

An
Bord
Pleanála

Board Direction
BD-013484-23
ABP-307674-20

The submissions on this file and the Inspector's reports dated 9th May 2023 and 10th March 2021, in addition to the Memorandum from the Inspectorate Ecologist dated 6th May 2022, were considered at a Board meeting held on 25/08/2023.

The Board, in carrying out a *de novo* assessment, decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

1.1.1. Having regard to:

- a) The location of the proposed scheme, the established nature of the existing Lower Tinnahinch Weir, the detailed nature, scale and form of the development and its location within the River Barrow and River Nore Special Area of Conservation (site code: 002162),
- b) The specific operational considerations at the site whereby the existing weir has been identified by Inland Fisheries Ireland as an obstacle to fish migration and free movement of all fish over all periods of the year, which is non-compliant with Section 116 of the 1959 Fisheries (Consolidation) Act and the requirements of the European Habitats Directive
- c) The conservation objectives, qualifying interests and special conservation interests for the River Barrow and River Nore SAC (Site Code 002161)

- d) The information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement and Construction & Environmental Management Plan
- e) Mitigation measures which are proposed for the construction and operation phases of the development.
- f) The provisions of the Carlow County Development Plan 2022-2028
- g) The written submissions and observations received in relation to the proposed development,
- h) The Inspectorate Ecologist's assessment, and the report and recommendation of the previous Senior Planning Inspector,

Appropriate Assessment Screening:

The Board agreed with and adopted the screening assessment and conclusion reached in the Inspector report that the River Barrow and River Nore Special Area of Conservation (site code: 002162) is the only European Site in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment:

The Board considered the Natura impact statement and associated documentation submitted to the planning authority, the mitigation measures contained therein, and the submissions and observations on file. The Board completed an appropriate assessment of the implications of the proposed development for one European Site, namely the River Barrow and River Nore Special Area of Conservation (site code: 002162), in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow for a complete assessment of all aspects of the proposed development and enable them to reach complete, precise and definitive conclusions for 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 Site.

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 Site, having regard to the site's 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 Site, in view of the site's conservation objectives and there is no reasonable scientific doubt remaining as to the absence of such effects.

Conclusions on Proper Planning and Sustainable Development:

It is considered that, subject to compliance with the conditions set out below, the proposed repair and strengthening works to the existing weir and proposed rock ramp fish pass would not have significant negative effects on the environment or on the archaeological heritage of the area. The proposed development would be in accordance with the stated objectives, as set out in the Carlow County Development Plan 2022-28, to support the conservation and enhancement of Natura 2000 Sites, and to protect the Natura 2000 network from any plans and projects that are likely to have a significant effect on the coherence or integrity of a Natura 2000 Site, in accordance with relevant EU Environmental Directives and applicable National Legislation, Policies, and Ministerial Plans and Guidelines. It is considered that the proposed development would constitute a significant improvement in terms of the protection of endemic fish species by accommodating their passage upstream and downstream of the weir and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1.	<p>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 20th day of March 2020 and by the further plans and particulars received by An Bord Pleanála, 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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>a) Prior to commencement of development, mitigation measures specified in the CEMP for the protection of fisheries habitat and water quality shall be submitted and agreed with Inland Fisheries Ireland and submitted to the Planning Authority.</p> <p>b) The creation of a dry working environment and all works within it shall be conducted from the 1st day of July to the 30th day of September inclusive. No site investigation, excavation or construction shall take place between the 1st day of October and the 30th day of June 3 in any year.</p> <p>c) Full regard shall be had 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).</p> <p>d) A programme of water quality monitoring shall be prepared in consultation with the contractor, and relevant statutory agencies and the programme shall be implemented thereafter. Details of such monitoring shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	<p>Reason: In the interests of protecting the environment, and the protection of European Sites and in the interest of public health.</p>
3.	<p>a) Monitoring of the construction phase shall be carried out by a suitably qualified Ecologist to ensure that all environmental and ecological mitigation measures contained in the documentation which accompany the application are fully implemented. The Ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed Ecologist and submitted to the planning authority for agreement in writing.</p> <p>b) A designated member of the developer's staff shall interface with the Planning Authority or members of the public in the event of complaints or queries in relation to environmental or ecological matters. Details of the name and contact details and the relationship to the developer of this person shall be available at all times to the Planning Authority on request whether requested in writing or by a member of staff of the Planning Authority at the site.</p> <p>Reason: In the interests of nature conservation and the protection of terrestrial and aquatic biodiversity.</p>
4.	<p>A monitoring programme will be arranged by Waterways Ireland and carried out by Inland Fisheries Ireland to ensure that the fish pass is operating effectively for all target species across the range of river flows for which the pass was designed. This shall be undertaken in line with standard methodology within 2 years of the construction of the fish pass and no longer than 4 years post construction. Results shall be made publicly available by Waterways Ireland.</p> <p>Reason: In the interests of nature conservation and the protection of aquatic biodiversity.</p>
5.	<p>a) A detailed Traffic Management Plan shall be submitted to and agreed in writing with Carlow County Council in consultation with Kilkenny County Council prior to commencement of development.</p>

	<p>b) All necessary measures shall be undertaken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.</p> <p>Reason: In the interest of traffic safety and to protect the amenities of the area.</p>
6.	<p>Prior to commencement of work on site the developer shall submit a recreational water user safety plan for written agreement with the Planning Authority.</p> <p>Reason: In the interest of public safety and to protect the amenities of the area.</p>
7.	<p>A pre-construction survey for Otter(s) will be undertaken in advance of any works at the site to confirm the baseline and in line with best practise. In the unlikely event of an otter holt being found, measures shall be implemented to ensure the protection of this species in consultation with the National Parks and Wildlife Services.</p> <p>Reason: In the interests of biodiversity and to safeguard the ecological amenities of the area.</p>
8.	<p>The applicant 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> <p>In this regard, the applicant shall:</p> <p>(a) employ a suitably qualified archaeologist prior to commencement of the development who shall assess the site and monitor all site investigations and other excavation works, and</p> <p>(b) undertake an Underwater Archaeological Impact Assessment in advance of any works. The assessment shall be carried out in accordance with the requirements of the Department of Culture, Heritage and the Gaeltacht and shall include the following: detailed desktop study and archaeological assessment to include intra-riverine assessment and if</p>

necessary, a dive survey. The assessment shall include survey and recording of the area of the river that will be impacted and adjacent areas,

- i. a metal detection survey,
- ii. the nature and location of any archaeological material on the site,
- iii. the impact of the proposed development on such archaeological material

A report containing the results of the assessment and any recommendations to mitigate any negative impacts shall be submitted to the Underwater Archaeological Unit of the National Monuments Service for consideration in advance of any works commencing on the site.

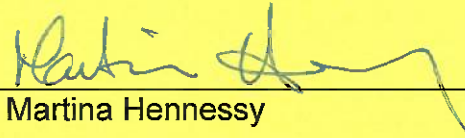
(c) where necessary provide arrangements, acceptable to the Department of Culture Heritage and the Gaeltacht for the recording and removal of any archaeological material which it is considered appropriate to remove.

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.

9. 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


Martina Hennessy

Date: 30/08/2023