



An
Bord
Pleanála

Board Direction
BD-016308-24
ABP-317082-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/05/2024.

The Board decided to **APPROVE** the proposed development based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) the Project Ireland 2024: National Planning Framework,
- (b) the National Development Plan 2021-2030,
- (c) the Climate Action Plan 2023 and 2024,
- (d) the Regional Spatial and Economic Strategy for the Southern Region 2020-2032,
- (e) the policies of the planning authority as set out in the Kilkenny City and County Development Plan 2021 to 2027,
- (f) the distance to dwellings or other sensitive receptors,
- (g) the submissions made in connection with the application,
- (h) 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 European Sites,

- (i) the Appropriate Assessment report of the Inspector, and,
- (j) the report and recommendation of the Inspector.

Appropriate Assessment Stage 1

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the following European Sites are the only Sites for which there is a possibility of significant effects and must therefore be subject to appropriate assessment: River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and River Nore Special Protection Area (Site Code: 004233).

Appropriate Assessment Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed flood relief development for European Sites in view of the Sites' conservation objectives, namely the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and River Nore Special Protection Area (Site Code: 004233).

The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the Sites' conservation objectives using the best available scientific knowledge in the field.

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

- (a) the site-specific conservation objectives for these European Sites,
- (b) the current conservation status, threats and pressures of the qualifying interest features,
- (c) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and,
- (d) the mitigation measures which are included as part of the current proposal.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the implications 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 would not adversely affect the integrity of any European Sites in view of the Sites' conservation objectives and there is no reasonable scientific 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 on a site,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions received from the prescribed bodies, 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 application. 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:

- The risk of pollution of ground and surface waters during the construction phase which would be mitigated by the implementation of measures set out in the Environmental Impact Assessment Report and the final Construction and

Environment Management Plan (CEMP) which include specific provisions relating to groundwater, surface water and drainage.

- Positive environmental impacts would arise during the operational phase from the installation of robust flood relief works.
- Noise, vibration and dust during the construction phase would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report and the final Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control of noise, vibration and dust.
- The increase in vehicle movements and resulting traffic during the construction phase would be mitigated by the preparation of a Construction Traffic Management Plan.
- The impacts on residential amenity during the construction phase would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report and the final Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and management of dust, vibration, noise, water quality and traffic movement.
- Biodiversity impacts, including on habitats, flora and fauna (including terrestrial and aquatic wildlife), would be mitigated by the implementation of specific mitigation to protect such habitats, flora and fauna (including pre-construction surveys, timing and seasonality of works, drainage and runoff management, the management of artificial lighting, buffers and the appointment of a project ecologist), during the construction and operational phases.
- Landscape and visual impacts would arise during the operational phase from the insertion of the flood defence walls into the urban and riparian landscape, however, the scale, design and linear layout of the project would assist in assimilating the works into the landscape.
- The impact on cultural heritage would be mitigated by terrestrial and underwater archaeological pre-testing and monitoring with provision made for

resolution of any archaeological features or deposits that may be identified (including burial grounds).

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, 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.

Proper Planning and Sustainable Development

It is considered that subject to compliance with the conditions set out below the proposed development would accord with European, national, regional and local planning and environmental policy, it would not have an unacceptable impact on the landscape or ecology, it would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and it would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The local authority shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report, the Natura Impact Statement and associated documentation are implemented in full, save as may be required by the conditions set out below.

Reason: In the interest of the protection of the environment.

2. The following nature conservation requirements shall be complied with:

- (a) the services of a suitably qualified and experienced Ecologist shall be retained to undertake pre-construction surveys at the various project elements immediately prior to commencing work in order to check for the presence of protected species in the vicinity (including otter, bats and kingfisher),
- (b) Derogation Licences shall be obtained for the removal of any bat roosts or otter holts,
- (c) in-stream works shall be carried out in accordance with the requirements of Inland Fisheries Ireland,
- (d) vegetation clearance should not take place during the bird nesting season and a 500 metre buffer shall be provided around any kingfisher nests, and,
- (e) appropriate noise and vibration mitigation should be undertaken to reduce any impacts on aquatic species (including soft start and ramping up of machinery).

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

- 3. The landscaping proposals shall be carried out within the first planting season following commencement of construction of the proposed development. The landscaping and screening shall be maintained at regular intervals. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those original required to be planted.

Reason: In the interest of visual amenity.

- 4. 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 prohibit the spread of invasive species

5. The construction of the proposed development shall be managed in accordance with a Construction and Environmental Management Plan (CEMP), which shall be finalised prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise, vibration, dust and odour monitoring and management measures, traffic management, protection of wayleaves, an invasive species management plan and off-site disposal of construction, demolition and post examination river dredge waste.

Reason: In the interests of public safety and residential amenity.

6. The preservation, recording and protection of archaeological materials or features that may exist within the site shall be facilitated, and all excavated material from the riverbed shall be spread at the work compound (or other suitable location) and metal detected to assess the artefact bearing potential. In this regard, suitably qualified archaeologists (terrestrial and underwater) shall be retained to monitor all site investigations and other excavation works and provide arrangements for the recording and for the removal of any archaeological material considered appropriate to remove. The mitigation measures contained in the Environmental Impact Assessment Report in relation to underwater and terrestrial archaeology shall be fully implemented. Underwater archaeological pre-testing including a licenced wade assessment, accompanied by a hand-held metal detection survey shall also be carried out by a licenced and experienced underwater archaeologist, following consultations with the National Monuments Service. The survey shall be followed by targeted in-river pre-development archaeologist test-excavations within specific areas of the proposed development area with archaeological heritage potential and thereafter the mitigation strategy for preservation of preservation of archaeological materials/objects shall be outlined and implemented.

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

Patricia Calleary.
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Date: 15/05/2024