



Planning and Development Acts 2000 to 2018

Planning Authority: Laois County Council

Planning Register Reference Number: 17/37

Appeal by Save the Barrow Line care of Olivia O’Leary of Tinnaslee, Saint Mullins Road, Tinnehinch, County Carlow, by Waterways Ireland care of McCarthy Keville O’Sullivan of Block 1, G.F.S.C., Moneenageisha Road, Galway and by Others against the decision made on the 21st day of February, 2018 by Laois County Council in relation to an application by Waterways Ireland Limited for permission for development of a multi-use shared leisure route (Blueway), approximately 115 kilometres (KM) in length, on the existing navigation towpath, which is a National Waymarked Way. This will include tailored surface finishes, information, directional, and safety signage, and all other associated ancillary works. The route commences in Lowtown, County Kildare, passes through County Laois and finishes in Saint Mullins, County Carlow. Approximately 16 kilometres of the route is in County Laois, 47 kilometres in County Kildare and 52 kilometres in County Carlow. The proposal will involve works to or within the curtilage of the following protected structures; Fisherstown Bridge (RPS 562), Courtwood Bridge (RPS 834), Grattan Aqueduct (RPS 593), Vicarstown Canal Warehouse 1 (RPS 606), Vicarstown Canal Warehouse 2 (RPS 607), Vicarstown Canal Warehouse 3 (RPS 608), Vicarstown Bridge (RPS 594), Camac Aqueduct (RPS 603), Ballymanus Bridge (RPS 838) and Maganey Bridge (Laois RPS 486), all located at The Barrow Navigation (Grand Canal - Barrow Line) and (River Barrow) through the townlands of Killinure, Ballintogher, Killaghlish,

Jamestown or Ballyteigeduff, Kilbrackan, Fisherstown, Courtwood, Rosnamullane, Vicarstown (Dodd), Vicarstown (Cosby), Derrybrock, Ballymanus, Bawn, Crossneen, Ballyhide and Clogrenan, County Laois.

The proposed development was revised by further public notices received by the planning authority on the 20th day of December, 2017.

The significant further information included:

- (a) Local road (L39321-0): New path included adjacent to the local road for shared use:
- (b) Local road (L39321-0) to M7 Road Bridge: New car parking area included:
- (c) Vicarstown: New footpath along R427 on approach to crossing point:
- (d) Minor revisions to site boundary to take account of the improved mapping from the topographical survey:
- (e) Revisions/additions to the environmental impact statement and the Natura impact statement to take account of the above and the further information requests.

all in accordance with the plans and particulars lodged with the said Council (which decision was to grant, subject to conditions, permission for the proposed multi-use shared leisure route (Blueway), on the existing navigation towpath, which is a National Waymarked Way which commences at Killinure and terminates at Bawn and to refuse permission for the proposed multi-use shared leisure route (Blueway), on the existing navigation towpath, which is a National Waymarked Way through the townlands on Crossneen, Ballyhide, Clogrenan, County Laois to the county boundary with Carlow).

Decision

GRANT permission for the section of the route within County Laois between Chainage 25,310 metres (Killinure to the south east of Monasterevin as indicated on drawing number T01/EBN/AA309/P/L09) and Chainage 38,265 metres (Bawn to the south of Vicarstown) as indicated on drawing number T01/EBN/AA309/P/L18) in accordance with the said plans and particulars based on the reasons and considerations marked (1) under and subject to the conditions set out below.

REFUSE permission for the section of the route within County Laois between Chainage 66,130 metres (Crossneen to the south of Carlow Town as indicated on drawing number T01/EBN/AA309/P/L19) and Chainage 69,180 metres (Mortarstown Lower as indicated on drawing number T01/EBN/AA309/P/L21) based on the reasons and considerations marked (2) under.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations (1)

Having regard to:

- (a) the nature and extent of the proposed development and the existence of a National Waymarked Trail, The Barrow Way, along the alignment of the route,
- (b) the provisions of the Project Ireland 2040 National Planning Framework which promotes the development of an integrated network of Blueway's, the promotion of a sustainable form of travel and activity based tourism and the diversification of rural and regional economies, and particularly the provisions of National Policy Objective 22 which seeks to facilitate tourism development and in particular national greenways, blueway's and peatway's strategy, and the development of an integrated network of such routes,
- (c) National policies aimed at promoting walking, cycling and physical activity, including the National Cycle Policy Framework, 2009-2020, the Get Ireland Walking Strategy and Action Plan, 2017-2020, and Get Ireland Active, 2016.
- (d) the provisions of the Regional Planning Guidelines for the Midland Region Area, 2010-2022 and specifically Objectives TIP4, TIP5, TP4 and TP5 which development of walking and cycling facilities and routes and the upgrading and development of the amenity potential of inland waterways,
- (e) the provisions of the Laois County Development Plan, 2017-2023, which support the principle of the development of the Barrow Blueway as a walking and cycling resource, including specifically Policies RA06, TM8, TM22, TM23, TM25 and Objective 13.
- (f) the potential economic benefits arising from the proposed development,

- (g) the proposals for improved car parking, route access and signage along the existing Barrow Way,
- (h) the nature, design and layout of the proposed development which involves a limited amount of intervention in the existing environment and the use of an unbound surface over the majority of this section of the route that is appropriate to a rural area and not such as to have a high landscape impact,
- (i) the existing landscape and visual character of this section of the route of the proposed development which is not such as to have a high landscape sensitivity,
- (j) the provisions of the environmental impact statement and Natura impact statement submitted,
- (k) the submissions on file, and
- (l) the report of the Planning Inspector,

it is considered that, subject to compliance with conditions set out below, the proposed development

- (i) would not seriously injure the visual amenities or character of the area or have a significant negative impact on residential amenity,
- (ii) would not result in significant impacts on water quality, hydrology or flooding,
- (iii) would not have a negative impact on ecology or have an adverse effect on the integrity of any European site,
- (iv) would not be prejudicial to public health, and

(v) would be generally acceptable in terms of pedestrian and traffic safety.

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

Appropriate Assessment: Stage 1 Screening

The Board completed a Stage 1 Screening for Appropriate Assessment in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, the Appropriate Assessment Screening Report submitted with the application and the Inspector's report and submissions on file. In completing the Stage 1 Screening for Appropriate Assessment, the Board, accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites Conservation Objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Moulds Bog Special Area of Conservation (Site Code:002331), the Pollardstown Fen Special Area of Conservation (Site Code:000396) the Blackstairs Mountains Special Area of Conservation (Site Code:000770) and the River Nore Special Protection Area (Site Code:004233) in view of the site's Conservation Objectives. However, the Board agreed with the screening assessment and conclusion contained in the Inspectors report that the River Barrow and River Nore Special Area of Conservation (Site Code:002162), is a European site for which there is a likelihood of significant effects.

Appropriate Assessment: Stage 2

The Board considered the submitted Natura impact statement (NIS) and the revised NIS and all other relevant submissions, and carried out an Appropriate Assessment (AA) of the implications of the proposed development for European Sites in view of the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code:002162). The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment for the section of the route within County Laois between Chainage 25,310 metres (Killinure to the south east of Monasterevin as indicated on drawing number T01/EBN/AA309/P/L09) and Chainage 38,265 metres (Bawn to the south of Vicarstown) as indicated on drawing number T01/EBN/AA309/P/L18), the Board considered, in particular,

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the location of this section of the proposed route which is located such that the majority of it is wholly or partially within the boundary of the River Barrow and River Nore Special Area of Conservation (Site Code:002162),
 - i) the mitigation measures, during the construction and operational phase, which are included as part of the current proposal, and,
 - ii) the conservation objectives of the European Sites.

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspectors report in respect of the potential

effects of the proposed development on the aforementioned European Site, 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 the River Barrow and River Nore Special Area of Conservation (Site Code:002162) or any other site in view of the sites' Conservation Objectives between Chainage 25,310 metres and Chainage 38,265 metres.

However, the Board is not satisfied, beyond reasonable scientific doubt, that the section of the proposed development within County Laois between Chainage 66,130 metres (Crossneen to the south of Carlow Town as indicated on drawing number T01/EBN/AA309/P/L19) and Chainage 69,180 metres (Mortarstown Lower as indicated on drawing number T01/EBN/AA309/P/L21) individually, or in combination with other plans and projects would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code:002162) in view of the sites' conservation objectives. Therefore, the Board is precluded from granting permission for this section of the proposed development.

Environmental Impact Assessment

The Board considered that, as the scoping process for the environmental assessment and the date of the submission of the original environmental impact statement (EIS) submitted with the application predate the coming into effect of EIA Directive 2014/52/EU on the 16th day of May, 2017, the application was accompanied by an EIS in compliance with the provisions of the 2011 EIA Directive (Directive 2011/92/EU) and not an Environmental Impact Assessment Report. As the process relating to the consideration of the applications had commenced prior to the coming into effect of the 2014 Directive on the 16th day of May, 2017 and having regard to the content of Circular Letter 1/2017 regarding the implementation of the 2014 Directive by Planning Authorities and An Bord Pleanála, it is considered that the provisions

of the 2011 Directive remain applicable in the assessment of the content and scope of the submitted revised EIS.

The Board considered the EIS submitted with the application, the submissions on file and the Inspector's assessment of the environmental impacts, which it noted. The Board considered that this documentation identified and described adequately the direct, indirect, secondary and cumulative effects of the development on the environment. The Board adopted the Inspectors report and concurred with its conclusions, and accordingly completed an Environmental Impact Assessment of the development. The Board concluded that the effects on the environment of the proposed development would be acceptable by itself and cumulatively with other development in the vicinity, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out below.

However, the Board did not agree with the conclusions of the EIS in respect of the River Barrow section of the proposed route as outlined in Reasons and Considerations (2) below.

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 submitted on the 13th day of December 2017, 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. (a) The mitigation measures identified in the environmental impact statement (EIS) and Natura impact statement and Construction and Environmental Management Plan submitted to the planning authority on the 13th day of December, 2017 shall be complied with in full by the developer, except where conditions hereunder specify otherwise.
- (b) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a schedule of environmental commitments setting out all mitigation measures as contained in the environmental impact statement (EIS) and Natura impact statement (NIS) and Outline Construction and Environmental Management Plan.

Reason: In the interests of clarity and to ensure the satisfactory mitigation of potential environmental impacts.

3. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of

archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

4. All works impacting on any protected structure along the route shall be supervised by a suitably qualified Conservation architect.

Reason: In order to protect the architectural heritage of protected structures along the route.

5. Works in the vicinity of watercourses shall comply with the requirements of 'Guidelines on Protection of Fisheries During Construction Works in and Adjacent to Waters', Inland Fisheries Ireland, 2016.

Reason: To ensure the protection of fish habitat during construction.

6. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority the following:

- (a) A detailed design for all new and existing controlled and uncontrolled crossing points (as identified at paragraph 11.1.4 of the revised environmental impact statement received by the planning authority on the 13th day of December, 2017) and traffic signals on public roads. Such detailed design shall include, but not be limited to details of shared pedestrian and cycle paths and new and amended footways; raised crossing points; traffic calming measures; guard rails and barriers; road markings; signage; materials; kerbing; tactile paving; anti-skid surfacing; lighting and traffic signals. The cost of the design, supervision, implementation, and site supervision of these works shall be borne solely by the developer.
- (b) Proposals for the ongoing maintenance and financing of maintenance works on the public road, the costs of which shall be shared between the developer and the planning authority.

- (c) Details of the location and design of proposed passing bays along the route of the Blueway.
- (d) Pre and post construction road condition surveys shall be undertaken of all areas in the vicinity of construction site accesses. The scope of such surveys shall be agreed in advance with the planning authority and the costs of any repairs or reinstatement works identified as being required shall be borne by the developer.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In the interests of pedestrian, cycle and traffic safety.

- 7. Drainage works at all surface car parks as identified at paragraph 11.1.6 of the revised environmental impact statement received by the planning authority on the 13th day of December, 2017 shall be submitted and agreed in writing with the planning authority prior to commencement of development.

Reason: In the interests of traffic safety, public health and protection of ground and surface waters.

- 8. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details of the following relating to development in the vicinity of the L39321-0/M7 crossing:

- (a) Detailed design for the proposed works in the vicinity of the wooden accommodation bridge adjacent to local road L39321-0.
- (b) The location of the parking area at Killaghlis.

Reason: In the interests of pedestrian, cyclist and traffic safety.

9. (a) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a Stage 2 Road Safety Audit, undertaken by an independent, approved and certified auditor, on the public roads directly affected by the proposed development. The recommendations of the audit shall be incorporated into the design and shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) On completion of the development, and in advance of the taking in charge of all public roads infrastructure, the developer shall complete a Stage 3 Road Safety Audit to be carried out by an independent approved and certified auditor. Any recommendations contained in the safety audit and agreed actions shall be subject to the consent of the planning authority.

Reason: In the interests of pedestrian, cyclist and vehicular safety.

10. (a) Prior to commencement of development, the developer shall submit a Stage 2 Road Safety Audit, undertaken by an independent, approved and certified auditor on the parts of the development located on lands within the control of Waterways Ireland. The recommendations of the audit shall be considered by Waterways

Ireland for incorporation into the design and decisions made on this issue documented and recorded and made available for inspection by the planning authority on request.

- (b) Upon completion of the development, the developer shall complete a Stage 3 Road Safety Audit undertaken by an independent, approved and certified author on the parts of the development located on lands that are within the control of Waterways Ireland. The recommendations of the audit shall be considered by Waterways Ireland for incorporation into the design and decisions made on this issue documented and recorded and made available for inspection by the planning authority on request.

Reason: In the interests of pedestrian, cyclist and vehicular safety.

11. A dedicated resident engineer shall be appointed and funded by the developer to supervise all proposed road works and to liaise with the local authority, adjacent land owners and all other relevant stakeholders.

Reason: In the interest of pedestrian, cyclist and vehicular safety.

12. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, traffic management, phasing and programming of works, hours of working, noise management measures,

details of construction compounds including hording/fencing, measures to ensure the protection of the public road in the vicinity of construction compounds and off-site disposal of construction/demolition waste.

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

13. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority proposals for the monitoring of noise and dust in the vicinity of the works area for the written agreement of the planning authority. Details to be submitted shall include proposals for monitoring locations, methodology for measurement and reporting of results to the planning authority.

Reason: In the interests of amenity, protection of the rural environment and minimising the impact of construction on ecology.

14. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details of a maintenance schedule for the Blueway. This schedule shall include details of the proposed ongoing measures for the maintenance of the unbound surface, signage and verges and shall provide for proposals for the review of the maintenance schedule based on experience of the operation of the route.

Reason: In the interest of pedestrian and cyclist safety and the protection of ecology and habitats.

15. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a finalised Invasive Species Management Plan. This plan shall include updated details of invasive species surveys, the location of such species, and the proposed method of managing these species during the construction and operational phase of the development.

Reason: To ensure that the spread of invasive species is minimised.

16. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details of the following:
 - (a) A planting plan for the re-vegetation of exposed or bare verges and grassed area in the vicinity of the proposed path.
 - (b) Proposals for the identification and agreement of areas where there are exposed tree roots or roots are encountered within the area to be excavated and a detailed methodology for construction in these locations. Such a methodology should include a requirement for hand rather than mechanical excavation in such instance.

Reason: In the interests of visual amenity, the protection of existing trees adjoining the route and minimisation of the ecological impacts of the development.

17. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority proposals for the ongoing monitoring and operation of parking and facilities along the route for the written agreement of the planning authority. By the end of the first October following completion of the proposed works, and again at the end of October after the second summer of operation of the Blueway the developer shall submit an updated parking and trailhead facilities report to the planning authority. This report shall include the following:
 - (a) The results of parking surveys and trail user questionnaires,
 - (b) A record of observations and complaints in relation to nuisance parking,

- (c) Identification of measures to address any issues of nuisance parking arising,
- (d) Identification of proposed improvements to trail head facilities and timeline for implementation,
- (e) Identification of locations requiring additional parking and potential areas to meet identified need and timescale for implementation of proposals,
- (f) Updates on ongoing development of new parking / trailhead facilities.

Reason: In the interests of proper planning and sustainable development and pedestrian, cycle and vehicular safety.

Reasons and Considerations (2)

1. Article 6(3) of the EU Habitats Directive 92/43/EEC requires that the competent authority shall only agree to a plan or project if it determines that it would not adversely affect the integrity of any European site having regard to the conservation objectives of the site. Having regard to the information submitted by the parties in this case, including the

revised environmental impact statement and Natura impact statement, the submissions received from third parties and the applicants response to the appeals, the Board is not satisfied that the applicant has satisfactorily demonstrated that the proposed development incorporating the use of an unbound surface of compacted stone and dust (Surface Type A) within an identified flood zone along the River Barrow would not significantly impact on the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162). The Board is also not satisfied that the proposed development would not impact negatively on otter, an Annex I species under the Habitats Directive and a qualifying interest of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) by virtue of the uncertainty regarding the location of otter holts, the potential loss of holts and the proposed removal of any holts encountered during the development. In view of this, and in accordance with the requirements of Article 6(3) of the Habitats Directive, the Board is not satisfied, beyond reasonable scientific doubt, that the proposed development, either individually or in combination with other plans and projects, would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code:002162), in view of the site's conservation objectives.

2. The River Barrow section of the proposed route within County Laois is characterised by a natural landscape of medium landscape sensitivity and views of high value and sensitivity, reflective of the location within a natural river channel with a degree of visual enclosure and general absence of physical interventions. This high landscape sensitivity and the importance of river corridors for scenic value is recognised in the Landscape Character Assessment undertaken for County Laois contained at Appendix 6 of the Plan, and Policy TM10 seeks the

promotion of rural tourism that is not detrimental to the character, scenic value and rural amenity of the surrounding area, including the protection and maintenance of rural landscape character. The Board do not agree with the conclusions of the environmental impact statement that the nature of the proposed development is such that the landscape impact and magnitude of change on views are imperceptible to slight, and it is considered that the overall landscape and visual impacts arising would be such as to interfere with the character of the existing landscape. The proposed development would, therefore, be contrary to the policies of the Laois County Development Plan, 2017-2023 relating to the protection of landscapes and landscape character and would be contrary to the proper planning and sustainable development of the area.

Stephen Bohan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this day of 2019.