



An
Bord
Pleanála

Inspector's Report ABP-319541-24

Question

Whether placement of boulders, placement of soil, placement of boulders and soil carried out by digger, to prevent further erosion to the pilgrim path is or is not development or is or is not exempted development

Location

within the Lady's Island Lake SAC and the Lady's Island Lake SPA within the townland of Our Lady's Island, Co. Wexford.

Declaration

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

NA0671

Applicant for Declaration

Department of Housing, Local Government and Heritage

Planning Authority Decision

None

Referral**Referred by**

Department of Housing, Local
Government and Heritage

Owner/ Occupier

Fr. Jim Cogley PP

Observer(s)

None

Date of Site Inspection

17th of January 2025

Inspector

Angela Brereton

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1.1. Site Location and Description

- 1.2. The site is located on the southern end of the walk/pilgrim path around Our Lady's Island, Co. Wexford. The carpark and Our Lady's Island Pilgrimage Centre is further to the north. This also includes a toilet building.
- 1.3. There is an unsurfaced walk around the lakeside verges and this was passable but subject to flooding on the day of the site visit. There is a statue and outdoor place of worship at the southern tip of the island. The area the subject of this referral is at the southern tip and has been subject to erosion and while there is a narrow unsurfaced path it is now partly submerged within the lake waters. The site is located within the coastal lagoons within Lady's Island Lake SAC and SPA. I noted several wintering water birds in the vicinity on the lakeside shores on the day of the site visit.

2.0 The Question

- 2.1. Whether the placement of boulders for the purpose of providing rock armour, placement of soil, placement of bounders and soil carried out by digger, to prevent further erosion to the pilgrim path within the Lady's Island Lake SAC and the Lady's Island Lake SPA within the townland of Our Lady's Island, Co. Wexford is or is not development and is or is not exempted development.

3.0 Declaration Referral

This Referral was made by the Department of Housing, Local Government and Heritage (on the 27th of March 2024), to seek a determination from the Board under Section 5(8) of the Planning and Development Act 2000 (as amended) as to whether the question raised constitutes development which is or is not exempted development.

It is described by the Department as a Referral to An Bord Pleanála of an application for derogation consent to carry out an operation or activity on a site within the Lady's Island Lake SAC (Site Code:000704) and the Lady's Island Lake SPA (Site Code: 004009), to which the European Communities (EC)(Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011) apply, in accordance with Regulation 30 of those Regulations and also to which the European Union Habitats (Lady's Island

Lake SAC Regulations 2018 (S.I. No. 292/2018) and EC (Conservation of Wild Birds, Lady's Island Lake SPA)) Regulations 2010 (S.I. No. 69/2010) – apply, in accordance with Regulation 5 of those Regulations.

3.1. Planning Authority Reports

This was not the subject of a Referral to the Planning Authority.

3.2. Referral to the Department

A Conservation Ranger with the NPWS, made an application to the Department of Housing, Local Government and Heritage for permission to carry out an operation or activity on a site to which the European Communities (Natural Habitats) Regulations 1997 (No. 94 of 1997), apply, in accordance with Regulation 14 of those Regulations. This was made on behalf Fr. Jim Cogley P.P.(on behalf of the Pilgrimage Committee) on the 29th of September 2023. Details are included in a report signed by the Conservation Ranger and in summary, relate to the following:

Erosion

- Line of armouring rocks (18" x18" approx.) extending for 20 yds have sunk due to erosion and need replacing to protect soil and walkway at the head of the Island.
- There is an urgent need for these works before the onset of winter. It is more difficult to do these works in spring. It is necessary to replace some soil which has been eroded, leaving a rough surface that is a health and safety issue.
- Part of this is yearly maintenance work and they have soil from the Island set aside for this purpose as pilgrims path/walkway needs to be kept level and safe.

Natura 2000 sites

- Lady's Island Lake SAC 000704
- Lady's Island Lake SPA 004009

Description of Habitats that would be affected by these works

- Lagoons – This is an Annex 1 habitat, a Q1 habitat of the Lady's Island Lake SAC and a Priority habitat. Its overall conservation status in the last Article 17 report is bad and deteriorating. This lagoon is a sedimentary lagoon with a shingle/sand barrier and is the largest and best example of this type in Ireland.

Recommendation

- The proposed activities may constitute development under the Planning and Development Act. The proposed activities are likely (individually or in combination with other plans/projects) to have a significant effect on the above European sites. Their recommendation is to 'Disallow' and that it be referred to ABP.

Other issues

An email included with the Referral includes the following details:

- It is confirmed that a standard JCB type tractor digger with bucket is used for the boulder replacement works on Lady's Island Pilgrim Path.

4.0 Planning History

There is no planning history relevant to Lady's Island noted on file. However, the Wexford County Council Planning note the following applications, relevant to Fr. Jim Cogley, parish of Our Lady's Island:

- Reg.Ref. 20190219 – Permission refused for 1) The Erection of a Marian Grotto and Candleabra at an existing religious site; 2) The creation of Reflection/Prayer Stations on a Pilgrimage Route at the Shrine of Our Lady.

This was refused for 4no. reasons which in summary relate to the following:

- 1) The absence of an NIS given the site's location with Lady's Island Lake SAC and SPA;
- 2) Visual Impact given the sites location within a Landscape of Greater Sensitivity and Coastal Landscape area and contrary to policies and objectives within the 2013 -2019 Wexford CDP;

- 3) Potential to impact negatively on archaeology given proximity to Recorded Monuments;
 - 4) The drawings submitted had insufficient detail to enable the planning authority to fully assess the proposed development and given the historic and sensitive nature of the subject site.
- Reg.No. EXD00701 – Section 5 Referral to Wexford County Council. They concluded that the proposed erection of Marian Grotto and Candelabra at existing religious site on Lady’s Island is development and is not exempted development.

Other decisions of note

- ABP-307432-20 – Application by Wexford County Council to the Board for approval under S.177AE of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an NIS for the installation of water level management measures at Lady’s Island Lake.

As revised by public notices at F.I stage the proposed development description, consisted of the installation of drainage pipeline and flow control structures within the beach fronting the lake to manage water levels and salinity in the Lake. A revised NIS was then submitted.

The Board approved the proposed development subject to conditions.

Copies of the above decisions are included in the History Appendix to the Subject Referral.

5.0 Policy Context

5.1. Wexford County Development Plan 2022-2028

Landscape – Chapter 11

Section 11.6 refers to Landscape Character Assessment. Lady’s Island is within the Coastal Landscape.

Section 5 refers to Distinctive Landscapes, noting that these are as identified on Map No.7.1 in Volume 7 LCA. Noting that many of these landscapes also have profound

historical, socio-cultural and/or religious interest. This includes Water Bodies such as Lady's Island. Landscape Sensitivity is described as 'High' – Table 11.1 refers.

Section 11.10 refers to Assessing Visual Impacts and to Landscape and Visual Impact Assessment. Landscape Objectives L01 – L17 refer.

Objective L06: To ensure that developments are not unduly visually obtrusive in the landscape, in particular, in or adjacent to the Upland, River Valley, Coastal or Distinctive Landscape Character Units.

Coastal Zone Management – Chapter 12

Section 12.2 refers to Climate Action in Coastal Areas.

Section 12.3 to Marine Spatial Planning.

Section 12.4 to Coastal Zone Management Spatial Strategy.

Section 12.4.2 includes the goal: *Adapting and managing the challenge of climate change in coastal areas and the marine area.*

Coastal Zone Management Strategic Objectives include

Objective CZM01: *To ensure the sustainable development of the county's coastal areas and the maritime area for the long term benefit of coastal communities and the economic well-being of these areas and the county whilst protecting and enhancing environmental quality and managing and restoring biodiversity.*

Section 12.5 refers to Managing the Coastal Zone and Maritime Area.

Section 12.5.4 to Coastal Erosion.

Section 12.5.5 to Coastal Flooding.

Section 12.5.6 to Ecosystems Services.

Objective CZM24: *To address, as part of the County Wexford Climate Change Adaptation Strategy 2019-2024, and the forthcoming County Wexford Coastal Strategy, the effects of sea level changes and coastal flooding and erosion in the coastal zone and maritime area and to support the implementation of adaptation responses in vulnerable areas subject to compliance with the Habitats Directive and the proper planning and sustainable development of the area.*

Objective CZM38: *To restrict the removal of beach material, sand and gravel.*

Heritage and Conservation – Chapter 13

Section 13.1.1 to Climate Action and Heritage.

Section 13.2 to Natural Heritage. This includes regard to Biodiversity Restoration and the Habitats Directive and Natura 2000 Sites.

Table 13.1 provides a list of Natura 2000 Sites in County Wexford and within 15km of the Plan Boundary. This includes Lady's Island Lake SAC 000704 and SPA 004009.

Table 13.3 provides a list of Wexford County Geological Sites and recommended geological Natural Heritage Areas. This includes Lady's Lake – site code WX027 – CGS, recommended for Geological NHA.

Objectives include:

Objective NH04: To protect the integrity of sites designated for their habitat and species importance and prohibit development which would damage or threaten the integrity of these sites. Such sites include Special Areas of Conservation (SACs) and candidate SACs, Special Protection Areas (SPAs), Natural Heritage Areas (NHAs) and proposed NHAs, Nature Reserves, Refuges for Fauna and RAMSAR sites. To protect protected species wherever they occur.

Objective NH05: In assessing planning applications located in and/or in proximity to Natura 2000 sites, whether hydraulically linked or otherwise linked or dependent (such as feeding, roosting or nesting grounds) to a designated site, regard shall be had to the detailed conservation management plans and data reports prepared by NPWS, where available, to the identified features of interest of the site, the identified conservation objectives to ensure the maintenance or restoration of the features of interests to favourable conservation status, the NPWS Article 17 current conservation status reports, the underlying site specific conditions, and the known threats to achieving the conservation objectives of the site.

Objective NH06: To recognise the importance of recommended Geological Natural Heritage Areas, proposed Natural Heritage Areas and County Geological Sites and protect the character and integrity of these sites where appropriate. The Council will consult Geological Survey Ireland where a development is proposed that may impact on geological sites.

Objective NH08: *To ensure that any plan/project and any associated works, individually or in combination with other plans or projects, are subject to Screening for Appropriate Assessment to ensure there are no likely significant effects on any Natura 2000 site(s) and that the requirements of Article 6(3) and 6(4) of the EU Habitats Directive are fully satisfied. Where a plan/project is likely to have a significant effect on a Natura 2000 site or there is uncertainty with regard to effects, it shall be subject to Appropriate Assessment. The plan/project will proceed only after it has been ascertained that it will not adversely affect the integrity of the site or where, in the absence of alternative solutions, the plan/project is deemed by the competent authority imperative for reasons of overriding public interest.*

5.2. Natural Heritage Designations

The Referral site is located within the Lady's Island Lake SAC and Lady's Island Lake SPA.

5.3. EIA Screening

The proposed development, which is the subject of this Referral, does not fall under a category of development listed in Schedule 5, Parts 1 or 2. As a result, the development is not considered sub-threshold, and a mandatory Environmental Impact Assessment (EIA) or screening for EIA is not required.

6.0 The Referral

6.1. Referrer's Case

The Minister for Housing, Local Government and Heritage received an Activity Requiring Consent (ARC) application form from Fr. Jim Cogley P.P. on behalf of Our Lady's Island Pilgrimage Committee, to carry out works within the Lady's Island Lake SAC (Site code: 000704) and the Lady's Island Lake SPA (Site Code:04009) within the townland of Our Lady's Island, Co. Wexford.

Proposed activities

A description is given of the proposed activities, concerning the placement of boulders, providing of rock armour etc., relevant to the subject Referral and to the Natura 2000 sites within the Lady's Island Lake. Further details are given relevant to the proposed works in the Question raised. These activities are discussed more fully in the context of the AA Screening Assessment in the Assessment below.

Ministerial Opinion

The Minister has considered the application and has formed the opinion that the above proposed activities may constitute development under the Planning and Development Act and may also alone or in combination with other activities, cause significant effects on habitats and species for which SAC and SPA are designated. The Referral notes that potential significant effects are outlined in the associated AA Screening Report. These include:

- Disturbance to Qualifying Interest bird species of the SPA (if works were carried out during the breeding period) of the common tern, artic tern, sandwich tern, roseate tern, black-headed gull and gadwell. Works will likely be carried out during the breeding season in advance of the pilgrimage in August.
- Significant effects to the Q.I coastal lagoon habitat of the SAC through changes to water quality via the use of a digger within the SAC and lagoon habitat and also the permanent placement of boulders within the SAC and lagoon habitat.

Regulations

It is provided that under Regulations 31(1) of the European Communities (EC)(Birds and Natural Habitats) Regulations (S.I No. 477 of 2011), where the Minister is considering an application for consent and forms the opinion that the application may not be exempted development, because it would be likely (individually or in combination with other plans or projects) to have a significant effect on a European Site, the Minister shall if the applicant wishes to pursue the application, refer the matter to ABP, for a determination on the matter.

The Minister has received confirmation from the applicant that they wish for the Minister to proceed with the referral of this application to ABP for Determination.

The Minister recommends that in accordance with Regulation 31(1) of the Habitats Regulations, that this application be referred to ABP under Section 5(8) of the Planning and Development Act for a determination as to whether it relates to development which is not exempted development.

Section 5 Referral

This notes that where the Minister is considering an application for consent under these Regulations and forms the opinion that it relates to a development within the meaning of the Planning and Development Acts 2000 (as amended), and that the development may not be exempted development because –

- a) It would require an AA under the Habitats Directive.
- b) It would require EIA under the EIA Directive for a reason of its likely effect on a European Site or on an NHA.
- c) It would be likely, individually or in combination with other plans or projects to have a significant on a European Site or on an NHA, or
- d) of any other relevant provision in the Planning and Development Acts 2000 to 2011 in relation to exempted development.

That if the applicant wishes to pursue the application the Minister shall refer the matter under Section 5(8) of the Planning and Development Act 2000 for a determination as to whether the application relates to development which is not exempted development.

They request that the Board send their determination to the DoHLGH.

An Appropriate Assessment Screening for ARCS prepared by the Department of Housing, Local Government and Heritage has been submitted with the Referral.

6.2. Planning Authority Response

No correspondence has taken place with the Planning Authority as the referral was sent directly to An Board Pleanala.

The Council provides that the name and address of the owner/occupier of the said land is Fr Jim Cogley PP-Parochial House, Our Lady's Island, Wexford.

6.3. Owner/ occupier's response

Fr Jim Cogley's response on behalf of Lady's Island Pilgrimage Committee, includes the following:

- They wish to make an appeal for exemption from planning in relation to boulder replacement that protects the ancient Pilgrimage Path in Lady's Island from erosion.
- The Pilgrimage Committee regard this as a small piece of essential maintenance works to keep the path from becoming stripped and dangerous for the thousands of walkers during the season.
- There have been ankle injuries and two breakages over the past few years which makes this to be essential works from a health and safety perspective and also to avoid insurance claims.
- They include two photos to show clearly where the boulders have sunk leaving the path subject to erosion.
- No access is needed along the Pilgrimage Path as it is possible to bring the boulders through the Parish field to within yards of where they need to be placed.
- They would prefer to do this work in September or October after the bird season, when the terns have departed and before the water level begins to rise.
- The environmental impact of doing this work would be negligible as there will be no disturbance of soil.
- The positive impact is to maintain a well-established heritage path that without some intervention can only suffer further erosion.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and

Section 3(1)

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 Exempted development

Section 4(1) (a) – (1C) sets out what is exempted development for the purposes of this Act and includes: *Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required.*

Section 4(2)(a)(i)

“The Minister may by regulations provide any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or”

Section 4(4)

Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 5

Declaration and referral on development and exempted development

Section 5 (8)(a) - The Minister for Arts, Heritage and the Gaeltacht may apply to the Board under this subsection, without charge, for a determination as to whether an activity requiring the consent of that Minister—

- (i) pursuant to a notification under Regulation 4(2) of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) or pursuant to a direction under Regulation 28(1) or 29(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011)] or under regulations made under the European Communities Act 1972 for the purpose of giving further effect to the Birds Directive or the Habitats Directive by designating a site as a special area of conservation or as a special protection area, or
- (ii) under section 19 of the Wildlife (Amendment) Act 2000, comprises development which is not exempted development, and the Board shall make such determination as soon as may be and shall inform that Minister of its determination and the reasons for the determination.

(b) An application from the Minister for Arts, Heritage and the Gaeltacht under this subsection shall include the following:

- (i) a copy of the application for consent;
- (ii) any other relevant information submitted with the application for consent;
- (iii) the reasons why that Minister considers that the activity may not be exempted development;
- (iv) the opinion of that Minister as to whether an appropriate assessment is required, and the reasons for that opinion;
- (v) the opinion of that Minister as to whether the development is likely to have significant effects on a European site or an area designated as a Natural Heritage Area under section 18 of the Wildlife (Amendment) Act 2000 and the reasons for that opinion, having regard to the purposes for which the site was designated.

(c) The Board may seek additional information from—

(i) the applicant for consent, or

(ii) the Minister for Arts, Heritage and the Gaeltacht,

and where this is not provided within the period specified, or any further period as may be specified by the Board, the Board shall not make a determination on the matter and the application of that Minister under this subsection shall be deemed to be withdrawn and the Board shall inform that Minister accordingly.

(d) In paragraph (a)(i) “special area of conservation” and “special protection area” have the same meaning as they have in section 177R.

Part XAB – Appropriate Assessment

Section 177U refers to Screening for AA by the competent authority.

— (1) A screening for appropriate assessment of a draft Land use plan or application for consent for proposed development] shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.

Section 177U(9) screening for appropriate assessment:

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

7.2. Planning and Development Regulations, 2001

Part 1 Preliminary and General

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) sets out restrictions on exemptions for development to which Article 6 relates and states as follows:

Development to which article 6 relates shall not be exempted development for the purposes of the Act-

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(vii) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under Section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

7.3. Precedent Cases

The following while not related to the subject case have some relevance to the issues raised.

ABP-301243-18 – A Question arose as to whether the cutting of small amounts of turf using a sléan within Mouds Bog, candidate Special Area of Conservation to demonstrate how turf is cut by hand to members of the public, at Hawkfield, County Kildare is or is not development or is or is not exempted development.

The Board's Conclusion included:

(c) inadequate information has been provided to assess the impacts of the proposed turf-cutting on the candidate Special Area of Conservation site.

This was referred to the Board by the Minister for Culture, Heritage and the Gaeltacht under section 5(8) of the 2000 Act. The Board decided that this is development and is not exempted development.

RL16.RL3153 – A Question arose as to whether or not the laying of boulders on White Strand Beach, Thallabawn, Louisburgh, County Mayo is or is not development or is or is not exempted development. The site is located within the Mweelrea/Sheefrey/Erriff SAC (site code 001932). This is an extensive Natura 2000 site with wide ranging qualifying interests. The Board concluded (2014) that: *the laying of boulders in the manner undertaken constitute works and that none of the exempted development classes set out in column 1 of Part 1 or Part 3 of Schedule 2, specified in article 6 would apply in this instance.*

The Board decided that this is development and is not exempted development.

RL05E.RL2560 – A Question arose as to whether the construction of rock armour, land reclamation, fencing and enclosure of land at Kinletter on the north-eastern shoreline of Trusk Lough, Kinletter, Ballybofey, County Donegal is or is not development or is or is not exempted development.

The Board decided that this constitutes development and is not exempted development.

Copies of these precedent cases are included in the Appendix.

8.0 Assessment

8.1. Introduction

- 8.1.1. The planning merits as to whether or not the development should take place is not the basis on which to determine the referral. The sole purpose of a Section 5 Referral is to determine, when a question arises in any particular case, what is or is not development or what is or is not exempted development within the meaning of the Act. The purpose of a Section 5 Referral is therefore not to adjudicate on the particular planning merits associated with a case, or whether or not a proposal is in accordance with the proper planning and sustainable development of the area, but rather a referral under Section 5 of the Act is confined to a legal interpretation as to whether or not planning permission is required in accordance with the provisions of the Act and associated Regulations.
- 8.1.2. The issue is whether it is considered having regard to the legislation and based on the documentation submitted as to whether the question as referred to the Board, would constitute development and would be exempted development.

8.2. Is or is not development

- 8.2.1. Section 2(1) of the Planning and Development Act 2000, (as amended) includes the definition of works as "...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal....."
- 8.2.2. Section 3(1) of the Act states the following in respect of 'development', "in this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."
- 8.2.3. The works to be carried out as described, which involve the placement of boulders for the purposes of providing rock armour and soil to prevent further erosion to the pilgrim path constitute development within the meaning of the Act. The question that is relevant in this instance is whether the works are or are not exempted development.

8.3. Is or is not exempted development

- 8.3.1. It needs to be established as to whether the development is exempt under the Act. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being 'exempted development'. There is no class of development exemption described which would equate to the works proposed in this instance.
- 8.3.2. In addition, Section 4(4) of the Planning and Development Act states that notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. Section 4(4A) further states that:
- 8.3.3. Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—
- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
 - (b) as respects which an environmental impact assessment or an appropriate assessment is required.
- 8.3.4. I would note that while an EIA is not required in this case, that the issue of the need for appropriate assessment, considering the site's locational context, has arisen and is discussed in the Department's Referral to the Board which includes a Screening for AA Report.
- 8.3.5. In addition, I would note that there is no reference to any Exempted Development listed that would be relevant to the subject works in Schedule 2, Parts 1 (General) and 3 (Rural) of the Planning and Development Regulations 2001 (as amended).

8.4. Restrictions on exempted development

Article 9(1)(a)(i) of the Regulations

- 8.4.1. This states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or if it would be inconsistent with any use specified in a permission under the Act.
- 8.4.2. Regard is had to the Planning History Section above. I note that there is no planning history or conditions relevant to the subject referral. However, regard is had to Reg.Ref. 20190219 where permission was refused by Wexford County Council for an unrelated development on Lady's Island noting the environmental and heritage issues raised including that the first reason for refusal referred to the absence of an NIS and having regard to the precautionary principle.
- 8.4.3. Regard is also had to Ref. ABP-307432-21 where the Council sought approval under section 177AE of the Planning and Development Act 2000 (as amended) for the installation of water level management at Lady's Island Lake. As noted in the Planning History Section above the Board granted approval for the said works subject to conditions. This application included an NIS and in conclusion: *the Board was satisfied that the proposed development by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Site, in view of the conservation objectives of those Sites.*
- 8.4.4. I would consider that having regard to documentation submitted, including the Referral from the Department of Housing, Local Government and Heritage, that the pertinent issue in this case is that it is considered that the restrictions on exemption in Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001(as amended) would apply i.e. proposal comprises development which requires Appropriate Assessment.
- 8.4.5. I would also note the response letter on file from Fr. Jim Cogley which considers that the works are much needed for health and safety purposes and that the Pilgrimage Committee regard this as a small piece of essential maintenance to keep the path from becoming dangerous for walkers. Also, that they are happy to do the works outside of the bird breeding season. They submit that the environmental impact of doing this work will be negligible to a well-established heritage path.

8.5. Screening for Appropriate Assessment

Compliance with Article 6(3) of the Habitats Directive

- 8.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U(9) of the Planning and Development Act 2000 (as amended) are considered fully in this section.
- 8.5.2. In accordance with the obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a European site; there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision, by carrying out appropriate assessment. The first stage of assessment is 'screening'.
- 8.5.3. The methodology for screening for Appropriate Assessment as set out in EU Guidance and the Department of Environment, Heritage and Local Government is:
- 1) Description of the plan or project and local site or plan area characteristics.
 - 2) Identification of relevant European sites and compilation of information on their qualifying interests and conservation objectives.
 - 3) Assessment of likely significant effects-direct, indirect, and cumulative, undertaken on the basis of available information.
 - 4) Screening Statement with conclusions.
- 8.5.4. An AA Screening report was prepared by the Department of Housing, Local Government and Heritage (npws.ie) and submitted with their Referral to the Board. This is entitled: *'Assessment of Activities Requiring Consent within Lady's Island Lake (SAC), (Site Code: 000704) and the Lady's Island Lake (SPA)(Site Code:004009) in accordance with regulation 30 EC (Birds and Natural) Habitats Regulations 2011-2021.'*

Step 1: Description of the project

- 8.5.5. I would note that Lady's Island Lake is described (ABP-307432-20) as a lagoon lake which is fed by runoff from the surrounding catchment and held in place by a barrier beach c.200m long located between it and the sea. The lagoon is 3.7m long (north-

south) with a maximum width of 1.8km (east-west) and covers a maximum area in winter of about 450ha. The current Referral concerns that area at the southern end of Lady's Island. This area forms part of a heritage walkway around the perimeter of the Island.

8.5.6. Regard has been had to the Question asked in the subject Referral, as has been noted above and to those issues raised in the Department Referral to the Board.

8.5.7. It is provided in the Referral and the Screening Report that proposed activities involve the following:

- Placement of boulders for the purpose of providing rock armour, within the Lady's Island Lake SAC and the Lady's Island SPA, at the southern tip of Lady's Island, extending up to 80m on the lake side of the pilgrim path;
- Placement of soil within the Lady's Island Lake SAC and the Lady's Island Lake SPA at the southern tip of Lady's Island on the lake side of the pilgrim path to replace areas of eroded soil with new soil to level the path. Soil to come from Lady's Island;
- The placement of boulders and soil to be carried out using a tractor digger with bucket;
- The proposed activities lie entirely within the Lady's Island Lake SAC and the Lady's Island Lake SPA;
- Purpose of these activities is to prevent further erosion to the pilgrim path by shoring up with boulders and to level the current eroded areas of the path with additional soil for a flatter surface to ensure the safety of walkers.

European Sites

8.5.8. The Screening Report provides that the list of all European sites which maybe affected by this activity because they are linked by an ecological pathway. These are as follows:

- Lady's Island Lake SAC (Site Code: 000704)
- Lady's Island Lake SPA (Site Code: 004009)

The Qualifying Interests and General Conservation Objectives of these two Designated Natura 2000 sites are as shown on Table 1 below:

Site Name Site Code and Distance	List of Qualifying Interests/Special Conservation Interest	General Conservation Objectives	Connections (source, pathway, receptor	Considered in further screening Y/N
<p>Lady's Island Lake SAC</p> <p>Site code: 000704</p> <p>The Referral site is located within the SAC.</p>	<p>Coastal lagoons [1150]</p> <p>Reefs [1170]</p> <p>Perennial vegetation of stony banks [1220]</p>	<p>To maintain or restore the favourable conservation condition of the Annex I habitats(s) and/or the Annex II species for which the SAC has been selected.</p>	<p>Yes</p> <p>The Referral site is located on the shores of the lake within the SAC.</p>	Y
<p>Lady's Island SPA</p> <p>Site Code: 004009</p> <p>The Referral site is located within the SPA</p>	<p>Gadwall (Anas strepera) [A051]</p> <p>Black-headed Gull (Chroicocephalus ridibundus) [A179]</p> <p>Sandwich Tern (Sterna sandvicensis) [A191]</p>	<p>To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA.</p> <p>To maintain or restore the favourable</p>	<p>Yes</p> <p>The Referral site is located on the shores of the lake within the SPA.</p>	Y

	<p>Roseate Tern (Sterna dougallii) [A192]</p> <p>Common Tern (Sterna hirundo) [A193]</p> <p>Arctic Tern (Sterna paradisaea) [A194]</p> <p>Wetland and Waterbirds [A999]</p>	<p>condition of the wetland habitat at Lady's Island Lake, SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.</p>		
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Other issues

8.5.19. It is noted that the NPWS Conservation Objectives page includes:

Please note that this SAC overlaps with Lady's Island Lake SPA (004009) and is adjacent to Tacumshin Lake SAC (000709) and Carnsore Point SAC (002269). See map 2. The conservation objectives for this site should be used in conjunction with those for the overlapping and adjacent sites as appropriate.

These latter Natura 2000 Sites have not been included in the Screening Report submitted.

Assessment of Likely Significant Effects on the European Sites

8.5.20. This Section has regard to the AA Screening Report submitted and the likely significant effects on the Qualifying interests/species of the Lady's Island SAC and SPA. It takes account of the Department's Assessment of the likelihood of significant effects on the qualifying habitats and bird species listed in the Table below.

Table 2 AA Screening matrix - Likelihood of Significant Effects

Site name	QI and Impacts	Direct/Indirect Effects
Lady's Island SAC (Site Code: 000704)	Lagoon – Conservation Condition – Unfavourable Bad	<p>There is potential that the proposed digger working within the Lady's Island Lake SAC and within the Priority QI Lagoon habitat will result in likely significant effects to the lagoon habitat via contravention of the Site Specific Conservation Objectives (SSCOs). The placement of soil and rock armour habitat within the lagoon habitat could reduce the area and distribution of the habitat, change the hydrological regime of the lagoon, reduce the number and/or possibility of bringing invasive species via the spoil is potentially likely. The excavator working the lagoon could also leak hydrocarbons into the lagoon and result in siltation of the lagoon from the excavator tracks and bucket on the bed of the lagoon.</p>

		There is concern that the activity will likely cause a deterioration of the conservation condition of this QI/SCI.
Lady's Island SPA (Site Code: 004009)	<p>Conservation Objective and the bird species listed as Special Conservation Interests for this SPA referred to. The following are amber listed under the Birds of Conservation Concern list in Ireland.</p> <p>Gadwell</p> <p>Blackheaded Gull</p> <p>Sandwich Tern</p> <p>Roseate Tern</p> <p>Common Tern</p> <p>Arctic Tern</p> <p>Wetland & Waterbirds: the wetland areas of Lady's Island Lake SPA support QI species and all other waterbird species through wetland habitat for feeding, shelter, breeding and roosting.</p>	<p>A digger working in the lagoon during the breeding season has the potential to result in likely disturbance effects to the QI bird species through noise and vibration etc. Inish provides potentially suitable habitat for nesting and is in close proximity to the proposed location of the works, during breeding season.</p> <p>The proposed works have the potential to cause a likely significant effect to the wetland habitat and associated waterbirds through change in water quality of the lagoon and other wetland habitats, associated reduction in food availability and/or animals and plants these birds feed on. This could result from hydrocarbons and sedimentation and</p>

		<p>siltation from an excavator working on the lakeshore/lagoon within both the Lady's Island SAC and SPA. The works could result in a deterrence to QI bird species of the SPA from disturbance impacts and have the potential to result in likely significant effects to breeding success and productivity, particularly for the QI bird species detailed in the Screening Report.</p>
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Cumulative and In-combination effects

8.5.21. The Screening Report provides that the proposed works the subject of this Referral are likely to cause a deterioration in the conservation condition of the QI/SCI for both Natura 2000 sites i.e Lady's Island Lake SAC and Lady's Island Lake SPA. It asks the question as to whether this activity is likely to cause negative effects in combination with any other plan or project and provides that there is uncertainty. Noting that if the answer is Yes or Uncertain that the activity must be screened in for AA. It concludes that it is 'Uncertain', therefore the precautionary principle applies.

Screening Report Conclusion

8.5.22. Taking the above into consideration, the Screening Report finds that it is considered that in the absence of mitigation measures, the proposed activities, alone or in combination with other plans and projects, have the potential to undermine the conservation objective of Lady's Island Lake SAC and Lady's Island Lake SPA and give rise to significant effects to these European sites.

AA Screening Conclusion – Finding of likely significant effects

- 8.5.23. Based on the information provided in the screening report, site visit, review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures beyond best practice construction methods, the proposed development has the potential to result in significant effects on the Lady's Island Lake SAC and the Lady's Island Lake SPA when considered on their own and in combination with other projects and plans in relation to pollution related pressures and disturbance on qualifying interest habitats and species.
- 8.5.24. In accordance with Section 177U(9) of the Planning and Development Act 2000(as amended) and on the basis of objective information provided by the applicant, I conclude that the works the subject of this referral, could result in significant effects on the Lady's Island Lake SAC and Lady's Island Lake SPA in view of the conservation objectives of a number of qualifying interest features of those sites.
- 8.5.25. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000(as amended), is required.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the placement of boulders for the purpose of providing rock armour, placement of soil, placement of boulders and soil carried out by digger, to prevent further erosion to the pilgrim path within the Lady's Island Lake SAC and the Lady's Island Lake SPA within the townland of Our Lady's Island, Co Wexford is or is not development and is or is not exempted development:

AND WHEREAS the Department of Housing, Local Government and Heritage applied to An Bord Pleanála, under Section 5(8) of the Planning & Development Act, for a determination as to whether the activity requiring

the consent of the Minister comprises development which is not exempted development on the 27th of March 2024:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3, 4, 177(U) (9) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) including 9(1)(a)(viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history relative to Lady's Island Lake, in particular register reference 20190219, and An Bord Pleanála reference number ABP-307432-20,
- (d) the Inspectors Report,
- (e) the plans and particulars submitted, and
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the placement of boulders for the purpose of providing rock armour, placement of soil, placement of boulders and soil carried out by a digger, to prevent further erosion to the pilgrim path at Lady's Island Lake, Co. Wexford, involves the carrying out of works and, therefore constitutes development, under sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) the subject site lies within the Natura 2000 sites: Lady's Island Lake Special Area of Conservation (Site Code:000704) and within Lady's Island Lake Special Protection Area (Site Code: 004009).
- (c) the restrictions on exempted development provided for under Article 9 (1)(a) (viiB) of the Planning and Development Regulations, 2001, as amended, apply in this case, and in particular, having regard to the Finding of the likelihood of Significant effects in the absence of

mitigation in the Screening Determination of the Appropriate Assessment Screening Report submitted.

(d) the activity requiring the consent of the Minister requires Appropriate Assessment under the Habitats Directive.

(e) that none of the exempted development classes set out in column 1 of Part 1 or Part 3 of Schedule 2, specified in article 6 would apply in this instance:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (8)(a) of the 2000 Act, hereby decides that the placement of boulders for the purpose of providing rock armour, placement of soil, placement of boulders and soil carried out by a digger, to prevent further erosion to the pilgrim path at Lady's Island Lake, Co. Wexford is development and is not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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.

Angela Brereton
Planning Inspector

15th of April 2025