



An  
Bord  
Pleanála

## Inspector's Report ABP-313371-22

<b>Development</b>	Retention of a new entrance, access road and site clearance.
<b>Location</b>	Gracedieu East, Waterford.
<b>Planning Authority</b>	Waterford City and County Council
<b>Planning Authority Reg. Ref.</b>	21316
<b>Applicant(s)</b>	Deise Community Boat Club
<b>Type of Application</b>	Retention of permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Declan McGrath
<b>Observer(s)</b>	James Power
<b>Date of Site Inspection</b>	2 <sup>nd</sup> May 2024
<b>Inspector</b>	Emer Doyle

## **1.0 Site Location and Description**

- 1.1. The appeal site refers to the broadly rectangular plot with a stated area of 0.77 hectares in Gracedieu East, Waterford City. The site is bounded by the River Suir and the Waterford City and County Council dog pound. The road serving the site is a local rural road which serves a small number of one off dwellings. A large car park known as the Bilberry car park is located c. 200m from the site which predominantly serves the Waterford Greenway.
- 1.2. There is no sign of any activity on the site and there are a number of large boulders, together with palisade fencing blocking access to the site. From information available on the file, I note that the entrance and site clearance works were carried out in early 2019. The site is now very overgrown and the site clearance works are not easily visible.
- 1.3. The River Suir forms part of the Lower River Suir SAC which is designated for a wide variety of terrestrial and aquatic habitats and species.

## **2.0 Proposed Development**

- 2.1. Retention permission is sought for the development of a new entrance, access road and site clearance works. The works were in connection with providing a boat club access to the site for activities on the River Suir. Section drawings submitted with the application indicate that there was considerable alterations of site levels on the site.
- 2.2. Revised drawings and details were submitted to the Planning Authority dated the 13<sup>th</sup> of October 2021. The revised drawings include sight line details together with details of site clearance works. Other details included are as follows:
  - Letter from owner of site consenting to the making of application.
  - Details in relation to intended use of lands - intention to apply for permission to construct a community boat house.
  - It is stated that no works have been carried out to the foreshore and no works were undertaken along the riverbank and no flood defences along said riverbank were interfered with.

- 2.3. Further revised drawings were submitted to the Planning Authority dated the 11<sup>th</sup> of March 2022. The revised drawings indicated the location of the site within Flood Zone A, together with details of changes in site level for the creation of a platform area and ramp to the site access.

### **3.0 Planning Authority Decision**

#### **3.1. Decision**

Permission refused for 2 No. reasons as follows:

1. A section of the site is located within Flood Zone A as identified in the Suir Catchment Study and as identified in the details submitted to the Planning Authority on the 11<sup>th</sup> March 2022 an area of fill abuts/ encroaches on the flood zone. Based on the details provided with the application it has not been demonstrated that flood risk has been adequately assessed in accordance with 'The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009' the development would therefore be contrary to national policy, and the policies and objectives of the Waterford City Development Plan 2013-2019 (as extended and varied), and may result in flooding and thus is contrary to the proper planning and sustainable development of the area.
2. At the location of the entrance to be retained to achieve the required sightlines in accordance with the Development Management Standards (Variation No. 1) Waterford City Development Plan 2013-2019 (as extended and varied) it is necessary to setback a section of the roadside boundary to the east of the entrance on lands outside of the site boundary and it has not been demonstrated that the developer has sufficient legal interest, or the consent of the landowner, to provide the required roadside boundary setback. Therefore, it is considered that the development which is unable to achieve the required minimum sight distances would give rise to a traffic hazard and would be prejudicial to public safety.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- There are a total of three planning reports on file. The main issues raised relate to sight lines, inadequacy of drawings in relation to the extent of site alterations, and potential impact on flood risk.

#### 3.2.2. Other Technical Reports

##### **Heritage Officer:**

The report can be summarised as follows:

- The site does not contain any of the seven qualifying interest habitats for which the River Suir is designated.
- Vegetation clearance works were carried out in an area of scrub in the central portion of the site affecting area of bramble and bracken.
- The site clearance works did not affect the band of saltmarsh vegetation fringing the site boundary along the River Suir.
- The area subject to clearance works between the roadside boundary and the remaining scrub habitat has recolonised.
- It is considered that none of the qualifying habitats of the River Suir have been significantly impacted as a result of the clearance works.
- The low lying nature of the site and the absence of wet woodland in a tidal area does not provide suitable sites for Otter holts.
- The River Suir SAC will continue to provide the habitat requirements necessary to sustain a healthy otter population in terms of feeding and breeding sites and thus it is considered that retention of the works will not incur significant effects on the Conservation Objectives for the River Suir SAC for this species.
- The River Suir SAC will continue to provide the habitat requirements necessary to sustain populations of Lamprey, Twait Shad and Salmon and thus it is considered retention of the works will not incur significant effects on the River Suir for these species.

- It is concluded that the retention of the works will not incur potential delay or interruption in the achievement of the Conservation Objectives as defined by their attributes and targets for any qualifying interest habitat or species relevant to this section of the SAC or immediately downstream. Retention of the works will not incur significant effects on the Conservation Objectives for the SAC and no further assessment is required.

### **3.3. Prescribed Bodies**

3.3.1. No reports.

### **3.4. Third Party Observations**

A total of 4 No. third party observations were submitted to the Planning Authority. The main concerns raised relate to the issues raised in the appeal.

## **4.0 Planning History**

4.1. No relevant site history.

## **5.0 Policy Context**

### **5.1. Development Plan**

The current Development Plan is the Waterford City and Council Development Plan 2022-2028

The site is located within the Waterford City Zoning Map and is zoned as OS- Open Space and Recreation- To preserve and provide for open space and recreational amenities.

The site is located on lands indicated to be in Flood Zone A on Map 2.

Section 7.25 deals with Recreational and Sporting Facilities. The Council will strive to provide facilities for sport and physical activity that are well maintained, sufficient in number and accessible to as many local people as possible, across a diverse range of sports.

Specifically in relation to water based uses it is recognised that the development of improved facilities for water-based sports is important for the revitalisation of harbours along our inland waterways and the coast of the County. The Council will support such water-based uses and activities in the harbours and along the rivers and coastline, with an emphasis on those that cater for a broader spectrum of the population.

Section 9.2 deals with Flood Management. Appendix 13 contains a Strategic Flood Risk Assessment.

Section 9.7 outlines Nature Conservation Sites in the County and Section 9.8 deals with Appropriate Assessment.

**Volume 2** - Section 8.6 deals with sightline requirements - local road with a speed of 80km/h requires 55m sightlines in both directions.

**Volume 2** - Section 9.8.1 deals with Flood Risk Mitigation of Developments. DM53 outlines that development should be located away from areas at risk of flooding where possible. Section 9.8 states that site specific Flood Risk Assessments are required for all new planning applications in areas identified at risk of flooding.

## **5.2. Natural Heritage Designations**

- The site is located within the Lower River Suir SAC Site Code 002137.
- Tramore Dunes SAC/SPA Site Code 000671 is located c. 11.3km to S.
- River Barrow and Nore SAC is located c. 9.8km to E.

## **5.3. EIA Screening**

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

6.1.1. The main grounds of appeal can be summarised as follows:

- The Board is asked to strengthen the grounds of refusal by including a reason relating to the Special Conservation status of the site.
- See Record No. 18 attached to the appeal – Report of Conservation Ranger of the NPWS. I refer the Board to this document.
- Damage has already been done to this SAC.
- Waterford City and County Council own the site and advised the applicant at pre-planning stage that an NIS would be required and had a meeting with an ecologist appointed by the applicant in this regard.
- Waterford City and County Council provided the applicant with an excavator and driver to carry out the works following a request from a local councillor.

### **6.2. Applicant Response**

- No response submitted.

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

- No response submitted.

### **6.4. Observations**

6.4.1. One observation was submitted by Mr. James Power which can be summarized as follows:

- The process of accepting and adjudicating on the application did not correctly assess the damage to the Lower River Suir SAC and did not correctly assess the damage to the Lower River Suir SAC.
- The reasons for refusal should have referenced the SAC.
- The site should be restored.

- The application contained false information by saying that the site in question was not in a European site.
- As evidenced by the National Parks and Wildlife Service Report attached to the appeal submission, the NPWS clearly have serious concerns in relation to works that took place.
- It is considered that the site should be screened in for Appropriate Assessment.
- The Conservation Ranger identified in October 2018 that there were important protected habitats on the site.
- The Council had previously advised the applicant that an NIS would be required. However, after the works took place, *'did Waterford City and County Council (WCCC) decide that it was previously mistaken and that now the already carried out works did not require an NIS'*.
- I have seen otters using this site. A walk of the foreshore adjoining the site will regularly reveal further evidence of usage such as footprints and scats.
- The site very clearly contains salt marsh where it adjoins the River Suir.
- The Heritage Officer's report contradicts the NPWS Conservation Ranger's report.

## 6.5. Public Representations

6.5.1. The comments of Cllr. Eamon Quinlan can be summarized as follows:

- Having regard to the history of other sites in the area and the previous (prior to the merge in 2014) City boundary, this site forms part of the City and the reduced city sight lines should be used.

## 7.0 Assessment

7.1. Having regard to the information presented by the parties to this appeal and in the course of the planning application and my inspection of the appeal site, I consider



the key planning issues relation to the assessment of the appeal can be considered under the following general headings:

- Principle of Development
- Flooding
- Traffic Safety
- Appropriate Assessment

## **7.2. Principle of Development**

7.2.1. The existing development comprises of an entrance, and site clearance works to provide a platform area and internal road to a community boat club.

7.2.2. The overarching approach taken by the Waterford City and County Development Plan 2022 – 2028 is to provide facilities for sport and physical activity that are well maintained, sufficient in number and accessible to as many local people as possible, across a diverse range of sports. Specifically in relation to water based uses, it is recognised that the development of improved facilities for water-based sports is important for the revitalisation of harbours along our inland waterways and the coast of the County. The Council will support such water-based uses and activities in the harbours and along the rivers and coastline, with an emphasis on those that cater for a broader spectrum of the population. Policy Objective SC36 is as follows:

‘To protect and enhance access to the River Suir, particularly within Waterford City, and to water based recreational and sporting amenity of all our rivers, waterways, coastline and harbours subject to Council Byelaws, and the Habitats and Birds Directives.

7.2.3. The site is located on zoned land as OS- Open Space and Recreation with an zoning objective to preserve and provide for open space and recreational amenities. The provision of a sports club is identified as being open for consideration on these lands as identified by Table 11.2 Zoning Matrix.

7.2.4. I am satisfied that the existing development is consistent with Development Plan policies and objectives, and is acceptable in principle, subject to consideration of other relevant factors below.

### **7.3. Flooding**

- 7.3.1. The first reason for refusal of the Planning Authority related to flood risk. It was considered by the Planning Authority that a section of the site is located within Flood Zone A as identified in the Suir Catchment Study and an area of fill (as identified in drawings dated 11<sup>th</sup> March 2022) encroaches on the flood zone. Furthermore, it was considered that it has not been demonstrated that flood risk has been adequately assessed in accordance with The Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009, the development would therefore be contrary to national policy, and the policies and objectives of the Waterford City Development Plan 2013-2019, and may result in flooding. (This Development Plan is superseded by the Waterford City and County Development Plan 2022-2028).
- 7.3.2. The site is located in Flood Zone A in Map 2 of the Waterford City and County Council Development Plan 2022-2028. Appendix 13 contains a Strategic Flood Risk Assessment for the County. Section 5 outlines that for sites within Flood Zone A or B, a site specific 'Stage 2- Initial FRA' will be required and may need to be developed into a 'Stage 3- Detailed FRA'. Any proposal that is acceptable in principle shall demonstrate the use of the sequential approach in terms of site layout and design and, in satisfying the Justification Test (where required) the proposal will demonstrate that appropriate mitigation and management measures are put in place. Section 5.6.4 deals with water compatible uses. It includes various types of development that do not require a flood risk assessment such as open space and green corridors. However, there are numerous other uses which are classified as water compatible but which involve some kind of built development, such as lifeguard stations, fish processing plants and other activities requiring a waterside location. It is stated that the justification test is not required for such development but an appropriately detailed flood risk assessment is. Section 9.8 of Volume 2 of the Plan also states that site specific flood risk assessments are required for all new planning applications in areas identified in areas at risk of flooding.
- 7.3.3. The Planning System and Flood Risk Management Guidelines, 2009 identifies three vulnerability categories based on the type of development – highly vulnerable, less vulnerable and water compatible. I am satisfied that the existing development associated with open recreation for a boat club would fall into the water compatible category.

- 7.3.4. The planner's report states that it is unclear if the works undertaken by the applicant have altered defences or flow paths. This issue was raised by the Planning Authority in the Further Information Request. The applicant responded that 'No works of any kind were undertaken along the riverbank and no flood defences along said riverbank were interfered with or altered.'
- 7.3.5. Notwithstanding this, I am not satisfied that the applicant has taken full cognisance of the flood risks involved in developing this site and in the absence of a site specific flood risk assessment as required by Appendix 13 and Section 9.8 of the Development Plan, flood risk assessment has not been satisfactorily addressed.

#### **7.4. Traffic Safety**

- 7.4.1. The second reason for refusal related to inadequate sightlines at the site access and the absence of sufficient legal interest to set back a section of the roadside boundary to the east of the entrance on lands outside of the site boundary.
- 7.4.2. I note that Section 8.6 of the Waterford City and County Development Plan (Volume 2- Table 8.1) states that for local roads with 80km per hr speed limit, sightlines of 55 metres will be required.
- 7.4.3. Based on my observations on inspection of this site, I have serious concerns regarding traffic safety at this location. The appeal site is within the 80km/hr speed limit zone, and I noted on my site inspection that inadequate sight distance was available to the east of the entrance and these lands are outside of the applicant's ownership. The applicant has not put forward any proposals to address this issue. I note that in order to provide the required visibility splays, it is likely that a significant amount of mature roadside hedgerow and trees would have to be removed. I therefore recommend that planning permission be refused on the basis that the proposed development would be contrary to Table 8.1 of the Development Plan and would endanger public safety by reason of a traffic hazard and obstruction of road safety.

#### **7.5. Appropriate Assessment**

#### **7.6. Compliance with Article 6(3) of the Habitats Directive**

- 7.6.1. I have considered this retention application for site clearance works and new entrance in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

7.7. Background and Description of Project and Site Characteristics

- 7.7.1. This site is owned by Waterford City and County Council and was leased by the Council to Deise Community Boat Club. The subject site is located entirely within the Lower River Suir SAC. At pre-planning stage, the Council advised that an NIS would be required. The applicants were also advised to contact the NPWS and Inland Fisheries Ireland. The applicants contacted the NPWS Conservation Ranger in October 2018 and were advised that the development would significantly damage the SAC as the proposed site was in the Lower River Suir SAC and that the site contained saltmarsh, a qualifying interest. The Conservation Ranger advised that saltmarsh was a priority habitat and it appeared to him that planning should not be granted.
- 7.7.2. The applicants carried out the works and were provided by WCCC with an excavator and driver to carry out the works. The NPWS Conservation Ranger received a report of these works and visited the site on the 2<sup>nd</sup> of April 2019.
- 7.7.3. The development comprises of retention of site clearance works to provide a raised platform area, access road, and site entrance. I refer the Board to the site layout map which indicates the hatched area of site clearance required for these works, together with the Section Drawings submitted with the application, and to additional detail provided in additional drawings in response to a Further Information Request and Clarification of Further Information Request. Other than the site entrance, it is not possible to easily see evidence of the works carried out due to overgrowth, however, I refer the Board to photographs included in the Conservation Rangers report which were taken shortly after the works were carried out.
- 7.7.4. At present the site is overgrown and appears to be abandoned for the purposes of a boat club. There is a high fence around the entrance together with a number of large boulders and it doesn't appear that the site has been used for any purposes in connection with a boat club or boating activity in recent years.

## 7.8. Submissions

- 7.8.1. Both the observation and appeal submitted to the Board raise issues in relation to appropriate assessment. I have summarised the submissions above. Of particular attention is the NPWS Conservation Ranger report attached to the third party appeal which includes photographs of excavated area of saltmarsh and fresh otter footprints in a recently excavated area of saltmarsh. The third party appeal considers that the unauthorised works were likely to have had a significant impact on two of the qualifying interests (saltmarsh and otter) present in this section of the Lower River Suir SAC and on the Conservation Objectives of the site. The observation considers that the application should have been screened in for Appropriate Assessment and submits that it adversely impacted the integrity of the SAC. The observer states that he has seen otters using the site and a walk of the foreshore will reveal further evidence of usage such as footprints and scats. It is also stated that the site contains salt marsh.

## 7.9. Identification of Relevant European Sites

- 7.9.1. Having regard to the characteristics of the development and the location of the appeal site, I can confirm that the only European Site relevant for consideration is the Lower River Suir SAC (002137).

## 7.10. Assessment of Likely Significant Effects

- 7.10.1. The Lower River Suir contains excellent examples of a number of Annex 1 habitats, including the priority habitat alluvial forest and Yew woodland. The SAC is of particular conservation interest for the presence of a number of Annex II animal species including Freshwater Pearl Mussel, White-clawed Crayfish, Salmon, Brook and River Lamprey and Otter.
- 7.10.2. Full details of Qualifying Interests are available on the NPWS website.

Table 1

<b>Qualifying Interests Lower River Suir SAC</b>
[1330] Atlantic Salt Meadows

[3260] Floating River Vegetation
[6430] Hydrophilous Tall Herb Communities
[91A0] Old Oak Woodlands
[91E0] Alluvial Forests*
[91J0] Yew Woodlands*
[1029] Freshwater Pearl Mussel ( <i>Margaritifera margaritifera</i> )
[1092] White-clawed Crayfish ( <i>Austropotamobius pallipes</i> )
[1095] Sea Lamprey ( <i>Petromyzon marinus</i> )
[1096] Brook Lamprey ( <i>Lampetra planeri</i> )
[1099] River Lamprey ( <i>Lampetra fluviatilis</i> )
[1103] Twaite Shad ( <i>Alosa fallax</i> )
[1106] Atlantic Salmon ( <i>Salmo salar</i> )
[1355] Otter ( <i>Lutra lutra</i> )

7.10.3. The Conservation Objectives for the Lower River Suir SAC, notes that the overall aim of the habitats directive is to maintain or restore the favourable conservation status of the habitats and species of community interest. A site-specific conservation objective aims to define favourable conservation condition for a particular habitat or species at the site. The NPWS has prepared specific attributes and targets for the qualifying interests protection of habitats and species associated with the Lower River Suir SAC.

#### 7.10.4. Potential Direct Effects

- Damage to qualifying interest habitat present at the site.
- Reduction in habitat quality for qualifying interest species (otter).

#### 7.10.5. Evidence of Damage on Site

This application is for retention of works and an inspection of the works was carried out by a Conservation Ranger for the NPWS. It was noted that some saltmarsh had been damaged. Fresh otter prints were present in the excavated area of the saltmarsh and that both otter and saltmarsh were qualifying interests of this SAC. It was recommended that a prosecution was sought for those involved and that a restoration order was issued to have the site restored.

#### 7.10.6. Planning Authority Report- Heritage Officer

I have summarised the report of the Heritage Officer in Section 3.2 above. The conclusion is as follows: *'the retention of works will not incur potential delay or interruption of Conservation Objectives as defined by their attributes and targets for any qualifying interest habitat or species relevant to this section of the SAC or immediately downstream. Retention of the works will not incur significant effects on the Conservation Objectives for the SAC and no further assessment is required.'*

The Board will note that there appears to be a conflict between the conservation rangers' report and the report of the Heritage Officer in relation to salt marsh and otter. I consider that both reports contain useful analysis of the site and I would urge the Board to read both reports in full. However, I am satisfied that there is sufficient information available to me that the development has the potential to have a significant effect on the Lower River Suir SAC and that there is evidence of saltmarsh and otter on the site.

7.10.7. Having regard to all of the available information, I am not satisfied that likely significant effects on the Lower River Suir SAC can be excluded from the existing development alone. In the absence of more detailed scientific information a detailed Appropriate Assessment to exclude adverse effects on site integrity cannot be completed by the Board, therefore the Board is precluded from granting permission for this development.

## 8.0 **Recommendation**

8.1. I recommend that permission is refused for the following reasons:

## 9.0 Reasons and Considerations

1. On the basis of information provided with the planning application and the appeal, and having regard to the absence of more detailed scientific information to exclude adverse effects on site integrity of the Lower River Suir SAC (Site Code 002137), the Board cannot be satisfied that the project individually, or in combination with other plans or projects approved in the area, would not result in adverse impacts on the integrity of the Lower River Suir SAC in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission for the development proposed to be retained.
2. Having regard to the location of the site in an area which is at risk of flooding, the Board is not satisfied on the basis of information submitted with the planning application and appeal, that issues relating to flood risk have been satisfactorily addressed. The development proposed to be retained would, therefore, be contrary to 'The Planning System and Flood Risk Management Guidelines for Planning Authorities' issued by the Department of Environment, Heritage and Local Government, 2009, and to Section 9.8 Volume 2 and Appendix 13 'Strategic Flood Risk Assessment' of the Waterford City and County Council Development Plan 2022-2028. The development proposed to be retained would, therefore, be contrary to the proper planning and sustainable development of the area.
3. The development proposed to be retained seeks to achieve access to a local road where sightlines to the east of the development are not in accordance with the requirements set out in Table 8.1 of Waterford City and County Development Plan 2022-2028. The traffic movements to which it would give rise, in conjunction with existing traffic movements, road capacity with restrictive width and poor horizontal alignment on approach, would interfere with the safety and free flow of traffic at a point where the maximum speed limit of 80kph applies. As such, the development proposed to be retained, if permitted would conflict with the Waterford City and County Development Plan 2022-2028 and would endanger public safety by reason of a traffic



hazard and obstruction of road users and would therefore be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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Emer Doyle  
Planning Inspector

16<sup>th</sup> May 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>				
<b>Proposed Development Summary</b>	Access and site clearance works			
<b>Development Address</b>	Gracedieu East, Waterford			
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)				
			<b>No</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>No</b>			Proceed to Q.3	
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required

**4. Has Schedule 7A information been submitted?**

<b>No</b>		<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_