



An  
Bord  
Pleanála

## Inspector's Report ABP-305431-19

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<b>Development</b>	Modification of existing concrete structures, construction of new diving boards, access platforms, railings and associated services.
<b>Location</b>	Site at Fenit Bathing Slips, Fenit Without, Fenit, Co. Kerry.
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	18/1176
<b>Applicant(s)</b>	Fenit Development Association
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant, subject to 3 conditions
<b>Type of Appeal</b>	Third Party -v- Decision
<b>Appellant(s)</b>	Tralee Bay Swimming Club & Others
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	6 <sup>th</sup> December 2019
<b>Inspector</b>	Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located 0.6 km due west of Fenit pier and 11.3 km west of Tralee town centre. This site lies on a rocky stretch of coastline on the far side of the beach beside Fenit. It is in a position towards the SW tip of the townland known as Fenit Without and the lighthouse on Little Samphire Island lies 0.5 km off shore further to the SW.
- 1.2. The site itself is amorphous and it extends over an area of 0.38 hectares. This site encompasses the existing terrace and slipways and an adjoining jetty and shelter, which are used by swimmers and known as the Bathing Slips. It also encompasses the adjoining portion of the shoreline. Other structures, such as old and new changing rooms appear to lie, variously, inside and immediately outside the NW boundary of the site.

## 2.0 Proposed Development

- 2.1. The proposal would entail the provision of diving boards at the existing Fenit Bathing Slips. This proposal would entail the construction of a walkway and ramp off the most westerly of the existing concrete structures comprised in these Bathing Slips. In plan view the walkway and ramp would be of dog leg form, with the former running to the south-east and the latter to just north of east. A platform with a diving board would be constructed/installed at the junction between the walkway and the ramp and a further platform with a diving board would be constructed/installed at the end of the ramp. The first of these boards would run to the south-east and it would facilitate diving beyond the structure into the open sea, while the second of these boards would run to the north and it would facilitate diving into the portion of sea enclosed by the structure and the existing shoreline.
- 2.2. The aforementioned platforms would be supported on circular pillars, which would be coloured coded green/amber/red to indicate diving conditions. The platform at the end of the ramp would be accompanied by terracing to facilitate divers leaving the water. Railings (1.1m high) would enclose the walkway and ramp, except along the exposed western side of the walkway, where a wall (1.1m high) with 5 port holes would be erected. This wall would be accompanied by a fence, to prevent diving over the wall, and 3 flag poles.

- 2.3. Modifications to existing concrete structures would entail the construction of a raised slab beside an existing hut and steps to the start of the aforementioned walkway. Further to the east, a wheelchair platform would be constructed beside an existing concrete terrace. This platform would be accompanied by a wheelchair hoist.
- 2.4. The applicant received the consent of Kerry County Council and the Department of Housing, Planning and Local Government to the making of its application. The latter body draws attention to the need for foreshore approval to be obtained for the project, too.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Following receipt of further information, permission granted, subject to 3 conditions.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Reports**

The following further information was requested:

- Clarify and expand upon submitted Stage 1 Screening for AA Report,
- More detailed plans of the proposal,
- Photomontages,
- Clarify means of access to proposed wheelchair platform,
- Clarify and revise as appropriate pillar design, and
- Land ownership map with respect to temporary construction phase access.

##### **3.2.2. Other Technical Reports**

Kerry County Council

- Fire Authority: No objection.
- Bio-Diversity Officer: Following receipt of further information, flags deemed to be unnecessary and condition requested.

## 4.0 Planning History

- 12/557: Tralee Bay Swimming Club: Demolish the existing ladies changing rooms at Fenit Bathing Slips and at the same location construct a new combined male and female changing room facility together with all associated services and site works: Permitted.
- Pre-application consultations were held in January and May 2018.

## 5.0 Policy and Context

### 5.1. Development Plan

Kerry County Development Plan 2015 – 2021 (CDP) identifies Fenit as a village in its settlement hierarchy. Tourism Objective T-18 states “Facilitate the sustainable development of water sports, surfing and water related events.”

Tralee Municipal District Local Area Plan 2018 – 2024, which incorporates the Fenit Local Area Plan (LAP). Under the heading of “Context”, the LAP states that “Locke’s beach west to the diving boards is a popular swimming spot and there is a long tradition of open sea swimming in Fenit. Local swimming clubs swim between the diving boards and Locke’s beach in both the summer and winter months.” The site lies within the settlement boundary around Fenit and it is accessed by means of an existing walkway.

### 5.2. Natural Heritage Designations

- Akeragh, Banna and Barrow Harbour SAC & pNHA (000332)
- Tralee Bay and Magharees Peninsula, West to Cloghane SAC & pNHA (002070)
- Tralee Bay Complex SPA (004188)
- Magharee Islands SAC (002261)
- Magharee Islands SPA (004125)

### 5.3. EIA Screening

The proposal would entail development, which for the purposes of EIA would not constitute a project. Accordingly, the question as to whether or not this proposal should be the subject of a mandatory or a sub-threshold EIA does not arise.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appellants begin by stating that they are in favour of the reinstatement of the diving facilities at Fenit Without, only by means of much simpler and less destructive and intrusive alternatives.

They then proceed to cite the following grounds of appeal:

#### Visual intrusion

- The scale and height of the proposal, especially at low tide, would intrude upon views of Tralee Bay that are available to swimmers. Particular exception is taken to the eastward's orientation of the bridges, when a southward extension to the existing plinth would facilitate comparable diving, without bisecting the swimming area.
- The scale and height of the proposal would be out of character with the intricate coastline westwards of the pier at Fenit and its whitewashed huts and lighthouse. Would the supporting structure even be considered were it not for the diving boards?
- The impetus for the proposal is the promotion of tourism and yet it would overwhelm a popular amenity spot to the extent that its attractiveness would be undermined.

#### Physical intrusion

- The introduction of the 2 bulky support pillars would be likely to have impacts upon water movement that may adversely affect swimming conditions.
- The proposal would introduce a barrier between landward and seaward areas for swimming in: The former area becoming much less visible with

implications for surveillance and safety. Likewise, a scenario is envisaged wherein, divers wanting their dives to be seen from the existing slip would be tempted to dive into shallower rather than deeper water.

- The need for the proposed seaward side wall is questioned, especially as it would further block views.
- The proposal would cast shadows over the existing south facing bathing slip, thus eroding its amenity value as a sun trap.

#### Relative diving benefit

- If it is assumed that the applicant's 3-hour window of opportunity in every 12.5-hour tidal period for diving relates to spring tides, then this would be a maximum figure. Critically, the same window of opportunity would arise were the diving boards to be reinstated on the existing plinth, provided it was extended a few metres to the south/south east to allow for sea bed depths.
- The submitted plans omit to show the proposal in conjunction with relevant levels, e.g. high water and low water. Thus, a proper assessment of this proposal from a planning or a safety or a diving viability perspective is not possible.
- In the submitted Screening Assessment, the applicant omitted to present any alternatives to the proposal. The alternative cited above is, subsequently, dismissed on the basis of unspecified safety and diving guidelines.
- The former diving boards were removed in 2001, due to insurance/liability concerns over insufficient depth of water to dive into. Other issues would be in danger of being replicated under the current proposal.

#### Omission of information

- Attention is drawn to the omission of information pertaining to water levels, tide levels, and a sea bed survey, all of which is necessary if the proposal is to be properly assessed.

#### Inaccurate information

- The applicant's contention that, since the removal of the diving boards, the footfall at the bathing slip has declined is contested with the appellants

contending that the opposite has been the case. In this respect, attention is drawn to the activities/experience of the Tralee Bay Swimming Club and to the construction of new changing rooms (12/557) by this Club.

- The letter of support from Irish Water Safety (IWS) pre-dates the application and the appellants contend that the IWS, in giving its support, would have had sight of the simpler proposal to extend the existing plinth only. Likewise, any contention that the Tralee Swimming Club was supportive of the current proposal is refuted by its objection at the application and appeal stages.
- The submitted photomontages are critiqued on the grounds that they are misleading, i.e. with respect to the height of the pillars, e.g. view 4, and the amenity that would be afforded by the proposal, e.g. view 5. Such critique was not able to be made heretofore as the further information stage was not the subject of a public consultation exercise.

#### Maintenance

- The applicant has not addressed the question as to who will be responsible for the future maintenance of the proposal. (Tralee Swimming Club maintains on a voluntary basis the existing facilities at the bathing slip).

## 6.2. Applicant Response

The applicant begins by summarising how the current application came to be made. Kerry County Council pointed out its opposition to any re-instatement of the original diving board plinth due to the shallowness of the sea. Accordingly, the current proposal pertains to deeper water.

The applicant then proceeds to respond to the appellants' grounds of appeal.

#### Visual intrusion

- The height of the 2 diving boards would be 2m and 3.5m OD (Malin). Figure 4 attached to the applicant's response shows that at these heights Spring high tides of 1.7m OD would be cleared. The depth of sea below the OD level underneath these 2 diving boards would be 1.9m and 2.2m, respectively, thus overall depths of 3.6m and 3.9m would be available.

- The photomontages illustrate that the proposal would not have a negative visibility from Fenit bridge/pier and the adjoining beach.

#### Physical intrusion

- The aim of the proposal is to provide a facility that would be safe for public use and thus capable of being operated, maintained and insured by Kerry County Council in the future.
- The design of the proposal was influenced by survey work at the bathing slip. Construction would be limited to upgrades of the existing sea wall, a wheelchair platform, and 2 diving board pillars. An AA Screening Exercise concluded that no significant effects on European sites would be likely.
- The design of the proposal would also incorporate safety features, e.g. the pillars would be colour coded to indicate when it is safe to dive, and the lower pillar would be accompanied by a terrace to facilitate easy exit from the water.

#### Relative diving benefit

- FINA, the international governing body recognised by the International Olympic Committee for administering competition in water sports, cites minimum depths of water that need to accompany diving boards of various heights to ensure safety, e.g. 3.5m for a 3m high diving board. These depths would be achievable, under the proposal, but not at the above cited plinth.
- The proposal would facilitate 3 hours of diving time around high tides. With the longer hours of daylight between April and September, this period is likely to facilitate diving on most days.

#### Omission of information

- Attention is drawn to Figure 4 attached to the applicant's response, which provides a composite cross-section of information, including mean high and low tide levels and sea bed levels. This Figure draws upon Chart Datum for, amongst other places, Fenit. The applicant acknowledges that there is a 10 and 5% chance of high spring tides reaching 2.91m and 3.22m above OD.

Inaccurate information

- The applicant summarises the pre-application discussions and support that was received for the emerging proposal.

Maintenance

- Kerry County Council would be responsible for the future maintenance of the proposal.

### 6.3. **Planning Authority Response**

Visual impact

- The view is expressed that the proposal would read as a recreational facility and that the description of it as being of “industrial scale” is mis-placed.

Safety

- While the Planning Authority recognises the inherent risks associated with swimming in the sea, it accepts that the design of the proposal is informed by safety considerations.

Benefit of development

- The proposal would avail of the 3-hour window of opportunity for diving around high tide, a period that would be difficult to improve upon, given the tidal range at Fenit. It would thus be an amenity of value to residents of and visitors to the locality.

### 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, the LAP, 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) Adequacy and accuracy of information submitted
- (ii) Diving benefit of proposal and question of alternatives
- (iii) Intrusiveness
- (iv) Screening for Stage 1 Appropriate Assessment

### **(i) Adequacy and accuracy of information submitted**

7.2. The appellant draws attention to omissions from the application, which it considers affects the adequacy of the application and hence the thoroughness of any assessment of the same. Specifically, the omission of information with respect to the levels of high and low tides and the sea bed is cited.

7.3. The applicant has submitting Figure 4 in their response to the appeal, which shows medium high and low water levels in accordance with Malin Head Vertical Datum and in conjunction with the proposal. This figure facilitates a comparison of these levels with this proposal and hence its assessment.

7.4. Whereas the applicant has not submitted a detailed survey of the sea bed, it has stated that it is underlain by Waulsortian limestones. It has also submitted aerial photographs of the site and its immediately surrounding area and it has superimposed upon these photographs, variously, the proposal and contours of the sea bed in accordance with Malin Head Vertical Datum. Thus, some information with respect to the affected area of the sea bed has been submitted.

7.5. The appellant also draws attention to the accuracy of the application. Specifically, the applicant's contention that since the former diving boards were removed, footfall at the Bathing Slips has declined is contested, the IWS's support may be based on an earlier simpler proposal, and the submitted photomontages (views 4 & 5) are critiqued.

7.6. The applicant refers to a document submitted under further information and entitled "The Story of Fenit Diving Boards". This document speaks of the decline in footfall

being linked to the removal of the former diving boards in 2000 and the loss to a generation of the thrill of diving at the Bathing Slips. It does not cite figures.

However, it is plausible that those who would otherwise have been attracted by the prospect of diving have not been in attendance. Similarly, it is plausible, too, that the numbers swimming has increased in recent years, as evidenced by the appellant's initiative to provide new changing rooms (12/557 permitted and implemented).

- 7.7. The IWS's letter of support dated 31<sup>st</sup> May 2018 was submitted by the applicant under further information. The application was made on 30<sup>th</sup> November 2018. The appellant has submitted under Appendix 1 of its letter of objection dated 8<sup>th</sup> January 2019 a copy of the illustration of the proposal that was "heavily advertised in Fenit and elsewhere by the promoters." The appellant claims that the IWS's support is based on this earlier version of the proposal, which is simpler and smaller in scale than the current proposal.
- 7.8. The letter in question does not state which version of the proposal it is referring to. If the appellant's assumption is accepted, then it is evident from the said illustration that this support extends to the equivalent of the walkway portion of the current proposal without the seaward wall and the principle of both higher and lower diving boards, the latter being accessed by means of a lower walkway underneath the higher one. Thus, under even this scenario a considerable proportion of the current proposal would have been supported.
- 7.9. Turning to the photomontages, I visited the site on Friday 6<sup>th</sup> December 2019, before high tide at 11.41. Based on my observations then and a comparison with both the appellant's own depiction of high water (10.00 on 8<sup>th</sup> September 2019) and the photomontages, the latter appear to be depicting something close to high tide. If these photomontages are then compared with Figure 4, cited above, then the proposal would appear to be shown too high out of the water and a figure standing in the water would be unrealistic. Clearly, the scaled and detailed presentation shown in Figure 4 should take precedence over the photomontages, which are not as accurate as they might be.
- 7.10. I conclude that there is sufficient information on the file and that there is sufficient accurate information on the file for the Board to proceed to assess and determine the current application/appeal in the normal manner.

## **(ii) Diving benefit of proposal and question of alternatives**

- 7.11. Under Objective T-18, the CDP seeks to facilitate the sustainable development of water sports and under the LAP the long tradition of open-air swimming in Fenit is acknowledged. In the past this tradition was accompanied by diving, which the applicant comments upon and which is celebrated by a photograph on an information panel near the site of a diving event held in 1955. There is thus historic precedence for having diving boards at the Bathing Slips in the townland of Fenit Without.
- 7.12. The appellant's critique various aspects of the current proposal. It states that the 3-hour window of opportunity in every 12.5-hour spring tidal period would be a maximum and that this opportunity would be available from a more modest proposal, e.g. an extension of the plinth, which was used for the former diving boards. It thus expresses concern that the applicant has not explored/presented alternatives to the current proposal.
- 7.13. The applicant has responded by stating that the design of the proposal was informed by the need to comply with minimum depths of water cited by FINA, the recognised international governing body for diving. Thus, this design would achieve such compliance, e.g. as depicted by Figure 4, cited above, the higher diving board would be accompanied by a depth of 3.9m at high tide and the lower board would be accompanied by a depth of 3.6m.
- 7.14. The applicant's aerial photograph with contours of the sea bed superimposed indicates that these depths would not be available closer to the shoreline and so more modest proposals would presumably not be able to comply with the required minimum depths.
- 7.15. The applicant has not explained the evolution of the proposal from that illustrated for promotional purposes to that which is the subject of the current application. The earlier version, a copy of which is included in the appellant's original letter of objection to the Planning Authority, would appear to have entailed a submersible lower walkway and a diving board into slightly shallower water than that which would now pertain. It may be that this version was set aside as the accessibility of this lower walkway during high tide would thus have been an issued.

- 7.16. The appellant's express concern that views of the higher diving board from the existing Bathing Slips would be obscured by the ramp and so there would be a temptation for divers to dive off the accompanying platform into the shallower water on the landward side.
- 7.17. The aforementioned temptation would be counteracted by railings and the absence of a diving board to facilitate such dives. Furthermore, to anticipate a recommendation emerging from my discussion of intrusiveness below, the omission of the ramp portion of the proposal would open up uninterrupted views of the said dives.
- 7.18. I conclude that the CDP is generally supportive of sustainable water sports developments and that there is historic precedence for diving boards at the Bathing Slips that the current proposal is seeking to reactivate. The design of this proposal would facilitate safe diving and that, while comparable alternatives have not been explicitly presented, it is not incumbent upon the applicant to do so.

### **(iii) Intrusiveness**

- 7.19. The appellant expresses concern that the proposal would be both physically and visually intrusive.
- With respect to the former, they state that the introduction of the two supporting pillars would be likely to have impacts upon water movement that may adversely affect swimming conditions. They also state that the proposal would introduce a barrier that would interrupt informal surveillance of those swimming beyond it, thereby jeopardising safety. (In this respect, the need for the wall along the western side of the walkway is questioned). By the same token the potential for overshadowing of the Bathing Slips, a sun trap, is also emphasised.
  - With respect to the latter, the scale and character of the proposal would be out of sympathy with existing structures along the accompanying intricate stretch of coastline and views of Tralee Bay, including the lighthouse on Little Samphire Island, would be interrupted. Particular exception is taken to the ramp portion of the proposal.

- 7.20. The pillars in question would be cylindrical in shape with bases that fan outwards. The higher of the two pillars would have a maximum diameter of 3.8m, while the lower one would have a maximum diameter of 7.15m. The reason for the perhaps unexpected difference is that the latter would also provide a terrace to enable divers to leave the water. These two pillars would be the only freestanding items to be constructed in the sea bed. (A proposed wheelchair access platform would be constructed, too, but as an extension to the existing shoreline terrace).
- 7.21. The applicant has not undertaken any predictive modelling exercise to trace what the effect of the two pillars would be upon water conditions. In the absence of such an exercise, uncertainty exists as to what these would be and the corresponding impact upon swimming within the vicinity of the same.
- 7.22. I anticipate that any effect on water conditions would tend to be greater as a result of the construction of the wider of the two pillars and, as this pillar would be constructed closer to the terrace from which swimmers tend to congregate prior to swimming and hence the area of water typically swum in, its width and location would be likely to have a greater impact upon them. I also note that the applicant acknowledges that under particularly high spring tides the diving board on the platform attached to this pillar would be submerged and so it would pose a potential collision risk to swimmers. These factors point towards the omission of the ramp portion of the proposal, including the pillar/platform/diving board at the end of it.
- 7.23. Under further information, the applicant set out a rationale for the lower of the two pillars/platforms/diving boards, which addressed its width and terraced form. This rationale included the concern that the divers from the higher diving board may need a ready means of exiting from the water. In this respect, I note that the platform for the higher diving board would be served by a ladder on its western side and that, in the absence of the means of exiting afforded by the wider terraced platform, a ladder could be installed on the eastern side of the said platform, too. Such provision would go some way towards compensating for the omission of this terraced platform.
- 7.24. The proposal would affect the continuity of visibility afforded by local views. The resulting interruption would affect the opportunity for informal surveillance of swimmers and hence their safety. If the ramp portion of the proposal were to be omitted, then such interruption would be limited.

- 7.25. Likewise, the presence of the wall along the western edge of the walkway would contribute to such interruption and, disproportionately, to any overshadowing that the proposal would give rise to. While this wall would afford shelter from the prevailing weather, I consider that, on balance, it would be appropriate to omit it in favour of railings. In this respect, I note the applicant's concern to guard against impromptu dives from the western side of the walkway. Why the temptation to do this would be any greater than along the other side of the walkway is unclear, especially as the contours of the sea bed appear comparable on either side of this walkway. Nevertheless, I consider that any conditioning of replacement railings should be non-prescriptive with respect to height so that the applicant can address any justifiable safety concern.
- 7.26. The Bathing Slips comprise 2 slipways, an accompanying multi-levelled terrace with fencing and steps and a sea wall at its western end, and 3 structures, i.e. 2 changing rooms, one old and one new, and a shelter. Thus, the immediate context of the proposal is composed of a considerable number of man-made interventions and so I do not consider that it would look out of place within the same.
- 7.27. The applicant has responded to the appellants visual concerns by stating that the proposal would have no appreciable impact upon views from Fenit Pier to the east of the site. I note that the impact on more localised views would be eased by the omission of the ramp and the wall on the walkway, as discussed above. I note, too, that, as the Bathing Slips are accompanied by Locke's Beach and a coastal path from Fenit, there are multiple public vantage points for views of Tralee Bay within which the presence of the proposal would be less pronounced and the obstruction of landmarks such as the lighthouse at Little Samphire Island would not result.
- 7.28. I note that the existing sea wall is accompanied by 2 flag poles. While their use is not explicit, I anticipate that they play a safety role. In these circumstances, I raise no objection to the proposed 3 flag poles. They would have the additional benefit of attracting the attention of visitors to the area, who might otherwise be unaware of the diving facility. The tourism value of it would thereby be promoted.
- 7.29. I conclude that the proposal would, subject to the omission of the ramp and wall and the inclusion of an addition ladder, be compatible with physical considerations and the visual amenities of the area.

#### **(iv) Screening for Stage 1 Appropriate Assessment**

- 7.30. Under further information, the applicant submitted a Stage 1 Screening Exercise for Appropriate Assessment. I will draw upon this Exercise, the NPWS website, and my own site visit in undertaking a Stage 1 Screening Exercise, too.
- 7.31. Under the NPWS's map viewer, the site and the access route to it are shown as lying outside any of the Natura 2000 sites within the vicinity. Thus, to the west lies the Askeragh, Banna and Barrow Harbour SAC (000332). This SAC extends to the north, where it overlaps with the Tralee Bay Complex SPA (004188). Beyond it, to the west, lies the Magharee Islands SAC (002261), within which the Islands themselves are a focal point for the Magharee Islands SPA (004125). To the south and east of the site, at some remove, lies the Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070). Further to the east this SAC, too, overlaps with the aforementioned SPA. Other Natura 2000 sites exist further away again from the site.
- 7.32. The location of the site is such that it would not result in any loss of habitat comprised in Natura 2000 sites. As the proposal would be constructed partly in the sea bed, potential source/pathway/receptor routes would exist between its site and the above Natura 2000 sites, which are either largely or partially sea-based.
- 7.33. The applicant's Screening Exercise recognises that the project would be a small scale one that would entail a brief construction phase period. It also elucidates at some length upon the standard construction methodologies that would be followed during this construction phase. These include measures to safeguard water quality, which would be integral to these methodologies.
- 7.34. With respect to the Tralee Bay Complex SPA (004188), the special conservation species that frequent the sea-based portion of this SPA comprise waders and wildfowl, which winter in its wetlands. The proposal would not be constructed during the winter to avoid periods of more inclement weather, and so its construction phase would not overlap with these visiting bird species. Likewise, it is not envisaged that the proposal would operate during the winter.
- 7.35. With respect to the Magharee Islands SPA (004125), the special conservation species that frequent this SPA are sea birds. These Islands lie 7-8 km to the NNW of the site and the site itself is already one that has been developed in the past to provide the Bathing Slips. Consequently, both the distance and the habitat afforded

are such that the proposal would not be likely to have any significant effect on the said sea birds.

- 7.36. With respect to the Askeragh, Banna and Barrow Harbour SAC (000332), the majority of this SAC is land-based and so “up-slope” from the site and hence the proposal. The special conservation features affected by the sea are sand dunes and salt marshes. These features do not occur near to the site. Accordingly, the separation distances involved, and the attendant dilution factor, would ensure that no significant effects upon them would be likely to ensue from the proposal.
- 7.37. With respect to the Magharee Islands SAC (002261), the special conservation feature is that of reefs. These Islands lie 7-8 km to the NNW of the site. Accordingly, the separation distances involved, and the attendant dilution factor, would ensure that no significant effects upon them would be likely to ensue from the proposal.
- 7.38. With respect to the Tralee Bay and Magharees Peninsula, West to Clohane SAC (002070), the majority of its special conservation features are located on the further shores of Tralee Bay from the site and so the separation distances involved, and the attendant dilution factor, would ensure that no significant effects upon them would ensue. One special conservation species that could be affected is that of the otter. However, given the short duration of the construction period, and the habituation of this species to human activity both at the site and within its vicinity, the proposal would not be likely to have any significant effect on this species.
- 7.39. 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 Sites Nos. 004188, 004125, 000332, 002261, and 002070, or any other European site, in view of the Sites’ Conservation Objectives, and a Stage 2 Appropriate Assessment (and a submission of the NIS) is not therefore required.
- 7.40. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially 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 Tralee Municipal District Local Area Plan 2018 – 2024, the Board considers that the proposal would in principle further Objective T-18 of the County Development Plan to facilitate the sustainable development of water sports and that it would, subject to amendments, be capable of complementing the Local Area Plan’s acknowledgment of the tradition of sea swimming at the Bathing Slips. These amendments would entail the omission of the ramp and the accompanying lower pillar/platform/diving board at the end of it, the re-specification of railings in place of the wall along the western side of the walkway, and the inclusion of an additional ladder on the eastern side of the retained higher pillar platform. They would be necessary to ensure that, based on the submitted information, the proposal is capable of being operated in a safe manner and that it would be compatible with the visual amenities of the area. No Appropriate Assessment issues arise. The proposal would thus accord with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 29<sup>th</sup> day of January 2019 and by the further plans and particulars received by An Bord Pleanála on the 15<sup>th</sup> day of October 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p>
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2.	<p>The proposed development shall be amended as follows:</p> <p>(a) The ramp and the lower pillar/platform/diving board shall be omitted.</p> <p>(b) An additional ladder shall be installed on the eastern side of the retained higher pillar/platform.</p> <p>(c) The wall and fence proposed for the western side of the walkway shall be omitted in favour of railings.</p> <p>Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interests of amenity and public safety.</p>
3.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice and access arrangements for the development. It shall be within the project parameters outlined in the applicant's Screening for Appropriate Assessment Report, which was submitted to the Planning Authority on the 24<sup>th</sup> day of July 2019. The Plan shall also state the projected construction period and the tidal ranges that would occur during the days comprised in this period.</p> <p><b>Reason:</b> In the interests of clarity, public safety, and orderly and well-planned development.</p>
4.	<p>Prior to the commencement of use of the diving facility, the railings to the walkway and the ladders to the platform shall be installed and the colour code system to the pillar shall be in place. Thereafter, these items shall be retained in-situ for the duration of the use of this diving facility.</p> <p><b>Reason:</b> In the interest of public safety.</p>

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Hugh D. Morrison  
Planning Inspector

8<sup>th</sup> January 2020