



An  
Bord  
Pleanála

## **Report to Inspector (Appendix to main report) ABP- 318652-23**

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### **Development**

Series of walking trails and ancillary works along the Copper Coast UNESCO Global Geopark Between Stradbally and Bunmahon, Co. Waterford

### **Applicant**

Waterford City and County Council

### **Type of Application**

Application for approval made under Section 177(AE) of the Planning and Development Act, 2000 (as amended)

### **Topic:**

Adequateness of information for Appropriate Assessment

### **Ecologist**

Maeve Flynn BSc. PhD. MCIEEM

### **Planning Inspector**

Adrian Ormsby

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## 1.0 Introduction

### 1.1. Background

- 1.1.1. Waterford City and County Council has applied to an Bord Pleanála for permission for a proposal to develop a series of walking trails along the Copper Coast between Stradbally and Bunmahon Co. Waterford (Section 177AE Application). A Natura Impact Assessment (NIS) prepared by Blackstaff Ecology accompanies the application. The proposed development would be located within the Mid-Waterford Coast Special Protection Area (SPA, site code 004193) designated for the conservation of bird species including Chough, Peregrine Falcon, both listed on Annex I of the Birds Directive and breeding populations of Herring Gull and Cormorant. The Chough population is of international importance and the SPA is the most Easternmost SPA for this species in Ireland.
- 1.1.2. A detailed submission by the Development Applications Unit on behalf of the Department of Housing Local Government and Heritage (DHLGH) raised significant concerns regarding the implications of the proposal for the Mid-Waterford Coast SPA and the Chough population in particular. In addition, local expert, ornithologist and author of *A Guide to the Waterford Coast* (2011) Mr Declan McGrath submitted detailed reasons and considerations regarding his concerns of potential adverse effects on birds listed for the SPA and other breeding seabirds if the development of walking trails in this area were permitted.

### 1.2. Scope of Report

- 1.2.1. As part of my role as Inspectorate Ecologist, I was formally requested to review the information submitted in terms of adequateness of the NIS to inform appropriate assessment with particular regard to the nature conservation matters raised by DHLGH.
- 1.2.2. This report to the Planning Inspector and available to the Board is a written record of my review of the submitted information. It comprises a detailed examination of the scientific information provided by the applicant, taking account of observations made by DHLGH and Mr McGrath.

1.2.3. This report only pertains to the requirements for appropriate assessment (AA) and does not consider aspects outside of the conservation objectives for the European site in question. I note that an ecological report examining impacts to other breeding sea birds, wintering birds and other ecological aspects does not accompany the application. I do not address Biodiversity policy in this report but recommend the Inspector and the Board to consider the proposal in light of the National Biodiversity Plan, the Southern Regional Assembly Regional Spatial and Economic Strategy and the Waterford City and County Development plan (2022-2028).

1.2.4. I have examined the following documents including relevant drawings (plans and particulars):

- NIS including appendices (breeding birds and habitat survey). (Blackstaff Ecology November 2023)
- Proposed Cooper Coast Walking Trails Planning Statement (Tobin, December 2023)
- Planning drawings

1.2.5. I have relied on the following current best practice guidance:

- DoEHLG (2009). Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities. Department of the Environment, Heritage and Local Government, National Parks and Wildlife Service.
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC
- EC (2021) Assessment of plans and projects in relation to Natura 2000 sites. Methodological guidance on Article 6(3) and 6(4) of the Habitats Directive 92/43/EC

## **2.0 Proposed Development (summary)**

2.1. A detailed description of the proposed development is provided in the application documents and in the Inspectors report. In summary, the proposed development consists of:

- Three discrete sections of walking trail of approx. 2m wide on existing ground with limited ground improvement / boardwalk where required in certain sections. Fencing (where necessary) is proposed to protect livestock on the landward side of the trails and also on cliff side, but no specific details appear to be provided.
- Trail 1: Stradbally to Killelton (4.5km)
- Trail 2: Ballydowane Beach (1.1km)
- Trail 3: Cooneennacartan to Trá na mBó (2.0km)
- Realignment of the road junction and an extension of the existing car park at Ballydowane beach is also proposed. The installation of wooden steps to provide access to trail at this location is also proposed along with a viewing platform and cove crossing.

2.2. The proposed trail development consists of very minor construction works as little physical intervention is proposed, with the exception of Ballydowane where works are required at the car park and road junction. Vegetation clearance is proposed at various locations.

2.3. The planning statement report and NIS state that best practice construction and pollution prevention methods will be employed, and that mitigation measures will be required to ensure minimal disturbance is caused to Qualifying Interest species (or special conservation interests -SCI bird species), particularly nesting and foraging Chough and Herring Gull. General mitigation measures incorporated into the project design include the following:

- Erection of clear signage at strategic locations.
- The project supervisor and an ecologist/ornithologist shall identify and mark areas which would be particularly sensitive to nesting birds and foraging Chough.
- All proposed works should be undertaken outside of the main bird breeding season.

2.4. I note that the current situation at is that access to the cliff edge is limited or informal with much of the land in private ownership and not accessible to the public.

2.5. Gaps in information provided:

- It is stated in the Planning Report that dogs are to be precluded from the trails, but no information is provided on how this would be enforced. In contrast, the assessment in the NIS is based on dogs being present on the walking trails and considered a potentially significant disturbance factor.
- No detail is provided on numbers of people expected to use to the walking trails or what the existing usage is where trails exist as a baseline for any comparison.

### 3.0 Submissions and Observations

3.1. Prescribed bodies

Department of Housing, Local Government and Heritage (DHLGH)

3.1.1. DHLGH made a detailed submission via the Development Applications Unit (DAU) on nature conservation aspects of the application (16/02/2024). Key points include:

- Development and human disturbance would be within the 300m area designated to protect the breeding and feeding habitat of this Annex I species.
- Potentially 18% of Chough SPA population could be affected.
- Impacts on critical core area of Chough: due to land management in Waterford area with intensive grass swards unsuitable for year-round foraging, birds are more restricted to cliff top and adjoining areas than in other more exposed and less intensively farmed areas.
- Peer reviewed research from the Island of Ouessant (Kerbiriou *et al* 2009<sup>1</sup>), France which has studied human disturbance of Chough and also Dursey Island example cited. Reference to flush distances from these examples.

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<sup>1</sup> Kerbiriou C., Le Viol, I, Robert, A., Procher, E., Gourmelon F. and Julliard R (2009) Tourism in protected areas can threaten wild populations: from individual response to population viability of the chough *Pyrrhocorax pyrrhocorax*. Journal of Applied Ecology, 46, 657-665

- Interference with the natural transitions from cliff face and cliff top to grassland and heath would result in deterioration of the conservation status of the site.
- Year-round use of the trails with increased numbers of walkers at the most sensitive time (breeding and post fledging) will adversely affect 7 km of SPA used by Chough- contravening conservation objective to maintain or restore favourable conservation condition of the bird species.
- DHLGH consider that the proposed development would significantly degrade a large area of core habitat within the SPA and constitute an adverse effect on site integrity and does not accept that mitigation proposed will remove this impact.
- Disturbance to breeding Peregrine Falcon and Herring Gull
- Peregrine: NPWS staff made site visit and found two birds within development area. No nest but have nested there in past.
- Other wader species not considered, curlew and oystercatcher flushed from the site during site visit by NPWS staff.
- The DHLGH view is that the proposal does not fulfil the criteria for sustainable development of the Southern Regional Assembly Regional Spatial and Economic Strategy (RSESO RPO1)
- Development could set precedent and incentive for other similar developments within SPA and pressure to join up disparate access points on the coast by traversing through SPA.

### 3.2. Public submission

- 3.2.1. In a detailed submission (dated 13<sup>th</sup> February 2024), Mr. McGrath presents information on seabirds of the Mid-Waterford Coast based on personal involvement in breeding seabird survey and local knowledge of the ecology of the area. Mr McGrath raises similar concerns to the Department and infuses his points with local knowledge and evidence from scientific literature. He considers that the proposed trails will result in disturbance to birds of conservation interest and loss of foraging habitat resulting in adverse effects on the Mid-Waterford Coast SPA. In summary, key points include:

- References Scientific literature and most up to date data on breeding seabirds of mid-Waterford Coast.
- **Chough:** SPA supports 42-50% of the County population (Irish Birds 44, 2022); Provides information on winter roosts of Chough and post breeding flocks and identifies lack of assessment of impacts on juvenile Chough in NIS (critical period of June to September); Survey results deviate from what would be expected, questions experience of surveyors in Chough survey? Importance of coastal edge/ cliff edge for Chough in this area. 300m strip of the SPA is very important. Ouissant study of Chough disturbance (flush distances) from France also referenced (Kerbiriou *et al* (2009).
- **Peregrine Falcon:** Demonstrated expert knowledge of peregrine Falcon in the area- question survey results of just 1 peregrine sighting and insufficient consideration of potential impacts.
- Assessment of impacts on other birds of importance in this area not considered (non SCI species).
- Provides detail and examination of planning records of the area where reasons for refusal were related to adverse effects on the SPA with particular reference to Chough.
- Concerns regarding setting precedent of development and referrals to Ballymacaw to Portally Cove coastal trail in relation to impacts on Chough and Peregrine and direction from EPA under Environmental Liabilities Regulation to Waterford City and County Council (see letter appended to submission dated 17<sup>th</sup> December 2021).
- Contrary to Waterford City and County Development plan (2022-2028)
- Does not align with National biodiversity action plan 2023-2030
- Other points raised **in relation to the NIS:** Standard census methods for seabirds not followed in bird survey; Critical of uncertainties in the NIS; Inadequacies of mitigation measures.
- Considers that high levels of human disturbance already exist from access at Bunmahon Bay.



- No reference to numbers of walkers expected.

## **4.0 Consideration of the Likely Significant Effects on a European Site**

### **4.1. Article 6(3) of the Habitats Directive**

4.1.1. The requirements of Article 6(3) as related to appropriate assessment of a project under part XAB, section 177AE of the Planning and Development Act 2000 (as amended) are considered in this section. The areas addressed are as follows:

- Screening for appropriate assessment
- NIS/Appropriate Assessment undertaken by applicant.
- Adequacy of the NIS to inform Appropriate assessment (for the Board)

### **4.2. Screening for Appropriate Assessment (stage 1)**

4.2.1. The first test of Article 6(3) is to establish if the proposed development could result in likely significant effects on a European site. Section 177(AE) (3) states that where a Natura Impact Statement has been prepared pursuant to subsection (1), the local authority shall apply to the Board for approval and the provisions of Part XAB shall apply to the carrying out of the appropriate assessment. There is no stated requirement for the Board to undertake screening in these cases as it presupposed that the Local Authority has established the need for AA through its own screening process (unless issues arise as to the adequacy or otherwise of the screening determination by the applicant) and in the preparation of a NIS.

4.2.2. I note that Waterford City and County Council did not provide evidence of formal AA Screening determination, instead reliance placed is on the screening test applied by Blackstaff Consultants and this is included as part of the NIS (See Screening Matrix page 19-23 NIS).

4.2.3. The screening stage concludes that “the proposed development, individually or in-combination with other plans or projects, would have effects of unknown significance on Mid-Waterford Coast SPA, in view of the said sites’ conservation objectives. An appropriate assessment is therefore, required”.

- 4.2.4. I bring the Inspectors and Boards attention to the requirements of the screening test which is to determine the likelihood (possibility) of significant effects occurring as a result of a proposed development. A significant effect is one that could undermine the conservation objectives of a European Site. Throughout the document there is conflation of the tests of the two stages of AA with references to adverse effects in screening (stage 1) and potentially significant effects in the AA information (stage 2).
- 4.2.5. As the proposed walking trails are within the Mid-Waterford Coast SPA, it is clear from the information submitted that there is possibility of significant effects on the site in view of the conservation objectives and any *uncertainty* as to the implications of those effects must be assessed in view of the best scientific knowledge available in the NIS. I note that the screening section of the NIS is focused on detailing those effects.
- 4.2.6. No other European Sites could be affected by the proposed development and the assessment is confined to the Mid-Waterford Coast SPA.
- 4.2.7. The conservation objective for the Mid-Waterford Coast SPA (NPWS 2022)<sup>2</sup> is:  
To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:
- Cormorant *Phalacrocorax carbo*
  - Peregrine *Falco peregrinus*
  - Herring Gull *Larus argentatus*
  - Chough *Pyrhacorax pyrrhacorax*
- 4.2.8. I note that site specific conservation objectives based on attributes and targets have not yet been published for this SPA site and the applicant did not show evidence of examining or applying targets from other SPA sites with similar suite of species which can assist in more detailed assessment required as part of AA.

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<sup>2</sup> NPWS (2022) Conservation objectives for Mid-Waterford Coast SPA [004193]. First Order Site-specific Conservation Objectives Version 1.0. Department of Housing, Local Government and Heritage.

4.2.9. The applicant states that they considered the conservation objectives, desk study of available information, breeding bird survey (6 dates between March and May 2023) and habitat surveys to inform the assessment.

4.2.10. Potential impacts considered include:

- Minor pollution incidents from clearance of vegetation/ ground works with surface water run off/ contamination of coastal water bodies causing degradation of marine and coastal habitats.
- Disturbance of SCI bird species during construction phase particularly if carried out during breeding season.
- Disturbance of SCI bird species from human disturbance, changes in nesting behaviours, adverse effects on foraging Chough. Impacts of unrestrained dogs on nesting birds and foraging Chough

4.2.11. The AA Screening concludes that the potential impacts during the operational phase of the proposed development to the SCI features of the SPA are unknown but have varying potential to adversely impact on Chough and Herring Gull. Increased visitors and exposure to dogs may result in change in Chough foraging patterns and potential impacts would relate to distances involved and extent of visibility in each instance.

4.2.12. These uncertainties are brought forward in the NIS document to the AA section.

#### 4.3. **Appropriate Assessment (AA-Stage 2) by Applicant**

4.3.1. The AA section of the NIS considers the potential for impacts that could arise even with the application of what are termed general mitigation measures which include measures such as signage detailing ecological sensitivities, works outside of the bird breeding season, views and recommendations from the National Parks and Wildlife Service and BirdWatch Ireland, preconstruction survey to identify particularly sensitive areas.

4.3.2. Three particular issues are considered: potential disturbance of Chough and or Herring gulls nesting on sea cliffs at strategic locations (non-specific), disturbance of a potential Chough nesting site at Ballydowan beach and potential disturbance of foraging Chough within agricultural grassland.

- 4.3.3. Uncertainties identified in the screening stage are not resolved in the AA and the applicant states that it is not possible to confirm the presence of breeding chough, or confidently identify areas of grassland routinely used by Chough.
- 4.3.4. I note that both the DHLGH and Mr McGrath highlight the fact that the entire 300m swathe of area of grassland designated within the SPA is because it is routinely used by Chough with particular importance given to the cliff top area.
- 4.3.5. There is a notable absence of references to key publications relating to Chough and in particular the Kerbiriou *et al* (2009) paper which is concerned with disturbance from human activity and tourism.
- 4.3.6. It is stated that additional visual screening mitigation measures may be required for Chough but detail on how this could be determined, or the location or design is not specified.
- 4.3.7. Where the development of walking trails in previously undisturbed areas are proposed a timed response to this increase in footfall is proposed to occur during winter months giving the local bird community time to habitat to these changes. However, no proposals of how this could be implemented are proposed.
- 4.3.8. Table 2 further details a list of measures to be introduced and monitored.
- 4.3.9. Measures are not related back to the conservation objectives or any attributes and targets that are standard for supporting site integrity at SPA sites.
- 4.3.10. The conclusion of the NIS does not clearly apply the integrity test i.e. exclude adverse effects on site integrity in view of the conservation objectives of the site, rather it concludes that no significant effects on the designation features of the SPA will result.

#### **4.4. Adequacy of NIS to inform Appropriate Assessment (by Board)**

- 4.4.1. I have reviewed the NIS in view of the conservation objectives of the European site and based on scientific information provided by the applicant and considering expert submissions and find notable inadequacies in the information submitted.
- 4.4.2. I consider that the survey undertaken and the assessment of impacts on breeding and foraging Chough population in particular is inadequate and does not correspond

to the requirements of best scientific knowledge for AA. There is no assessment of impacts on post fledging flocks and key scientific references related to Chough disturbance have not been considered.

- 4.4.3. The uncertainties raised by the consultants on behalf of applicant regarding potential impacts on the Chough population in particular are not resolved and based on information presented by DHLGH and Mr McGrath, I consider that there is an underestimation of the potential for adverse effects and a lack of assessment on how such effects could undermine the conservation objectives of the site.
- 4.4.4. AA requires an examination and assessment of all features listed for the European Site and this is not considered in full in the NIS. There are inadequacies in terms of assessments of SCI features of Peregrine Falcon in particular.
- 4.4.5. Based on conservation objectives from other SPA sites, in order to remove the possibility of adverse effects, the applicant would have to demonstrate beyond reasonable scientific doubt that the proposed development would not result in significant decrease in the range, timing, or intensity of use of areas by individual species (other than that occurring from natural patterns of variation). The applicant does not have adequate data or a scientific approach to assessment that could address this core aspect of the requirements to support the integrity of SPA sites.
- 4.4.6. Mitigation measures proposed are inadequate, uncertain and lack specificity. There is an apparent reliance on post consent identification of areas of importance for breeding sea birds and foraging Chough in order to determine locations for visual barriers and fencing and monitoring to further identify negative effects. There is also a proposal for seeking post consent agreement of approach with NPWS and BirdWatch Ireland with no evidence provided to support any such proposal. This approach is fundamentally flawed and not in compliance with the legal provisions of the Habitats Directive and no such measures can be relied upon by the Board as part of the AA.
- 4.4.7. In summary, I consider that the information as presented in the NIS is inadequate and it would not be possible for the Board to undertake AA in line with the requirements for clear, precise, and definitive findings that can exclude adverse effects on site integrity. Mitigation measures proposed are not compliant with the provisions of the Habitats Directive and rely on post consent assessments and

agreements. There is reasonable scientific doubt as to absence of adverse effects on site integrity in view of the conservation objectives of the Mid-Waterford Coast SPA.

## **5.0 Conclusion: adequacy of NIS to inform Appropriate Assessment – and recommendation for Integrity Test**

- 5.1. In screening the need for Appropriate Assessment, consultants on behalf of Waterford City and County Council determined that there was uncertainty regarding significant negative impacts on the Mid-Waterford coast SPA from the proposal to open walking trails along the Copper Coast and that Appropriate Assessment under the provisions of S177AE was required.
- 5.2. I consider that in applying the screening test correctly there is no such uncertainty regarding the likelihood of significant effects occurring and any uncertainty relates to the degree that the proposed development could undermine the conservation objectives of the SPA and site integrity. The NIS doesn't resolve uncertainties regarding Chough in particular, and mitigation measures are not adequate to exclude adverse effects on site integrity and include post consent measures that are not compliant with the provisions of Article 6(3).
- 5.3. Having reviewed the NIS and the detailed submissions made by the DHLGH and Mr Declan McGrath which presented evidence that raised reasonable scientific doubt regarding the robustness of the findings in the NIS, I consider that it is not possible to exclude adverse effects on the integrity of the Mid -Waterford SPA and that the Board are precluded from granting permission for this development.
- 5.4. My conclusion is based on the following:
  - Inadequate assessment of impacts on breeding and foraging Chough population in the Mid-Waterford Coast SPA.
  - Underestimation of adverse effects and how they would undermine the conservation objectives of the site.
  - Inadequate mitigation measures lacking specificity, reliance on post consent monitoring to identify negative effects and a proposal for seeking post consent

agreement of approach with NPWS and BirdWatch Ireland with no evidence provided to support any such proposal.

- Reasonable scientific doubt as to the absence of adverse effects in view of conservation objectives of the site and that the proposal would result in a significant decrease in the range, timing and intensity of use of areas by individual species.

**Signed:**



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Maeve Flynn BSc. PhD, MCIEEM  
Inspectorate Ecologist

30<sup>th</sup> May 2024