



An
Bord
Pleanála

Inspector's Report ABP-305431-19 Addendum Report

Development	Modification of existing concrete structures, construction of new diving boards, access platforms, railings and associated services.
Location	Site at Fenit Bathing Slips, Fenit Without, Fenit, Co. Kerry.
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	18/1176
Applicant(s)	Fenit Development Association
Type of Application	Permission
Planning Authority Decision	Grant, subject to 3 conditions
Type of Appeal	Third Party -v- Decision
Appellant(s)	Tralee Bay Swimming Club & Others
Observer(s)	Billy Moyles
Date of Site Inspection	6 th December 2019
Inspector	Hugh D. Morrison

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1.0 Introduction

- 1.1. On 17th January 2020 the Board decided to defer a decision on this application/ appeal and to request, under a Section 132 notice, the following further information:

It is considered that having regard to the nature, form and location of the proposed development, and its proximity to European sites, that the submitted documentation, including the Screening for Appropriate Assessment lodged with the planning application and an amended Screening for Appropriate Assessment received by the PA on 24th July 2019, do not adequately address the potential for indirect impacts of the proposed development on the integrity of European Sites. In the light of the above, the Board may consider that, in the absence of a Natura Impact Assessment that deals with the potential for impacts, including indirect impacts, of the proposed development on European Sites, it cannot be satisfied that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of European Sites in the light of their conservation objectives/qualifying interests.

- 1.2. The applicant responded to the said notice by submitting a NIS to the Board on 6th April 2020. This NIS identifies a series of potential significant effects upon Natura 2000 sites arising from the project and corresponding mitigation measures by design and management. It concludes that “provided the recommended mitigation measures are implemented in full, it is not expected that the proposed Fenit Diving Board Project will result in an adverse residual impact on the European sites considered in this NIS, namely: Akeragh, Banna and Barrow Harbour SAC (000333), Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070), and Tralee Bay Complex SPA (004188).”

2.0 Public Consultation

- 2.1. The submitted NIS was the subject of a public consultation exercise. The appellant and a new observer commented accordingly, and their submissions are summarised below.

(a) Tralee Bay Swimming Club & Others

- 2.2. The appellant regrets that the RFI was not used to raise with the applicant the range of issues that formed its grounds of appeal. It submits a further photograph and photomontage to illustrate its concerns. No comments are made on the NIS *per se*.

(b) Billy Moyles of Clahane, Ballyard, Tralee

- 2.3. The observer describes the range of activities that occur at Fenit Bathing Slips. He critiques the proposal on similar grounds to those cited originally by the appellant. He suggests that an alternative location for a diving facility would be off the viaduct to Fenit Pier. He does not comment upon the NIS *per se*.

3.0 Appropriate Assessment

- 3.1. The applicant has undertaken a revised Stage 1 Screening Exercise for the proposal, which concludes that a Stage 2 Appropriate Assessment should be undertaken. It has thus submitted a NIS.
- 3.2. I consider that the information contained in these documents is sufficient to allow the Board to carry out an Appropriate Assessment (AA). I will draw upon these documents and the NPWS's website in undertaking my own AA of the proposal.

Stage 1 Screening for AA

- 3.3. The geographical scope of the project and its main characteristics are set out below.
- 3.4. The site is located 0.6 km due west of Fenit Pier and on the far side of Fenit Beach. This site lies within a rocky stretch of coastline and it overlaps with the existing Fenit Bathing Slips, which comprise a terrace, slipways, changing rooms, and a jetty with an accompanying sea wall and shelter. The site itself is amorphous and it extends over an area of 0.38 hectares.
- 3.5. During the construction phase of the project, the site would be accessed via agricultural land to the N and a temporary ramp would be installed to facilitate access to the shoreline. Site preparation and construction works would be undertaken at low tide.
- 3.6. Construction works would entail the following:
- Repairs to the existing sea wall,
 - Installation of high and low diving board base/foundations for the concrete columns,
 - Installation of precast concrete columns for the high and low diving boards,
 - Installation of stainless-steel walkways/platforms,

- Installation of diving boards/handrails/signage, and
- Installation of wheelchair platform and hoist.

3.7. The site does not lie within any Natura 2000 site and so the project would not have any direct impacts upon such a site. This site does, however, lie within a maritime environment and so there are source/pathway/receptor routes between it and Natura 2000 sites within this environment. Thus, the project would potentially have indirect impacts upon the following sites:

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

3.8. Whereas the first three of these sites lie within Tralee Bay, the latter two sites lie outside it. Thus, given the intervening distance between them and the site and the attendant dilution factor, the project, which is a small scale one, would be unlikely to have any significant effects upon the Conservation Objectives of their Qualifying Interests.

3.9. Other Natura 2000 sites exist within 15km of the site. However, those that lie within a maritime environment are at considerable distances from the site and those that lie outside maritime environments are not linked to the site by any source/pathway/receptor routes.

3.10. I, thus, consider that the first three sites are the ones that would potentially be likely to be significantly effected by the project. Drawing upon the NPWS website, I identify each of their Qualifying Interests and Conservation Objectives below.

Askeragh, Banna and Barrow Harbour SAC (000332)

- Annual vegetation of drift lines [1210]
- Salicornia and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]

- Embryonic shifting dunes [2110]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Humid dune slacks [2190]
- European dry heaths [4030]

The Conservation Objectives for the following Qualifying Interests is to maintain their favourable conservation status: 1210, 1310, 1410, 2110, and 4030. The Conservation Objectives for the following Qualifying Interests is to restore their favourable conservation condition: 1410,2120, 2130, and 2190.

Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070)

- Estuaries [1130]
- Mudflats and sandflats not covered by seawater at low tide [1140]
- Coastal lagoons [1150]
- Large shallow inlets and bays [1160]
- Reefs [1170]
- Annual vegetation of drift lines [1210]
- Perennial vegetation of stony banks [1220]
- *Salicornia* and other annuals colonising mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]
- Dunes with *Salix repens* ssp. *argentea* (*Salicion arenariae*) [2170]
- Humid dune slacks [2190]
- *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]
- *Lutra lutra* (Otter) [1355]

- *Petalophyllum ralfsii* (Petalwort) [1395]

The Conservation Objectives for the following Qualifying Interests is to maintain their favourable conservation status: 1130, 1140, 1160, 1170, 1220, 1310, 1330, 1410, 2170, and 6410. The Conservation Objectives for the following Qualifying Interests is to restore their favourable conservation condition: 1150, 1210, 2120, 2130, 2190, 91E0, 1355, and 1395.

Tralee Bay Complex SPA (004188)

- Whooper Swan (*Cygnus cygnus*) [A038]
- Light-bellied Brent Goose (*Branta bernicla hrota*) [A046]
- Shelduck (*Tadorna tadorna*) [A048]
- Wigeon (*Anas penelope*) [A050]
- Teal (*Anas crecca*) [A052]
- Mallard (*Anas platyrhynchos*) [A053]
- Pintail (*Anas acuta*) [A054]
- Scaup (*Aythya marila*) [A062]
- Oystercatcher (*Haematopus ostralegus*) [A130]
- Ringed Plover (*Charadrius hiaticula*) [A137]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Lapwing (*Vanellus vanellus*) [A142]
- Sanderling (*Calidris alba*) [A144]
- Dunlin (*Calidris alpina*) [A149]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Bar-tailed Godwit (*Limosa lapponica*) [A157]
- Curlew (*Numenius arquata*) [A160]
- Redshank (*Tringa totanus*) [A162]
- Turnstone (*Arenaria interpres*) [A169]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Common Gull (*Larus canus*) [A182]
- Wetland and Waterbirds [A999]

The Conservation Objectives for all of the above Qualifying Interests is to maintain their favourable conservation status.

- 3.11. During the construction phase, the project would potentially have the following significant effects:
- The risk of oil/fuel and concrete spills/leaks would exist. Such spills/leaks could lead to a reduction in water quality and they could lead to either a loss or alteration of habitat. The Conservation Objectives of the Qualifying Interests of each of the three Natura 2000 sites could be affected thereby.
 - A reduction in water quality could lead to fewer fish in Tralee Bay. Species displacement could follow. In this respect, the Conservation Objective of the Qualifying Interest of the Otter in the Tralee Bay and Magharees Peninsula, West to Cloghane SAC and the Conservation Objectives of the Qualifying Interests of bird species in the Tralee Bay Complex SPA could be effected. Species fragmentation could also ensue.
- 3.12. During the operational phase, the project would have effects associated with diving that would be similar to the existing use of the Fenit Bathing Slips for swimming. Otters and birds, which are Qualifying Interests, would already be habituated to these effects and so it is unlikely that their Conservation Objectives would be significantly effected.
- 3.13. The applicant has identifying existing activities, e.g. Fenit Harbour and WWTP, which discharge into Tralee Bay, all of which have a bearing on existing water quality. It has also interrogated the Planning Authority's planning register and it has identified 10 extant permissions in the general area of the site, all of which are for small scale domestic developments. During their construction phases these developments, too, could effect water quality. Thus, the possibility of cumulative impacts would exist, although, given their small scale and non-shoreline locations, I do not consider that such effects would be significant.
- 3.14. Having regard to the source/pathway/receptor routes between the site and the Askeragh, Banna and Barrow Harbour SAC (000332), the Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070), and the Tralee Bay Complex SPA (004188) and the risk to water quality posed by the construction phase of the project, I cannot conclude that the proposal would not have significant

effects on the Conservation Objectives of Qualifying Interests in these Natura 2000 sites and so the need for a Stage 2 Appropriate Assessment arises.

Stage 2 AA

- 3.15. The applicant has submitted a Natura Impact Study (NIS), which I consider is sufficient to allow the Board to carry out a complete and precise assessment of all aspects of the project and the reasoning behind this Statement.
- 3.16. In the light of the Stage 1 Screening, the project and its potential indirect impacts have been described and the relevant Natura 2000 sites have been identified, along with their Qualifying Interests and Conservation Objectives, in paragraph 3.10.
- 3.17. The NIS reviews the Qualifying Interests of each of the Natura 2000 sites. A detailed assessment is made as to whether or not a reduction in water quality would potentially have a significant effect on these Interests. Thus,
- With respect to Askeragh, Banna and Barrow Harbour SAC, none of the Qualifying Interests would be effected.
 - With respect to Tralee Bay and Magharees Peninsula, West to Cloghane SAC, the following Qualifying Interests would potentially be effected:
 - Mudflats and sandflats not covered by seawater at low tide [1140],
 - Large shallow inlets and bays [1160],
 - Reefs [1170], and
 - Otter [1355].
 - With respect to Tralee Bay Complex SPA, the Qualifying Interests comprise certain sea bird species and wetland and waterbirds, all of which would be potentially effected.
- 3.18. The applicant has identified a series of mitigation measures that would address the risk of a reduction in water quality due to leaks/spillages. Some of these measures would relate to the design of the project and some to its management. Foremost among the former would be the utilisation of pre-cast concrete units. The latter would include the following:
- A pre-construction Otter survey would be undertaken. If a holt is found then the NPWS would be contacted.

- Construction works on the shoreline would only be undertaken at low tide.
- Method statements would be prepared for each element of the construction works. Thus, for example, they would be prepared for the pouring of quick drying concrete and the protocols that would govern the associated use of plant and machinery.
- A fuel management plan would be prepared to minimise the risk of fuel spills/leaks.
- Waste management guidelines would be followed.
- An emergency response plan would be prepared to deal with any breach of the method statements, fuel management plan, and waste management guidelines.
- Site management would entail the briefing of operatives on the method statements, fuel management plan, and waste management guidelines.
- The project ecologist would review weekly the above cited management mitigation measures and he/she would have the authority to suspend work if compliance is absent/lacking.

3.19. On the basis of the identified mitigation measures, the risk that the project would lead to a reduction in water quality would be reduced. Any residual risk would not be significant and any in-combination effects from projects delineated in paragraph 3.13 would not be significant.

3.20. The proposed development has been considered in light of the assessment requirements of Sections 177U and 177V of the Planning and Development Act, 2000 – 2020.

Having carried out screening for Appropriate Assessment of the proposed development, it was concluded that it would be likely to have significant effects on the European Sites Nos. 000332, 002070, and 004188. Consequently, an Appropriate Assessment was required of the implications of the project on the Qualifying Interests of those sites in light of their Conservation Objectives.

Following an Appropriate Assessment, it has been determined that the proposed development, individually or in combination with other plans or projects, would not

adversely affect the integrity of the European Sites Nos. 000332, 002070, and 004188, or any other European Site, in view of the Sites' Conservation Objectives.

This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable doubt as to the absence of adverse effects.

During the construction phase, a series of mitigation measures would address the risk of a reduction in water quality due to leaks/spillages. These measures would relate to the design of the project and to its management.

4.0 Recommendation

4.1. That permission be granted.

5.0 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 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. The proposal would thus accord with the proper planning and sustainable development of the area.

The Board agreed with the screening assessment and conclusion carried out in the inspector's report that Askeragh, Banna and Barrow Harbour SAC (000332), Tralee Bay Complex SPA (004188), and Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070) are European Sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the Sites' Conservation Objectives for Askeragh, Banna and Barrow Harbour SAC (000332), Tralee Bay

Complex SPA (004188), and Tralee Bay and Magharees Peninsula, West to Cloghane SAC (002070). The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the Sites' Conservation Objectives using the best available scientific knowledge in the field.

In completing the appropriate assessment, the Board considered, in particular, the following:

- (i) Site-specific Conservation Objectives for these European Sites,
- (ii) The likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and
- (iii) The mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Sites, having regard to the Sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European Sites, in view of the Sites' Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on the following: During the construction phase, a series of mitigation measures would address the risk of a reduction in water quality due to leaks/spillages. These measures would relate to the design of the project and to its management.

6.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 29 th day of January 2019 and by the further plans and particulars received by An Bord Pleanála on the 15 th day of October 2019 and the 6 th April 2020, except as may otherwise be required in order to comply with the following conditions. Where such
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	<p>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>Reason: In the interest of clarity.</p>
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>Reason: 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 Natura Impact Statement, which was submitted to An Bord Pleanála on the 6th day of April 2020. 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>Reason: 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>

	Reason: In the interest of public safety.
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Hugh D. Morrison
Planning Inspector

16th November 2020