

An
Bord
Pleanála

Board Order ABP-313763-22

Planning and Development Acts, 2000 to 2022

Planning Authority: Cork County Council

Application by Cork 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 9th day of June, 2022.

Proposed Development: Remedial works to the existing Fermoy weir (protected structure) and the construction of a new fish bypass on the River Blackwater. The proposed development includes the following:

- site preparation works to include the removal of circa 30 number trees on the northern bank, excavation works and installation of sheet piles/beams to facilitate the proposed fish bypass,
- the construction of a new fish bypass channel including the placement of gravel and rockfill for the base of the bypass channel and the provision of stone steps in the bypass channel,
- remedial works to the existing weir (upstream and downstream of Fermoy/Kent Bridge which is also a protected structure) to include the restoration of the existing salmon leap,
- dredging and re-profiling of the existing riverbed, remedial and protection works to the existing river embankment and masonry river wall, and,

- all associated ancillary development works including temporary construction works and diversion/control of river flows and tie-ins to the existing structures/riverbanks.

All located within the townlands of Fermoy and Fermoy South and Carrignagroghera, County Cork.

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 Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and Blackwater Callows Special Protection Area (Site Code: 004094),
- (e) the policies and objectives of the Cork County Development Plan, 2022-2028 including Policy Objectives BE15-2a and HE16-14,
- (f) the nature and extent of the proposed works as set out in the application for approval,

- (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, and
- (i) 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 and adopted the screening assessment and conclusion carried out in the Inspector's report that the River Blackwater (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and Blackwater Callows Special Protection Area (Site Code: 004094), 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 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 for the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170) and Blackwater Callows Special Protection Area (Site Code: 004094), 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.

Proper Planning and Sustainable Development and 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.

CONDITIONS

1. The proposed 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 set out in the Natura Impact Statement 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. (a) The mitigation and monitoring measures outlined in the plans and particulars relating to the proposed development, including but not limited to those set out in section 8 of the Natura Impact Statement shall be implemented in full or as may be required in order to comply with the following conditions.
- (b) Prior to the commencement of development the following shall be prepared by the local authority and placed on file and retained as part of the public record:
 - i. a schedule of all mitigation measures set out in the application documentation,
 - ii. details of a time schedule for implementation of mitigation measures and associated monitoring, and
 - iii. details of monitoring being carried out in accordance with the schedule.
- (c) Arrangements for monitoring shall include reporting on the efficacy of mitigation measures in respect of riverine habitats and the migration of fish species up and down stream, with measures to include environmental DNA (eDNA) monitoring and/or other arrangements as required by Inland Fisheries Ireland. Any significant deviation from predicted effects shall be immediately remedied.

- (d) Post construction mitigation measures to prevent the spread of crayfish plague shall be incorporated on permanent information display boards at access points in the vicinity of the development.

Reason: In the interest 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:
- i. phased arrangements for construction works to facilitate fish passage for duration of works, to be agreed with Inland Fisheries Ireland prior to commencement,
 - ii. method statement in respect of proposed weir remediation works in proximity to Kent Bridge, to be agreed with Transport Infrastructure Ireland prior to commencement, and
 - iii. specific proposals as to how the measures outlined in the CEMP will be measured and monitored for effectiveness.

Reason: In the interests of road safety, protecting biodiversity and European Sites.

4. 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. These shall include:
- i. in-channel works shall adhere to the timing restrictions set out in the Natura Impact Statement (July to September),
 - ii. replacement planting alongside the fish bypass, to be agreed with Inland Fisheries Ireland and the Office of Public Works prior to commencement,

- iii. location of temporary works and spoil heaps, to be agreed with the Office of Public Works prior to commencement,
- iv. method statement for the infilling, with natural riverbed material, of any localised depressions in the riverbed identified at the bridge piers during the course of construction works, to be agreed with Transport Infrastructure Ireland, Inland Fisheries Ireland and National Parks and Wildlife Service prior to commencement,
- v. 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), and
- vi. 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 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 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 application 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 and the protection of terrestrial and aquatic biodiversity.

7. 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 archaeologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on site during construction works. All excavated material, as required by the supervising archaeologist, shall be spread and metal detected under licence to recover any archaeological remains.

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.



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

Dated this 20 day of February 2024