

An Bord Pleanála 64 Marlborough Street, Dublin 1

SUBMISSION TO 315195: N24 Carrick Road, Clonmore to Mooncoin, Co. Kilkenny

Kilkenny County Council

An Bord Pleanála's Legal Functions.

An Bord Pleanála's has three distinct sets of legal tasks when it deals with an application such as this one.

1. The Planning Acts
2. The Environmental Impact Assessment Directive
3. The Assessment under the Habitats Directive

4. The Planning Acts

It must examine the application to ascertain if the contents of the application comply with the Planning Regulations, in particular Articles 22 and 23 of the 2001 regulations. (See Judgement of *Humphries J Sweetman v An Bord Pleanála* 2020 No. 557 JR)

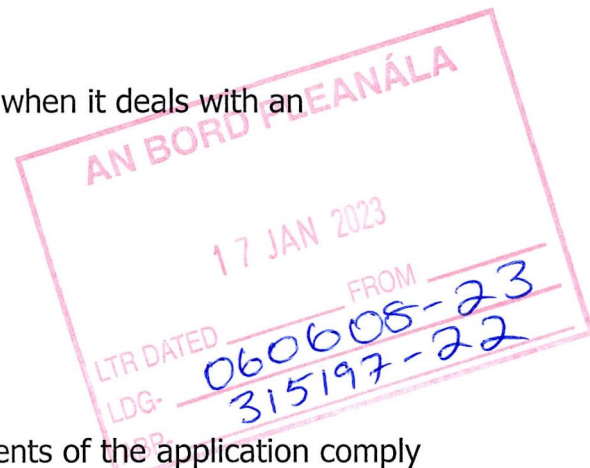
It must assess the planning merits of Application in accordance with the **Planning and Development Act 2000** (as amended) to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area.

2.The Environmental Impact Assessment Directive

An Bord Pleanála must examine the EIAR to ascertain full compliance, with particular relevance to the following;

INFORMATION REFERRED TO IN ARTICLE 4(4) (of the Directive)

1. A description of the project, including in particular:
 - (a) a description of the physical characteristics of the whole project and, where relevant, of demolition works;
 - (b) a description of the location of the project, with particular regard to the environmental sensitivity of geographical areas likely to be affected.
2. A description of the aspects of the environment likely to be significantly affected by the project.
3. A description of any likely significant effects, to the extent of the information available on such effects, of the project on the environment resulting from:



- (a) the expected residues and emissions and the production of waste, where relevant;
- (b) the use of natural resources, in particular soil, land, water and biodiversity.

The Board is required to form and record a view as to the environmental impacts of the development, considering the **EIA Report (EIAR)** furnished by the Applicant, the views of the public concerned and applying its own expertise or if no EIAR is submitted to screen the development for EIA.

Thirdly, and different in nature to the first two tasks, An Bord Pleanála's is the competent authority having responsibilities under the **Habitats Directive**.

This responsibility is

1. To screen the development under Article 6.3.
2. To make a decision as required under 6.3

The legal case for screening is found in AG Sharpston in the opinion to 259/11 Sweetman & Others v An Bord Pleanála

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

This is implemented into Irish law by Finlay Geoghegan J. in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) at

"26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect."

On the basis of the total lack of certainty in the information submitted it is not possible for An Bord Pleanála to make a decision to grant permission which would comply with;

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

The threshold Appropriate Assessment must pass in this context is explained in paragraph 44 of CJEU Case 258/11

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This is a strict standard and An Bord Pleanála does not have legal jurisdiction to give permission if it is not met.

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The Public website of An Bord Pleanála states that this development does not have a Natura Impact Statement submitted,

The public notice published by Kilkenny County Council states,

A Natura Impact Statement (NIS) has been prepared as part of the application for approval in respect of the proposed development.

As this proposed development is within the Zone of influence of Lower River Suir SAC (SiteCode: IE0002137) it is not possible to make an informed submission to the adequacy of the mitigation measures proposed.



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