

An
Bord
Pleanála

Board Order ABP-310487-21

Planning and Development Acts, 2000 to 2020

Planning Authority: Donegal County Council

Application by Donegal 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 11th day of June, 2021.

Proposed Development: The proposed works will involve the construction of a new footpath adjacent to the R248 on the Carrigart to Downings Regional Road. The footpath is planned to extend along the western margin of the R248, from its beginning near Carrigart to its junction with a minor road close to the Rosepenna Hotel and Golf Resort in Downings. This represents a total distance of approximately 2.6 kilometres. For much of its length the footpath is proposed to be 2.5 metres in width and will occupy the existing roadside verge. At the southern end of the site the verge is replaced by a hardstand and in this location it is proposed to create a footpath approximately 1.8 metres in width so as to fit within this area. It is also proposed to create a 1.8 metre wide footbridge to the southern side of Ballyohagan Bridge to tie in with the proposed footpath. The works will involve traffic management, excavation, kerb laying, concrete works, Tarmac works and any associated accommodation works. The proposed development will be located adjacent to the R248, Carrigart to Downings Regional Road, County Donegal.

Decision

APPROVE the 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, qualifying interests and special conservation interests for the Sheephaven Special Area of Conservation (site code: 001190), and the Mulroy Bay Special Area of Conservation (site code: 002159)
- (e) the policies and objectives of the Donegal Development Plan, 2018-2024,
- (f) the nature and extent of the proposed works as set out in the application for approval,

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- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement,
- (h) the submissions and observations received in relation to the proposed development,
- (i) 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 Sheephaven Special Area of Conservation (Site Code: 001190), and the Mulroy Bay Special Area of Conservation (Site Code: 002159), 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, 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 for the affected European Sites, namely the Sheephaven Special Area of Conservation (Site Code: 001190), and the Mulroy Bay Special Area of Conservation (Site Code: 002159), 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:

- 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 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 have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, 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 not interfere with the existing land uses in the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 interests of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including those set out in Invasive Species Management Plan and Section 7 of the Natura Impact Statement and associated Appendices, shall be implemented in full. Prior to the commencement of development, details of a time schedule for implementation of mitigation measures and associated monitoring shall be prepared by the local authority and placed on file and retained as part of the public record.

Reason: In the interests of protecting the environment, the protection of European Sites and in the interest of public health.

3. Prior to the commencement of development, the local authority, or any agent acting on its behalf, shall prepare in consultation with the relevant statutory agencies, a Construction Environmental Management Plan (CEMP), incorporating all mitigation measures indicated in the Natura Impact Statement and demonstration of proposals to adhere to best practice and protocols. The CEMP shall include:
 - (a) intended construction practice for the development, including hours of working,

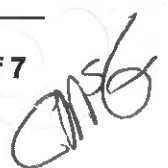
- (b) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses,
- (c) the management of construction traffic and off-site disposal of construction waste,
- (d) details of materials storage location,
- (e) specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness,
- (f) the management of local traffic during the works period,
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (h) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil.

Reason: In the interests of protecting the environment and adjacent European Sites and in the interest of public health and safety.

4. All works shall have regard to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

Reason: In the interest of the protecting of receiving water quality, fisheries and aquatic habitats.

5. The local authority or any agent acting on its behalf shall ensure that all plant and machinery used during the works shall be thoroughly cleaned and washed



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before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

6. A suitably qualified ecologist shall be retained by the local authority to oversee the site set-up and construction of the proposed development and implementation of mitigation measures relating to ecology set out in the Natura Impact Statement and appended documentation. The ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation.

Chris McGarry

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

Dated this 17th day of November 2021