

An
Bord
Pleanála

Supplemental Report

ABP-314686-22

From: Conor Donnelly, Inspectorate Ecologist

Re: ABP-314686-22
Strategic Housing Development. Former Bray Golf Club lands, off Ravenswell Road and Dublin Road, Bray, Co. Dublin and Co. Wicklow.

Applicant Shankill Property Investments Ltd.

Date: 25th June 2024

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1.0 Introduction

Following a Board Direction dated 31st May 2024 (BD-016463-24) on ABP 314686-22 the case was deferred to the Inspectorate Division to complete an Appropriate Assessment of the proposed Strategic Housing Development for the Board.

At the request of Stephen O'Sullivan, Assistant Director of Planning, I was asked to prepare a supplementary report in support of the Appropriate Assessment to be prepared by the Inspectorate Division.

For the purpose of this memorandum, I have reviewed the Inspectors report and the application file including the NIS, EIAR and the submissions received. I have also reviewed other relevant sources of information including the NPWS designations viewer, NPWS web pages for the Natura sites referred to in the NIS and the conservation objectives and supporting documents for the Rockabill to Dalkey Island SAC.

Comments are provided below on the Appropriate Assessment screening assessment and Appropriate Assessment sections of the Natura Impact Statement. I have also provided some comments relating to the consideration of the mitigation proposed in the NIS as 'standard features' of a project versus measures intended to avoid or reduce the harmful effects of a plan or project on a European site (i.e. mitigation).

2.0 'Standard features' of a project vs measures intended to avoid or reduce the harmful effects of a plan or project on a European site (i.e. mitigation)

The Board, in its Direction, noted the Inspector's conclusion that the project, individually or in combination with other plans or projects, would not be likely to give rise to significant effects on the Rockabill to Dalkey Island SAC, or any European sites, in view of the sites' conservation objectives, and consequently Appropriate Assessment (Stage 2) is not required. The basis for the Inspector's conclusion being, *inter alia*, the consideration of the mitigation measures referred to in the NIS as being standard and best practice and not designed or intended to avoid or reduce any harmful effects of the proposed development on a European site.

The Board notes that in this particular context, whilst the mitigation measures may be standard in nature they are also clearly stated and intended by the applicant's ecological experts to avoid or reduce harmful effects to the Qualifying Interest (QI) of a European site. As such, the Board considers it appropriate that the impacts of the proposed development together with any mitigation measures should be considered as part of an appropriate assessment.

This would appear to be consistent with the approach established by the judgement in the People Over Wind case (Case C – 323/17) where the Court of Justice of the European Union (CJEU) in paragraph 40 ruled that:

“Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”¹

However, the recent Eco Advocacy case (Case C – 721/21) has provided further clarity around this issue². In that case, the CJEU ruled that:

“Article 6(3) must be interpreted as meaning that, in order to determine whether it is necessary to carry out an appropriate assessment of the implications of a plan or project for a site, account may be taken of the features of that plan or project which involve the removal of contaminants and which therefore may have the effect of reducing the harmful effects of the plan or project on that site, where those features have been incorporated into that plan or project as standard features, inherent in such a plan or project, irrespective of any effect on the site”.

The EC methodological guidance on Appropriate Assessment published in October 2021 (2021/C 437/01)³ includes guidance which is consistent with this ruling:

“However, project developers can sometimes design projects in a way to avoid or minimise potential impacts from the outset. This can be done by using best available technologies or by applying pre-emptive measures, including statutory measures (e.g. no go zones) prescribed e.g. in sector-specific regulations, Natura 2000 management plans or in spatial/zoning plans.

Such generic components of the project can be considered in the screening, contrary to the plan- or project-specific mitigation measures that must not be taken into account

¹

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=200970&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5479272>

²

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=274644&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21723482>

³ Assessment of plans and projects in relation to Natura 2000 sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (2021/C 437/01). [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1028\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1028(02))

at this stage. These components should be clearly identified in the project description. Specific mitigation measures e.g. construction of green bridges to allow migration of species for protection of which the site has been designated, particularly if imposed by the competent authority, should only be considered during the appropriate assessment.”

The ‘mitigation’ identified in the NIS can be summarised as follows:

Surface water run-off during construction

- Follow existing guidelines (e.g. CIRIA guidelines on control of water pollution from construction sites) and best practice guidance (IFI guidelines on the protection of fisheries during construction works in and adjacent to water).
- Protection of the existing drainage network.
- Implementation of a response procedure to deal with any accidental pollution events.
- Measures to be implemented where poured concrete is being used on site.
- Storing potentially hazardous materials in site compound areas away from the lower lying portion of the site.

Surface water discharge during operation of the development

- Compliance with requirements set out in the Greater Dublin Strategic Drainage Study (GDSDS).
- A range of SuDS measures.

In this case, it would appear that these measures are ‘standard features’, in that the Inspector has noted that they do not include any specific measures that would be uncommon for a project of this nature. As such, they are sector-specific requirements and measures that are inherent to the design of the project and as such would be implemented irrespective of any incidental effect of avoiding or reducing potential adverse effects of the project upon a European site. By excluding them, an assessment of the project could therefore not be properly made at screening stage⁴.

⁴ Tyldesley, D., and Chapman C., (2013) The Habitats Regulations Assessment Handbook, April 2024 edition. DTA Publications Limited. Section E.4.3.

Accordingly, in line with the Eco Advocacy case and current EC guidance it would appear that as standard features of the proposed development these should be considered as part of the proposed development at Appropriate Assessment screening stage.

3.0 Submissions

3.1. Background

In preparing this report I have reviewed and considered the submissions received including from the Department of Housing, Local Government and Heritage and third-party observers. The issues raised in the submissions have been summarised in the Inspectors report so I have not repeated them here.

3.2. Note

I note that the Department agree with the conclusion of the NIS that, with the implementation of the 'mitigation measures' identified in the NIS, the proposed development will not have an adverse effect on the integrity of the Rockabill to Dalkey Island SAC or any other European site. The Department further notes that implementation of the proposed 'mitigation' should also protect trout, salmon and other fish stocks in the River Dargle, and birds such as mute swans occurring on the river and in Bray Harbour.

One of the third-party observations refers to the importance of the lower part of the golf course lands as a feeding ground for curlew (*Numenius Arquata*) and that this isn't considered in the NIS.

I note that the site visits undertaken by the applicant's consultants to the proposed development site included a site visit in February 2020 (during the waterbird wintering period) and that no waterbirds were observed within the site boundary at that time. The Appropriate Assessment Screening Assessment section of the NIS (in relation to South Dublin Bay and River Tolka Estuary SPA) notes that:

"A number of species such Light-bellied Brent Geese, Curlew, Black-tailed Godwit, Oystercatchers and gulls do utilise terrestrial lands / fields in the wider landscape (i.e. away from the SPA or coastal waters). The Bray Harbour I-WeBS count site does not include any of the terrestrial lands of the project site. However, there is no evidence of the project site being used by field feeding species. Site surveys undertaken in winter

2020 for this project did not record any field feeding species within the proposed project site. Furthermore, it should be noted that the site is prone to high levels of disturbance from walkers, dogs and experiences high levels of antisocial behaviour.”

The nearest SPA for which curlew is a SCI is North Bull Island SPA which is approximately 15km away from the proposed development site. The conservation objective for curlew in North Bull Island SPA is to maintain the favourable conservation condition of curlew^{5, 6}. Given distance from the SPA and evidence of relatively small home range for the species (e.g. foraging range of 3.5 km inland⁷) the proposed development site is outside the area used by those curlew which are an SCI of North Bull Island SPA and the proposed development would not be likely to have a significant effect on the SPA individually or in-combination with other plans or projects in view of the site’s conservation objectives.

I have considered the other issues raised in the submissions alongside the assessment of the NIS in the following sections of the report.

4.0 Appropriate Assessment screening

4.1. Background

The Appropriate Assessment screening is included in Section 5 of the Natura Impact Statement prepared by Atkins, dated September 2022.

It refers to guidance on Appropriate Assessment published by DoEHLG (2009, updated 2010) and OPR Practice Note PN01 (2021).

It identifies a ‘zone of influence’ (Zol) of the project, noting *“that it must be evaluated on a case by case basis with reference to the nature, size and location of the project, the sensitivities of the ecological receptors, and the potential for in-combination effects.*

⁵ North Bull Island SPA Conservation Objectives. NPWS, March 2015.

https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO004006.pdf

⁶ North Bull Island SPA & South Dublin Bay and River Tolka Estuary SPA Conservation Objectives Supporting Document Version 1. NPWS, October 2014.

[https://www.npws.ie/sites/default/files/publications/pdf/North%20Bull%20Island%20SPA%20\(004006\)%20Conservation%20objectives%20supporting%20document%20-%20\[Version%201\].pdf](https://www.npws.ie/sites/default/files/publications/pdf/North%20Bull%20Island%20SPA%20(004006)%20Conservation%20objectives%20supporting%20document%20-%20[Version%201].pdf)

⁷ Mander, L., Nicholson, I., Green, R. M. W., Dodd, S. G., Forster, R. M., & Burton, N. H. K. (2022). Individual, sexual and temporal variation in the winter home range sizes of GPS-tagged Eurasian Curlews *Numenius arquata*. *Bird Study*, 69(1–2), 39–52. <https://doi.org/10.1080/00063657.2022.2144129>

Thus, given the nature, scale and extent of the proposed project, the potential zone of influence will consider European sites with regard to the location of a European site, the Qualifying Interests (QIs) of the site and their potential mobility outside that European site, the source-pathway-receptor model and potential environment effects of the proposed project.”

The screening notes that the project does not lie within any European site but identifies potential hydrological connectivity to coastal and marine European sites, via the River Dargle, to the south of the development site, which discharges to the Irish Sea.

The screening assessment considers those qualifying interests (QI) / special conservation interests (SCI) of European sites which are mobile, such as the harbour porpoise QI of Rockabill to Dalkey Island SAC, and may occur at some distance from the European site for which they are a QI / SCI.

Table 5-1 of the screening assessment considers 13 European sites and for each site, identifies their QI/SCI, the potential indirect effects arising from the proposed development and how these might interact with the QI/SCI of the European site.

Following this exercise, further consideration is given to Rockabill to Dalkey Island SAC only. All other sites are not subject to further consideration on the basis that the location, scale and operation of the proposed development is such that it will not contribute to direct, indirect or in-combination impacts on habitats or species for which the European site has been designated and do not have the potential to affect the conservation objectives of these species/habitats.

The assessment goes on to consider the QIs of the Rockabill to Dalkey Island SAC, namely reefs and harbour porpoise, their conservation objectives and also refers to information on potential threats and pressures on the SAC. It notes that the construction phase of the project works will involve construction of a drainage outfall on the banks of the River Dargle which has the potential to affect the water quality of this watercourse. Also, during the operational phase of the proposed development drainage (storm water / treated foul water) from the development will outfall to the River Dargle and the Irish Sea.

Impacts upon the reef QI are ruled out. However, the screening assessment concludes that because of the potential indirect pathways referred to above, in the ‘absence of additional measures’, likely significant effects on the harbour porpoise QI of the SAC

cannot be excluded and therefore recommends that the proposed development should proceed to Stage 2 Appropriate Assessment.

4.2. Note

The NIS, including sections relating to Appropriate Assessment screening and information in support of Appropriate Assessment have been prepared by suitably qualified and experienced ecologists from Atkins.

I consider that the Screening Assessment section has been undertaken adequately and there is sufficient information to complete it. It takes into account relevant guidance, using the source-pathway-receptor approach with consideration given to mobile QI/SCIs.

I agree with the results of the initial examination that the only site that requires further examination is Rockabill to Dalkey Island SAC and the decision to exclude other sites is supported by rationales which demonstrate sound reasoning using an evidence-based approach.

A number of comments made in the submissions relate to the presence of otter in the vicinity of the proposed development site. I consider the applicant's NIS adequately addresses potential impacts on otter as a QI of the Wicklow Mountains SAC (the proposed development is outside the territorial range of the otter QI of the SAC).

The potential effects of the proposed development on Rockabill to Dalkey Island SAC is considered in light of the QIs and their conservation objectives and reference is made to the specific attributes and targets used to define these objectives. I agree with the Inspector that there is no potential for significant effects upon the reef habitat QI given the significant separation distance and the dilution and dispersal capacity within the intervening waters.

The applicant's NIS identifies the need for 'additional measures' to address potential impacts upon the harbour porpoise QI and concludes that the proposed development should proceed to Appropriate Assessment. These measures are subsequently incorporated into the NIS as 'mitigation'. As set out in Section 1.1. of this document, rather than being mitigation, these measures represent standard features of the proposed development, that would be implemented irrespective of any incidental effect of avoiding or reducing potential adverse effects on a European site. Consequently,

they should be considered as part of the proposed development during the Appropriate Assessment screening stage.

In light of this, I agree with the Inspector's Appropriate Screening Determination which concludes that the proposed development, individually, or in-combination with other plans or projects, would not be likely to give rise to significant effects on the Rockabill to Dalkey Island SAC, in view of the sites' conservation objectives and Appropriate Assessment is not therefore required.

As I have been asked to provide a report in support of Appropriate Assessment, I give further consideration to the appropriate assessment section of the NIS below.

5.0 Appropriate Assessment

5.1. Background

Section 6 of the Natura Impact Statement provides information in support of Appropriate Assessment. It examines the potential for adverse effects on the integrity of Rockabill to Dalkey Island SAC. Given the proposed development does not occur within or directly adjacent to the site, no direct impacts are identified but a range of potential indirect impacts are identified:

Indirect impacts via surface water run-off during construction phase

During wet conditions sediment can mobilise in the form of over-ground run-off during excavations and/or movement of heavy machinery. Sediment is of particular concern for aquatic species within receiving water bodies. However, the only works near the River Dargle are those involving the installation of the surface water drainage outfall and there is the physical barrier of the flood defence walls and public promenade separating the site from the watercourse. The applicant's NIS therefore considers that the potential for large volumes of sediment to reach the River Dargle as a result of construction activities is very limited. However, whilst the risk of impacts is considered low, impacts upon the harbour porpoise QI are not ruled out and mitigation is identified to address this (as summarised in section 1.1 of this report).

Indirect impacts during construction phase via groundwater (hydrogeological pathway)

Given the location, nature and scale of the proposed project, potential impacts through groundwater pathways and then onwards via the Irish Sea which could affect the conservation objectives of the harbour porpoise QI are not considered likely.

Indirect noise and vibration impacts during construction phase (piling works)

Adverse effects from this potential impact are ruled out as percussive works will not occur near the coastline or near the coastal waterbody (minimum ca. 100m distance) and consequently piling works will not result in noise and/or vibration related disturbance impacts to harbour porpoise.

Indirect impacts from discharge of treated foul effluent during operational phase

Adverse effects from this potential impact are ruled out as effluent will be treated at Shanganagh WwTP prior to discharge and given the dilution and dispersal which will occur within the Irish Sea. The Shanganagh WwTP has already been subject to the Appropriate Assessment process and no adverse effects on the integrity of any European site were identified in that process^{8,9}.

Indirect impacts from discharge of storm water / surface water during operational phase

Storm water / surface water drainage is proposed to discharge to the River Dargle which outfalls to the Irish Sea. While the potential for SW drainage impacts to the surface water quality of the River Dargle / Irish Sea is considered to be low, given the dilution and dispersal that would occur within these waterbodies, the applicant's NIS considers impacts upon the harbour porpoise QI cannot be ruled out and mitigation is identified to address this (as summarised in section 1.1 of this report).

The assessment goes on to assess potential in-combination effects, giving consideration to the County Development Plans for Wicklow and Dún Laoghaire-Rathdown, future phases of the Harbour Point Master Plan and permitted developments since 2015. The Inspector has considered further development since the completion of the NIS. In the case of the County Development Plans, the report notes that they were subject to Strategic Environmental Assessment (SEA) and Appropriate Assessment, the findings of which were incorporated into the objectives of the Plans resulting in plans that afford high levels of protection to the environment

⁸ EPA. Inspector's Report on Waster Water Discharge License Review, License Register Number D0038-02. 9 December 2020.

https://epawebapp.epa.ie/licences/lic_eDMS/090151b28079fff2.pdf

⁹ EPA. Waste Water Discharge License D0038-02 Shanganagh-Bray

https://epawebapp.epa.ie/licences/lic_eDMS/090151b28079fff3.pdf

and European sites. Significant developments also went through Appropriate Assessment which identified no significant effects on the integrity of any European sites. The report concludes that no significant effects are identified from these other plans and projects acting in-combination with the proposed development.

The applicant's NIS concludes that, following a comprehensive evaluation of the potential direct, indirect and cumulative impacts on the qualifying interests of the SAC and the implementation of the proposed mitigation measures, there will be no residual impacts and the proposed project will not have an adverse effect on the integrity of the Rockabill to Dalkey Island SAC or any other European site.

5.2. Note

I agree with the reasoning and evidence presented for the identification of no direct impacts upon Rockabill to Dalkey Island SAC. With regards the indirect impacts that have been identified, most of these are not assessed as giving rise to adverse effects on the integrity of the SAC and I consider the rationale supporting this demonstrates sound reasoning using an evidence-based approach.

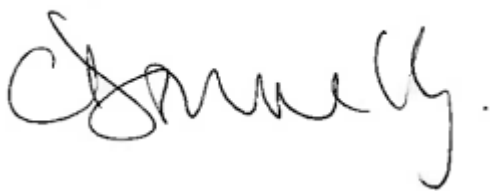
For the two indirect impacts identified as requiring mitigation to address adverse effects, namely surface water run-off during the construction phase and discharge of storm water / surface water during the operational phase, the information presented supports the conclusion that the risk presented is low. The applicant's NIS concludes that mitigation will reduce these impacts such that they will not have an adverse effect. As set out in Section 1.1. of this document, rather than being mitigation, these measures represent standard features of the proposed development, that would be implemented irrespective of any incidental effect of avoiding or reducing potential adverse effects on a European site. Consequently, they should be considered as part of the proposed development during the Appropriate Assessment screening stage, in which case Appropriate Assessment would not be required.

The in-combination assessment within the NIS has considered permitted development. From a methodological perspective, if these are completed projects they should be considered as part of baseline conditions rather than as part of the in-combination assessment. However, I do not consider the fact they are considered here affects the conclusions reached.

6.0 Conclusion

I would recommend that the Board consider the measures identified in the NIS as standard features of the proposed development that should be considered during Appropriate Assessment screening. I agree with the Inspector's Appropriate Assessment Screening Determination that the proposed development, individually, or in-combination with other plans or projects, would not be likely to give rise to significant effects on the Rockabill to Dalkey Island SAC, in view of the sites' conservation objectives and Appropriate Assessment is not therefore required.

Nevertheless should the Board disagree and consider that assessment of the proposed development should proceed to Stage 2 Appropriate Assessment, then I consider that adequate information is available to allow an Appropriate Assessment of the implications of the proposed development on the Conservation Objectives of the Rockabill to Dalkey Island SAC to be completed and for such Stage 2 Appropriate Assessment to determine that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No. 003000, or any other European site, in view of the sites Conservation Objectives. This conclusion would be based on a complete assessment of all aspects of the proposed development and there is no reasonable doubt as to the absence of adverse effects.

A handwritten signature in black ink, appearing to read 'Conor Donnelly'.

Conor Donnelly
Inspectorate Ecologist
25th June 2024