



An
Bord
Pleanála

Inspector's Report

ABP-309157-21

Development	Public realm improvement scheme within town centre to enhance existing streetscapes.
Location	Mohill, Co. Leitrim
Planning Authority	Leitrim County Council
Type of Application	Appropriate Assessment Screening Determination
Applicant	Cllr Des Guckian.
Date of Site Inspection	9 th March 2021.
Inspector	Patricia Calleary

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1.0 Introduction

- 1.1. Leitrim County Council is proposing to undertake a Public Realm Improvement scheme in Mohill town centre in County Leitrim. Under the provisions of Article 250(3)(b) of the Planning and Development Regulations 2001-2021, Cllr Des Guckian contends that the development would give rise to significant effects on European sites and has requested the Board for a determination on this matter.
- 1.2. It is noted that a request for a screening determination on the need for Environmental Impact Assessment (EIA) under Article 120(3)(b) was also received by the Board from Cllr Guckian. However, this request for screening for the need for EIA was received outside of the four-week statutory time period. This assessment is therefore limited to the consideration of the potential for significant effects on European sites arising from the project and whether or not the preparation of a Natura Impact Statement (NIS) by Leitrim County Council would be necessary, should the need for carrying out of Appropriate Assessment be identified.
- 1.3. Leitrim County Council have carried out an Appropriate Assessment Screening for the proposed development in which it is determined that an Appropriate Assessment is not required and they have advanced the project through the process set out in Part XI of the Planning and Development Act 2000, as amended, and Part 8 of the Planning and Development Regulations, 2001-2021.

2.0 Site Location and Description

- 2.1. The site is located in the town centre of Mohill in south county Leitrim, c.16km east of Carrick-on-Shannon. It includes the existing streetscapes at the junction of Main Street (R201) / Castle Street (R202), O'Carolan / St. Mary's public space; Glebe Street (R202) / public Car Park and Water Street; Main Street (R201) and Hyde Street (R202) / Glebe Street (R202) and Main Street / Green Lane / Butter Market; Main Street (R201), Chapel Lane (at St. Patrick's Church) and the curtilage of St. Mary's Church.

3.0 Proposed Development

- 3.1. The proposed development comprises the carrying out of improvement works to the public realm in Mohill town centre in an area defined by the redline boundary on the submitted drawings.
- 3.2. The nature of the proposed works would broadly include:
- widening of footpaths;
 - introduction of shared surface space at identified locations;
 - provision of enhanced pedestrian crossings and access steps;
 - replacing existing road surfaces;
 - provision of new lighting in addition to the existing lighting;
 - relocation of street furniture and signage;
 - provision of soft and hard landscaping measures, including a vertical landscape feature at the Butter market;
 - new street furniture;
 - alterations to the existing on-street car parking provision.
- 3.3. It is also proposed to modify the curtilage / front boundary of Saint Mary's church wall to include opening two upper sections of the existing wall and replacement with a railing, while the existing peers and gates would remain untouched. Saint Mary's church is a Protected Structure located on Castle Street.
- 3.4. A copy of the **Part 8 application** was received from Leitrim County Council on 17th February 2021. It includes the following documents:
- Copy of site notice and newspaper notice;
 - Part 8 Planning Report;
 - Architect's Report;
 - Architectural Heritage Impact Assessment;
 - Appropriate Assessment Screening Report;
 - Environmental Impact (Preliminary Examination) Report;

- Letter from South Leitrim Group of Parishes;
- Drawings;
- Minutes of Meeting of Carrick on Shannon Municipal District held on 14th December 2020.

4.0 Request for Direction and Submitted Documents

- 4.1. In a letter received by the Board on the 14th day of January 2021, John Gerard Cullen solicitors of Hartley Business Park, Carrick on Shannon, County Leitrim, submitted a request for an Application under Article 120(3)(a) and 250(3)(b) of the Planning and Development Regulations 2001-2021 on behalf of Cllr Des Guckian.
- 4.2. In relation to the request for under Article 250(3)(b) which centres around whether or not the development would be likely to have a significant effect on a European site, it is submitted that Article 6(3) of the Habitats Directive was not complied with and the Appropriate Assessment Screening Report does not identify the likely impacts from the proposed development on Lough Forbes Complex SAC (Site Code: 001818) and or other proximate European sites either alone or in combination with other local authority projects. It is submitted that there are a number of omissions from the assessment including: the exclusion of a disused landfill, no reference made to the pathway via the River Shannon and other European site receptors and the absence of consideration of disturbance to the cemetery and monastery wall. It is also asserted that no assessment was carried out in respect of other Local Authority development taking place adjacent to the site. It is submitted that the screening is empirical and generic and the methodology used in assessing likely significant effects is inadequate. It is stated that the screening conclusion is irrational in light of the standard of proof required. The request concludes that the works would be likely to result in a significant effect on European sites and that the preparation of a NIS is therefore required.
- 4.3. The Board received a number of emails from the applicant with attachments, all of which I have viewed and issues raised that are relevant have been considered in this report.

5.0 Local Authority Response

5.1. The response of the local authority can be summarised as follows:

- provides an outline of the Part 8 application process and documentation and states that the process has concluded;
- provides an overview of the Appropriate Assessment Screening Statement and its conclusion;
- states that the Part 8 proposed development was referred to the Development Applications Unit of the Department of Housing, Local Government and Heritage and that no comments were received;
- states that any amendments made subsequent to the original advertised development were not significant or material, and that they were communicated to the applicant's solicitors;
- with the exception of the stretch of the river, which is already culverted, the remainder of the river or disused landfill do not form part of the development;
- reference to the impact of the development on the cemetery / monastic wall is of no relevance to the substantive issue of Appropriate Assessment;
- there is no proposed increase in the extent of surface water runoff from the proposed development or no increase in hard surface area;
- the development does not result in any foul /wastewater being created. An upgrade of Mohill wastewater treatment plant was completed in 2019;
- the quality of the Rinn River is classified as poor as it flows through Mohill town. It flows on to Lough Rinn and then continues to the River Shannon where the quality improves to moderate.
- the improvement in water quality would support the view outlined in the Appropriate Assessment Screening Statement, which relies on the distance from the proposed development to the nearest European Site of almost 12km of being adequate to conclude that the proposed development would not have a significant effect on the qualifying interest of such sites;

- provides a number of clarifications in relation to statements made by the applicant in his submission.
- The Planning Authority state that they should be entitled to rely on the Part 8 approval and that the Board's acceptance of the application would open up an avenue to allow for development which has been through the Part 8 process to be referred to the Board for a determination on Appropriate Assessment screening. States that this is inconsistent with Article 120 of the Regulations which deal with EIA.

6.0 Policy Context

6.1. Development Plan

6.2. The site is located within the area covered by Leitrim County Development Plan (2015-2021). Mohill is identified as a 'T2B Support town', which are towns with a population over 750 people and which have a range of commercial and community facilities and services. The preparation of the new Leitrim County Development Plan 2022-2028 is currently underway.

7.0 Planning History

7.1. The Appropriate Assessment Screening Report on file details the planning history in Mohill over the past 5 years and includes the following:

- **Planning Ref.15228:** Permission granted for the renovation of an existing building including change of use at ground floor level from veterinary clinic to residential to provide 1 no. two storey dwelling and partial demolition of existing boundary wall to accommodate off street parking;
- **Planning Ref. 17170:** Permission granted to (a) retain existing wastewater treatment system & pump/sump and (b) permission to decommission existing percolation area and install a new packaged tertiary treatment system;
- **Planning Ref. 19144:** Permission granted for the change of use from betting office to Chinese restaurant and takeaway;

- **Planning Ref.17195:** Permission granted for the proposed construction of a single storey sun lounge to service existing storey and a half type dwelling house and all ancillary works;
- **Planning Ref.19223:** Permission granted for (a) proposed change of use from restaurant to Retail / Food Hall on ground floor level of existing two storey Mixed Use building; (b) proposed demolition of existing out buildings; the proposed re-construction of same for use as part of the aforementioned Retail / Food Hall; (c) proposed conversion and internal alterations of the existing first floor habitable accommodation into 2 no. one bedroom; (d) alterations to the existing front façade.

8.0 Legislative Provisions

- 8.1. Under the provisions of Article 250(3)(b) of the Planning and Development Regulations 2001, as amended, where any person considers that a development proposed to be carried out by a local authority would be likely to have a significant effect on a European site, he or she may apply to the Board for a determination as to whether the development would be likely to have such significant effect.
- 8.2. Under Article 250(3)(d), where the Board determines that a development would be likely to have a significant effect on a European site, it would require the local authority to prepare a Natura Impact Statement.

9.0 Screening for Appropriate Assessment

9.1. Introduction

- 9.1.1. At the outset, it is noted that the works have been through the statutory Part 8 planning process, a process which was completed on the 14th December 2020 and all parties were noted of the outcome on the 25th January 2021.
- 9.1.2. The Planning Authority have raised concerns with the principle of the application at the outset, stating that they should be entitled to rely on the Part 8 approval. It is submitted that the Board's acceptance of the application would open up an avenue to allow for development which has been through the Part 8 process to be referred to

the Board unless the respective developments have commenced and that this would be unreasonable.

9.1.3. In considering this point, I would agree on one hand that it would seem reasonable that following a Part 8 approval of the works, the works could be considered '**approved**' rather than '**proposed**'. However, it is of relevance to note that Article 250(3)(b) does not stipulate any timeframe, unlike a similar process dealing with screening for EIA set out in Article 120(3)(a) of the Regulations, which stipulates a four-week timeframe from the date of publication of the notice referred to in Article 81(2) (Notice of the proposed development).

9.1.4. Given the absence of a timeframe set out in the Regulations in particular and noting that the physical works are not completed, it is reasonable that the works are considered '**proposed**' within the meaning of Article 250. Should the Board agree, I am proceeding with my screening for appropriate assessment as set out in the remainder of my report.

9.2. Information Considered

9.2.1. The following are considered in this screening for Appropriate Assessment:

- documents on file including the request and subsequent correspondence by John Gerard Cullen solicitors on behalf of Cllr Des Guckian;
- response from the planning authority;
- Part 8 Planning Application Drawing and Documents on the Planning Authority's website;
- report for the purpose of Appropriate Assessment Screening;
- information gathered during site visit carried out on 9th March 2021;
- relevant guidance.

9.2.2. This screening exercise has been prepared in accordance with the following guidance:

- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities. (Department of Environment, Heritage and Local Government, 2010 revision);

- Scottish Natural Heritage (SNH) Guidance, 'Assessing Connectivity with Special Protection Areas (SPA)' (2016);
- Assessment of Plans and Project Significantly Affecting Natura 2000 sites: Methodological Guidance on the Provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. (European Commission, 2001);
- Managing Natura 2000 sites: The Provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EEC (European Commission, 2018);
- A Practice Note (PN01) – 'Appropriate Assessment Screening for Development Management' (Office of the Planning Regulator 2021);
- An Bord Pleanála internal guidance, specifically 'Advice Note 1: Appropriate Assessment'.

9.2.3. The guidance referred to in the Local Authority's Appropriate Assessment Screening Report has also been noted.

9.2.4. Taking the above into account, I am satisfied that there is adequate information to allow for a complete, precise and definitive determination as to whether Appropriate Assessment is required for the proposed development.

9.3. **Key elements of the project**

9.3.1. The proposed development details have been set out in summary in Section 3 above. It would broadly comprise the carrying out of improvement works to the public realm in Mohill town centre and to modify the curtilage/front boundary of St.Mary's Church wall. There is no increase in the extent of hard surfacing proposed and the extent of surface water runoff would not increase. No foul /wastewater would be generated as a result of the works.

9.4. **Appropriate Assessment Screening Document**

9.4.1. An Appropriate Assessment Screening document was prepared by MKO on behalf of Leitrim County Council. It describes the proposed development, its receiving environment and lists the European Sites in the zone of influence of the development. It is submitted that the report is based on a desk study and field surveys undertaken on the 28th day of September 2020 to establish baseline conditions on the site.

- 9.4.2. The habitats identified largely comprise: Buildings and Artificial Surfaces (BL3), Flower Beds and Borders (BC4) and some ornamental trees. A wall categorised as Stone Walls and Other Stone Work (BL1) runs adjacent to the footpath along Castle Street and acts as a barrier to the adjacent river categorised as Depositing/Lowland River (FW2). It is stated that at the time of surveying, the river was stagnant along this section of the road and heavily vegetated with species including Fools Watercress (*Apium nodiflorum*) Floating Sweetgrass (*Glyceria maxima*) and Branched Bur-reed (*Sparganium erectum*).
- 9.4.3. No species listed under Annex II of the EU Habitats Directive or Annex I of the EU Birds Directive were recorded. No invasive species listed on the Third Schedule of Regulations 49 and 50 of the European Communities (Birds and Natural Habitats) Regulations SI 477/2011 were recorded.
- 9.4.4. The site is not located within or immediately adjacent to any European site. The Appropriate Assessment Screening Report considers European sites within a 15km radius of the proposed development. The nearest site is the Cloneen Bog Special Area of Conservation (SAC) (Site Code: 002348), which is located c. 11.9km south of the proposed development site. Lough Forbes Complex SAC (Site Code: 001818) and Ballykenny-Fishertown Bog Special Protected Area (SPA) (Site Code: 004101) are located 13.6km south of the site.

9.5. Identification of European Sites

- 9.5.1. Having regard to the information and submissions available and to the nature, size and location of the proposed development and its likely direct, indirect and cumulative effects, the source-pathway-receptor principle and the sensitivities of the ecological receptors, the following European Sites (Set out in Table 1) are considered relevant to include for the purposes of initial screening for the requirement for Stage 2 Appropriate Assessment on the basis of likely significant effects. It is of relevance to note these were considered by the Local Authority as set out in the Appropriate Assessment screening report received by the Board. Their location relative to the proposed works are set out on Figure 3-1 (EU sites within 15km buffer), also included in the Local Authority's screening report.

Table 1: European sites considered for Stage 1 Screening.

European Site (SAC/SPA)	Distance from proposed works site	Qualifying Interests/ special conservation interests	Conservation Objectives
Cloneen Bog SAC (Site Code: 002348)	11.9km	Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Bog woodland [91D0]	Detailed conservation objectives (Version 1, August 2016 available on www.npws.ie).
Lough Forbes Complex SAC (Site Code: 001818)	13.6km	Natural eutrophic lakes with Magnopotamion or Hydrocharition - type vegetation [3150] Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>) [91E0]	Detailed conservation objectives (Version 1, May 2016 available on www.npws.ie).
Ballykenny-Fishertown Bog SPA (Site Code: 004101)	13.6km	Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]	Generic conservation objectives – ‘To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA’ (Version 8 - 2021 available on www.npws.ie).

9.6. Screening for Likely Significant Effects

- 9.6.1. Examination of the information provided on the proposed development shows that all works associated with the development would be confined to the site boundaries. As this area is outside of the SACs and the SPA boundaries, no **direct impacts** on any habitats or species for which the aforementioned designated European sites would

occur and there is no requirement for any form of instream works. There would be no direct discharge of water into the River Rinn, which runs along Castle Street. The proposed area of the development site does not contain ex-situ habitats for any qualifying interest/special conservation interest species (birds). Direct impacts on the three European sites can therefore be screened out.

- 9.6.2. The only potential for **indirect impacts** on the designated European sites or their qualifying interests that could arise would be associated with the construction phase, through the potential release of sediment or other contaminants which, though considered remote, might connect with the European sites. No foul /wastewater would be generated as a result of the works. It is stated that the upgrade of the Mohill Wastewater plant was completed in 2019.
- 9.6.3. All of the proposed works are confined to the existing built infrastructure of Mohill town. The existing wall adjacent to the River Rinn along Castle Street would function as a natural barrier between the proposed works and the watercourse, and as stated above, no discharge to the watercourse is proposed. I am satisfied therefore that based on the location, nature and scale of the works, which would occur completely within the existing infrastructure of Mohill town and the absence of a complete source-pathway-receptor chain, there is no likelihood that pollutants arising from the proposed development during construction could reach the European designated sites in such concentrations to have any likely significant effects on Cloneen Bog SAC (Site Code: 002348), Lough Forbes Complex SAC (Site Code: 001818), Ballykenny-Fishertown Bog SPA (Site Code: 004101), or any other European site having regard to the sites qualifying interests/special conservation interests and conservation objectives.
- 9.6.4. While there is potential for the generation of noise and dust/particulate matter during construction, due to the localised nature and limited duration of the works and the distance to the 3 relevant European sites, no significant effects on qualifying interest/special conservation interest species (birds) are likely to arise as a result.
- 9.6.5. Following completion of the works, the site would operate as a public realm, similar to its current use, with no realistic potential for any significant effects on the three European sites.

9.7. **Consideration of Applicant's submission**

9.7.1. I have taking the matters raised by the applicant into account in my assessment above. There is no factual scientific evidence provided as to how the development would interact with any disused landfill so as to cause a likely significant effect on any European sites. The pathway from the adjoining watercourse to the River Shannon does not in itself mean that likely significant effects on the European Sites would result. Alterations to the wall at St.Mary's church would not realistically result in significant effects to the European sites. Overall, no scientific evidence has been put forward or is available to me to alter the findings above.

9.8. **In combination or Cumulative Impacts**

9.8.1. As the proposed works would not have potential to result in any significant effect on any European Site, it can be concluded that the works would not give rise to any potential cumulative/in-combination effect and therefore likely significant effects can be ruled out in this regard.

9.9. **Conclusion on Appropriate Assessment Screening**

9.9.1. Having regard to the nature and scale of the proposed development comprising small-scale public realm works including modification of the curtilage / front boundary of Saint Mary's church wall, the nature of the receiving environment which comprises a built-up urban area and existing infrastructure and the distance to the nearest European sites, I consider that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Cloneen Bog SAC (Site Code: 002348), Lough Forbes Complex SAC (Site Code: 001818) or Ballykenny-Fishertown Bog SPA (Site Code: 004101), or any other European site, in view of the conservation objectives of these sites and that a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement for the proposed development is not, therefore, required.

9.9.2. The exclusion of likely significant effects is based wholly on objective information and there is no reliance on any measures intended to reduce or avoid impacts on any European site.

10.0 Recommendation

10.1. I recommend that the Board determine that the development proposed to be carried out by Leitrim County Council would not be likely to have significant effects on any European site and the preparation and submission of a Natura Impact Statement is not required for the reasons and considerations set out under.

10.1.1. Reasons and Considerations

Having regard to:

- a) the planning and development regulations 2001-2021,
- b) the nature and limited scale of the proposed development,
- c) the location of the proposed development outside of any European designated sites,
- d) the separation distance between the proposed development and the European Sites at the closest points,
- e) the absence of identified hydrological connections between the proposed development and European sites,
- f) the lack of in-combination effects arising from other proposed and permitted development in the vicinity,
- g) the submissions made to the Board including the initial request and the Local Authority's response, and
- h) the report and recommendation of the inspector,

It is considered reasonable to conclude that, on the basis of the information available which is considered adequate to issue a screening determination, the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Cloneen Bog SAC (Site Code: 002348), Lough Forbes Complex SAC (Site Code: 001818) or Ballykenny-Fishertown Bog SPA (Site Code: 004101), or any other European Site, in view of the sites' conservation objectives and, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement for the proposed development is not required.

The exclusion of likely significant effects is based wholly on objective information and there is no reliance on any measures intended to reduce or avoid impacts on any European site.

A handwritten signature in cursive script that reads "Patricia Calleary".

Patricia Calleary
Senior Planning Inspector
22nd March 2021