An Bord Pleanála

Board Direction
BD-017039-24
ABP-318652-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 18/07/2024.

The Board decided to refuse permission, generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

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

(a) the relevant provisions of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended;

(b) the relevant provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU (EIA Directive);

(c) the relevant provisions of Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives), Wildlife Acts 1976, as amended and the European Communities (Birds and Natural Habitats) Regulations 2011, as amended;

(d) national, regional and local policies and objectives of relevance;

(e) the nature, extent and scale of the proposed works as set out in the application for approval;

(f) the information submitted including the Approval Drawings, Environmental Impact Assessment Screening Report, Natura Impact Statement and associated documentation, and the range of mitigation measures set out;

(g) the likely effects and 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;

(h) the submissions received from the local authority, prescribed bodies and public submission in the course of the application, and

(i) the report of the Inspectorate Ecologist

(j) the report and recommendation of the Inspector.

Appropriate Assessment

The Board agreed with and adopted the screening assessment and conclusion carried out in the inspector's report and that the Mid-Waterford Coast SPA (004193) is the only European site for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement (NIS) and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the Mid-Waterford Coast SPA (004193) in view of the Site's Conservation Objectives.

Having considered the submissions of the DAU, the public and the Inspectorate Ecologist, the Board is not satisfied that the information submitted in the NIS is adequate, with the result that it does not allow the Board to carry out Appropriate Assessment of all aspects of the proposed development and is therefore not sufficient to enable the Board to reach complete precise and definitive findings as to the implications for the identified European Site. Reasonable scientific doubt exists as to the absence of adverse effects in view of conservation objectives of the protected site. There are inadequacies in terms of assessments of Special Conservation Interest (SCI) features of Peregrine Falcon in particular. In addition, the proposal would be likely to result in a significant decrease in the range, timing and intensity of use of areas by individual bird species most notably the Chough.

This conclusion is based on-

- Inadequate assessment of impacts on breeding and foraging Chough population in the Mid-Waterford Coast SPA.
- Inadequacies in terms of assessments of Special Conservation Interest (SCI) features of Peregrine Falcon.
- Underestimation of adverse effects and how they would undermine the conservation objectives of the site.
- Inadequate mitigation measures lacking specificity, reliance on post consent monitoring to identify negative effects and a proposal for seeking post consent agreement of approach between third parties, with no evidence provided to support any such proposal.
- Reasonable scientific doubt as to the absence of adverse effects in view of conservation objectives of the site and that the proposal would result in a significant decrease in the range, timing and intensity of use of areas by individual species.

Accordingly, the Board cannot be satisfied that the proposal would not adversely affect the integrity of the Mid-Waterford Coast SPA (004193) in view of the site's Conservation Objectives. Therefore, the Board is precluded from granting approval for this development.

EIA Directive

The Board agreed with and adopted the Inspectors finding that the development of a series of walkways as proposed is not a class of development under the classes listed in Schedule 5 of the Planning & Development Regulations 2001 (as amended) and therefore neither a Preliminary Examination nor EIA screening is required.

Proper Planning and Sustainable Development

Notwithstanding considerations relating to Appropriate Assessment and designated European Sites, it is considered that the principle of the proposed development is otherwise consistent with National, Regional and Local policies and objectives.

Board Member _____ **Date:** 18/07/2024

Martina Hennessy