



An
Bord
Pleanála

Board Direction
BD-016949-24
ABP-317109-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 09/07/2024.

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 2011-2015,
- (c) the Climate Action Plan 2024 (Government of Ireland),
- (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 Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233),
- (f) the policies and objectives of the Kilkenny City and County Development Plan, 2021-2027,

- (g) the nature and extent of the proposed works as set out in the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 6th day of April 2023,
- (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, and
- (j) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment: Stage 1

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment: Stage 2

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 relevant European Sites, namely the River Barrow and River Nore SAC (Site Code 002162) and River Nore SPA (Site Code 004233), in view of the sites' 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

It is considered that 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 or significantly affect biodiversity in the area, would not be detrimental to the visual or landscape amenities of the area, would not result in adverse traffic impact, would not adversely impact on the archaeological heritage of the area, and would not interfere with the existing land uses in the area. Having regard to the provisions of the Kilkenny City & County Development Plan 2021-2027 and to the documents prepared for the future redevelopment of the area of which the site forms part, including the Urban Design Framework Masterplan for Abbey Creative Quarter (2015) and Abbey Quarter Urban Design Code (2018) and to the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed mix-use development would be in accordance with the General Business zoning for the site, that the proposed retail and office use would be in accordance with the Abbey Quarter Masterplan and Urban Design Code, that the non-provision of parking for the proposed development is acceptable, would contribute to reducing the demand for travel and the reliance on the private car and would therefore accord with one of the strategic aims of the Development Plan. 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, as amended by the further plans and particulars received by the planning authority on the 6th day of April 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. All mitigation measures contained in the Stage 2: Appropriate Assessment – Natura Impact Statement submitted by the applicant shall be carried out.

Reason: In the interest of the protection of the River Barrow and River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233).

3. (a) Prior to the commencement of development the developer shall submit revised proposals for written agreement of the planning authority for the south

terminus saw-tooth to be re-orientated to match the others and unite the roof-top profile.

(b) Details of the materials, colours and textures of all the external finishes to the proposed building shall be submitted to and agreed in writing with, the planning authority prior to commencement of development.

(c) Details of signage for the building, including illumination, shall be submitted to and agreed upon in writing with the planning authority prior to the commencement of development. Internal illumination of the signage is not permitted.

Reason: In the interest of visual amenity.

4. *Please insert the standard Construction and Environmental Management condition.*

5 Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of environmental and public health.

6 Prior to commencement of development, the developer shall enter into water and/or wastewater connection agreement(s) with Uisce Eireann.

Reason: In the interest of public health.

7 (a) The applicant shall engage the services of a suitably qualified Archaeologist to carry out a programme of additional Archaeological Monitoring of site investigation works and the removal of the concrete ground slab.

(b) A detailed archaeological mitigation strategy shall be drafted at this point, for the approval by the National Monuments Service that seeks to include more

expansive archaeological testing/excavation across the proposed development site. It shall include consideration of the results of previous testing undertaken, which clearly indicates the potential of the site to retain archaeology, including structures, deposits and archaeological objects.

c) All archaeological mitigation shall be undertaken under licence issued by the National Monuments Service and under Ministerial Consent, where applicable (under the National Monuments Acts 1930-2014) and in accordance with an agreed and approved method statement. (Note: a period of 4-5 weeks should be allowed to facilitate processing and approval of the licence and/or consent application method statement.)

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.

8. The proposed mitigation measures in relation to the protection of bats shall be implemented in full as part of the development.

Reason: In the interest of wildlife protection.

- 9 The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to

An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Note:

In relation to the roof design, the Board shared the view of the Planning Authority that the roofscape of Kilkenny City makes a significant contribution to its character and that, having regard to the photomontages submitted, the proposed south terminus saw tooth is read as an anomaly, at odds with other elements in the skyline. The Board, therefore, disagreed with the Inspector regarding this element of the proposed development and considered it appropriate to attach a condition requiring the reorientation of saw-tooth roof element on the southern terminus.

Board Member


Martina Hennessy

Date: 09/07/2024