

An
Bord
Pleanála

Board Direction
BD-016140-24
ABP-318285-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/04/2024.

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 EU Habitats Directive (92/43/EEC),
- (b) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (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 Nore Special Protection Area (Site Code: 004233) and River Barrow and River Nore Special Area of Conservation (Site Code: 002162),
- (e) the policies and objectives of the Kilkenny City and County Development Plan 2021-2027,

- (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: Stage 1

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Nore Special Protection Area (Site Code: 004233) and River Barrow and River Nore Special Area of Conservation (Site Code: 002162), 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 affected European Sites, namely the River Nore Special Protection Area (Site Code: 004233) and River Barrow and River Nore Special Area of Conservation (Site Code: 002162), 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 Sites' conservation objectives.

Proper Planning and Sustainable Development and 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 proposed 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.
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 table 4.1 of the Appropriate Assessment Report and 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. Prior to the commencement of the 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 and demonstration of proposals to adhere to best practice and protocols. The CEMP shall also include:
 - (a) measures to monitor vibration and movement to the protected structures at 18-19 Green Street as it is situated adjacent to the proposed boardwalk. If vibration exceeds agreed limits or cracks or settlement is detected, works should be suspended pending expert advice on how best to proceed, and,

- (b) 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.

4. Prior to the commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. Works shall comply with 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. The following specific requirements of Inland Fisheries Ireland to be complied with:

- (a) no interference with the bed, gradient, profile or alignment of watercourses without consultation with Inland Fisheries Ireland,
- (b) instream works to be done in dry weather conditions. Instream or bankside works should take place during 1st day of July to the 30th day of September,
- (c) a method statement for the riparian / instream works to be prepared in consultation with Inland Fisheries Ireland and placed on file,
- (d) during the construction phase, buffer zones should be applied and silt curtains should be in place prior to commencement of works,
- (e) a net or similar barrier to be placed below any assembly of prefabricated boardwalk deck boards if taking place above the existing bank level, to prevent cuttings or shavings entering the river,
- (f) routes of roads, tracks and turning areas should be planned to minimise the potential for environmental disturbance, and,
- (g) records of water monitoring to be kept for inspection.

Reason: In the interests of the protecting of receiving water quality, fisheries and aquatic habitats.

5. The local authority 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.

6. 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 Table 4-1 of the Ecological Impact Assessment Report. 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 interests of nature conservation and the protection of terrestrial and aquatic biodiversity.

7. A report describing measures for compensatory planting of new trees in Bishops Meadows, to an equivalent amount of woodland and scrub habitat to be lost as part of the works, shall be prepared, placed on file, and retained as part of the public record.

Reason: In the interests of protecting ecology and the environment.

8. The local authority 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 local authority to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on-site during construction works. An Archaeological Impact Assessment, to include

pre-development archaeological testing, shall be carried out in advance of construction works. A report containing results should be submitted to the National Monuments Service and kept on file.

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.

9. The local authority and any agent acting on its behalf shall liaise with Uisce Éireann regarding existing water services infrastructure in the vicinity of the proposal prior to and during construction to ensure that the integrity of Uisce Éireann's infrastructure shall be protected both during and after the completion of the works. Works to be in accordance with the Uisce Éireann Codes of Practice and Standard Details insofar as they may interact with Uisce Éireann infrastructure or assets.

Reason: To ensure protection of water and wastewater facilities


10. Within three months of the date of this Order, an Access Statement for the proposed development shall be prepared, placed on file, and retained as part of the public record. The statement shall align with that prepared for the Abbey Quarter (former Smithwicks Brewery site) in the Townlands of Gardens, Kilkenny City (An Bord Pleanála reference ABP-307796-20 under condition 6). The statement shall describe measures that will assist in the navigation and movement along the proposed pathway/link for visually impaired users, including use of materials to assist safety, such as audible indication of cyclists/scooters, and slip resistance. Assisting wayfinding through tapping rails or similar, consideration of the installation of tactile and navigational tiles as well as sensory interpretation of the view at the viewing platform and continuation of the 'braille trail' provided in the Abbey Quarter. Avoidance of free-standing signs at head height and a lighting strategy to be informed by the Abbey Quarter.

Reason: To provide for universal access and in the interest of pedestrian safety.

11. Comprehensive details of the proposed public lighting system to serve the proposed development shall be prepared, placed on file, and retained as part of the public record, and prior to commencement of development/installation of the lighting. Lighting shall be 'bat sensitive' and incorporate Dark Skies Association rated downlighters with directional hoods to minimise light spillage. Placement of lighting should be sensitive to the amenity of adjacent residents.

Reason: In the interests of ecology, public safety and visual amenity.

Board Member



Patricia Calleary.

Date: 24/04/2024