

An
Bord
Pleanála

Board Direction
BD-011763-23
ABP-311468-21

The submissions on this file and the Inspector's report were considered at Board meetings held on 24/06/2022 and 08/02/2023.

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:

- (a) Directive 2014/52/EU amending Directive 2011/92/EU (The EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
- (b) Directive 92/43/EEC (The Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (The Birds Directive) which sets out the requirements for the Conservation of Natural Habitats and Wild Fauna and Flora throughout the European Union.
- (c) the policies and objectives of the Donegal County Development Plan 2018-2024.
- (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 River Finn SAC (Site code:002301) and River Foyle and Tributaries SAC (Site code: UK0030320),
- (f) the relevant provisions of the Water Framework Directive,
- (g) the nature, scale and limited duration 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 revised Natura Impact Statement,
- (i) the submissions and observations received in relation to the proposed development and the responses to further information,
- (i) the report of the Inspector.

Appropriate Assessment: Stage 1

The Board considered the revised Natural Impact Statement and all other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European sites.

The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion reached in the Inspector's report that the River Finn SAC (Site code: 002301) and the River Foyle and Tributaries SAC (Site code: UK0030320) are the only European sites for which there is a possibility of significant effects and which, must therefore be subject to Appropriate Assessment.

Appropriate Assessment: Stage 2

The Board considered the revised Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the European Sites in view of the sites' conservation objectives, namely the River Finn SAC (Site code: 002301) and the River Foyle and

Tributaries SAC (Site code: UK0030320) The Board concluded 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
- iv. the views contained in the submissions.

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

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 planning application, including the further information,
- (c) the submissions received during the course of the application, 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 planning application.

Reasoned Conclusions on the Significant Effects

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:

- **Population and Human Health:** Positive impacts in terms of the provision of enhanced open space and recreational facilities which benefit both communities on both sides of the Border.
- **Biodiversity:** Habitat loss associated with construction will impact on habitats of low ecological value with no rare or protected species recorded. Potential impacts to habitats and faunal species, aquatic fauna, avian species and bats would be mitigated by the implementation of the measures during the construction and/or operational phases set out in the revised Environmental Impact Assessment Report
- **Land soil and water (Flooding):** The site will continue to be subject to fluvial flooding but will not increase flood risk on the site or contribute to flood risk elsewhere.
- **Material assets (Roads & Traffic):** will be mitigated during construction by the measures set out in the revised Environmental Impact Assessment Report and Traffic Assessment. The impacts during the construction stage will be short term, temporary and capable of effective mitigation. Traffic during the operational stage will be accommodated without significant adverse effects on the road network.

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

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 as set out in the EIAR, 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 and conclusions of the Inspector.

Having considered the totality of the Environmental Impact Assessment Report, associated documentation submitted with the application and the report of the Inspector, the Board concluded that any likely significant effects on the environment would be mitigated by the mitigation measures proposed by the applicant.

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 community in the vicinity, would not pose a risk to water quality, would not contribute to flooding on the site or increase flood risk downstream, 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 and would constitute an acceptable public amenity use at this location. The proposed development accords with international and national objectives to deliver shared infrastructure projects of mutual benefit within the border region of Ireland and Northern Ireland and is 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 lodged with the application, and the further plans and particulars received by the Board on the 28th day of April, 2022 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 planning authority, these details shall be placed on file and retained as part of the public record.

Reason: In the interests of clarity and the proper planning and sustainable development of the area and to ensure protection of the environment.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report (EIAR), the Addendum EIAR and other plans and particulars submitted with the application shall be implemented in full.

Reason: In the interests of clarity and the protection of the environment during the construction and operational phases of the development.

3. The mitigation measures contained in the revised Natura Impact Statement shall be implemented in full.

Reason: In the interests of clarity and proper planning and sustainable development and to ensure the protection of European sites.

4. Construction works will be undertaken in accordance with best practice and relevant guidance in relation to all matters as set out in the outline Construction and Environmental Management Plan (oCEMP) received by An Bord Pleanála on the 28th April 2022. These measures will be integrated in full into the final CEMP by the eventual contractor as a means of effective implementation of all measures. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, surface water management proposals, the management of construction traffic and off-site disposal of construction waste. The Construction and Environmental Management Plan shall be retained on file as part of the public record.

Reason: In the interests of protecting the environment.

5. Construction works shall be confined to between 0700 and 1900 hours Monday to Friday inclusive and between 0800 hours and 1400 hours on Saturdays and not at all on Sundays or Bank Holidays.

Reason: To safeguard the amenities of property in the vicinity.

6. A suitably qualified freshwater ecologist shall be retained by the local authority to oversee the site set up and construction of the proposed development and

implementation of the mitigation measures relating to ecology set out in the revised Natura Impact Statement. The ecologist shall be present during the construction works. Upon completion of the works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on the file as part of the public record.

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

7. The local authority, or any agent acting on its behalf shall retain the services of a suitably qualified and experienced bat specialist to survey the site for the presence of bat roosts, prior to commencement of development. In the event that any roosts are identified, the national parks and Wildlife Service shall be consulted regarding how best to deal with such roosts. The removal of any roosts identified shall be carried out only under licence from the National Parks and Wildlife Service.

Reason: In the interest of protecting ecology and wildlife in the area.

8. The local authority, or any agent acting on its behalf shall retain the services of a suitably qualified and experienced ecologist to survey the site for the presence of badger, prior to commencement of development. In the event that any setts are identified, the National Parks and Wildlife Service shall be consulted regarding how best to deal with such setts. The removal of any setts identified shall be carried out only under licence from the National Parks and Wildlife Service.

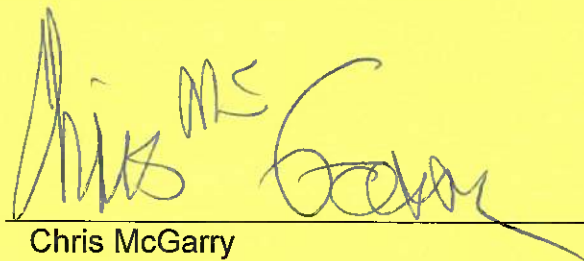
Reason: In the interests of protecting ecology and wildlife in the area.

9. The 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. In this regard the developer shall-
 - (a) employ a suitably qualified archaeologist, who shall access the site and monitor all excavation and site works, and

(b) provide suitable arrangements acceptable to the Department of Housing Local Government and Heritage for the recording and removal of any archaeological material which 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.

Board Member


Chris McGarry

Date: 08/02/2023