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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Clare County Council**

**Planning Register Reference Number: 221095**

**Appeal** by Michael Duffy of 1 Clós na hEaglaise, Kilfenora, County Clare against the decision made on the 12<sup>th</sup> day of October 2023 by Clare County Council to grant, subject to conditions, a permission to Irish Water care of Mott McDonald Ireland Limited of South Block, Rockfield, Dundrum, County Dublin in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** The development will compromise proposed works within the existing Newmarket-on-Fergus Wastewater Treatment Plant, including: (a) one number 7.8-metre-high storm storage tank with minimum storage capacity of 516 cubic metres, measuring approximately 11 metres diameter. Between 3.6 metres - 5.0 metres will be above ground level, the remainder will be buried below ground level; (b) new below ground discharge pumping station with associated below ground valve chambers and wet well; (c) New 4.1 metre high tertiary treatment system (including two number tertiary filter units and flocculation tank with a volume of 8 cubic metres); (d) two number 2.7 metre high chemical storage tanks (each with a volume of 7.5 cubic metres); (e) Electrical control kiosk (6.4 metre Length by 5.2 metre Width by 2.5 metre Height); (f) Standby generator; (g) Diversion of the flows

from the existing final effluent pump chamber via 110 metres of 300 millimetre external diameter sewer to the new discharge pumping station. The proposed development will also include construction of approximately 4.4 kilometres of 400 millimetre diameter outfall rising main from the proposed pumping station to the proposed outfall diffuser within the River Rine, an outfall diffuser with three diffuser heads of 225 millimetre diameter located within the River Rine foreshore and all ancillary works, site development works including site preparation works, hardstanding, site clearance, ground levelling and site drainage as required to facilitate the development at Boheraroan, Newmarket-on-Fergus, County Clare. The Treatment Plant in the townland of Boheraroan, Newmarket-on-Fergus, County Clare and an associated rising main traversing the townlands of Ballyconneely, Ballynacragga, Boheraroan, Dromoland, Latoon North, Latoon South, Manusmore, Newmarket and Rathfolan, County Clare. The proposed development was revised by further public notices received by the planning authority on the 18<sup>th</sup> day of August 2023.

## **Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## Reasons and Considerations

The Board made its decision consistent with the Climate Action Plan 2024.

And in coming to its decision, the Board had regard to the provisions of:

- (a) the Habitats Directive 92/43/EEC, the Birds Directive 79/409/EEC as amended by 2009/147/EC, the Urban Wastewater Treatment Directive 91/271/EEC, the Water Framework Directive 2000/60/EC and the EIA Directive 2011/92/EU as amended by 2014/52/EU;
- (b) the Clare County Development Plan 2023-2029 including objectives CDP3.3 (Appropriate Assessment), CDP 11.32 (Wastewater Treatment and Disposal) and CDP 15.4 (Requirement for Appropriate Assessment);
- (c) the National Planning Framework including national policy objective 63;
- (d) the Regional Spatial and Economic Strategy for the Southern Region including regional policy objective 211;
- (e) the Water Action Plan 2024;
- (f) the Water Services Strategic Plan 2015;
- (g) the objectives and targets of the National Biodiversity Action Plan 2023-2030; and
- (h) the report and recommendation of the Planning Inspector;

together with the established site context and pattern of development in the area, to the nature and purpose of the development to increase the treatment efficiency of the existing Newmarket-on-Fergus wastewater treatment plant which will provide a higher quality of discharged effluent, to the operational performance of the existing wastewater treatment plant being in accordance

with the emission limit values set out under the Environmental Protection Agency wastewater discharge licence and Urban Wastewater Treatment Directive 91/271/EEC, to the available hydraulic and organic capacity of the existing wastewater treatment plant, to the River Rine's 'moderate' classification under the Water Framework Directive, to the level of dilution available within the River Rine and Fergus estuary and to the range of proposed mitigation measures set out in the submitted Natura Impact Statement and Ecological Impact Assessment, it is considered that the proposed development, subject to compliance with conditions, would result in a satisfactory standard of effluent discharge in line with licence requirements being discharged into the River Rine, would assist Ireland in meeting its obligations set down under the European Union Directives, national legislation and policy, would not result in an adverse impact on the environment and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Appropriate Assessment**

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report in which the Lower River Shannon Special Area of Conservation (Site Code 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code 004077) and Lough Gash Turlough Special Area of Conservation (Site Code 000051) are the only European Sites in respect of which the proposed development has the potential to have a significant effect, and for which Appropriate Assessment is, therefore, required.

### **Appropriate Assessment**

The Board considered the Appropriate Assessment Screening and Natura Impact Statement, and associated documentation submitted with the planning

submissions on file, the Inspector's assessment and the Specialist Report to the Inspector. The Board completed an appropriate assessment of the implications of the proposed development for the affected European sites, namely Lower River Shannon Special Area of Conservation (Site Code 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code 004077) and Lough Gash Turlough Special Area of Conservation (Site Code 000051) in view of the site's 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 site.

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 site's 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 site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

## 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 plans and particulars submitted to the planning authority on the 2<sup>nd</sup> day of August 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the development shall be carried out in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented in full.

**Reason:** To protect the integrity of European sites.

3. The mitigation measures contained in the submitted Ecological Impact Assessment, shall be implemented in full.

**Reason:** To protect the environment.

4. Site preparation and construction shall adhere to best practice and shall conform with the requirements of Inland Fisheries Ireland.

**Reason:** For the protection of fisheries during construction works.

5. An environmental clerk of works shall be engaged on site for the duration of the works to supervise, monitor and ensure the strict implementation of all mitigation measures set out in the Natura Impact Statement and Ecological Impact Assessment Report.

**Reason:** In the interest of the proper planning and sustainable development of the area and to ensure the preservation of the integrity of the qualifying interests associated with Natura 2000 sites in the vicinity.

6. Odour levels at the site boundary shall comply with an odour concentration limit of 3 ouE/m<sup>3</sup> on a 98<sup>th</sup> percentile basis of hourly averages. Procedures for the purpose of determining compliance with this limit shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To protect residential amenity of property in the vicinity.

7. All external lighting within the proposed development shall be sufficiently cowled so as to ensure that light spillage beyond the boundary of the site is minimised.

**Reason:** In the interest of residential amenity

8. The attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services. No surface water from the site shall be permitted to discharge to the public road or adjoining properties.

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

9. Prior to the commencement of development, the developer shall submit to the planning authority, for written approval, a detailed Construction and Environmental Management Plan. This plan shall identify the names, roles and responsibilities of the appointed ecological clerk of works and appointed contractor, shall clearly identify all measures/ commitments as set out in the submitted Natura Impact Statement in relation to construction activities and confirms that all vehicles including excavators are not operated on the saltmarsh either side of the River Rine.

**Reason:** In the interest of amenities, public health and safety.

10. A detailed construction traffic management plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.

**Reason:** In the interest of traffic safety and convenience.

11. Site development and building works shall be carried out between the hours of 0700 to 1900 hours Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written agreement has been received from the planning authority.

**Reason:** To safeguard the amenity of property in the vicinity.



12. Prior to commencement of development, a Resource Waste Management Plan (RWMP) as set out in the Environmental Protection Agency's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

**Reason:** In the interest of reducing waste and encouraging recycling.

13. (a) All mitigation measures in relation to archaeology as set out in the Archaeological Impact Assessment (AIA) report (Mizen Archaeology, March 2023) included in application documents shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this permission.
- (b) The developer shall engage a suitably qualified Archaeologist to monitor (licensed under the National Monuments Acts) groundworks associated with the development in the vicinity of Recorded Monuments CL042-140 --- (Enclosure), CL042-064001- (Earthwork) and CL042-064002- (Castle - unclassified). The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary. No ground disturbance shall take place in these areas in absence of the Archaeologist without his/her express consent.

- (c) Should archaeological remains be identified during the course of archaeological monitoring, all works shall be suspended in the area of archaeological interest pending a decision of the planning authority, in consultation with the Department, regarding appropriate mitigation (preservation in situ/excavation).
- (d) The developer shall facilitate the Archaeologist in recording any remains identified. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the Department, shall be complied with by the developer.
- (e) The planning authority and the Department shall be furnished with a final archaeological report describing the results of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

14. Archaeological monitoring shall be undertaken as follows:

- (a) The services of a suitably qualified and suitably experienced archaeologist shall be engaged to carry out archaeological monitoring of all works within the river/riverbanks of the development site, including demolition of historic structures and features, in-stream excavations, ground reduction works, service trenching and all other works as advised by the monitoring archaeologist.

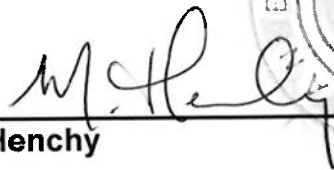
- (b) The archaeological monitoring shall be carried out under a Section 26 (National Monuments Act 1930) licence from the Department and in accordance with an approved method statement. The method statement shall lay out the monitoring strategy for each location where works are proposed. Licensed metal detection shall be undertaken in tandem with the monitoring. The method statement shall contain a Finds Retrieval Strategy that includes for the spreading, systematic searching and metal detection of all excavated deposits in order to maximise the retrieval of archaeological objects. A Detection Device consent (Section 2 1987 National Monuments Act) will be required for the metal detecting works. Note a period of 3-4 weeks should be allowed to facilitate processing and approval of licence applications and method statement.
- (c) The monitoring archaeologist shall obtain a dive/survey licence (Section 3(5) of the National Monuments Act 1987) in order to facilitate investigation of underwater archaeological materials should they be uncovered/identified.
- (d) In order to ensure full communication is in place between the monitoring archaeologist and the works contractor at all times, a communication strategy shall be implemented that provides the monitoring archaeologist with adequate notice of all forthcoming works that require their attendance. Sufficient, suitably experienced and qualified, archaeological personnel shall be in place to cover all aspects of the monitoring works, and all in-stream works shall be monitored by a suitably qualified and experience underwater archaeologist.

- (e) Should archaeological structures, features, deposits or objects or suspected/potential archaeological structures, features, deposits or objects be found during the course of the archaeological monitoring, the archaeologist shall be authorised to suspend all construction works in the affected part of the site (as identified by the monitoring archaeologist) in order to facilitate investigative assessment, protection and prompt notification to the Department and other statutory authorities, as required. The developer shall be prepared to be advised by the Department with regard to any ensuing mitigating action. Mitigation may include recommendations for redesign to allow for full or partial preservation in situ, the institution of archaeological exclusion zones, test-excavations, excavations ('preservation by record') and/or monitoring, as deemed appropriate. No construction works should recommence within the affected area until after an amended method statement that describes the mitigation strategy has been submitted, reviewed and agreed in writing by the Department.
- (f) The planning authority and the Department shall be furnished with a final archaeological report describing the results of all archaeological monitoring and any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation either in situ or by record of places, caves, sites, features or other objects of archaeological interest.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

Dated this 3<sup>rd</sup> day of December 2024.