Tool ([www.epa.ie](http://www.epa.ie)), the Appropriate Assessment prepared by the applicant and separately that of the PA.

The following designated sites are located within 15 km of the development:

Designated Site (Site Code)	Distance to Development	Impact Pathway
Killarney National Park, Macgillicuddy Reeks, Caragh Catchment SAC (000365)	c. 900m	Yes – proposed development is adjacent and within the catchment
Sheherre (Ardagh) Bog SAC (000382)	c. 2.1 km	No – proposed development is a considerable distance from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Castlemaine Harbour SAC (000343)	c. 6.3 km	No – proposed development is a considerable distance from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Old Domestic Building, Curraglas Wood SAC (002041)	c. 13 km	No – proposed development is a considerable distance from the site and taking into account the qualifying interests of the site and absence of hydrological connectivity there's no likely effect
Killarney National Park, SPA (004038)	c. 500m	No – while the proposed development is adjacent and within the catchment, there is no impact pathway – having regard to the

		<p>specific habitats associated with the key species and that they are restricted to within the SPA boundary itself and that no impacts on surrounding habitats or alterations to key environmental conditions are identified such as would disturb these species.</p>
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These sites and their qualifying features of conservation interest, are outlined in outlined in Table 2, pages 13-14, of the submitted Screening Report, prepared in January 2020 and Table 1 of the PA Screening Report dated 18/03/2020 and the Board is satisfied that this is an accurate record.

The Board does not consider that any other European Sites fall within the zone of influence of the project, having regard to the distance from the development site to same, and the lack of an obvious pathway to same from the development site.

As outlined in the Screening for Appropriate Assessment submitted, and as is further augmented in the PA's screening, the Board is satisfied that the functional zone of potential impact can be employed in order to eliminate a number of European sites from further consideration. The Board considers that there is no possibility of significant effects on the following designated sites within 15 km, with regard to their conservation objectives, due to intervening distances, to the nature of the intervening land uses and to the absence of a hydrological or any other linkage between the development and the European Site:

- Sheherre Bog SAC
- Castlemaine Harbour SAC
- Old Domestic Building, Curraglas Wood SAC
- Killarney National Park SPA

The Board noted that the applicant's screening report screened out Killarney National Park SPA at an earlier stage than the PA by reason of the SCIs as the habitats surrounding the proposal site are unsuitable breeding habitats owing to the

species make up, as well as the highly modified and recreational nature of the area (human disturbance). There is no spatial overlap between the application site and species habitat, no plausible impact and given the nature and scale of the development. While the PA Biodiversity officer included this site in her screening report, the conclusions are the same, ie. ‘the birds (Merlin and Greenland White fronted geese) of SCI for the SPA are linked to specific habitats with the SPA boundary. No impacts on surrounding habitats are identified from the development and no potential for the development to alter the key environmental conditions or disturb either species is identified”.

The Board is satisfied that there is no plausible impact pathway connecting the above noted designated sites to the location of the proposed development, and no potential ecological receptors, that these sites are outside the functional zone of impact influence of the proposal. The Board there concluded in respect of these sites, that the proposal does not include any element (whether at construction or operational stage) that is likely to result in significant effects on the conservations objectives of these Natura 2000 sites (as listed in table 3, pages 17-18, of the applicant’s screening report, dated January 2020).

### **Potential Effects on Designated Sites**

As outlined in the submitted screening report (prepared by Malachy Walsh & Partners on behalf of the applicant), the Board accepts their assessment that the possible risks to any European Site relate to:

- Habitat loss and alteration;
- Disturbance and/or displacement of species;
- Habitat or species fragmentation; and
- Water quality.

This assessment is consistent with that of the PA, where potential significant impacts are noted as:

- Reduction/erosion/fragmentation of key habitats

- Disturbance/mortality/harm of key species (eg noise, light pollution, trampling or general disturbance)
- Alteration of key environmental conditions (eg water quality, water supply, air quality)
- Interference with the movement of key species within, between or in the vicinity of European sites
- Interactive/cumulative/in combination impacts including potential climate change impacts and those with other plans or projects.

The Board considers that those European sites where a relevant source-pathway-receptor link exists can be identified as follows:

- Killarney National Park, MacGillycuddy's Reek and Caragh River Catchment SAC (000365)

In considering the above potential impacts, the Board has had regard to the applicant's screening report pages 19-25 and the PA's screening report and is satisfied that the potential impacts have been identified, and adequately considered. In noting the Inspector's concerns regarding the Lesser Horseshow Bat, in particular at operational stage, the Board considers that there is adequate information to assess the potential significant impacts on this species.

The Board is satisfied that the issue arising, i.e.. disturbance of this key species due to noise/light pollution or general disturbance has been adequately considered (by the applicant and PA, and in the documents and reports submitted), and that the impact itself does not arise, as the linear features on site are already fragmented and therefore would not provide an optimal commuting route for foraging bats.

Additionally, the route in question is adjacent to a public road serving the residential estate adjacent and is already subject to light spillage and the proposal does not notably or significantly increase light spillage. Similarly, there would be no notable increase in noise/disturbance along commuting routes, as the LSH bats would not be unduly disturbed by noise when foraging. Noise sensitivity is associated with roosting and breeding, and no such habitats are associated with the application site. Further it is noted that the proposed operation is seasonal and does not occur during

night time hours, further limiting any potential impact on the activities of nocturnal species.

### **Appropriate Assessment Screening Conclusion**

The Board completed an Appropriate Assessment Screening exercise in relation to the potential effects of the proposed development on designated sites, taking account the nature, scale and location of the proposed development within a zoned and serviced urban area, the Appropriate Assessment Screening Report submitted with the application, the Appropriate Assessment carried out by the PA biodiversity officer, and the Inspector's report and submissions on file. In completing the screening exercise, the Board concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect of any European site in view of the sites' conservation objectives and that a Stage 2 Appropriate Assessment is not therefore required.

### **Conclusion on Proper Planning and Sustainable Development**

The Board considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area and would be 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.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board, considered,

- the land-use zoning on the site, and the fact that the proposed development falls within a development class that is cited as being "open for consideration". The Board had regard to the decision of the Planning Authority, and their consideration that the development did not contravene the land-use zoning objective, and the previous An Bord Pleanála's planning inspector's report and Board decision (304968-19), where consideration of this issue concluded that the proposed development was acceptable in principle under this zoning.



The Board is, therefore, satisfied that in principle the proposed development does not materially contravene the zoning objective relating to the site, and that the issue of potential impact on residential amenity is a separate and independent matter (as per previous ABP decision under 304968-19).

- the Noise Report submitted on behalf of the applicant by Malachy Walsh & Partners, the technical validity of which was accepted by Kerry County Council's environmental officer (Senior Executive Engineer) responsible for noise management, and absence of any empirical evidence to contradict the findings of this report. The Board further noted the conditions attached in the notification of decision to grant by the PA, and is satisfied that compliance with these conditions limiting the noise to 45dbA at the nearest noise sensitive receptor and on-going monitoring of this would ensure that the protection of residential amenity. It is further noted that the activity does not generate any noise during night time hours (23.00 to 07.00), and as such there would be no disturbance to sleep as a result of the proposed development.
- the Traffic Impact Assessment submitted, which indicates that the relatively low levels of traffic generated by the proposed development occur outside of peak traffic times and can be absorbed by the local road network serving the development. There is no traffic safety or road capacity issues associated with traffic generated by the proposed development. The Board is further satisfied that the level of traffic generated by the proposed development is not of a sufficient level or duration or time such as would result in an unacceptable and adverse impact on the local road network or neighbouring residential area.
- the Appropriate Assessment Stage 1 screening carried out by the applicant, and further expanded upon and independently assessed by the Planning Authority's biodiversity officer (a qualified ecologist). The Board noted the

reporting inspector's view that there is no NIS submitted with the application and as such cannot conclude that the 'proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on European site No. 000365'. However, the Board notes that the reporting inspector has not carried out a comprehensive Stage 1 Screening and does not appear to have considered the AA Stage 1 carried out by the Planning Authority's biodiversity officer. The Board therefore carried out its own appropriate assessment (see below). Measures intended to avoid or reduce negative effects on the European sites have not been relied upon in reaching this conclusion

- in general, the Board do not consider that there should be an expectation of no additional development or new development on these lands, and that the proposed development results in a reasonable intensification of use (cited as being open for consideration within this zoning) and on an underutilised zoned brownfield site within the development boundary of Killarney, increasing the tourist offering, economic activity and employment in the area, and as such in accordance with the proposed planning and sustainable development of the area. The Board is satisfied that there is no undue impact on the residential amenity of the neighbouring area by reason of noise or traffic; and that adequate information has been submitted to assess any potential environmental or ecological impact associated with the proposed development.

### **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 7th day of April 2020 and by the further plans and particulars received by An Bord Pleanála on the 20th day of July, 2020, 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. PA condition number 3
3. PA condition number 5
4. PA condition number 4
5. PA condition number 6
6. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Board Member**

**Date:** 17/10/2020

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Michelle Fagan