



An  
Bord  
Pleanála

## Board Order ABP-307796-20

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### Planning and Development Acts, 2000 to 2020

### Planning Authority: Kilkenny County Council

**Application** by Kilkenny County Council for approval under section 175 and section 177AE of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an Environmental Impact Assessment Report and a Natura impact statement lodged with An Bord Pleanála on the 30<sup>th</sup> day of July, 2020.

### Proposed Development:

The construction of a new urban park and urban street - a pedestrian and cyclist dominated street, including ancillary site works in the Abbey Quarter (former Smithwicks Brewery site) in the Townlands of Gardens, Kilkenny City. The proposed development will cover an area of approximately 1.44ha within the Abbey Quarter and will include an urban park, an urban street, ancillary development, and associated site clearance works.

The urban park is located on the northern part of the Abbey Quarter and is centred around the upstanding remains of St. Francis Abbey. The park will comprise of a variety of grassed areas, trees, paved surfaces, water feature and meeting points and will provide a new amenity area for Kilkenny City.

The park has been specifically designed to express known historical features in the area, including St. Francis Abbey, the City Walls incorporating Evan's Turret and St. Francis Well. In addition, the park will provide space to accommodate outdoor events. The urban street is aligned north-south through the Abbey Quarter, linking Bateman Quay in the south with St. Francis Bridge in the north. The street will be a pedestrian and cyclist dominated shared space, with limited vehicular access. The street will provide multiple pedestrian linkages to the City, making the park readily accessible.

## **Decision**

**Approve the above proposed development 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 coming to its decision, the Board had regard to the following:

- (a) EU legislation including, in particular:
  - The relevant provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment, and

- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC, as amended by 2009/147/EC (Birds Directive) which set out the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.

(b) National legislation including, in particular:

- The Provisions of section 175 of the Planning and Development Act 2000 (as amended),
- The Provisions of section 177AE of the Planning and Development Act 2000 (as amended).

(c) National Policy and Guidance including, in particular:

- The Design Manual for Urban Roads and Streets, 2013, which provides guidance on how to approach the design of urban streets in a more balanced way.

(d) Regional Policy including, in particular:

- The Regional Spatial and Economic Strategy for the Southern Region, which seeks to support urban generation through investment in the Abbey Quarter and other initiatives to improve the public realm and regenerate underused land in Kilkenny City.

(e) Local planning policy including, in particular:

- The provisions of the Kilkenny City & Environs Development Plan 2014-2020, including Objectives 3I and 3P which specifically provide for the proposed park and street,
- The Urban Design Framework/Masterplan for Abbey Creative Quarter, 2015, which contains the proposed park and street as key components, and
- The Abbey Quarter Urban Design Code, 2018, which sets out criteria for the design of the public realm,

(f) The following matters:

- the nature, scale and design of the proposed works as set out in the application for approval and the pattern of development in the vicinity,
- the documentation and submissions of the local authority, including the Environmental Impact Assessment Report, the Natura impact statement and associated documentation submitted with the application, and the range of mitigation and monitoring measures proposed,
- other relevant guidance documents,
- the submissions and observations made to An Bord Pleanála in connection with the application,
- 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 European Sites, and
- the report and recommendation of the inspector including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

### **Appropriate Assessment: Stage 1**

The Board agreed with and adopted the screening assessment carried out and the conclusions reached in the Inspector's report that the River Nore Special Protection Area (Site Code: 004233) and the 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 other associated documentation submitted with the application, 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 on the aforementioned European Sites 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:

- (a) the likely direct and indirect impacts arising from the development and the proposed development, both individually, when taken together and in combination with other plans or projects,
- (b) the mitigation measures, which are included as part of the current proposal, and
- (c) 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 aforementioned European Sites, having regard to the sites' 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.

### **Environmental Impact Assessment**

The Board completed an environmental impact assessment of the proposed development, taking into account the following:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and other associated documentation submitted in support of the application,
- (c) the submissions from the applicant, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the environmental impact assessment, and the examination of the information contained in the Environmental Impact Assessment Report and the associated documentation submitted by the applicant, and the submissions made in the course of the application as set out in the Inspector's report. The Board was satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation which are incorporated into the Board's decision.

### **Reasoned Conclusions on the Significant Effects:**

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment.

The Board is satisfied that the information contained in the Environmental Impact Assessment Report was up to date and complies with the provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Positive short-term impacts on **population and human health** in terms of the local economy from increased spending and jobs during the construction period.
- Positive long-term impacts on population and human health through the creation of an aesthetically pleasing outdoor public area that will improve the visual setting of the area, encourage physical activity, and enhance the health and wellbeing of visitors to the site.

- Construction phase impacts on Population and Human Health will be mitigated by a range of measures and through implementation of the Construction and Environmental Management Plan (CEMP).
- Potential adverse impacts on **Biodiversity** during the construction phase on highly sensitive aquatic species in the River Nore and River Breagagh. A range of mitigation measures will be put in place for the construction phase to prevent water pollution and impacts on flora and fauna.
- Potential long-term positive impacts on **Land** through change of use from disused industrial land to public open space.
- Potential adverse impacts on **Water** from silt run-off and incorrect handling of deleterious materials such as lubricants, waste oils, cement, etc. Measures will be put in place such that works are undertaken in accordance with best practice in relation to the handling and storage of fuels, oils, chemicals and stockpiles and the Construction and Environmental Management Plan (CEMP) will also provide a framework for water quality protection during construction.
- Potential for long-term positive impacts on Water through decreased quantity and improved quality of run-off from the site due to increased planting/landscaping and installation of new oil/silt interceptors.
- Potential for long term positive impacts on **Climate** through restriction of motorised traffic and promotion of sustainable transport modes, enhancement of biodiversity and improved air quality, and tree planting contributing to carbon sequestration.
- Potential for long term positive impacts on **Material Assets (Transport)** by prioritising active transport modes and providing a safe and comfortable environment for walkers and cycling.
- Potential for long-term positive impacts on **Cultural Heritage** through improvements to the setting and accessibility of National Monuments of very high significance and representation of archaeological heritage on site through features contained in the proposed urban park.

- Potential for adverse impacts on underlying archaeology during excavation works. Mitigation during the construction stage will include archaeological monitoring of ground works and consultation with National Monuments Service if archaeology is discovered.
- Potential for adverse impacts on architectural heritage structures within the site during construction from vibration, impact of vehicles or machinery and undermining of foundations. Mitigation measures will include vibration monitoring and protective fencing.
- Potential for long-term positive impacts on **Landscape** through transformation of the site from disused industrial lands to publicly accessible and aesthetically pleasing landscaped open space that complements the riparian setting.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures referred to above, including proposed monitoring as appropriate, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report. The Board is satisfied that this reasoned conclusion is up to date at the time of making this decision.



## **Proper Planning and Sustainable Development**

The proposed development is in accordance with the aims and objectives of the Kilkenny City & Environs Development Plan, 2014-2020 and is, therefore, acceptable in principle. The proposed urban park and street will be key components of the Abbey Quarter development in the heart of Kilkenny City.

The proposed park will be multifunctional and will enhance the special interest, character and setting of the National Monuments on site, archaeology underlying the site and the adjacent riparian setting. Overall, the proposed public realm works represent an acceptable contribution towards place-making that will generate a largely positive impact on the amenities of the area. Subject to the conditions set out below, the Board concludes that the proposed urban park and street layout is acceptable, having regard to the potential end users and is, therefore, 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, including the Environmental Impact Assessment Report (EIAR), and other associated documentation, lodged with An Bord Pleanála on the 30<sup>th</sup> day of July, 2020, except as may otherwise be required in order to comply with the conditions set out below. Where any mitigation measures set out in the Environmental Impact Assessment Report or any conditions of this Approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

**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 measures and associated monitoring outlined in the plans and particulars relating to the development, including the Environmental Impact Assessment Report submitted with this application as set out in Section 16 of Volume 2 of the EIAR 'Schedule of Commitments', shall be carried out in full, except as may otherwise be required in order to comply with the following conditions.

Prior to commencement of the development, details of a time schedule for implementation of the mitigation measures and associated monitoring shall be prepared by or on behalf of the local authority, and these details shall be placed on the file and retained as part of the public record.

**Reason:** In the interest of clarity and protection of the environment and in the interest of public health.

3. The mitigation measures contained in the Natura impact statement which was submitted with the application shall be implemented in full.

**Reason:** In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of European Sites.

4. The proposed development shall be amended by the inclusion of drinking water source(s) at appropriate locations within the grounds of the park. Revised drawings showing compliance with this requirement shall be placed on the file and retained as part of the public record.

**Reason:** In the interest of public convenience.

5. Within three months of the date of this Order, measures to facilitate safe pedestrian and two-way cyclist priority access to or from and past the site at Bateman Quay and the Kilkenny Central Access Scheme, and a timeframe for implementation of these measures prior to the opening of the proposed development to the public, shall be placed on file and retained as part of the public record.

**Reason:** In the interests of pedestrian and cyclist safety.

6. 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. This shall incorporate measures to assist in navigation and movement through shared spaces for visually impaired users, such as the provision of sections of tactile paving that direct movement along the street or across spaces; the creation of distinct zones that delineate pedestrian only space from shared space; flush kerbs, drainage lines and/or sections of tactile paving to assist guide dogs and indicate movement from a pedestrian only space to a shared carriageway; and an audit of materials to be used on site to assess their appropriateness for those with visual impairments.

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

7. Prior to the commencement of the development, the applicant or any agent acting on its behalf shall update the preliminary Construction and Environmental Management Plan (CEMP) including demonstration of proposals to adhere to best practice and protocols. The CEMP shall include specific proposals as to how the CEMP will be measured and monitored for effectiveness.

**Reason:** In the interest of protecting the environment and public health.

8. Within three months of the date of this Order, a detailed Construction Management Plan for the construction stage shall be placed on the file and retained as part of the public record. The Construction Management Plan shall incorporate the following:
  - (a) a detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, water sampling, dust minimisation, pest control, construction hours and the management of construction waste,

- (b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period,
- (c) an emergency response plan,
- (d) proposals for construction traffic access to the site for the duration of the Abbey Quarter development and during festivals or other large events, and
- (e) proposals in relation to public information and communication.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for public inspection by the planning authority.

**Reason:** In the interests of environmental protection and orderly development.

9. The developer shall facilitate the preservation, recording and protection of archaeological materials or features which exist within the site and these details shall be placed on the file and retained as part of the public record. The developer shall also comply with the following requirements:

- (a) satisfactory arrangements shall be put in place for the execution (or supervision) by a suitably qualified archaeologist of all archaeological excavations, investigations, and site development works.
- (b) This archaeologist shall advise on such measures as may be necessary to ensure that any damage to the remaining archaeological material is avoided or minimised. In this regard, the proposed locations of service trenches or other subsurface works shall be placed on the file and retained as part of the public record.

(c) satisfactory arrangements for post-excavation research and the recording, removal and storage, of any archaeological remains which may be considered appropriate to remove, shall be placed on the file and retained as part of the public record. In this regard, a comprehensive report on the completed archaeological excavation shall be prepared within a period of six months or within such extended period as may be agreed with the planning authority.

**Reason:** In order to conserve the archaeological heritage of the site, it is considered reasonable that the developer should facilitate the preservation by record of any archaeological features or materials which may exist within it.

In this regard, it is considered reasonable that the developer should be responsible for carrying out properly supervised archaeological excavations in circumstances where the permitted development works would be likely to result in the unavoidable disturbance or destruction of such features or materials.

10. A suitably qualified ecologist shall be retained by the applicant to oversee the construction of the proposed project and implementation of mitigation measures relating to ecology as set out in the Environmental Impact Assessment Report and Natura impact statement. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be kept on file as part of the record.

**Reason:** In the interest of nature conservation and protection of terrestrial and aquatic biodiversity,

In not accepting the Inspector's recommendation to alter the design arrangements for the recreational lawn and orchard of forgotten fruits by sloping the grassed area towards new seated areas along the southern edge by the pedestrian path, and the relocation of bicycle parking to the area proximate to the playground and fitness areas, the Board considered that the layout as proposed by the local authority, following an evolved concept design process and extensive consultations represented the optimal design for the area, respecting the topography and proposed uses within the overall urban park and would provide sufficient amenity for pedestrians, cyclists and the general public.

**Dave Walsh**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

Dated this       day of       2021