

An
Bord
Pleanála

Board Order ABP-308824-20

Planning and Development Acts, 2000 to 2020

Planning Authority: Kilkenny County Council

Application by Kilkenny County Council for approval under section 177AE of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including a Natura impact statement, lodged with An Bord Pleanála on the 3rd day of December, 2020.

Proposed Development: N77 Ballyragget Village to Ballynaslee road improvement scheme, north of Ballyragget Village, in the townlands of Ballyconra and Ballynaslee, County Kilkenny.

The proposed development will consist of the realignment of a 2.44-kilometre section of the N77 to remove a bend immediately to the north of the Glanbia plant at Ballyragget, County Kilkenny. The proposed development will commence circa 250 metres south of the Glanbia plant at Ballyragget and extend northwards to tie in to the recently completed N77 Ballynaslee Realignment Scheme. The works will consist of 1,740 metres of online realignment and 700 metres of offline realignment works, with associated drainage, including attenuation pond and swales, fencing, safety barriers, kerb line, signage, and all site development and landscaping works.

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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) 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 of the European Sites, River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233),
- (e) the policies and objectives of the Kilkenny County Development Plan 2015-2021,
- (f) the nature and extent of the proposed works as set out in the application for approval, and

- (g) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the European Sites, River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Natura impact statement and associated documentation submitted with the application for approval, including the further information received on the 1st day of July, 2021, the mitigation measures contained therein and the submissions and observations on file. The Board completed an appropriate assessment of the implications of the proposed development for the European Sites, 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 for a complete assessment of all aspects of the proposed development and to enable it to reach complete, precise, and definitive conclusions for 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 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 and there is no reasonable scientific doubt remaining as to the absence of such effects.

Proper Planning and Sustainable Development/Likely effects on the environment

It is considered that, subject to compliance with the conditions set out below, the proposed development would not contribute to downstream flooding, 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 be acceptable in terms of traffic safety and convenience. The proposed development is in accordance with the stated objectives of the Kilkenny County Development Plan 2014-2020. The proposed development 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 information received on the 1st day of July, 2021, and the information contained in the Natura impact statement, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures or any conditions of 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 local authority and any agent acting on its behalf shall comply with the mitigation measures contained in the application documentation, as amended by the further information received on the 1st day of July, 2021, and in the Natura impact statement submitted with the application.

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

3. The discharge of surface water during the construction phase shall be in accordance with emission limit values that aim to achieve the ecological quality objectives set out in the Fourth Schedule of European Communities Environmental Objectives (Freshwater Pearl Mussel) Regulations 2009 (S.I. number 296/2009).

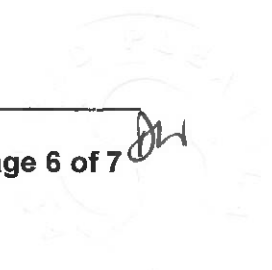
Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European Sites.

4. A suitably qualified ecologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the ecologist shall be present on-site during construction works. Upon completion of works, an audit report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be kept on record.

Reason: In the interest of nature conservation, to prevent adverse impacts on the European Sites and to ensure the protection of the Annex I habitats and Annex II species and their Qualifying Interests for which the sites were designated.

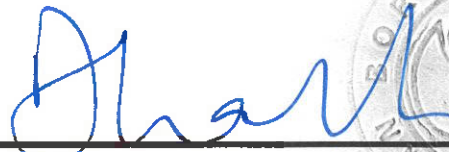
5. The design and construction of culverts shall have regard to the provisions of the National Roads Authority publication 'Guidelines for the Crossing of Watercourses during the Construction of National Road Schemes' and the Eastern Regional Fisheries Board publication 'Requirements for the Protection of Fisheries Habitat during Construction and Development Work at River Sites'.

Reason: In the interest of ecological protection.

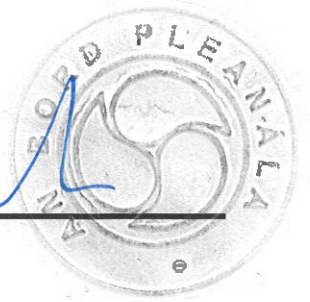


6. The local authority and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or features that may exist within the site. In this regard, the local authority shall:
- (a) employ a suitably qualified archaeologist prior to commencement of development who shall assess the site and monitor all site investigations and other excavation works, and
 - (b) provide suitable arrangements acceptable to the Department of Housing, Local Government and Heritage for the recording and removal of any archaeological material which is considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and secure the preservation and protection of any remains that may exist within the site.



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



Dated this *26th* day of *August* 2021