



An
Bord
Pleanála

Addendum Report

ABP-317440-23

Development	Development of Amenity Looped Paths
Location	Peninsula Point, Kenmare, Co. Kerry.
Local Authority	Kerry County Council
Type of Application	Appropriate Assessment (AA) Screening Determination under Article 250(3)(b) of the Planning and Development Regulations 2001, as amended.
Applicant	Martin Arthur
Date of Site Inspection	04/09/2023.
Inspector	Auriol Considine

1.0 Introduction

- 1.1. This case relates to the issuing of a direction to Kerry County Council on whether the proposed development, comprising amenity looped paths at Peninsula Park, Kenmare should be subject to Appropriate Assessment (AA), which would require the preparation and submission of a Natura Impact Statement (NIS).
- 1.2. The proposed development comprises a local authority project, under the provisions of Part XI of the Planning and Development Act, as amended, and does not comprise a direct application to the Board. Kerry County Council is of the opinion that the proposed development would not likely have significant effects on a European site and an AA is not required.
- 1.3. Under the provisions of Article 250(3)(b) of the Planning and Development Regulations 2001 (as amended), Mr. Martin Arthur sought direction from the Board as to whether or not a NIS is required for the proposed works.
- 1.4. The purpose of this report is to address the additional information submitted by Kerry County Council in response to the Boards request for same on the 7th of December 2023.
- 1.5. A response to this request was received by the Board on the 11th of January 2024.
- 1.6. Observations on the additional information were received from the applicants' consultants on the 31st of January.
- 1.7. I refer the Board to my previous report in terms of the background of the development, details of the site and location, details of the proposed development, planning history and policy context.

2.0 Additional Information Submitted

- 2.1. Following the request for additional information, Kerry County Council submitted the following documents in support of the proposed development:
 - Revised AA Screening Report
 - Ecological Habitat Survey.
 - Gantt Chart detailing construction timing.
 - Updated site layout plans and longitudinal sections.

- Construction Environment Management Plan

3.0 Applicants Observations

3.1. Mr. Martin Arthur, through his agent Cunnane Stratton Reynolds, responded to the additional information submitted and the response is summarised as follows:

- Notes that KCC has taken account of earlier comments and that the Kenmare River SAC remains the designated site upon which the development may impact.
- There remain gaps in the due process and that the survey was carried out in December and as such, the findings may not be entirely accurate.
- The timing of otter survey may not lead to accurate results and there is no information as to expertise, method or findings of the Otter Survey. The presence of otter therefore cannot be ruled out.
- No bat survey was conducted.
- There are a number of cumulative sites in the vicinity of the proposed development site and the following is noted:
 - A S5 Declaration Request has been submitted to the Board (ABP-318452-23 refers) with regard to the construction compound of the WWTP which is causing a level of impact in terms of lighting and construction activity not addressed by IW.
 - KCC has sought further information with regard to the impact of a proposed development (retention of the existing properties as constructed and to change the use of a holiday home to a full-time residence) on the subsistence zone of the Lesser Horseshoe Bat – KCC ref 23/60188)¹.
 - An appeal has been submitted for a development (retain an extension to an existing agricultural barn at Reennagappul) (ABP-318818-24 (PA ref: 23/730) on the grounds that there has been a

¹ The Board will note that the FI request requires landscaping proposals and a review of external lighting arrangements. This site lies approximately 275m to the west of the current subject site.

lack of a Bat Survey and the potential use of the old barn as a roost for bats.

As such, the cumulative impact of development within the vicinity cannot be ruled out.

It is submitted that the development requires an NIS.

4.0 Assessment

4.1. Introduction

4.1.1. I refer the Board to my previous report and AA Screening Assessment. I present an assessment of the further information received from Kerry County Council and have had regard to the submission from the applicant on the response to the further information request. In addition, I will present an updated consideration of the following sections in terms of my AA Screening Assessment:

- Potential Significant Effects
- Potential In-combination Effects
- Appropriate Assessment Screening Conclusion

4.2. Revised AA Screening Report

4.2.1. The revised AA Screening Report has been updated to take into account recent planning decisions as part of the in-combination effects consideration. The report considers that none of the identified projects are expected to result in in-combination effects with the subject proposal, due to the minor nature of the project. It is further noted that the operational stage of the project will give rise to increased usage of the peninsula park lands for amenity purposes.

4.2.2. No Annex I habitats will be lost as a result of the project as the site lies outside of the SAC. The site is not identified as providing a supporting role to any QI habitats for the SAC and as such no ex-situ effects will arise. While construction works could result in a risk of contamination of the estuary waters, given the minor nature of the project and the separation from the boundary, any risk of contamination arising during the construction phase are considered to be negligible and not significant.

4.2.3. In terms of potential effects on key species associated with the SAC, Kerry County Council concludes that no significant loss or fragmentation of habitat or any potential

commuting routes is considered likely with regard to the Lesser Horseshoe Bat or Otter. Given the nature of the project, together with the lack of any lighting proposed, the revised AA Screening Report concludes, beyond reasonable scientific doubt, that the proposed works, individually or in combination with other plans/projects are not likely to have a likely significant effect on a European Site (Natura 2000 Site). It is therefore concluded that a Stage 2 Appropriate Assessment / Natura Impact Statement, is not required.

4.2.4. My assessment in terms of AA is presented in Section 4.7 of this report.

4.3. **Ecological Habitat Survey**

4.3.1. The Ecology Habitat Survey, prepared by Kerry County Council Ecologist, presents clear details as to the existing habitats present on the site and identifies the location and extent of alteration to each. The estimated loss of habitat in the event of the proposed development is as follows:

- 1,950m² or 8.2% of the existing Mosaic of Improved Grassland (GA1) and Dry Calcareous & Neutral Grassland (GS1) will be lost due to the proposed construction of the bituminous paved surface. In the context of the overall availability of this habitat, the impacts are not considered significant.
- 60m² or 0.4% of Scrub (WS1) habitat will be lost in the provision of a new grass trail through the scrub. This is not considered to be a significant impact.
- No loss of (Mixed) Broadleaf Woodland (WD1) or Hedgerows (WL1) habitats will arise as a result of the proposed development.

4.3.2. While it is acknowledged that the timing of the habitat survey was not optimal, I am satisfied that the impacts arising from the proposed development have been clearly identified and can be assessed as being insignificant. No invasive species were identified within the site, and it is noted that the recent planting of a hedgerow along the northern boundary of the site will be, on maturity, of locally important ecological value.

4.3.3. No Annex I habitats associated with the SAC were identified within the proposed development site.

4.4. **Gantt Chart detailing construction timing**

- 4.4.1. Kerry County Council has submitted a detailed timeline for the construction of the loop walk. It is anticipated that works will begin in September 2024 and will be completed before the end of November.
- 4.4.2. The main construction works, in terms of excavation of topsoil and the placing and compacting of aggregate will occur between the 4th of September and the 21st of October. The bituminous pavement surface will be laid over a 4-day period in the last week of October and reinstatement of the pavement edges, delineation of grass trails, landscaping and vacating the site will take place up to the 22nd of November. As such, there will be no works undertaken during the nesting season.

4.5. **Construction Environment Management Plan**

- 4.5.1. Kerry County Council included updated layout plans and longitudinal sections in support of the proposed works. The CEMP sets out how the project will be managed in order to minimise negative environmental effects and includes certain mitigation measures to ensure this objective. It is noted that no measure is being implemented to avoid likely significant effects on any European Site and I am satisfied that all amount to standard best construction practices.
- 4.5.2. The CEMP sets out the environmental management framework to be employed, including details of roles and responsibilities and section 3 provides the construction methodology and management plan for the development. This included information in terms of hours of work, numbers of personnel and details of the works to be undertaken, plant and equipment to be used and details of construction traffic and haul routes.
- 4.5.3. Section 4 of the report sets on the environmental conditions, potential impacts and controls and includes the general site environmental rules that will apply. Monitoring and inspections will comprise part of the routine mitigation and audits will be carried out by a suitably qualified person.

4.6. **Applicant Submission**

- 4.6.1. In terms of the concerns around the timing of the surveys, I am satisfied that the submission of KCC, in response to the Boards further information request, has had regard to concerns raised. All matters raised have been considered in this assessment.

4.7. **Appropriate Assessment Screening**

- 4.7.1. The proposed development includes (as described in the public notices in compliance with Part XI of the Planning and Development Act 2000, as amended, as set down in Part 8 of the Planning and Development Regulations 2021, as amended:
- The construction of 643m of bituminous macadam paths 3m wide.
 - Construction of 447m of grassed paths 3m wide
 - All associated ancillary and accommodation works.
- 4.7.2. The works seek essentially, to improve the existing finishes of the existing natural trail paths through the site at Peninsula Lands so as to increase accessibility and provide a more comfortable and diverse range of experience for recreational users and for a broad range of people.
- 4.7.3. Kerry County Council prepared an Appropriate Assessment Screening report as part of the Part 8 application, dated April 2023, and submitted a revised AA Screening report following the further information request from the Board. Both Screening Reports describe the proposed development, the assessment methodologies and receiving environment as well as the relevant European Sites in the zone of influence of the development site. The reports acknowledge that the project is not one which is necessary for the management of a Natura 2000 site and therefore AA Screening is required.
- 4.7.4. I refer the Board to my previous report, and associated AA Screening Report. The following section of this report will present an updated consideration of the following sections in terms of my AA Screening Assessment:
- Potential Significant Effects
 - Potential In-combination Effects
 - Appropriate Assessment Screening Conclusion

Potential Significant Effects:

- 4.7.5. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of any European Site, no direct effects are anticipated.

4.7.6. With regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies outside the boundary of the adjacent designated site, the Kenmare River SAC. The site does not include any habitats identified as QIs for which the SAC is so designated. As such, there shall be no direct loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within the settlement boundary of the town of Kenmare and is currently used for recreational purposes. The proposed development seeks essentially, to improve the surface of the existing trails and no qualifying species or habitats of interest, for which the Kenmare River SAC is so designated, occur at the site.

Lesser Horseshoe Bat:

- It is the stated Conservation Objective to maintain the favourable conservation condition of lesser horseshoe bat in the Kenmare River SAC.
- With particular regard to the potential for effects to arise on the Lesser Horseshoe Bat and acknowledging that the site lies within the 2.5km buffer around the Dunkerron Souterrain roost, the Board will note that the separation distance from this roost site is approximately 1.5km.
- In addition, the NPWS does not identify the subject proposed development site as comprising part of the potential foraging grounds for this species. I do not consider that a Bat Survey is necessary.
- While there are some wooded areas in the vicinity of the site, I note that there was no LHS bat activity recorded in 2020 during the summer surveys associated with the NIS for the Kenmare WWTP development. The location of the WWTP site lies within a largely wooded area which lies adjacent to the River Finnihy.
- Disturbance potential to LHS bats relate to noise, vibration and light during the construction phase and potential increased footfall, noise

and light during the operational phase of the project. While there is potential for temporary effects to the LHS bat, during the construction phase of the project, they would be temporary and unlikely to give rise to significant adverse effects.

- No lighting is proposed as part of the proposed project, and in this regard, the proposed works will not form any barrier to commuting bats. The lack of lighting will ensure that the site is largely not used in hours of darkness, and when bats are active, similar to the current situation on the site, and as such, any potential impact on bats in terms of increased footfall and noise can be deemed minimal and insignificant. No mitigation measures are required in this regard.
- Notwithstanding the timing of the habitat survey work undertaken, I am satisfied that sufficient information is available in order to determine that the potential for likely significant effects on the Lesser Horseshoe Bat, a QI of the Kenmare River SAC can be excluded.

Otter:

- It is the stated Conservation Objective to restore the favourable conservation condition of Otter in the Kenmare River SAC.
- This QI is expected to commute along the shoreline at the location of the proposed project and to use the adjoining waters for foraging purposes.
- The NIS associated with the Kenmare WWTP upgrade development confirmed the presence of an Otter holt approximately 2km upstream of Cromwells Bridge (approximately 650m to the NE of the site) which is considered to be outside the zone of influence for the site. The NIS found, while no evidence of activity in close proximity to the WWTP site in surveys undertaken in June 2019 or August 2021 the use of the adjacent river for foraging and commuting was extremely likely.
- Disturbance potential to Otter relate to construction and operational noise, vibration and lighting, as well as potential effects on water quality. While there is potential for temporary effects to Otter, during

the construction phase of the project, they would be temporary and unlikely to give rise to significant adverse effects. Standard construction best practices will ensure that no emissions from the site will impact on the quality of the adjacent waters during the construction phase.

- As indicated above, no lighting is proposed as part of the proposed project and therefore, there will be no effects arising in terms of Otter.
 - The project will not give rise to a change of use of the site, which is currently used for recreational purposes.
 - The existing boundaries of the site will be largely held intact, with the only loss of habitat arising from the proposed works being 60m² of scrub (over two areas) where a 3m grass path is proposed. The proposed project will not give rise to any significant barriers to Otter commuting through the area.
 - Notwithstanding the timing of the habitat survey work undertaken, I am satisfied that sufficient information is available in order to determine that the potential for likely significant effects on Otter, a QI of the Kenmare River SAC can be excluded.
- While there may be an increase in noise / disturbance during the construction phase, I consider this to be for a very limited and short period of time and is unlikely to give rise to any significant impacts to the QI species associated with the SAC, and in particular Lesser Horseshoe Bat or Otter. The number of users of the trails on completion of the works may increase however, I do not consider that the general noise or disturbance to birds, bats, Otter and other species that may be present on the site, will be such as to significantly effect on the QI species associated with the SAC.

As the subject site is not located within any Natura 2000 site and having regard to the nominal nature and scale of the project and works proposed, there is little or no potential for disturbance or displacement impacts to species or habitats for which the identified Natura 2000 site has been designated.

- Water Quality: The proposed development relates to the construction of 643m of bituminous macadam paths 3m wide and a 447m of

grassed paths 3m wide all within a site which is currently used for recreational purposes. The project will not give rise to any waste water being generated and the level of increase in potential surface water discharges is considered to be so small as to not have any impact on water quality within the SAC. Having regard to the nominal scale of the proposed project, and subject to best construction practices, I am generally satisfied that the development, if permitted, is unlikely to impact on the overall water quality of the Kenmare River SAC.

I am generally satisfied that the potential for likely significant effects on the qualifying interests of the Kenmare River SAC can be excluded given the nature and scale of the development and the lack of a direct hydrological connection.

4.7.7. Potential in-combination effects:

Having regard to the plans and projects which may give rise to potential in-combination effects, the Board will note that both of the Planning Authority's AA Screening Reports conclude that no in-combination effects arise.

I note that an NIS was prepared for the upgrade of the Kenmare Waste Water Treatment Plant which was consulted in the preparation of this AA screening. The subject site is currently used for recreational purposes and lies within an open green space which exhibits a wide range of habitats. I have had full regard to the nature of developments in the immediate vicinity of the subject site and I am satisfied that there is no development within the wider area which might be considered to be of such a scale as to give rise to any significant in-combination effects. These include those projects detailed in the applicants observation, and noted in KCCs AA Screening report.

Given the nominal nature and scale of the proposed project as described above, I consider that any potential for in-combination effects on habitats, disturbance to species and water quality in the Kenmare River can be excluded.

4.8. Appropriate Assessment Screening Conclusions:

- 4.8.1. 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 and including the

response to the Boards further information request and the observations of the applicant, that the project, either individually or in combination with other plans or projects would not be likely to have a significant effect on Kenmare River SAC, (Site Code: 002158), 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.

- 4.8.2. 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.

5.0 Recommendation

- 5.1.1. Having regard to the information submitted following the Boards request for further information, together with the applicants observations received, my original recommendation that the Board determine that the development would not be likely to have a significant effect on any European site and that the Local Authority be directed not to prepare a Natura Impact Statement in respect of the subject development for the reasons and considerations set out in my previous report remains unchanged.

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 lack of in-combination effects arising from other proposed and permitted development in the vicinity,

- (e) the submissions made to the Board including the initial request and the Local Authority's response,
- (f) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter,

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 Kenmare River SAC, (Site Code: 002158), 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.

A. Considine
Inspectorate
12th February 2024