



An
Bord
Pleanála

Inspector's Report ABP-305033-19

Development	A flow measuring weir on the River Owennafeana River.
Location	Owennafeana River, Cloonsarragh and Slieveglass, Brandon, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	19/41
Applicant(s)	Dan Twomey
Type of Application	Retention permission
Planning Authority Decision	Grant, subject to 3 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Edward & Mary Corkery
Observer(s)	None
Date of Site Inspection	25 th October 2019
Inspector	Hugh D. Morrison

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	4
5.0 Policy and Context.....	5
5.1. Development Plan.....	5
5.2. Natural Heritage Designations	5
5.3. EIA Screening	5
6.0 The Appeal	6
6.1. Grounds of Appeal	6
6.2. Applicant Response	7
6.3. Planning Authority Response	8
6.4. Observations.....	8
6.5. Further Responses.....	8
7.0 Assessment.....	8
8.0 Recommendation.....	13
9.0 Reasons and Considerations.....	14
10.0 Conditions	14

1.0. Site Location and Description

- 1.1. The site is located in the Slieveglass Valley through which flows the Owennafeana River from Brandon Mountain in the west to Brandon Village in the east where it flows into Brandon Bay. This site lies at a point in this River c. 135m OD and it is surrounded by moorland.
- 1.2. The site is accessed via the local road network, which connects to a private lane within range of the site. From a position adjacent to a fork in this lane, an informal track across the intervening moorland affords access to the site.

2.0 Proposed Development

- 2.1. The proposal is for the retention of a flow measuring weir on the River Owennafeana River. This weir comprises a plinth that has been laid over the riverbed on which is erected a thin stainless-steel plate (150mm high) with a notch in its centre (200mm wide). Concrete blockwork side walls (750mm high) enclose either end of this plate to the north west and to the south east. The weir is 3657.60mm wide. A measuring stick is sited adjacent to it on the upstream side of this weir.
- 2.2. The applicant states that the purpose of the weir is to measure the flow of the River as an input to plans to a hydro-electric station further downstream.

3.0 Planning Authority Decision

3.1. Decision

Following receipt of further information, retention permission granted, subjected to 3 conditions, including the following:

1. No further interference with the River, and embankments opened to facilitate river diversion to be stabilised by means of seeding and planting.
2. Restoration plan to be prepared, submitted, and agreed with the Planning Authority.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Further information requested, i.e. a Stage 1 AA Screening Report, which comments on how the works were undertaken and what effects if any the works had on designated habitats in the environs of the development.

3.2.2. Other Technical Reports

- IFI: Conditions requested.
- Kerry County Council:
 - Biodiversity: Following receipt of further information, the following commentary and conclusion was set out:

The works were predominantly undertaken within a watercourse which although within the SAC is not designated as a qualifying interest. No water dependent annexed habitat or species were identified as being significantly affected... Terrestrial annexed habitat occurs in proximity to the works namely heath and blanket bog. However, no significant effects on these habitats were identified, access to the site was via a local access track with works localised at or within the watercourse. No negative impacts on annexed habitat were identified that could significantly effect the qualifying interests of the SAC.

4.0 Planning History

Site

- Pre-planning consultation occurred on 17th April 2018.

Elsewhere on the Owennafeana River

- 02/0083: Small hydro-electric scheme: Withdrawn at appeal PL08.131150.
- 04/2096: Small hydro-electric scheme to supply the ESB network (maximum output 800 kW), incorporating river in-tacks, buried pipelines and powerhouse buildings: Permitted at appeal PL08.208495, subject to conditions, including the following ones:

- Condition 2: Submission of (a) final figures for average annual flow along the Owennafeana River, and (b) detailed design drawings of, amongst other things, the river weirs.
- Conditions 3 & 4: Submission of a construction method statement, which shall include a phasing programme and which states that “In-stream works affecting the river bed or water quality, including river crossings, intake and weirs, shall only take place during the months May to September.”

The duration of this permission was extended twice. It lapsed in January 2013.

5.0 Policy and Context

5.1. Development Plan

Under the Kerry County Development Plan 2015 – 2021, the site is shown as lying within an area that is zoned Rural Secondary Special Amenity. Section 3.3.2.2 of this Plan addresses these areas. It states that they are sensitive landscapes which can accommodate a limited level of development, i.e. depending on the degree to which it can be integrated into the landscape.

5.2. Natural Heritage Designations

- Mount Brandon SAC and pNHA (both site code 000375)
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC and pNHA (both site code 002070)
- Magharee Islands SAC (site code 002261)
- Magharee Islands SPA (site code 004125)
- Dingle Peninsula SPA (site code 004153)

5.3. EIA Screening

The applicant comments on whether or not the proposal is a type of development that would potentially be the subject of EIA. It concludes that this proposal would not come within the ambit of any of the types of development set out under Part 1 and 2

of Schedule 5 to Article 93 of the Planning and Development Regulations 2001 – 2018. Accordingly, the possibility of it being sub-threshold for the purposes of EIA does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

Mary & Edward Corkery of Sliabh Glas, Brandon

- Attention is drawn to the former permission for a hydro-electric power station (04/2096 & PL08.208495). The proposal is critiqued on the basis that, as a river flow measurement device, it should have been the first rather than one of the last stages to the implementation of the said station project.
- No end date for the river flow measurement has either been stated or conditioned. No arrangements for monitoring such measurement have been stated or conditioned.
- The proposal is, in effect, a dam across the river, which leads to pooling on its upstream side. An attendant flood risk arises, and it forms a barrier to fish.
- The water quality status of the river is “poor” and the river is in an SAC.
- Under the above cited project, sensors were to have been installed at the two intake points to display pond levels and control the level of water abstraction: This has not been done.
- Conditions attached to the former permission were not adhered to and the Planning Authority’s supervision of the same has been lacking, e.g. it was notified when works began on the current proposal and yet they continued to completion and the turbine house was constructed after permission for it expired and in a manner that departs from this permission.
- The public notice was posted on private land rather than on the public road.
- Access to the site is along a private road that the applicant does not have a right of way over.

- The proposal was constructed without being supervised by an engineer from Kerry County Council.

6.2. Applicant Response

The applicant begins by summarising the planning history of the micro-hydro scheme for the Owennafeana River. Following the expiration of the permission for this scheme, the project was reviewed, and the position was adopted that a revised project entailing only one water abstraction point and pipeline should be pursued. Discussions were held with the IFI and the NPWS. The River was electro-fished, and it was established that no salmon or other protected species were present. Likewise, the proposed pipeline route through “wet heath” was traversed and no problems are anticipated with it.

At a meeting with the Planning Authority in April 2018, the revised project was discussed, and the associated need for river flow measurements was identified. The applicant was not advised that a weir in this respect would require planning permission.

The applicant’s engineer advised that, given the variable flows of the river, 2 years’ worth of information would be necessary and the only viable means of obtaining the same would be to construct the subject weir.

Construction was undertaken during the dry summer of 2018 in accordance with the engineer’s design. The resulting weir is between 350 and 450mm above the existing river bed and it is 3657.60mm wide. This weir incorporates within it a 150mm high stainless-steel plate, which has a 200mm wide notch in it to allow fish to pass through. Side walls accompany the weir to a height of 750mm high, i.e. they are below the exempted development height for a wall.

During the construction phase, a temporary river diversion was undertaken, and the channel thus formed was subsequently restored to the satisfaction of the IFI. The weir itself would be removed once sufficient data has been collected.

The applicant responds to the above cited grounds of appeal as follows:

- The construction of the weir has had no material effect on the river bed and the banks on either side have been restored. Any upstream pooling is shallow

as a consequence of the low height of the weir and so no flood risk is created thereby. As stated above, the passage of any fish would be facilitated.

- Issues pertaining to the former permission are not relevant to the current application. In this respect, a new application will be prepared to complete the partially constructed turbine house and to take forward the project. The current application is a necessary prelude to this anticipated application, i.e. the data gained thereby will inform preparatory work on the same.
- The site notices were posted in positions advised on by the Planning Authority and when removed they were re-posted.
- The applicant has an agreement with the landowner concerning right of access to the site.

6.3. **Planning Authority Response**

None

6.4. **Observations**

None

6.5. **Further Responses**

None

7.0 **Assessment**

7.1. I have reviewed the proposal in the light of the CDP, relevant planning history, the submissions of the parties, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) The principle of the development,
- (iii) Water, ecology, access, landscape and visual amenity, and
- (iv) Stage 1 Screening for Appropriate Assessment.

(i) Legalities

- 7.2. The appellants draw attention to the posting of the site notice on private land rather than on the public road. The applicant has responded by stating that the site chosen was on the advice of the Planning Authority.
- 7.3. I note that the application was validated by the Planning Authority and so the position of the site notice was accepted. I note, too, that the validation process is one that lies exclusively within the remit of the Planning Authority rather than being a matter for the Board.
- 7.4. The appellants also draw attention to the means of access to the site, which entails traversing a private road. They contend that the applicant does not have a right to use this road. The applicant has responded by stating that he has an agreement with the landowner in this respect. While I discuss access under the third heading of my assessment, questions relating to the right to use a private road are essentially civil matters for the parties concerned to address rather than the Board.
- 7.5. I conclude that there are no legal impediments to the Board assessing and determining the current application/appeal in the normal manner.

(ii) The principle of the development

- 7.6. The planning history of the Owennafeana River indicates that planning permission was previously granted at appeal (04/2096 and PL08.131150) for a small hydro electric scheme on this River (maximum output 800 kW). Under this earlier proposal, the construction of weirs was envisaged as being necessary at the two water abstraction points from the River. Conditions 2 and 4 attached to the Board's Order specifically refer to these weirs in conjunction with the need for their detailed design and inclusion in a construction method statement for the project. Furthermore, condition 2, also, refers explicitly to the need for "Final figures for average annual flow along the Owennafeana River. Thus, two weirs were envisaged as being necessary at the operational phase and, by implication, at least one at the pre-construction stage, i.e. to facilitate measurement of the flow of the River.

- 7.7. Notwithstanding two times extensions, the above cited permission did not proceed to full implementation and so it lapsed in January 2013. The applicant is now seeking to revive the hydro-electric scheme project and so, as an input to the envisaged planning application for the same, he has constructed the subject weir as a means by which to record the all-year round flow of the Owennafeana River.
- 7.8. The appellants consider that the measurement of the flow of the River should have been a precursor to the original project. The applicant has responded by stating that this project is no longer relevant. In this respect, I observe that the applicant is beginning the revival of the project by undertaking the said measurement and so, in effect, meeting the appellants' critique of the original one.
- 7.9. The appellants express concern that no timetable has been given as to the duration of the measurement exercise and hence the retention of the weir *insitu*. The applicant has responded that two years' worth of information would be needed. I note that the weir was constructed in the summer of 2018 and so, presumably, the identified period is now into its second year. I note, too, that the duration of any retention permission could be conditioned.
- 7.10. The previous permission was granted on 16th February 2005. Since then I am not aware of any material change in planning circumstances that would prompt an in-principle objection to the subject weir. In this respect, the reasons and considerations cited in the Board's order refer, amongst other things, to "national policy regarding the development of alternative and indigenous energy sources and the minimisation of emissions of greenhouse gases." If anything, this policy has become more pronounced in the intervening years.
- 7.11. I conclude that the principle of the construction weirs in the Owennafeana River has previously been accepted in conjunction with a small hydro-electric scheme. I conclude, too, that, in the absence of any material change in planning circumstances in the intervening years, no in principle objection to the subject weir would now be appropriate.

(iii) Water, ecology, access, landscape and visual amenity

- 7.12. The appellants cite the water quality in the Owennafeana River as being of "poor status" (Q 2-3, Q3). The EPA's website shows the water quality as being of "moderate status" (Q3-4). I recognise that there is some overlap in these statuses

around Q3. The IFI, as a consultee to the application, raised no objection to the proposal on the grounds that it has an affect upon water quality.

- 7.13. The appellants critique the subject weir on the basis that it is in effect a dam, which causes water to build up and so it poses a flood risk and a barrier to fish. The applicant has responded by stating that, as the plinth and steel plate that comprise the weir are between 350 and 450mm above the river bed, this weir does not, in practise, lead to any significant build up of water behind it and so it does not pose a flood risk. He also draws attention to the notch in the centre of the steel plate, which is designed to allow fish to pass upstream, although electro-fishing results indicate that there are very few fish in the River and no salmon or other protected species. This notch is 200mm wide and 150mm deep and the overall width of the weir is 3657.60mm.
- 7.14. The applicant outlines that, during the construction phase of the weir in the dry summer of 2018, the Owennafeana River was temporarily diverted. This diversion entailed some encroachment upon the river banks. The IFI, as consultee to the application, requested that a restoration scheme be undertaken that would ensure the stability and reseedling of these banks. The Planning Authority's second condition in its draft permission encapsulates this request. During my site visit, I observed the need for such a scheme.
- 7.15. The site is accessed off the local road network, which joins a private sealed road that leads onto an unsealed lane. Vehicular access is thus available as far as the lane and thereafter by means of four-wheel drive vehicles. The last phase of the means of access to the site entails the use of an informal track downhill from the said lane through the Slieveglass Valley. This track appears to have been formed during the construction phase of the subject weir and, while discernible during my site visit, i.e. tyre tracks, it is rapidly returning to moorland. Its continuing use during the operational phase of the project would be light. However, insofar as the removal of the weir would entail works comparable to the original works the track would be reused to a greater extent at that stage. Its evident recovery at present bodes well for the future.
- 7.16. The scale of the weir as indicated above is modest and its visibility within the undulating landscape is such that, for example, on approach along the informal track

its presence only becomes apparent when one is close to it. Its landscape and visual impacts are therefore low key and, insofar as it is a temporary structure, these impacts would be of limited duration. As note above, the greater landscape and visual impacts arise from the encroachment upon the river banks that occurred when the river was diverted. Correspondingly, the envisaged restoration scheme would address these impacts.

7.17. I conclude that the subject weir is compatible with the maintenance of water quality in the Owennafeana River and the continuance of fish within this River. I conclude, too, that landscape and visual impacts that have arisen to date, primarily in relation to the diversion of this River, would be capable of being ameliorated by means of a restoration scheme.

(iv) Stage 1 Screening for Appropriate Assessment

7.18. The site lies within the Mount Brandon SAC (site code 002070). This site also lies within the Owennafeana River, which flows into the western side of Bandon Bay. It is thus linked to this Bay and so there is a source/pathway/receptor route between the site and Bandon Bay.

7.19. The following Natura 2000 sites have been designated around this Bay:

- Dingle Peninsula SPA,
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC,
- Magharee Islands SAC, and
- Magharee Islands SPA.

I have viewed the Features of Interest and Conservation Objectives of these sites and I conclude that, notwithstanding the said source/pathway/receptor route, the proposed retention of the subject weir would not be likely to have a significant effect on these sites.

7.20. The applicant has submitted a Stage 1 Screening Report, as has the County Biodiversity Officer. I will draw upon these Reports in my own Stage 1 Screening of the proposal.

7.21. The NPWS lists the Features of Interest in the Mount Brandon SAC. The majority of these Features are not present in the Owennafeana River as they relate to terrestrial

habitats elsewhere in this SAC. The minority that could be present, as they relate to aquatic habitats, are either not present. Thus, for example, Map 13 of the NPWS's Conservation Objectives shows that the Freshwater Pearl Mussel is not present in the Owennafeana River. Significantly, the Owennafeana River *per se* is not identified as a Feature of Interest.

7.22. Under Maps 5 and 9 of the NPWS's Conservation Objectives, the informal track to the site appears to pass through an area wherein Northern Atlantic Wet Heaths with *Erica Tetralix* and Blanket Bogs may be present. These habitats are Features of Interest, which the County Biodiversity Officer acknowledges and upon which she comments as follows:

7.23. *Field inspections during the works and after the works were undertaken indicated that no loss of heath/bog habitat occurred...Works at the watercourse to facilitate the development did result in some localised damage to terrestrial habitat – namely rutting from track machinery. However, considering the scale of these works, the existence of these habitats in a worked and farmed landscape and the ability of the habitat to rejuvenate from localised rutting from agricultural machinery, it is concluded the habitat types have not been significantly affected within the context of the SAC. No loss of habitats occurred, and minor damage will rejuvenate.*

7.24. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposal, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000375, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.25. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potential harmful effects on the projects on any European sites.

8.0 Recommendation

8.1. That permission be granted.

9.0 Reasons and Considerations

Having regard to the Kerry County Development Plan 2015 – 2021 and the planning history of the area, it is considered that, subject to conditions, the proposed retention of the weir on the site to facilitate monitoring of the flow of the Owennafeana River would, in principle, be appropriate on a temporary basis. This weir does not affect the quality of water in this River and it does not add appreciably to the flood risk attendant upon it. The design of the weir facilitates the passage of fish upstream. The landscape and visual impacts of the weir and associated works, including an informal access track, would, subject to restoration, be capable of being accommodated within the area. Likewise, any impact upon habitats identified as Features of Interest in the Mount Brandon SAC would not be likely to have a significant effect on their Conservation Objectives. The proposal would thus accord with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be retained in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 11th day of June 2019, 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 within the specified time period.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Within 24 weeks of the date of this Order, a scheme shall be submitted to and agreed in writing with the Planning Authority. This scheme shall include the following:</p> <p>(a) A restoration programme for the disturbed riverbanks within the vicinity of the weir, which shall ensure the stability of these banks and their reseeded with indigenous shrubs and grasses. A timetable for the works outlined in this programme shall accompany it.</p> <p>(b) A methodology for the removal of the weir and the restoration of its site.</p>

	<p>This methodology shall provide details of the plant and machinery and any attendant vehicles that would be used in this removal. It shall also outline the period during which the removal and subsequent restoration works would occur.</p> <p>Reason: In the interests of ecology and amenity.</p>
3.	<p>Within 24 weeks of the date of this Order, a scheme shall be submitted to and agreed in writing with the Planning Authority. This scheme shall outline the period during which the weir shall remain <i>insitu</i>. It shall justify this period in terms of the time needed for the flow monitoring exercise.</p> <p>Reason: In order to minimise impacts arising from the weir.</p>

Hugh D. Morrison
Planning Inspector

14th November 2019