

An
Bord
Pleanála

Board Direction
BD-013929-23
ABP-313738-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 28/09/2023.

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 particular regard to the policies and objectives of the following:

- (a) the requirements of the Water Framework Directive (2000/60/EC) which seeks to establish a framework for the protection and improvement of inland surface waters, transitional waters and coastal waters,
- (b) the provision of the Urban Wastewater Treatment Regulations (SI 271 of 2001), which seek to ensure that urban wastewater being discharged from a collection system shall be so chosen as to minimise the adverse effects on the receiving environment,
- (c) the standards and limits set out in Schedule 5 of the European Communities Environmental Objectives (Surface Water) Regulations 2009 (SI 272 of 2009),
- (d) the Waste Water Discharge (Authorisation) Regulations 2007 (SI 684 of 2007) in respect of authorisation by the Environmental Protection Agency of local authority waste water discharges and the separate licencing regime that exists under these regulations where appropriate,

- (e) the National Policy Objectives, including National Policy Objective 63 of the National Planning Framework 2018-2040 which seeks to ensure the efficient and sustainable use and development of water resources in a manner that supports a health society and cleaner environment,
- (f) the policies and provisions contained in the Dublin City Development Plan 2016-2022 including Policy SI 4 which seeks to promote and maintain the achievement of at least good status in all waterbodies in the city,
- (g) the policies and provisions of the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ), which includes specific policy objective SI3 'To complete, as a priority, the relocation of the Grand Canal Surface Water Outfall for the Grand Canal Dock Basin to the River Liffey',
- (h) the pattern of the existing and permitted development in the area,
- (i) the Environmental Impact Assessment Report submitted,
- (j) the Natura Impact Statement submitted,
- (k) the submissions and observations made in connection with the planning application, and
- (l) the report of the Inspector.

Appropriate Assessment – Stage 1

The Board considered the screening report for appropriate assessment, the Natura Impact Statement and all the 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 agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the only European Sites in respect of which the proposed development has the potential to have a significant effect are:

- the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024),
- the North Bull Island Special Protection Area (Site Code: 004006), and
- the North Dublin Bay Special Area of Conservation (Site Code: 000206).

Appropriate Assessment – Stage 2

The Board considered the Natura Impact Statement and associated documentation submitted with the application, 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 three European Sites, namely the South Dublin Bay and River Tolka Estuary Special Protection Area (Site Code: 004024), the North Bull Island Special Protection Area (Site Code: 004006), and the North Dublin Bay Special Area of Conservation (Site Code: 000206) 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 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 Sites, in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development taking into account of:

- The nature, scale and extent of the proposed development;
- The environmental impact assessment report and associated documentation submitted in support of the application;

- The submissions from the observers in the course of the application; and
- 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 application.

Reasoned Conclusion on Significant Effects

The Board considered, and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- The most significant effects will be the positive impact arising in the water quality of the Grand Canal Dock and Basin. This in turn will have positive impacts on the biodiversity and the recreational potential of the Basin particularly for tourism and water sports. The relocation of the outfall to the River Liffey would have no appreciable effect on pollution levels within the river or down stream of outfall due to the assimilative capacity of the river downstream of the outfall. Hydrodynamic modelling supports this conclusion reached in the EIAR. The proposed development therefore will have a positive impact in water quality in general.
- The main potential adverse negative impacts will arise from the construction phase. These potential adverse impacts relate to noise and air quality, water quality traffic and visual impact. These impacts will be short term and temporary (c.24 months and will be phased throughout the construction period) but will, to some extent, negatively impact on the amenities of the area. The proposal could also give rise to traffic diversions in the area. The

employment of various mitigation measure will reduce and, in some cases, eradicate potential adverse impacts.

- Approximately 5,500 tonnes of waste material will be required to be removed to cater for the new outfall. Some of this material will be contaminated soil which is hazardous in nature. This will have to be carefully removed and disposed of by a licenced contractor.
- In terms of archaeology and cultural heritage, the alignment of the new outfall has the potential to impact on archaeological remains of the area particularly in the Basin area and at the proposed new outfall. This will be the subject of appropriate monitoring. The proposal will also have direct and permanent impacts with the removal of small sections of quay walls at Sir John Rogerson's Quay and Hanover Quay.
- Cumulative impacts, in terms of other on-going and anticipated developments in the area considered and assessed in EIAR, and these impacts are assessed to be minimal.

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

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the provisions of the Water Framework Directive, National Planning Framework 2018-2040, Dublin City Development Plan 2016-2022 and the North Lotts and Grand Canal Dock Strategic Development Zone (SDZ) Planning Scheme 2013. It would

- make a positive contribution to Ireland's national strategic policy in improving the status of water quality for surface waters,
- not seriously injure the residential or visual amenities of the area,
- not adversely affect the natural heritage to any significant extent,

- not adversely impact the road network in the area, and
- be acceptable in terms of traffic safety.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board noted that the development would involve the removal of a small section of Sir John Rogerson's quay (RPS 7542) and the removal of a section of quay wall on Hanover quay (RPS 8847) as well as works in Grand Canal Docks L-basin (RPS 8844). In this regard, the Board was satisfied where sections of the protected structures would be removed, exceptional circumstances apply having regard in particular to the need for the project proposal and the benefits that it would bring in improving water quality and improving the recreational uses of the Grand Canal Basin by relocating the outfall from its current position to a point on Sir John Rogerson's Quay. The Board therefore considered it was appropriate to grant approval, having regard to S57(10)(b) of the Planning and Development Act, 2000, as amended.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application for approval, 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 interest of clarity.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report 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 proposed development.

3. The mitigation measures contained in the Natura Impact Statement submitted with the approval application shall be implemented in full.

Reason: In the interest of clarity and to ensure the protection of European Sites in the vicinity.

4. Construction works will be undertaken in accordance with best practice and relevant guidance in relation to all matters as set out in the Construction and Environmental Management Plan (CEMP) received by An Bord Pleanála with the application on 28th November 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 and environmental management measures. 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. An Invasive Species Management Plan shall be incorporated into the finalised Construction Environmental Management Plan and shall include measures to prevent the dispersal of Zebra Mussel and Nuttall's Waterweed within the Grand Canal Basin.

Reason: In order to restrict the spread of alien species.

6. Prior to the commencement of development, the area in the vicinity of Sir John Rogerson's Quay, shall be surveyed for the presence of Black Guillemot nesting sites. In the event that nesting sites are present, appropriate measures shall be put in place to avoid any destruction or disturbance of the nesting sites.

Reason: In the interest of protecting biodiversity.

7. The applicant shall liaise with the National Parks and Wildlife Service and Waterways Ireland to ensure that the works to be undertaken facilitates the implementation Grand Canal Basin Otter Survey and Otter Conservation Management Plan. Prepared by Triturus Environmental Ltd. For Waterways Ireland (June 2022).

Reason: In the Interests of protecting biodiversity.

8. The services of a suitably qualified and suitably experienced underwater archaeologist shall be engaged to carry out archaeological monitoring of the works programme. Details of the method statement shall accompany any licence application to the Department of Housing Local Government and Heritage. Should potential archaeology be identified during the works then construction works shall be suspended in the affected location and the Department be notified. Following the completion of the works reports detailing the outcome of the monitoring shall be forwarded to the Department as per the conditions of archaeological licences.

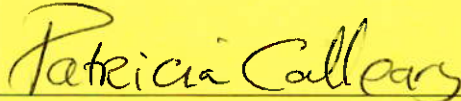
Reason: To protect the cultural heritage of the area.

Note:

The Board noted the footnote in the inspectors report (Page 83) outlining that the works would be included in the licence review associated with the overall Ringsend agglomeration (Licence D0034-01) and as such would be the subject of licencing requirements under the Waste water Discharge (Authorisation) Regulations 2007. The Board shared the view of the inspector, as also set out in the footnote, that conditions for the purposes of controlling the wastewater discharges from the relocated outfall should not be included in any decision to approve issued by the Board. Furthermore, in arriving at its decision, the Board noted the provisions of Article 44 of the said regulations which include that, where the Board consider that

the proposed development is likely to have a significant impact on wastewater discharges, the Board may request observations from the Environmental Protection Agency. Having regard to the information on file, including the EIAR and related documentation and to the inspector's assessment and the Boards own assessment, the Board was satisfied that the proposed development would not be likely to give rise to a significant impact on waste water discharges and therefore the Board decided not to exercise its discretion to request observations from the Environmental Protection Agency in this instance.

Board Member


Patricia Calleary

Date: 28/09/2023

