

**An
Bord
Pleanála**

**Board Direction
BD-012677-23
ABP-313154-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 29/06/2023.

The Board 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

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 as amended,
- (c) 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,
- (d) the conservation objectives, qualifying interests and special conservation interests for the River Shannon and River Fergus SPA (site code: 004077), and the Kilkee Reefs SAC (site code: 002264),
- (e) the policies and objectives of the Clare County Development Plan, 2023-2029,

- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development, and
- (i) 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 Kilkee Reefs SAC [European site no. 002264], and River Shannon and River Fergus SPA [European Site no. 004077], are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, 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 Kilkee Reefs SAC [European site no. 002264], River Shannon and River Fergus SPA [European Site no. 004077], in view of the site's 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 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.

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 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 and would not interfere with the existing land uses in the area. 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 set out in the Natura Impact Statement or Construction and Environment Management Plan 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 Section 5 of the Natura Impact Statement, 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. The proposed development shall not be opened for use until such time as Irish Water have confirmed in writing that the foul drainage arising will be subject to adequate treatment within the municipal wastewater treatment plant/system prior to discharge. A copy of the written confirmation from Irish Water will be 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

4. 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 as well as incorporating all control measures set out in the submitted CEMP and demonstration of proposals to adhere to best practice and protocols. The CEMP shall include:

- (a) All mitigation measures indicated in the Natura Impact Statement.
- (b) All control measures set out in the CEMP submitted with the application proposals.
- (c) Hours of construction, and lights-out times during construction.
- (d) Details of protection measures to be employed to ensure that existing mature trees and vegetation will not be removed or impacted by construction.

- (e) Specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness.

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

5. Prior to the commencement of development, details of measures to protect fisheries and water quality of the Bay and 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.

6. The County Council 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: In the interest of the proper planning and sustainable development of the area and to ensure the protection of the 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 the submitted Natura Impact Statement, Construction and Environmental Management Plan and conditions here stated. 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. Prior to commencement of development a Visitor Management Plan shall be prepared, generally in accordance with the commitments regarding same set out in the submitted Natura Impact Statement. A copy of the Visitor Management Plan will be attached to the file and retained as part of the public record. Upon opening of the facility here permitted the Visitor Management Plan will be implemented and will be subject to annual review prior to the commencement of each summer season to ensure new operators using the facility are identified and any updates to protection measures or guidance in relation to key ecological receptors are provided as necessary.

Reason: In the interests of nature conservation, protecting the environment and the proper planning and sustainable development of the area.

9. (a) A landscaping scheme generally in accordance with layout plans received shall be submitted to the file for public record. The landscaping scheme shall specify the nature and type of planting proposed and will consist of indigenous species. The planting shall be carried out in accordance with the landscaping scheme and shall be completed within the first planting season following the substantial completion of external construction works.
(b) Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species.

Reason: In the interest of visual amenity

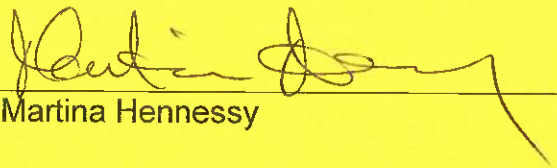
10. All lighting within the site shall be cowled to prevent overspill outside the site.

Reason: In the interests of clarity, protection of bats and visual and residential amenity.

11. 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. A suitably qualified archaeologist shall be appointed by the County Council to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on-site during construction works.

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


Martina Hennessy

Date: 30/06/2023

