



An
Bord
Pleanála

**Board Order
ABP-310996-21**

Planning and Development Acts, 2000 to 2021

Planning Authority: Kilkenny County Council and Carlow 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 30th day of July, 2021, and the further information received by An Bord Pleanála on the 14th day of April, 2022.

Proposed Development: Site investigation works at Tinnahinch, County Carlow and Graiguenamanagh and Priest's Valley, County Kilkenny.

Decision

APPROVE the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

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 River Barrow and River Nore Special Area of Conservation (Site Code: 002162),
- (e) the nature and extent of the proposed works as set out in the application for approval including the response received to the further information request,
- (f) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura Impact Statement and further information submission on same,
- (g) the submissions received in relation to the proposed development, and
- (h) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment: Stage 1:

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report (and the Senior Ecologist's assessment) that the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), is the only European Site for which there is a possibility of significant effects and must therefore be subject to appropriate assessment.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submission on file, and the Inspector's recommendation. The Board carried out an appropriate assessment of the implications of the proposed development for the European Site, namely the River Barrow and River Nore Special

Area of Conservation (Site Code: 002162), in view of the sites' conservation objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field. 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 view of the Department of Arts, Heritage and the Gaeltacht,
- iii. the mitigation measures which are included as part of the current proposal, and
- iv. the conservation objectives for the European Site.

In completing the appropriate assessment, the Board accepted and adopted the screening conclusion and the appropriate assessment carried out in the Senior Ecologist's Report and concurred with by the Inspector in respect of the implications of the proposed development on the integrity of the aforementioned European Site, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, would not adversely affect the integrity of the European Site in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

The conclusion is based on the following

- A full and detailed assessment of all aspects of the proposed works including proposed mitigation and ecological monitoring in relation to the conservation objectives of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162),
- The proposed site investigation works will not undermine the conservation objective of maintaining the favourable conservation condition of the qualifying interest habitat of Floating River Vegetation (Watercourses of plain to montane levels with the Ranunculion Fluitantis and Callitriche-Batrachion vegetation)

- With the application of all mitigation measures, the proposed site investigation works will not undermine or delay the conservation objective of restoring the favourable conservation condition of the qualifying interest freshwater species.

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, in particular the land or underwater archaeology 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.

CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars, including the mitigation measures specified in the Natura Impact Statement, submitted with the application to An Bord Pleanála on the 30th day of July, 2021 and in the further information response submitted to An Bord Pleanála on the 14th day of April, 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development 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 monitoring commitments identified in the Natura Impact Statement and revision to same, and other plans and particulars submitted with the application shall be carried out in full except as may otherwise be required in order to comply with other conditions.

Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

3. Prior to the commencement of development, the local authority shall, in consultation with the National Parks and Wildlife Services, a finalised Construction Environmental Management Plan and Method Statement, incorporating:

- (a) all mitigation measures indicated in the Natura Impact Statement and revision to same,

- (b) methods to be employed to sterilise the equipment and machinery:

This Construction Environmental Management Plan shall be placed on file prior to commencement of development and retained as part of the public record.

Reason: In the interest of protecting the environment.

4. A suitably qualified ecologist shall be appointed as a Project Ecologist/Ecological Clerk of works to oversee the site investigations and implementation of mitigation and monitoring measures relating to ecology set out in the Natura Impact Statement. The ecologist shall be present during the period of in-stream works.

Reason: In the interest of nature conservation; to ensure the appropriate application of mitigation measures to ensure the protection of Annex I habitats, and qualifying interest species and their habitats for which the site is designated.

5. Prior to the commencement of development, details of measures to protect fisheries and water quality of the river systems shall be outlined and placed on file. Timing of in-stream works will be undertaken in the period August to September. Any possible extension of works beyond this period will require approval from National Parks and Wildlife Service in consultation with Inland Fisheries Ireland.

Full regard shall be had 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.

6. The local authority and any agent acting on its behalf shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

7. IP-08 (inspection pit at Tinnahinch Castle) shall be omitted from the works.

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

8. 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. A suitably qualified project archaeologist shall be appointed, and the archaeologist shall be present on site for the duration of the works. All works shall be carried in compliance with the Section 14 Consent and Section 26 Licence (issued under the provisions of the National Monuments Act 1930 (as amended)) for the works.

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.

DR. Maria FitzGerald

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



Dated this 19th day of Sept. 2022