



Planning and Development Acts 2000 to 2018

Planning Authority: Kilkenny County Council

Planning Register Reference Number: P17/651

Appeal by Kingsriver Community Limited care of Byrne and McCabe Design Limited of Upper Main Street, Graiguenamanagh, County Kilkenny against the decision made on the 28th day of August, 2018 by Kilkenny County Council to refuse permission for the proposed development.

Proposed Development: Erection of a small hydro power scheme (containing Archimedes screw type technology). The development consists of creating a new mill race, repairing the existing weir and construction of a new rock ramp beside Rockview Mill a Protected Structure number D69, NIAH number 12316004, and all associated site works at Rockview Mill, Ennisnag, Stoneyford, County Kilkenny.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

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

In arriving at its decision, the Board had regard to:

- (a) European and national policy in relation to renewable energy, climate change and water quality,
- (b) the provisions of the Kilkenny County Development Plan 2014-2020, and policy in relation to hydro power,
- (c) the identification of this site within the document – Kilkenny’s Potential Hydro Power Sites, 2010,
- (d) national guidelines in relation to small scale hydro-electric schemes and fisheries,
- (e) the nature of the proposed development which seeks to utilise a former hydro power generation site, and
- (f) the modest scale of the proposed development.

Appropriate Assessment:

The Board considered the Natura impact statement and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites. The Board considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

Stage 1

The Board agreed with the screening assessment carried out in the Inspector's report that the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) are the European Sites for which there is a likelihood of significant effects.

The Board was satisfied that all other European Sites could be screened out of any further assessment because of the nature and Conservation Objectives of the European Sites, the absence of relevant Qualifying Interests downstream of the works, the absence of an aquatic connection between the European Sites and the hydro-power scheme site, or the location of the European Sites at a significant distance from the proposed development.

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 development for the European Sites, namely the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (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 assessment, 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 mitigation measures which are included as part of the current proposal,
- (iii) the Conservation Objectives for these European Sites.

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 European Sites in view of the Sites' Conservation Objectives.

Proper planning and sustainable development:

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area, would not conflict with the ecological protection of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) or the River Nore Special Protection Area (Site Code: 004233), would not unduly impact on the fisheries resource of the river, would constitute a sustainable form of development and 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 submitted on the 2nd day of August, 2018, 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. This permission relates only to development as set out in the drawings and documentation submitted to the planning authority on the 3rd day of October 2017, as amended by the further plans and particulars submitted on the 2nd day of August, 2018 and shall not be construed otherwise. Any ancillary development not shown in submitted drawings, such as safety fencing, service access devices, radio transmission aerials, lighting and signage shall not be undertaken except with the prior written agreement of the planning authority.

Reason: To ensure a proper standard of development.

3. In-stream works affecting the river bed or water quality, including river crossings, intake and weirs, shall only take place during the months of May to September.

Reason: In the interest of orderly development and the protection of the ecological environment.

4. (1) The developer shall arrange for a suitably-qualified and named consultant, with ecological and engineering expertise, to be responsible for the full application of mitigation measures as outlined in the Natura impact statement submitted to the planning authority on the 3rd day of October 2017, and for the prevention of pollution.
- (2) All mitigation measures specified in section 5.0 and Appendix C of the Natura impact statement, submitted to the planning authority on the 3rd day of October 2017, shall be fully adhered to in the development.
- (3) A professional ecologist, to be approved by the planning authority prior to commencement of development, shall supervise reinstatement works and be on site throughout the construction period.

Reason: In the interest of proper planning and sustainable development, and to protect the ecology of the area.

5. (1) An Environmental Monitoring Programme, including frequency of testing, shall be submitted to and agreed in writing with the planning authority prior to commencement of development.
- (2) All data obtained from monitoring and recording shall be made available to the planning authority. This data shall be placed on the public file. The planning authority shall be afforded the opportunity, at all times during working hours, to inspect, examine and check all apparatus and equipment used or required to carry out the monitoring programme. If adverse impacts are identified by monitoring results, the planning authority may require changes to the site infrastructure to be carried out.

Reason: In the interest of orderly development.

6. The water abstraction regime shall comply with the plans and particulars submitted to the planning authority on the 3rd day of October 2017, and further plans and particulars submitted on the 2nd day of August 2018. Any deviation from this abstraction regime shall be the subject of a separate application for planning permission. The quantity of water being abstracted shall be monitored on an on-going basis, and the results of this monitoring shall be submitted to the planning authority and Inland Fisheries Ireland, at intervals to be agreed in writing with the planning authority.

Reason: In the interest of conservation of fish stocks and to protect the amenities of the area.

7. All pipelines and ducts to the turbine house shall be laid underground.

Reason: In the interest of visual amenity and protection of the setting of Ennisnag Mill – a Protected Structure.

8. 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, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

9. (1) The developer/operator shall designate a named person (and a replacement when and wherever applicable), who shall be responsible for the operation and maintenance of the plant; and this person shall be formally made known to Inland Fisheries Ireland and to the planning authority.
- (2) During construction, the use of this stretch of river as a recreational amenity shall not be unduly impeded.

Reason: In the interest of the proper planning and sustainable development of the area.

10. In the event of decommissioning or abandonment of the proposed development, the developer or their successors, shall be responsible for management of the redundant facility (including potential removal of the Archimedes screw), reinstatement of the weir structure and sluice gates, to the satisfaction of the planning authority following consultation with Inland Fisheries Ireland.

Reason: In the interest of proper planning and sustainable development.

11. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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,
 - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any remains that may exist within the site.

John Connolly

Member of An Bord Pleanála

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

Dated this day of 2019.