



An
Bord
Pleanála

Inspector's Report ABP-303960-18

Development

Proposed town park incorporating children's play area, play equipment, zip wire, outdoor gym equipment, pump track, multi-use games area, recreational walkways, seating, signage, interpretive panels, landscaping and car parking.

Location

Mulkear View, Tullow, Newport, Co. Tipperary

Local Authority

Tipperary County Council

Type of Application

Application for approval made under Section 177(AE) of the Planning and Development Act 2000 (Local Authority development requiring Appropriate Assessment)

Prescribed bodies

- (1) Inland Fisheries Board (Shannon District)
- (2) Waterways Ireland
- (3) ESB
- (2) Department of Culture, Gaeltacht and Heritage

Observer(s)

(1) Fiona Bonfield

(2) Niall Dunne

(3) Paul Dunne

(4) Patrick & Gertrude Flanagan

(5) Joe Kelly

(6) Newport Tidy Towns

Date of Site Inspection

22nd November 2018

Inspector

Colin McBride

1.0 Introduction

- 1.1 Tipperary County Council is seeking approval from An Bord Pleanála to construct a town park. The site partially encroaches onto the Lower River Shannon SAC, Site Code 002165. There are 10 other designated European sites SACs within 15km of the proposed works (see further analysis below). A Natura Impact Statement (NIS) and application under Section 177AE was lodged by the Local Authority on the basis of the proposed development's likely significant effect on a European site.
- 1.2 Section 177AE of the Planning and Development act 2000 (as amended) requires that where an appropriate assessment is required in respect of development by a local authority the authority shall prepare an NIS and the development shall not be carried out unless the Board has approved the development with or without modifications. Furthermore, Section 177V of the Planning and Development Act 2000 (as amended) requires that the appropriate assessment shall include a determination by the Board as to whether or not the proposed development would adversely affect the integrity of a European site and the appropriate assessment shall be carried out by the Board before consent is given for the proposed development.
- 1.3 The proposed development was submitted to An Bord Pleanala on the 09th day of November, 2018.

2.0 Proposed Development

- 2.1 The description of the proposed development, as advertised is as follows...

Construction of a town park incorporating...

- (a) Children's play area,
- (b) Specifically designed play equipment for use by people with a disability.
- (c) Zip wire.
- (d) Outdoor gym equipment.
- (e) Pump track.
- (f) Multi-Use Games Area (MUGA).
- (g) Recreational walkways.
- (h) Seating.
- (i) Appropriate signage.
- (j) Interpretative panels.
- (k) Landscaping.
- (l) Car parking.

2.2 The application included the following accompanying documents:

Description of the proposed works/project review report

Planning drawings

Natura Impact Statement

3.0 **Site Location and Description**

3.1 The appeal site, which has a stated area of 2.53 hectares, is located in Newport, Co. Tipperary. The appeal site is located to the south and west of Mulkear View, which is

small housing development of two-storey semi-detached dwellings. The appeal site is defined by the Newport River which runs to the west of the site. The access road to Mulkear View runs along the northern boundary of the site and the public road defines the eastern boundary of the site. The site itself is a vacant area that is overgrown with shrub and vegetation. Levels on site fall from the public road in a westerly direction towards the river. The area along the river to the west of the site is level. To the north and east of the site is the remains of 6 partially constructed dwellings that appear to have been in-situ for a considerable period of time. This area is subject to a separate application under Section 177(AE) of the Planning and Development Act 2000 for 11 dwellings to link into Mulkear View. The Newport River is part of the Lower River Shannon SAC, Site Code 002165.

4.0 Planning History

4.1 No planning history.

On the site to the north and west of the appeal site.

4.2 ABP-302644-18: Permission granted for demolition and removal of 6 partially constructed houses and the construction of 11 dwellings consisting of 6 three-bed two-storey units, 4 two-bed two-storey units and 1 two-bed single storey unit and all associated works under Section 177(AE) of the Planning and Development Act.

5.0 Legislative and Policy Context

5.1 The EU Habitats Directive (92/43/EEC)

This Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) and 6(4) require an appropriate assessment of the likely significant effects of a proposed development on its own and in combination with other plans and projects which may have an effect on a European Site (SAC or SPA).

5.2 **European Communities (Birds and Natural Habitats) Regulations, 2011**

These regulations consolidate the European Communities (Natural Habitats) Regulations 1997 to 2005 and the European Communities (Birds and Natural Habitats)(Control of Recreational Activities) Regulations 2010, as well as addressing transposition failures identified in CJEU judgements.

5.3 **National nature conservation designations**

The Department of Culture, Heritage and the Gaeltacht and the National Parks and Wildlife Service are responsible for the designation of conservation sites throughout the country. The three main types of designation are Natural Heritage Areas (NHA), Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and the latter two form part of the European Natura 2000 Network.

European sites located in proximity to the subject site include:

- The Lower River Shannon SAC, Site Code 002165, part of the site is located within the designated site.

5.4 **Planning and Development Acts 2000 (as amended)**

Part XAB of the Planning and Development Acts 2000-2017 sets out the requirements for the appropriate assessment of developments which could have an effect on a European site or its conservation objectives.

- 177(AE) sets out the requirements for the appropriate assessment of developments carried out by or on behalf of local authorities.
- Section 177(AE) (1) requires a local authority to prepare, or cause to be prepared, a Natura impact statement in respect of the proposed development.

- Section 177(AE) (2) states that a proposed development in respect of which an appropriate assessment is required shall not be carried out unless the Board has approved it with or without modifications.
- Section 177(AE) (3) states that where a Natura impact assessment has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment.
- Section 177(V) (3) states that a competent authority shall give consent for a proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site.
- Section 177AE (6) (a) states that before making a decision in respect of a proposed development the Board shall consider the NIS, any submissions or observations received and any other information relating to:
 - The likely effects on the environment.
 - The likely consequences for the proper planning and sustainable development of the area.
 - The likely significant effects on a European Site.

5.5 **EU (Environmental Impact Assessment and Habitats) (2) Regulations 2011**

Article 6 of the EU (Environmental Impact Assessment and Habitats) (2) Regulations 2011 de-exempts Part 8 requirements for local authority development where there is an appropriate assessment requirement.

5.6 **Development Plan**

The relevant Development Plan is the North Tipperary County Development Plan 2009-2015.

Under the settlement strategy Newport is defined as a Service Centre. Service Centres are robust settlements that have a capacity to accommodate new residential growth, employment and enterprise and other appropriate uses. The service centres are being targeted for growth at an appropriate scale to service their local hinterlands and to consolidate housing, local employment, public transport and a range of services. These towns and villages perform important roles as retail and service providers in their local economy and are targeted for continued growth. A dedicated Local Area Plan is in place for the Service Centre of Newport; the Newport Local Area Plan 2010.

Newport Local Area Plan 2010

Under the Newport Local Area Plan the site is zoned Existing Residential with a stated objective 'to preserve and enhance existing residential amenity'.

Both 'community facilities' and 'recreational buildings' are indicated as being 'open for consideration' under this zoning.

6.0 **Natura Impact Statement**

- 6.1 Tipperary County Council's application for the proposed development was accompanied by an Appropriate Assessment Screening and Natura Impact Statement (NIS) which scientifically examined the proposed development and the European sites. The NIS identified and characterised the possible implications of the proposed development on the European sites, in view of the site's conservation objectives, and provided information to enable the Board to carry out an appropriate assessment of the proposed works.

The AA Screening exercise examined the potential impacts on eleven European Sites, which are located within 15km (Slievefelim to Silvermines Mountains SPA (Site Code 004165) listed twice due to differing qualifying interest on different parts of the designated site) of the proposed development....

Lower River Shannon SAC (Site Code 002165), site is located partially within the designated site.

Slievefelim to Silvermines Mountains SPA (Site Code 004165), 1.8 hectares from the site.

Clare Glens SAC (Site Code 000930), 1.5 km from the site.

Glenstal Wood SAC (Site Code 001432), 4.5 km from the site.

Keeper Hill SAC (Site Code 001197), 8.8 km from the site.

Silvermines Mountains SAC (Site Code 002258), 9.8 km from the site.

Slieve Bernagh Bog SAC (Site Code 000939), 14 km from the site.

Lough Derg (Shannon) (Site Code 004058), 12.5 km from the site.

Glenomra Wood SAC (Site Code 001013), 12.5 km from the site.

Slievemines Mountains West SAC (Site Code 002258), 9.8 km from the site.

Bolingbrook Hill SAC (Site Code 002124), 14.8 km from the site.

The conservation objectives of each site is outlined and potential effects. In the case of all designated sites apart from the Lower River Shannon SAC of which part of the site is located within, it is concluded that there is no pathway for significant effects or potential in-combination effects for the other 10 designated Natura 2000 site within 15km of the site.

Given the proximity of the site to the Lower Shannon SAC and the potential for direct effects it is noted that mitigation measures are required to reduce or minimise effects on a European Site. It was therefore concluded that in accordance with Article 6(3) of the Habitats Directive that a Stage 2 Appropriate Assessment is required.

7.0 Consultation

7.1 In accordance with the provisions of Section 177AE(4)(b), a number of prescribed bodies were notified of the proposal and copies of the application and the accompanying Natura Impact Statement were circulated to the following bodies:

- Inland Fisheries Board (Shannon District).
- Waterways Ireland.
- ESB.
- Department of Culture, Heritage and the Gaeltacht

7.2 Responses were received from the following prescribed bodies:

No responses

7.3 Public Submissions

7.3.1 Following the initial publishing of the public notice for the proposed works, 6 public submissions were made to the Board.

Submission were received from the following...

Elaine Carey, Riversdale, Tullow, Newport, Co. Tipperary

Joe Kelly, Tullow, Newport, Co. Tipperary

Paul Dunne, Tullow, Newport, Co. Tipperary

Niall Dunne, Tullow, Newport, Co. Tipperary

Fiona Bonfield, 87 Mulkear View, Newport, Co. Tipperary

Patrick & Gertrude Flanagan, 89 Murroe Road, Newport, Co. Tipperary

Newport Tidy Towns

7.3.2 The issues raised by third parties are summarised as follows:

- Provision should be made for a bicycle lane, provision of stone wall back planted with trees and parking should be available day and night as well as for events.
- Provision should be made for security but such not include high metal fencing unless softened by planting.
- Provision should be made for a dividing wall instead of fencing across from the existing house in Mulkear View. Such is preserve the housing development's separate identity to the park. It is also noted that existing stone walls on the site should be reinstated/refurbished.
- The proximity of the playground to some houses is noted (Patrick & Gertrude Flanagan) with concerns regarding noise pollution from such and its impact on mental health/stress. The issue of security and attraction of unwanted visitors is noted.
- The provision of a 2m high metal fence around a portion of the site would be aesthetically unappealing. The site had a stone wall around the perimeter of the site and such was demolished by the previous owner. Such should be reinstated and used as boundary treatments on site as it is characteristic of the area.
- It is noted that the high metal fencing will not prevent anti-social behaviour but may facilitate it. Concern is also expressed regarding the potential outlook of dwellings facing the fencing.
- The car park should be accessible at all times and useable for other events or occurrences in the town.
- No lighting provisions are included in the plans and for safety purposes should be provided in the car park. Provision should also be made for access to electricity in the park for events.
- It is noted that low level open type fencing is used successfully in another park (Castleroy Park, Limerick).

8.0 Assessment

8.1 Under the provisions of Section 177AE of the Planning & Development Act, 200 as amended, the Board is required to consider the proposed development in terms of the following:

(a) The likely consequences for the proper planning and sustainable development of the area

(b) The likely effects on the environment and

(c) The likely significant effects of the proposed development on any European sites.

8.2 The likely consequences for the proper planning and sustainable development of the area:

8.2.1 The proposal seeks to construct a town park with multiple elements including open space, areas for recreational activities (playground, multi-use games area, pump track, zip line and outdoor gym equipment). The proposal also entails landscaping (hard and soft), boundary treatment and parking provision with a new vehicular entrance off the public road. The site is zoned for residential use under the Newport Local Area Plan (LAP). Land use policy under the LAP indicates that such a use would be 'open for consideration' (community facilities or recreational buildings). The proposed use is acceptable in the context of Local Area Plan land use policy.

8.2.2 The appeal site is within the town boundary as defined by the LAP and is currently an underutilised site. The site is accessible from the town centre and surrounding residential development and is an appropriate and positive use of an underutilised site. The proposed town park provides for wide range of activities as well as an increase in passive open space and is a facility that would be of significant benefit to the local community. The observations received are generally positive towards the proposal while at the same identifying specific issues concerning certain elements of the proposal. I would consider that the proposal would be acceptable in the context of the proper planning and sustainable development of the area.

- 8.2.3 The observations do identify a number of specific design issues concerning the proposal. The overall design and layout of the proposal appears to be well thought out and provides for the more active uses on the eastern half (playground, games area, bandstand, gym equipment) as well as the parking area, whereas the western part is less formal featuring a wet grassland area and landscaping. This arrangement appears to take account of the location of the Newport River relative to the site and provides for a more natural and less formal design where it adjoins the river. The site proposes linkage between the road and area adjacent the river, linkages into the existing residential development including allowing for a riverside walk and identifies future linkages to the public road on the northern side of Mulkear View Housing development.
- 8.2.4 One of the issues raised in the submission relates to boundary treatment with the observations. It is proposed to erect a 2m high green metal fence around the perimeter of the site. The observations raise concerns regarding aesthetic impact of such and note that there were previously stone wall boundaries on site and that such would be more appropriate. The observation also note that the residents of Mulkear View would prefer a wall rather than the fencing between the site and the housing development. I would consider that the proposed boundary treatment is satisfactory in that it is lightweight in structure and subject to the provision of comprehensive landscaping proposed, would have an acceptable visual impact, while at the same time providing sufficient separation from adjoining uses and security.
- 8.2.5 One of the observations raises concerns regarding the proximity of the playground to existing dwellings and the potential for noise pollution. I would note that there is an adequate degree of separation between existing dwellings and the town park with adjoining dwellings separated by the existing public road and service road in Mulkear View. The location of the playground is appropriate and I am satisfied that it would not have an adverse impact on the amenities of adjoining properties. In relation to anti-social behaviour, I would note that the location of the site within the town boundary and accessible to the existing development as well as being overlooked by dwellings would help prevent anti-social behaviour. I am satisfied that the design and location of the town park is appropriate in the context of adjoining amenities.

8.2.6 The observations note that the car park should be available for events and activities in the town and be accessible day and night. This matter is not a planning matter and is matter for the Council and how they wish to manage the facility. There is some suggestion that lighting details are required for the car park. In this instance it is not clear regarding how the Council wish to management the facility and its accessibility at night. If deemed necessary a condition could be applied requiring lighting.

8.3 The likely effects on the environment

8.3.1 Having regard to the nature of the development, it is considered that the most significant potential for environmental impacts arising relate to impacts on water quality of the River Newport and the flora and fauna supported by the river. The Board will note that the River Newport is part of the Lower River Shannon SAC (Site Code 002156) and that part of the site is located within the boundary of designated site. Matters relating to appropriate assessment are discussed further in Section 8.4 of this report.

8.3.2 The proposal is on zoned lands that are currently underutilised and overgrown. The proposed development is compatible with existing lands uses at this location. The proposal also links into existing infrastructure in terms of drainage, traffic and access. I would consider that the proposal would have a limited environmental impact and that the appeal site is not of high ecological value.

8.4 The likely significant effects of the proposed development on any European sites:

8.4.1 The areas addressed in this section are as follows:

- Compliance with Article 6(3) of the EU Habitats Directive
- The Natura Impact Statement
- Appropriate Assessment

8.4.2 Compliance with Article 6(3) of the EU Habitats Directive:

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site.

8.4.3 Screening Report and Natura Impact Statement

The application was accompanied by a Screening report and a Natura Impact Statement (NIS) which described the proposed development, the project site and the surrounding area. The Stage 1 Screening Assessment concluded that a Stage 2 Appropriate Assessment was required on the basis that it was not possible to exclude the possibility of significant impacts on the Lower River Shannon SAC arising, in absence of mitigation. The NIS outlined the methodology used for assessing potential impacts on habitats and species within the European Site which has the potential to be affected by the proposed development.

8.4.4. The report concluded that, subject to the implementation of the recommended mitigation measures, detailed in the report, the integrity of the European Site will not be adversely affected. Having reviewed the NIS and the supporting documentation, I am satisfied that it provides adequate information in respect of the baseline conditions, clearly identifies the potential impacts, and uses best scientific information and knowledge. Details of mitigation measures are provided and they are summarised in the NIS with respect to site-specific Conservation Objectives of the Lower River Shannon SAC (002165). I am satisfied that the information is sufficient to allow for appropriate assessment of the proposed development.

8.5 Appropriate Assessment:

8.5.1 Appropriate Assessment (AA) considers whether the plan or project in combination with other projects and plans will adversely affect the integrity of a European site in view of the site's conservation objectives and includes consideration of any mitigation measures necessary to avoid, reduce or offset negative effects. This determination must be carried out before a decision is made or consent given for the proposed development alone or in combination with other plans and projects would not adversely affect the integrity of a European site in view of the site's conservation objectives.

8.5.2 Guidance on appropriate assessment is set out in the European Commission's Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (European Commission 2002) and in the Department of the Environments' Appropriate Assessment of Plans and Projects Ireland, Guidance for Planning Authorities (December 2009, revised February 2010).

8.5.3 I consider that development as proposed, comprising of the construction of a town park and associated site works, is not directly connected or necessary to the management of a European Site. The following assessment sets out to:

- Identify European Sites which could be potentially affected using the Source Pathway Receptor Model.
- Identify Conservation Objectives for these sites.
- Examine Predicted Impacts on sites and assess whether these impacts would likely to be significant.
- Assess likely significant impacts against the conservation objectives. Assess whether these impacts would likely to be significant.
- Consider cumulative and in-combination effects.

- Consider Mitigation.
- Appropriate Assessment Conclusion.

8.5.4 The NIS submitted in support of the proposed development, examined the potential impacts on 11 European Sites with 15km (Slievefelim to Silvermines Mountains SPA (Site Code 004165) of the subject site. The European Sites considered for Stage 1 screening include:

Lower River Shannon SAC (Site Code 002165), site is located partially within the designated site.

Slievefelim to Silvermines Mountains SPA (Site Code 004165), 1.88 hectares from the site.

Clare Glen SAC (Site Code 000930), 2.32 hectares from the site.

Glenstal Wood SAC (Site Code 001432), 4.82 hectares from the site.

Keeper Hill SAC (Site Code 001197), 8.88 hectares from the site.

Slievefelim to Silvermines Mountains SPA (Site Code 004165), 10.88 hectares from the site.

Slieve Bernagh Bog SAC (Site Code 002312), 10.87 hectares from the site.

Lough Derg (Shannon) (Site Code 004058), 12.48 hectares from the site.

Glenomra Wood SAC (Site Code 001013), 12.48 hectares from the site.

Slievemines Mountains West SAC (Site Code 002258), 14.08 hectares from the site.

Bolingbrook Hill SAC (Site Code 002165), 14.94 hectares from the site.

8.5.5 The submitted NIS concluded, having regard to information and submissions available, nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source pathway receptor principle and sensitivities of the ecological receptors, only one European Site was considered relevant to include for the purposes of screening for Stage 2 Appropriate Assessment on the basis of likely significant effects, that being the Lower River Shannon SAC, Site Code 002165.

8.5.6 Based on my examination of the NIS report and supporting information, the NPWS website, aerial and satellite imagery, the scale of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European site, their conservation objectives and taken in conjunction with my assessment of the subject site and the surrounding area, I would concur with the conclusion of the applicants NIS, that a Stage 2 Appropriate Assessment is required for only one of the eleven European Sites referred to above, that being the Lower River Shannon SAC, Site Code 002165.

8.5.7 The remaining 10 sites can be screened out from further assessment because of the scale of the proposed works, the nature of the Conservation Objectives, Qualifying and Special Qualifying Interests, the separation distances and the lack of substantive hydrological and ecological pathways between the proposed works and the European Sites. It is therefore reasonable to conclude that on the basis of the information on file, which I consider adequate in order to issue a screening determination, that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on remaining 10 European Sites within 15km of the subject site. In view of these sites conservation objectives a Stage 2 Appropriate Assessment is not required for these sites.

8.5.8 Relevant European Site: The Lower River Shannon SAC, Site Code 002165:

The Lower River Shannon SAC, Site Code 002165. The qualifying interests of designated site are as follows...

Sandbanks which are slightly covered by sea water all the time [1110]

Estuaries [1130]

Mudflats and sandflats not covered by seawater at low tide [1140]

Coastal lagoons [1150]

Large shallow inlets and bays [1160]

Reefs [1170]

Perennial vegetation of stony banks [1220]

Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]

Salicornia and other annuals colonising mud and sand [1310]

Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]

Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation [3260]

Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]

Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]

Petromyzon marinus (Sea Lamprey) [1095]

Lampetra planeri (Brook Lamprey) [1096]

Lampetra fluviatilis (River Lamprey) [1099]

Salmo salar (Salmon) [1106]

Tursiops truncatus (Common Bottlenose Dolphin) [1349]

Lutra lutra (Otter) [1355]

Conservation Objectives

To restore the favourable conservation condition of Freshwater Pearl Mussel in the Lower River Shannon SAC.

To maintain the favourable conservation condition of Brook and River Lamprey in the Lower River Shannon SAC, which is defined by the following list of attributes and targets.

To restore the favourable condition of Salmon in the Lower River Shannon SAC.

To maintain the favourable conservation condition of Sandbanks, Estuaries, Mudflats, Large shallow inlets and bays, Reefs, Perennial vegetation of stony banks and Vegetated sea cliffs in the Lower River Shannon SAC.

To restore the favourable conservation condition of Coastal Lagoons in the Lower River Shannon SAC.

To maintain the favourable conservation condition of *Sailcornia* and other annuals colonizing mud and sand in the Lower River Shannon SAC.

To restore the favourable conservation condition of Atlantic salt meadows (*Glauco-Puccinellietalia maritmae*) in the Lower River Shannon SAC.

To maintain the favourable conservation condition of Bottlenose Dolphin in the Lower River Shannon SAC.

To restore the favourable conservation condition of Otter in the Lower River Shannon SAC.

To restore the favourable conservation condition of Mediterranean salt meadows (*Juncetalia maritima*) in the Lower River Shannon SAC.

To maintain the favourable conservation condition of Water courses of plain montane levels with *Rununculion fluitantis* and *Calitricho-Batrachion* vegetation in the Lower River Shannon SAC.

To maintain the favourable conservation condition of *Molinia* meadows on calcareous, peaty or clayey-silt laden soils (*Molinion caeruleae*) in the Lower River Shannon SAC.

To restore the favourable conservation condition of Alluvial forests with *Alnus glutinosa* and *Fraxinis excelsior*(*Alno-Padion*, *Alnion incanae*, *Salicion albae*) in the Lower River Shannon SAC.

Potential direct and indirect effects:

The submitted NIS predicts the following potential effects arising from the proposed development.

- Loss/reduction of habitat area.
- Disturbance of key species (increased public access and construction phase)
- Habitat or species fragmentation.
- Reduction in species density.
- Changes in key indicators of conservation values such as decrease in water quality/quantity (inadequate wastewater treatment, run-off or pollutants during construction and operation).

The NIS identified a number of the qualifying interests on which there is potential for significant impacts. These include...

Floating River Vegetation (conservation status currently 'unfavourable-inadequate').

Sea Lamprey (conservation currently 'bad').

River Lamprey (conservation currently 'favourable').

Brook Lamprey (conservation currently 'favourable')

Atlantic Salmon (conservation status 'unfavourable-inadequate').

Otter (conservation status currently 'good').

The assessment of potentially significant effects include...

Water Quality:

There potential for discharge of suspended solids or pollutants to the Newport River during the construction phase. During the operational phase potential effects relate to discharges from the drainage system.

Habitat loss:

The proposal entails works within the Lower River Shannon SAC. It is noted there will be loss of treeline, scrub and recolonising of bare ground. It is noted that these habitats are largely artificial and non-native species.

Habitat alteration:

There is potential for alteration of aquatic habitats due ingress of pollutants and or/sediments during the construction phases. A reduction in water quality would have an adverse impact on the qualifying species.

Disturbance and/or displacement of species:

There is potential for disturbance or displacement of species due to potential pollutants entering the Newport River.

Habitat or species fragmentation:

There is potential for habitat or species fragmentation due to potential pollutants entering the Newport River.

The NIS includes an assessment of effect on the Lower River Shannon SAC Conservation Objectives and indicates that mitigation measures are required in the case of a number of qualifying interests. This mainly relates to the potential for a decrease in water quality but also relates to potential impact on an area identified as critical for otters that is overlapped by the site boundary.

Potential in-combination effects:

In terms of considering the potential significance of cumulative effects arising from the proposed development there is proposal for 11 dwellings on an adjoining site to the north and east under ABP-302644-18 that has been approved. I am satisfied that the proposed development in combination with other plans and projects would not adversely affect the integrity of the European Site, Lower River Shannon SAC, Site Code 002165, or any other European site, in view of site's Conservation Objectives.

Mitigation measures:

In terms of mitigation, Section 5.5 of the NIS provides details.

Method statements are to be used to translate the project requirements into a planned system of work or instructional guide to minimise impact on the designated site during construction. A project ecologist is to be appointed to monitor all works. Measures will be put in place to ensure invasive species control. Landscaping will comprise of native species. An artificial otter holt is to be constructed to offset any loss of terrestrial habitat along the Newport River.

A temporary construction compound is to be erected with drainage to be directed to an oil interceptor and provision of a bunded containment are for fuels. Drainage and associated pollution control measures are to be implemented on site before construction commences, the timing of soil stripping and excavation will take account of weather conditions and deposits and stockpiling on site shall be managed. Drainage control measures will include a silt fence. A riparian leave strip is to be established using appropriate fencing and signage. Measures will be in place to manage hydrocarbons to avoid spillage or discharge. Measures will also be implemented regarding concrete and a wheel wash area will be provided. Best practice measures shall be implemented in regards to storage of materials and waste.

Appropriate Assessment Conclusions:

I consider that it is reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment that the proposed development, individually or in combination with other plans and projects would not adversely affect the integrity of the European Site, Lower River Shannon SAC, Site Code 002165, or any other European site, in view of sites Conservation Objectives.

A Construction Environmental Management Plan, which incorporates all mitigation measures indicated in the Natura Impact Statement should be agreed between the Council and the relevant statutory authorities prior to the commencement of development.

9.0 Recommendation

On the basis of the above assessment, I recommend that the Board **approve** the proposed works for the reasons and considerations below and subject to conditions requiring compliance with the submitted details and with the mitigation measures as set out in the NIS.

10.0 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 interests and conservation objectives of the Lower River Shannon Special Area of Conservation (site code 002165),
- (e) the policies and objectives of the North Tipperary County Development Plan 2010,
- (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 likely effects on the environment, and on the likely significant effects of the proposed development on a European Site, and
- (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 the screening assessment and conclusion carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (site code: 002165) is the only European Site 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 Site, namely the Lower River Shannon Special Area of Conservation (site code: 002165), 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 screening and the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, 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 Site, in view of the site's conservation objectives.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except where otherwise may be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Prior to the commencement of development, the local authority shall agree with the relevant statutory agencies a Construction Environmental Management Plan, incorporating all mitigation measures indicated in the Natura Impact Statement. The mitigation measures identified in the Natura Impact Statement shall be implemented in full by the local Authority.

Reason: In order to minimise the impact of construction activities on species and habitats of conservation interest in the interest of proper planning and sustainable development of the area.

3. Site development and building works shall be carried out only between the hours of 08.00 to 19.00 Mondays to Fridays inclusive, between 08.00 to 14.00 on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

Colin McBride
Planning Inspector

25th March 2019