



An  
Bord  
Pleanála

## Inspector's Report

### ABP-307974-20

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<b>Development</b>	Replacement of sub-standard lighting system, along with the addition of lamp standards and LED lighting, including low level bollard lighting and under deck access safety lighting
<b>Location</b>	Lough Derg Marina , Ballina, Co Tipperary
<b>Planning Authority</b>	Tipperary County Council
<b>Planning Authority Reg. Ref.</b>	19601021
<b>Applicants</b>	Lough Derg Marina Ltd
<b>Type of Application</b>	Retention
<b>Planning Authority Decision</b>	Grant Retention
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Claire Quinn
<b>Date of Site Inspection</b>	27 <sup>th</sup> October 2020
<b>Inspector</b>	Dolores McCague

## **1.0 Site Location and Description**

- 1.1.1. The site is located at Lough Derg Marina, Ballina, Co Tipperary which is on the eastern shoreline of the outfall of Lough Derg where it is just above water level and bounded by a bank to the east, on which there are dwellings. It is an open location on the lake outfall and exposed to prevailing winds from the west and south west.
- 1.1.2. The site is occupied by a small low building, by parking and circulation space and by jetties. The site is surrounded by a fence on the landward site and at the entrance by a wall and pedestrian and vehicular gates.
- 1.1.3. On the evening of inspection the site was well lit.
- 1.1.4. The site is given as 1.62 ha.

## **2.0 Proposed Development**

- 2.1.1. The development for retention is described as the replacement of an old sub-standard lighting system, along with the addition of a number of new lamp standards and LED lighting, including low level bollard lighting and under deck access safety lighting.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. The planning authority decided to grant permission subject to two conditions:
  - 1 Save where modified by the following conditions, the development shall be retained and completed in accordance with the drawings and documentation submitted with the planning application including the contents and mitigation measures set out in the Ecology report on 17/09/2019 and as amended by further information submitted on 01/05/2020 and on 06/07/2020 in response to a further information request issued on the 04/11/2019 and a clarification of information request issued on the 11/06/2020.

2 In the event of a complaint being received by the planning authority the applicant may be requested by the planning authority to carry out a lighting survey and may be requested to dim lighting as appropriate.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

#### 3.2.2. Further Information

A request for further information issued (4<sup>th</sup> November 2019) (no report) on 3 points:

- Layout plan illustrating: location and type of previous lighting system; location and type of new lighting system; location and type of all lighting within the landholding.
- Revised lighting assessment prepared by a qualified lighting engineer, that has regard to: differences between previous and new in terms of height, lux levels, spill; hours of operation and variations in response to season/day/time; justification for use within a mixed use area in the context of 'Guidance Notes for The Reduction of Obtrusive Light', 'The Impact of Artificial Light on Invertebrates', and 'The Outdoor Lighting Guide'; a site plan showing spill, having regard to the effects of physical features and reflectance from water; the impact of the lighting system in combination with existing lighting in the area on bats having regard to best practice: Bats & Lighting, Guidance Notes for Planners, Engineers, Architects and Developers, & Bats & Lighting in the UK, Guidance Note 08/18, Bats in the Built Environment Series; and a schedule of any mitigation.
- Assess the potential to negatively impact on the Lady Landsdown wreck as part of an Underwater Archaeological Impact Assessment (UAIA), as detailed in the letter.

3.2.3. Response to the request for further information received 1<sup>st</sup> May 2020, which includes details of the old lighting installation and the new lighting, prepared by a Consulting Engineer MILP (member of the institute of lighting professionals), which gives detailed justification for the need for the new lighting as designed.

3.2.4. Planner's report 29<sup>th</sup> May 2020 – response to item 1, the layout drawings, satisfactory; item 2, that the old system was not fit for purpose, new will consist of 19

x 20 watt lanterns and 14 x 28 watt lanterns in compliance with BS 5489-1:2018, mounted on 6m columns. Lighting will be provided on 1m high bollards on quayside walk for greater safety. There is light trespass into two properties and it is suggested that this can be contained by the fitting of a cowl, if it is considered to be an annoyance. Re. hours of operation dimming on the road and car park by 30% during hours 2300-0600 and during hours from 2200-0600 on bollards and decking, however there is a safety risk. Impacts on bats and aquatic life, details submitted, no surveys undertaken. UAIA carried out in 2018 is submitted. Clarification required. AA screening report completed. Recommendation from SEP re. clarification 4/6/2020: item 1 re. lighting impact on 1-3 Lakeside Cottages and 1-3 Derg Marina of Marine Village; item 2 re. dimming lighting and Health & Safety obligations of the operator; report from a qualified ecologist re. impact on bats and aquatic life; schedule of mitigation measures.

#### 3.2.5. Further Clarification

3.2.6. A request for clarification of further information issued (11<sup>th</sup> June 2020) on 4 points  
Lighting spill into the houses in 1-3 Lakeside Cottages and 1-3 Derg Marina of Marine Village; item 2 re dimming lighting and Health & Safety obligations of the operator; item 3 report from a qualified ecologist re impact on bats and aquatic life; and item 4 schedule of mitigation measures.

#### 3.2.7. Further Clarification received 6<sup>th</sup> July 2020

James Molloy Consulting Engineer - There is currently light spill in the horizontal plane of the order of 1 lux onto a localised area of unlit unnamed public road at the development entrance – drawing P0253-ME-103-AB. It is proposed to install a baffle on light 15B to eliminate light spill onto the public road. It is proposed to install cowls on 3 lamp standards: 33B, 24B, and 15B.

The lighting scheme has been designed in accordance with BS 5489-1:2020 and meets all safety legislation requirements.

Dimming of 30% can commence at 20.00 and continue to 06.00. Extinguishing lights is not appropriate.

Mitigation – LED lighting units have been installed. These provide much more targeted light and maximise light free areas, and maximise areas where bats can

forage or traverse. Low power, primarily 20W, which is a significant reduction from the previous 70W units, have been provided in accordance with guidance, to the benefit of bats.

Mounting heights minimised, @ 6m, to permit bats to fly over.

Only luminaires with an upward light ratio of 0% and with good optical control, have been used.

- 3.2.8. Doherty Environmental Consultants Ltd – re. item 3 – the potential for lighting to pose a barrier to the movement of bats relates to its presence between roost and foraging sites, or along linear corridors that intersect potentially suitable foraging habitat. Given that the bats using the marina as a foraging site are likely to be approaching the marina and the lake from the land to the east, as observed, the lighting at the marina is not predicted to have the potential to function as a significant barrier to the movement of bats. Also the lighting will span an area of approx. 300m which represents a limited extent and will not pose a significant barrier to the movement of bats over the lake from east to west or vice versa.

Mitigation – dimming to approx. 25% of their intensity level between the hours of 7pm and 7am during the months of April to October. The spacing between the lights has been maximised to reduce light intensity while at the same time aiming to achieve the required lighting levels to provide for a safely lit environment. The new lighting regime has been designed to avoid any illumination in the area that was relied upon by Daubenton's bars for foraging. This area will be maintained in darkness throughout the operational phase.

In order to reduce light spill, the new lighting has been designed to direct light to areas only where it is needed. Upward spread above the horizontal plane has been avoided by installing low beam angle lights, less than 70 above the horizontal plane, and by baffling of the light columns.

Lighting as detailed in the ILP 2018 guidelines should be used.

Light with high UV content will be avoided. Narrow spectrum lighting with low UV content will be used.

Low intensity lighting will be used.

These measures have been used and accord with Lighting Professional's Guidance Note 08/18 Bats & Artificial Lighting in the UK; the Bats Conservation Ireland, 2010 guidance document: Bats & Lighting Guidance Notes for Planners, Engineers, Architects and Developers.

Residual Impact – the new lighting regime will not result in illumination of areas that were observed to be relied upon by Daubenton's bats, the species considered to be most sensitive to disturbance from lighting. It will result in the area of illumination above 1 lux from 0.8ha to approx. 1.5ha and in an increase in the area of illumination over water from 0.16ha to 0.26ha. It will be of lower intensity and the potential to attract insects away from the surrounding areas will be reduced. It is located on the edge of L Derg and is not a significant barrier to movement of bats. With the mitigation measures it will not result in significant negative impact on Daubenton's bats. Impact on Soprano pipistrelle and Common pipistrelle will be imperceptible to minor negative, similarly aquatic life.

### 3.3. Other Technical Reports

None.

### 3.4. **Prescribed Bodies**

#### 3.4.1. DAHU Nature Conservation

The Council whilst carrying out AA screening ensures that this development will have no significant negative impact on the Lower River Shannon Special Area of Conservation (site code 002165), downstream. Bats (and other wildlife) can be adversely impacted by inappropriate lighting. The Department recommends that the applicant's lighting plan take this into account and where possible adhere to best practice guidelines by following the advice given in the following documents:

Bats & Lighting – Guidance Notes for Planners Engineers Architects and Developers.

Bats and artificial lighting in the UK Guidance Note 09/18, Bats in the Built Environment Series.

DAHU Archaeology

The proposed works for the lighting, runs into an area where there is a protected wreck site, that of the Lady Lansdowne that sank at its moorings in 1868 and is therefore afforded statutory protection under the 1987 National Monuments (Amendment) Act, as the wreck is over 100 years old. The wreck site therefore should not be negatively impacted, tampered with or interfered with.

The works for the proposed lighting has the potential to negatively impact on the site of the Lady Lansdowne wreck and there is therefore a requirement to have the works assessed as part of an Underwater Archaeological Impact Assessment (UAIA) in advance of any works proceeding. The UAIA should take the following format:

The services of a suitably qualified and suitably experienced underwater archaeologist to be engaged to carry out the UAIA.

The UAIA shall be licensed by the Department of Culture, Heritage and the Gaeltacht and a detailed method statement shall accompany the application.

The UAIA shall comprise detailed desktop study and archaeological assessment to include intra-riverine and if necessary dive survey (if wading is not possible). The assessment shall also include a metal detection survey of the footprint of the proposed works.

A UAIA Report should be forwarded to the Underwater Archaeology Unit for consideration/preservation in situ of the Lady Lansdowne wreck, with no impact from the works.

The UAIA shall contain an Impact Statement and put forward recommendations to mitigate any identified negative impacts to potential or identified cultural heritage. These may include preservation in situ/avoidance, archaeological testing or full archaeological excavation.

The Department advises that any diving, should it be necessary, shall adhere to the Health and Safety Authority's Rules and Regulations pertaining to the Health and Welfare at Work (Diving) Regulations 2018, SI254 of 2018.

No permission should be granted for this application until the UAIA Report has been received, considered and a response has issued on it from this Department.

### **3.5. Third Party Observations**

3.5.1. Third party observations on the file have been read and noted.

## **4.0 Planning History**

ABP-303801-19 PA Register Reference 1860032 - Demolition of an existing building (toilets, shop and office) and permission to complete the re-construction of a new replacement structure (toilets, shop and office) and all associated site works.

Application for leave to appeal (S37(6)) refused.

Having regard to the submissions and documents received in connection with the application for leave to appeal and the conditions set out in the planning authority's decision, it is considered that it has not been shown that the development in respect of which a decision to grant permission has been made will differ materially from the development as set out in the application for permission by reason of conditions imposed by the planning authority to which the grant is subject.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The North Tipperary County Development Plan is the operative plan, it includes a settlement plan for Ballina.

Relevant provisions include:

Zoned 'enterprise and employment' and 'open space/amenity' and also identified as an opportunity site.

Ballina has a number of key sites in the town, which if developed have a role to play in the prosperity of the town. Proposals for development shall comply with the overarching policies and objectives of the North Tipperary County Development Plan 2010 (as varied). The Council will encourage and support the development of these sites, subject to the principle of proper planning and sustainable development.

Development briefs have been prepared for each site, as set out below to provide guidance in the development of designs and development proposals.

Site 1: Derg Marina – Tourism, Recreation and Public Amenity - This site is located on the shores of Lough Derg, north of the town centre. The site encompasses a derelict marina. The development of the site presents an important opportunity to enhance tourism facilities and water based recreational facilities in the town and in particular to increase berthage and boating facilities.

#### Tourism and Economic Development

- To promote Ballina as a tourism destination as part of Ireland Ancient East and the Lakelands destination propositions.
- To facilitate the expansion and development of new tourism infrastructure and activities, including water based recreational facilities.
- To seek to implement the recommendation of the Green and Blue Infrastructure Masterplan

## 5.2. Natural Heritage Designations

- 5.2.1. The nearest Natura sites are the Lough Derg (Shannon) SPA, site code 004058, (designated for Cormorant, Tufted Duck, Goldeneye, Common Tern, Wetland and Waterbirds) is located c0.6km to the north; and the Lower River Shannon SAC, site code 002165, (designated for sandbanks which are slightly covered by sea water all the time, estuaries, mudflats and sandflats not covered by seawater at low tide, coastal lagoons, large shallow inlets and bays, reefs, perennial vegetation of stony banks, vegetated sea cliffs of the Atlantic and Baltic coasts, salicornia and other annuals colonising mud and sand, atlantic salt meadows, mediterranean salt meadows, water courses of plain to montane levels with the ranunculion fluitantis and callitricho-batrachion vegetation, molinia meadows on calcareous, peaty or clayey-silt-laden soils, alluvial forests with alnus glutinosa and fraxinus excelsior, freshwater pearl mussel, sea lamprey, brook lamprey, river lamprey, salmon, common bottlenose dolphin and otter) is located c0.5km to the south.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. Property – Resource Planning Management & Development have submitted the appeal on behalf of the third party, 1 Derg Marina; the grounds includes:

- The marina had a lighting system before it was replaced.
- The replacement system consists of more numerate lamp standards at 6m height so close to the boundary as to result in light spill into her private garden and bedrooms. The level of intrusion constitutes light pollution and is an unacceptable impact on the established residential amenity of the dwelling.
- The replacement system also includes under deck lighting and bollard type lighting which has a cumulative impact with the higher lamp standards to illuminate the marina to an extent in excess of that required or desirable for its use, scale and location outside a dense urban centre, not on a public vehicular foot or cycleway and on the edge of a waterbody subject to protections as part of the Natura 2000 network.
- The need was not justified.
- Need was not supplied in response to a further information request.
- There was no evidence that the previous system was not adequate.
- In response to the request to demonstrate the protection of residential amenity, the applicant stated that a cowl could be fitted to avoid light spill onto the public road, but could not submit evidence as the software utilised cannot produce a depiction of this mitigation.
- The planner's report stated that there will be no light spill onto the public road. This negligible level of consideration of the further information has resulted in no conditions curtailing the development impact on the appellant's home.
- The retrospective AA concluded that no NIS was required. This was at further information stage and no further information on bats was submitted. The AA is therefore deficient.

## 6.2. Applicant Response

6.2.1. Arnold Leahy Architects on behalf of the first party have submitted a response to the grounds of appeal, which includes:

- Following purchase of the marina in 2015 the current owner was served with a notice under the Derelict Sites Act and in response he assembled a professional team to oversee works of: refurbishment of the marina and of the services building (retention application 18600/322).
- A complaint was made re. the lighting system and a second retention application was made.
- Care has been taken to replicate the exact footprint and character of the original marina.
- Lamp Standards:
  - Appellant requests removal of lamp standards 33B and 24 B and revision of 14A and 15B. She refers to Nos 2 & 3 Derg Marina and Nos 1-3 Lakeside Cottages – none of which are party to the appeal. Standards 14A and 15B are sufficiently removed to have no light spill to her residence and their removal would have serious safety implications at the entrance.
  - 33B and to a lesser extent 24B may illuminate the rear garden of No 1 Derg Marina to a greater extent than previously experienced but their removal would result in inadequate illumination of the car park, rear of the services building and the entrance road, at a point of directional change. Although speeds may be slow, as referenced, many vehicles will be towing boats or trailers and safe manoeuvrability is dependent on good visibility. Installation of cowls to standards 33B and 24B would be a reasonable compromise.
- Under Deck and Bollard Lighting
  - The response disagrees that the need was not established. The old was not fit for purpose and had been broken/removed. The refurbishment is for safety and security.

- The refurbished lighting system was designed by specialist lighting experts who advocated the need for both high-level and low-level lighting.
- Pleasure boating is high risk. The marina will operate 24 hours a day throughout the year. During the summer it will attract large numbers of over-night and short term berthages. The need for visibility of the services building, jetties and pontoons and life buoys, and vehicle parking areas, is referred to.
- Re. the further information:
  - UAIA – this was submitted as requested. The suggestion that it was not is confusing.
  - AA – it is suggested that the screening is deficient. A report on bats was requested and submitted.
  - Comparison Drawings – to allow a clear comparison of the light spill generated on her property before and after the proposed installation of a cowl. A number of computer software packages are standard within the industry. The various data input fields are pre-formulated and do not make allowance for addition of unusual variables such as a cowl. It is not possible to generate a comparison drawing showing light spill isochrome from the lamp standards in question with and without the addition of a cowl. However the potential effectiveness of the cowl can be realistically determined without a computerised drawing, based on existing industry practice and common sense. Back spill would be controlled through the use of a rear cowl.
- Re. her complaint that they have not been installed, that is because of the appeal.
- Accusations of planning impropriety are responded to with reference to the planning history of the site. The appellant is the only person to have raised an objection to the Marina's refurbishment.
- Accompanying the response are:

reports from ADCO the Archaeological Diving Company Ltd. 29/4/2020 and 23<sup>rd</sup> June 2018;

from Signify – the lighting suppliers confirming that they can provide external cowls for the three indicated Luma LED Lanterns (33B, 24B and 14B) which they supplied and fitted; they are designed to eliminate directional light spill; they recommend the rear cowl which will eliminate back spill; and

a copy of the notice of entry in the Derelict Sites Register.

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

- 6.3.1. The planning authority have responded to the grounds of appeal stating that they have no observations to make.

### **6.4. Further Response**

- 6.4.1. The appellant has submitted a response to first party response to the grounds of appeal, which includes:
- 6.4.2. The appellant re-iterates that the removal of lamp standards 33B, 24B and 14A is required to remove the unacceptable light spill into the private garden and bedroom areas.

## **7.0 Assessment**

- 7.1.1. The issues which arise in relation to this appeal are, appropriate assessment, impact on bats, aquatic life and underwater archaeology need, residential amenity, and other issues and the following assessment is dealt with under these headings.

### **7.2. Appropriate Assessment**

- 7.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

### 7.3. Impact on Bats, Aquatic life and Underwater Archaeology

7.3.1. The potential impact on bats and aquatic life was raised in a further information request, in response to which Doherty Environmental Consultants Ltd stated that the potential for lighting to pose a barrier to the movement of bats relates to its presence between roost and foraging sites, or along linear corridors that intersect potentially suitable foraging habitat. Given that the bats using the marina as a foraging site are likely to be approaching the marina and the lake from the land to the east, as observed, the lighting at the marina is not predicted to have the potential to function as a significant barrier to the movement of bats. The lighting will span an area of approx. 300m which represents a limited extent and will not pose a significant barrier to the movement of bats over the lake from east to west or vice versa.

The new lighting regime has been designed to avoid any illumination in the area that was relied upon by Daubenton's bats for foraging. This area will be maintained in darkness throughout the operational phase.

The spacing between the lights has been maximised to reduce light intensity while at the same time aiming to achieve the required lighting levels to provide for a safely lit environment.

Lighting as detailed in the ILP 2018 guidelines should be used.

Light with high UV content will be avoided. Narrow spectrum lighting with low UV content will be used.

Low intensity lighting will be used.

These measures have been used and accord with Lighting Professional's Guidance Note 08/18 Bats & Artificial Lighting in the UK ; the Bats Conservation Ireland, 2010 guidance document: Bats & Lighting Guidance Notes for Planners, Engineers, Architects and Developers.

Dimming to approx. 25% of their intensity level between the hours of 7pm and 7am during the months of April to October is proposed.

Residual Impact – the new lighting regime will not result in illumination of areas that were observed to be relied upon by Daubenton's bats, the species considered to be most sensitive to disturbance from lighting. It will result in the area of illumination above 1 lux from 0.8ha to approx. 1.5ha and in an increase in the area of illumination over water from 0.16ha to 0.26ha. It is not a significant barrier to

movement of bats. With the mitigation measures it will not result in significant negative impact on Daubenton's bats. Impact on Soprano pipistrelle and Common pipistrelle will be imperceptible to minor negative, similarly aquatic life.

- 7.3.2. In my opinion the impact on bats and aquatic life should not be a reason to refuse or modify the proposed development.

#### **7.4. Scale and Intensity of Lighting/ Residential Amenity**

- 7.4.1. The grounds of appeal refers to scale and intensity of lighting, stating that it is not justified, exceeds that which it replaces and that the cumulative impact of the under deck lighting and bollard type lighting with increased number of higher lamp standards, illuminate the marina to an extent in excess of that required or desirable for its use, scale and location.
- 7.4.2. This matter was addressed in the course of the planning application. The grounds of appeal refers to residential amenity, that in response to the request to demonstrate the protection of residential amenity, the applicant stated that a cowl could be fitted to avoid light spill onto the public road, but could not submit evidence as the software utilised cannot produce a depiction of this mitigation.
- 7.4.3. The applicant's response states that a number of computer software packages are standard within the industry which do not make allowance for variables such as a cowl. However the potential effectiveness of the cowl can be realistically determined without a computerised drawing, based on existing industry practice and common sense and back spill would be controlled through the use of a rear cowl.
- 7.4.4. It is accepted, in the response, that 33B and to a lesser extent 24B may illuminate the rear garden of No 1 Derg Marina to a greater extent than previously experienced but their removal would result in inadequate illumination of the car park, rear of the services building and the entrance road at a point of directional change. It is proposed that installation of cowls to standards 33B and 24B would be a reasonable compromise.
- 7.4.5. The marina, which is a long established facility, did not previously have the level of lighting, now provided by the replacement lighting, and it is now a well lit area. In addition, since the facility had fallen into some level of disrepair and disuse, the lighting appears to have fallen below the standards of its first installation. It is

however an established facility, predating the three houses at 1-3 Derg Marina which first appear on the OSI aerial photography in 2005, and requires adequate lighting.

- 7.4.6. In my opinion the installation of cowls is an acceptable solution. Impact on residential amenity should not be a reason to refuse or further amend the development proposed for retention.

## 8.0 Recommendation

- 8.1.1. In accordance with the foregoing I recommend that permission for retention should be granted, for the following reasons and considerations and in accordance with the following conditions.

## 9.0 Reasons and Considerations

- 9.1.1. The site is identified in the North Tipperary County Development Plan, settlement plan for Ballina, as a key site / opportunity site where the Council will encourage and support development. It is considered that the provision of adequate lighting for users of the facility is a fundamental requirement for the use of this land as a marina, and that subject to the following conditions, the retention of the lighting as developed, would provide for the safety and convenience of the users of the marina, would not adversely impact on bats, aquatic ecology or underwater archaeology, would not unduly impact on nearby residential properties and would accordingly be in accordance with the proper planning and sustainable development of the area.

## 10.0 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 1st May 2020 and 6th July 2020, 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
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	<p>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>
2.	<p>Rear cowls shall be fitted to lights on standards 33B and 24B to reduce the amount of light spill to adjoining properties.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>

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Planning Inspector

5<sup>th</sup> November 2020

## Appendices

Appendix 1: photographs

Appendix 2: North Tipperary County Development Plan 2010, as varied, extract