



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309715-21

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<b>Development</b>	Public realm improvement scheme.
<b>Location</b>	Carrick on Shannon, Co. Leitrim
<b>Planning Authority</b>	Leitrim County Council
<b>Type of Application</b>	Appropriate Assessment Screening Determination
<b>Applicant</b>	Leitrim County Council.
<b>Date of Site Inspection</b>	2 <sup>nd</sup> April 2021.
<b>Inspector</b>	Patricia Calleary

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## **1.0 Introduction**

- 1.1. Leitrim County Council is currently undertaking a Public Realm Improvement scheme in Carrick on Shannon and as part of the scheme, have provided a public car park with c.105 car parking spaces and replaced a fixed boardwalk along the River Shannon. The works are stated to be a continuation of the public realm improvement works already carried out along Bridge Street in the town centre, and on the day of my site inspection, construction was well advanced, with some elements complete.
- 1.2. Under the provisions of Article 250(3)(b) of the Planning and Development Regulations 2001-2021, John Gerard Cullen Solicitors, on behalf of his client, 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.
- 1.3. Leitrim County Council 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. As part of that process, the Local Authority have prepared an Appropriate Assessment Screening report for the development in which it is concluded that an Appropriate Assessment (Stage 2) is not required.

## **2.0 Site Location and Description**

- 2.1. For the most part the site comprises a network of streets located in the town centre of Carrick on Shannon in county Leitrim, including St. Georges Terrace, Market Square, Main Street West, Church Lane, Main Street Canter, Priest's Lane, Main Street East and an approach road, as well as a backland site known as Flynn's Field. The site also comprises an area located at the property of Le boat / Emerald Star and Carrickcraft boating companies (The Marina, St. George's Terrace or Townparks Townland).

## **3.0 The Development**

- 3.1. The development, which as stated above is well advanced, comprises the carrying out of improvement works to the public realm in Carrick on Shannon town centre.
- 3.2. The nature of the works include:

- provision of a public realm improvement scheme comprising the widening of footpaths, introduction of shared surface space at identified locations;
- provision of enhanced pedestrian crossings, replacing existing road surfaces, replacing existing street lights and provision of new lighting, landscaping and street furniture, and to reduce the extent of on-street car parking;
- relocate the Town Clock, a protected structure by 2 metres;
- provide a public car park comprising 105 car parking spaces;
- replace the existing fixed boardwalk along the River Shannon (at a specific location) and to provide a 2.5m public floating boardwalk at its location, connecting with the existing car parking area at the quayside.

#### **4.0 Request for Direction and Submitted Documents**

- 4.1. In email correspondence received by the Board on the 3<sup>rd</sup> day of March 2021, John Gerard Cullen Solicitors requested the Board to exercise its powers under Article 250(3) of the Planning and Development Regulations 2001-2021. The request was accompanied by supporting information, which is information available on the National Parks and Wildlife Service (NPWS) website. Two further emails were received from John Gerard Cullen Solicitors on the 4<sup>th</sup> day of March 2021, which collectively included a technical report prepared by a Mr. John Anderson of AA Forensics Limited and there are a number of photographs included in the report.
- 4.2. The request primarily focusses on the works at the marina area of the site, which it is submitted is located within 10km of a natural heritage area (NHA) known as 'Lough Boderg and Lough Bofin' (Site Code 001642). It is also stated that there is a direct hydrological connection between the site of the works and various European sites. It is submitted that the development would adversely impact protected habitats and birds, contrary to the Habitat and Birds Directives. Referring to the enclosed technical report prepared by AA Forensics Limited, the following is set out:
- the marina site has endured transfer of diesel fuel on board and carrying out of repair works to boats, including their engines leading to pollution of the river;

- requests further investigations of the site including soil sampling and analysis of the area surrounding the storage tanks adjacent to the river;
- the site is littered with items including rusting drums and plastic containers that contain hazardous chemicals;
- refers to further photographs that are stated to show a daily oil slick on the water, caused by ingress of oil from the marina site;

The following is also stated:

- the site is located c.20km from Lough Forbes Special Area of Conservation (SAC) and within 15km of other European sites;
- Lough Forbes is also a source for the abstraction of drinking water;
- there are direct pathways and hydrological connections between the marina and the following designated sites: Corracramph Bog NHA (site code 001422), Aghnamona Bog NHA (Site Code 000422), Clooneen Bog SAC (Site Code 0002348) and Ballykenny-Fisherstown Bog Special Protection Area (SPA) (Site Code 004101);
- Ireland has a large proportion of the total EU source of raised bog and has a special responsibility for its conservation at an international level;
- the Local Authority's description of the plan excludes the fact that diesel pollution has not been considered in the Local Authority's assessment;
- the screening is empirical and generic, and the methodology used in assessing likely significant effects is inadequate;
- refers to the Water Framework Directive and the statutory obligations for improvement of water quality and that the River Shannon has already a poor status.

4.3. In a further email correspondence dated the 31<sup>st</sup> March 2021, received from John Gerard Cullen Solicitors, it is stated that the application is made on behalf of Councillor Des Guckian. It is also stated that the Local Authority have ignored a request for the core sampling and that the Authority may have carried out water sampling. A single photograph was included with that correspondence. The

requestor asks the Board to order that the works be suspended pending an investigation on pollution.

- 4.4. A further email dated 9<sup>th</sup> April 2021 was received by the Board from John Gerard Cullen Solicitors reiterating concerns regarding oil pollution and again requesting that the works are suspended pending results of requested tests. It is the requestor's case that the works would be likely to result in significant effects on European sites and that the preparation of a Natura Impact Statement (NIS) is therefore required.

## 5.0 Planning Authority Response

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

- submits that the works are either complete or under construction and by virtue of the wording of Article 250(3)(a), whereby the application permitted refers to 'proposed works', the application should not be considered further and requests the Board to dismiss the request;
- provides an outline and timeline of the Part 8 development process and public consultation;
- states that the Part 8 development was approved at the Carrick on Shannon District meeting on 11<sup>th</sup> February 2019;
- provides an update of the current status of the works. States that the car park works are complete, the boardwalk works are near completion (and the works along the river, including the provision of the boardwalk, have been completed in 2020), while the works to the streets are under construction;
- states that an application for leave to bring judicial review proceedings by Mr. Cullen on behalf of a different client, against the decision of the Local Authority on the Part 8 process has been granted;
- states that an allegation of pollution has been made to the Environmental Protection Area (EPA) who have referred the matter back to the Local Authority and an investigation is underway;

- provides an extract of a response from the Department of Housing, Local Government and Heritage relating to the lack of a prescribed timeline provided for under Article 250 of the Regulations;
- Submits its position that the Planning Authority concur with the conclusions of the Appropriate Assessment Screening report carried out for the Part 8 process.

## 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). The preparation of a new plan, the Leitrim County Development Plan 2022-2028 is currently underway. On the Planning Authority's website, it is stated that the new plan is currently at pre-draft stage. The Carrick on Shannon Local Area Plan (2010-2019), as extended, is also relevant. Carrick on Shannon is the county town of Leitrim.

## 7.0 Planning History

7.1. Section 5.1 of the Local Authority's Appropriate Assessment screening report provides a list of proposals for which planning permissions has been granted in Carrick on Shannon over the past 5 years from the date of their report (November 2018). It includes reference to a new three-storey Primary Care Centre to the south of Flynn's Field. Planning permissions granted for other proposals relate to developments of a relatively minor scale.

## 8.0 Legislative Provisions

8.1. Under the provisions of Article 250(3)(b) of the Planning and Development Regulations 2001-2021, 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 NIS.

## 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 and were approved by Carrick on Shannon Municipal District on 11<sup>th</sup> February 2019. The works are now at an advanced stage of construction.

9.1.2. The Planning Authority have raised concerns with the principle of the application at the outset, stating that the works are no longer 'proposed' and by reference to Article 250(3)(a) the application should have been dismissed.

### 9.2. Information reviewed.

9.2.1. I have examined all of the information on file, and I have also reviewed a copy of the Local Authority's Part 8 application available on the Planning Authority's website. This included an examination of an Appropriate Assessment Screening report (MKO, 26<sup>th</sup> November 2018) prepared for that process. My examination on the relevant documents is also informed by the written request and the Local Authority's response and by the information gathered during my site visit. I have had regard to relevant guidance including the following:

- 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’;

9.2.2. In addition to the above, other guidance referred to in the Local Authority’s Appropriate Assessment Screening Report has also been noted.

### 9.3. **Adequacy of Information**

9.3.1. Having regard to all of the information on file and to the legislative requirements and applicable guidance on Appropriate Assessment screening, I am satisfied that there is adequate information on file to allow for a complete, precise and definitive determination as to whether Appropriate Assessment is required for the works which are at an advanced stage of construction.

### 9.4. **Key elements of the project**

9.4.1. The details of what was the proposed development, and is now currently underway, are set out in summary in Section 3 above. The development broadly comprises the carrying out of improvement works to the public realm in Carrick on Shannon town centre, providing for a new public car park comprising 105 car parking spaces at a backland site referred to as Flynn’s Field and the removal of a fixed boardwalk within the River Shannon, with the provision of a public floating boardwalk in its place. As submitted by the Planning Authority and as was evident on the date of my inspection, the car park is complete, the works on the public realm are well advanced and the works to the marina are also at an advanced stage. The physical boardwalk structure along the river is in place.

### 9.5. **Appropriate Assessment Screening Document**

9.5.1. The Appropriate Assessment Screening document describes the (then) proposed development, its receiving environment and lists the European Sites considered to be in the zone of influence of the development. It is submitted that the screening is based on a desk study and field surveys undertaken on the 9<sup>th</sup> day of November 2018 to establish baseline conditions on the site.

9.5.2. As set out in the screening report, the majority of habitats within the site were found to be of local importance (lower value). The River Shannon, categorised as a

Depositing/lowland River [FW2], is not designated under any European site in this location. It has been assigned County Importance due to its potential to support regularly occurring protected species and its nature as an area of high amenity. No evidence of fauna populations of ecological significance were recorded on the site. 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.

## **9.6. Identification of European Sites**

- 9.6.1. The test for likely significant effects in the context of Appropriate Assessment screening requires an examination of any possible interaction with European sites to ascertain whether the development, alone or in combination with other plans or projects, might give rise to significant effects on any European site in view of the conservation objectives of those sites.
- 9.6.2. The site of the works is not located within or required for the management of any European site. The Appropriate Assessment screening report notes that there are no European sites within a 15km radius of the (then) proposed development (DoEHLG Guidance 2010 refers). There are two sites identified that are potentially within the zone of influence as they have hydrological connectivity via the River Shannon, albeit at a considerable distance away. These comprise Lough Forbes Complex SAC (Site Code: 001818) and Ballykenny-Fishertown Bog Special Protected Area SPA (Site Code: 004101), both of which lie 32.8km along a downstream hydrological pathway from the works. I consider there is a low potential for significant effects due to the extent of the separation distance and dilution available because of the large volume of water along the pathway, however, having regard to the potential for a complete source-pathway-receptor chain, albeit with a weak pathway for the reasons outlined, they are relevant sites to include for screening. I would agree as is submitted that all other European sites with potential for hydrological pathway via the River Shannon beyond this distance can be immediately screened out because of the nature and scale of the development in the first instance and the separation distance from the subject site and dilution offered by the River Shannon and lakes downstream. The requestor referred to Clooneen Bog SAC (Site Code 0002348), however, while it is marginally closer to works at Carrick on Shannon, than the

European sites listed above, there is no ecological or other such pathway connecting the works to this site and therefore, in the absence of any complete Source-Pathway-Receptor chain, no significant effects on the integrity of this site would arise as a result of the works.

9.6.3. Having regard to the information and submissions available and to the nature, size and location of the 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 below, are those I consider to be relevant for the purposes of initial screening for the requirement for Stage 2 Appropriate Assessment on the basis of likely significant effects. These were the sites that were examined by the Planning Authority during the Part 8 application, as set out in the Appropriate Assessment screening report. Their location relative to the works are set out on Figure 3-1 (Designated sites within 15km<sup>1</sup>) included in the Planning Authority’s screening report.

**Table 1: European sites considered for Stage 1 Screening.**

European Site (SAC/SPA)	Distance from works site	Qualifying Interests	Conservation Objectives	Source-pathway-receptor
Lough Forbes Complex SAC (Site Code: 001818)	32.8km	Natural eutrophic lakes with <i>Magnopotamion</i> or <i>Hydrocharition</i> - type vegetation [3150] Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the	Detailed conservation objectives (Version 1, May 2018 available on <a href="http://www.npws.ie">www.npws.ie</a> )	While this site is a considerable distance away, a potential pathway exists via the River Shannon and is considered therefore to be within the likely zone of impact of the works.

<sup>1</sup> While the title of the map suggests the sites within a 15km buffer are shown, others outside of the 15km including the two which are considered relevant are also shown on Figure 3.1.

		<i>Rhynchosporion</i> [7150] <i>Alluvial forests with Alnus glutinosa</i> and <i>Fraxinus excelsior</i> ( <i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i> ) [91E0]		
Ballykenny-Fishertown SPA SAC (Site Code: 004101)	32.8km	Greenland White-fronted Goose ( <i>Anser albifrons flavirostris</i> ) [A395]	Generic conservation Objective for this site is: To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA (Version 8, March 2021 available on <a href="http://www.npws.ie">www.npws.ie</a> )	While this site is a considerable distance away, a potential pathway exists via the River Shannon and is considered therefore to be within the likely zone of impact of the works.

## 9.7. Screening for Likely Significant Effects

- 9.7.1. It is noted that all works associated with the development lie outside of the SAC and the SPA boundaries and therefore no **direct impacts** on any habitats or species for which the aforementioned designated European sites would occur. The area of the development site does not contain *ex-situ* habitats for any qualifying interest/special conservation interest species. Significant effects on the two European sites and their conservation objectives as a result of direct impacts can therefore be excluded.
- 9.7.2. The only potential for **indirect impacts** on the two designated European sites or their qualifying interests that could arise would largely be associated with the construction phase, through the potential release of sediment or other pollutants

which, though considered remote, might connect with the European sites via surface or groundwater. 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 designated sites, no significant effects on the integrity of the sites are considered likely and no mitigation is required in respect of noise and dust/particulate matter.

- 9.7.3. Following completion of the works, the site would operate as a public realm, car park and floating boardwalk. Having regard to the nature, scale and location of these elements, there is no realistic potential for any significant effects on the two relevant European sites having regard to their conservation objectives.
- 9.7.4. I would agree that there are two aspects of the works during the construction phase, that could potentially give rise to significant effects associated with impact from the construction works, from the release of sediment or other pollutants (source) and noting the existence of a hydrological/hydrogeological link (pathway) connecting with the two European sites (receptors). These include works on the Marina Boardwalk and the development of the car park at Flynn's Field.
- 9.7.5. In relation to the **marina boardwalk**, the works, in so far as they are complete, have taken place within the site of the existing marina and all works carried out were stated to have been conducted from either a hardstanding area or a floating pontoon within the River Shannon. It is stated that no works were intended to take place in any of the adjacent habitats associated with the existing boardwalk. I am satisfied that, given the nature, scale and location of the works including the works carried out would not give rise to the release of sediment or hydrocarbons in such concentrations that would lead to significant effects on the two European sites, in view of their conservation objectives, during the construction phase. This is particularly so given the minor nature of the works, the works duration, the large separation distance and the dilution available because of the large volume of water in the River Shannon and lakes.
- 9.7.6. In relation to the construction of the **car park** at Flynn's Field, any sediment-laden surface water run-off was proposed to be collected in the existing surface water drainage network as set out in the design. Consequently, there is no potential for surface water to enter the River Shannon. The project design also includes provision

for any groundwater encountered to be directed to the existing surface water drainage network. An attenuation tank was proposed to be located beneath the new car park as an integral part of the project works. I am satisfied that the nature, scale and location of the works, now complete, would not give rise to release of sediment or hydrocarbons or other pollutants in such concentrations that would lead to significant effects on the two European sites during the construction of this element of the development, having regard to the European sites conservation objectives.

## **9.8. Consideration of applicant's submission**

- 9.8.1. The main point raised in the request relates to the development having led to hydrocarbons entering the River Shannon and consequential impacts on European sites (SACs and SPAs) and on other national heritage areas (NHAs). This application now before the Board requires examination as to whether or not significant effects on European sites, having regard to the sites conservation objectives, would result and I have dealt with these in my assessment above. NHA sites are not covered by the provisions of the Habitats or Birds Directives and are not considered further in my assessment.
- 9.8.2. The applicants submission is supported by a technical report 'Carrick on Shannon Marina Pollution Investigation' which referred to numerous site management problems, stated to have included rusting oil drums, discarded timber and metal items, waste and a plastic container with unidentified liquid. It is stated by the author of that report that in carrying out his inspection(s) there was a noticeable odour of kerosene and that there was no evidence of an absorbent floating boom to prevent Volatile Organic Compounds (VOCs) entering and polluting the River Shannon. It is stated that an unbunded vertical storage tank was on site. Concerns are raised in the report about potential run-off pollution from fuelling and repair of boats. A series of photographs were attached with that report. I note the contents of the technical report by AA Forensics and photographs which I refer to above, however, whether or not the approved works caused the oil spill/hydrocarbon or other pollutants to enter the River Shannon is not conclusive. I also noticed that there was no evidence of any oil residue on the river on the day of my site inspection. Even if an inadvertent oil spill had occurred at this location during construction of the works, given the low level of concentration and the relatively minor nature of the construction works required and the short term duration of same, it would be localised and would not be

likely to lead to significant adverse effects on the relevant European sites in view of their conservation objectives having regard to, in particular, the considerable separation distance and the volume of water which would dilute and disperse any such inadvertent minor oil spill rapidly. The presence of a pathway from the River Shannon to the European sites, does not in itself mean that likely significant effects on the European Sites would result. Therefore, no scientific evidence has been put forward or is available to me to alter the findings on the issue of appropriate assessment above.

## **9.9. In combination or Cumulative Impacts**

- 9.9.1. The project was examined in combination with five planning permissions for local developments and the County Leitrim Development Plan (2015-2021). The assessments of the individual projects and plans do not predict any residual impacts that could act in-combination with the works. The County Development Plan and the Carrick on Shannon Local Area Plan 2010-2019, as extended, have been subject to Appropriate Assessment during the plan making process.
- 9.9.2. When taking in combination with the identified plans and projects, including those five projects for which permission has been granted and are capable of being implemented, it is not considered that there would be any measurable impact on the integrity of the relevant European designated sites or their qualifying interests in view of the sites' conservation objectives. As the 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 additional effect and therefore likely significant effects can be ruled out. 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 of the European sites.

## **9.10. Conclusion on Appropriate Assessment Screening**

- 9.10.1. Having regard to the nature and scale of the development, the nature of the receiving environment and to the distances 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 development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Lough Forbes Complex SAC (Site Code: 001818),

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 development is not, therefore, required.

9.10.2. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the development on any European Sites.

## 10.0 Recommendation

10.1. I recommend that the Board determined that the development would not be likely to have a significant effect on any European site and that the Local Authority are not directed to prepare a Natura Impact Statement in respect of the subject development for the reasons and considerations set out below.

### Reasons and Considerations

Having regard to:

- a) the planning and development regulations 2001-2021,
- b) the nature and limited scale of the development,
- c) the location of the development outside of any European designated sites,
- d) the separation distance from the development and dilution offered by the River Shannon and lakes downstream,
- e) the lack of in-combination effects arising from other proposed and permitted development in the vicinity,
- f) the submissions made to the Board including the initial request and the Local Authority's response, and
- g) 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 development, either individually or in combination with other plans or projects would not be likely to have a significant effect on Lough Forbes



Complex SAC (Site Code: 001818), 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 development is not required.

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Patricia Calleary  
Senior Planning Inspector

6<sup>th</sup> May 2021