

An
Bord
Pleanála

Board Direction
BD-009731-22
ABP-310145-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/01/2022.

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:

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (c) the Water Framework Directive (2000/60/EC),
- (d) 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,
- (e) the conservation objectives, qualifying interests and special conservation interests for the Malahide Estuary SAC (site code: 000205) and the Malahide Estuary SPA (site code: 004025),
- (f) the policies and objectives of the Fingal Development Plan, 2017-2023,
- (g) the nature and extent of the proposed works as set out in the application for approval,

- (h) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (i) the submissions and observations received in relation to the proposed development,
- (j) the 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 Malahide Estuary SAC (site code: 000205) and the Malahide Estuary SPA (site code: 004025), are the only European Sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposal for the Malahide Estuary SAC and the Malahide Estuary SPA. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered, in particular:

- i. the likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the Malahide Estuary SAC (site code: 000205) and the Malahide Estuary SPA (site code: 004025),
- ii. the mitigation measures which are included as part of the current proposal,
- iii. the Conservation Objectives for the European Sites,
- iv. the views set out in submissions received.

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

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the amenities of property in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural, archaeological and built heritage of the area, would not interfere with existing land uses in the area nor interfere with the potential for future development on adjoining zoned lands, would be in accordance with relevant national, regional and development policy, in particular relating to the encouragement of sustainable and low carbon transport modes and supporting the delivery of infrastructure to facilitate walking and cycling movements with associated improvements in accessibility, and would be acceptable in terms of traffic, pedestrian and cyclist safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures or any conditions of approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file 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 mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Natura Impact Statement and Environmental Report, shall be implemented in full or

as may be required in order to comply with the following conditions. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

3. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement and a demonstration of proposals to adhere to best practice and protocols.

Reason: In the interest of protecting the environment, the landscape, European Sites, and sensitive receptors and in the interest of public health.

4. Prior to the commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. 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). 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.

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

5. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be placed on the file and retained as part of the public record. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Location of areas for construction site offices and staff facilities;
- (c) Details of site security fencing and hoardings;
- (d) Details of the timing and routing of construction traffic to and from the construction site;
- (e) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (f) Alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;
- (g) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (h) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained.
- (i) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (j) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.
- (k) Consultation with the respective Regional Waste Management Planning Office regarding development of the final plans,
- (l) Details of hours of working.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety.

- 6. The local authority 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.

Reason: To ensure the protection of the local environment and European sites.

7. A suitably qualified ecologist shall be retained by the local authority to oversee the site set up and construction of the proposed development and implementation of mitigation measures relating to ecology set out in Natura Impact Statement and Environmental Report. 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 to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of terrestrial and aquatic biodiversity.

8. The local authority 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. A suitably qualified archaeologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on site during construction works. Should archaeological material be found, the archaeologist may have work stopped and the developer shall carry out the necessary mitigation/ recording. The Planning Authority and Department shall be furnished with a report describing results of monitoring.

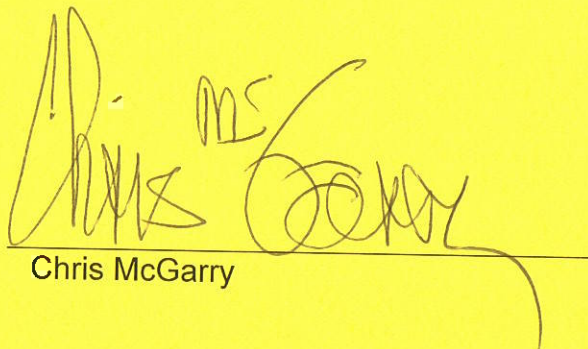
Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

Note: the Board noted recommended condition nos. 2 and 3, as set out in the Inspector's report. However, having regard to the totality of the documentation submitted with the application and considering the nature and extent of the development for which approval is sought, the Board considered that the attachment of these conditions was not warranted and in reaching this determination had regard to the following. The development proposes a reduced speed limit of 50 k/h/r and the enforcement of this will be a matter for the Roads Authority and it is not considered appropriate to seek by condition, further (unspecified) traffic calming measures.

Matters relating to signal lighting as well as to pedestrian/cyclist/traffic green phases are operational matters for the Roads Authority.

The approved development will not interfere with the potential for future development on adjoining zoned (and Master planned) lands; equally final detailing on matters such as access to such adjoining lands is for future separate consent exercises.

Board Member

MS
Chris McGarry

Date: 10/01/2022

