

File With _____

SECTION 131 FORM

Appeal NO: ABP 320010

Defer Re O/H

TO: SEO

Having considered the contents of the submission ~~dated~~ received 23 / 7 / 24

from

Peter Sweetman I recommend that section 131 of the Planning and Development Act, 2000

~~be~~ not be invoked at this stage for the following reason(s): no new issues

E.O.: 

Date: 

To EO: _____

Section 131 not to be invoked at this stage.

Section 131 to be invoked – allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP _____

M _____

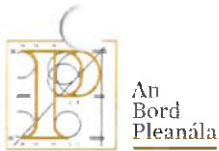
Please treat correspondence received on _____ as follows:

1. Update database with new agent for Applicant/Appellant _____ 2. Acknowledge with BP _____ 3. Keep copy of Board's Letter <input type="checkbox"/>	1. RETURN TO SENDER with BP _____ 2. Keep Envelope: <input type="checkbox"/> 3. Keep Copy of Board's letter <input type="checkbox"/>
--	--

Amendments/Comments

4. Attach to file (a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/> (b) GIS Processing <input checked="" type="checkbox"/> (e) Inspectorate <input type="checkbox"/> (c) Processing <input type="checkbox"/>	RETURN TO EO <input type="checkbox"/>
---	---------------------------------------

	Plans Date Stamped <input type="checkbox"/> Date Stamped Filled in <input type="checkbox"/>
EO:	AA:
Date:	Date:



SID Online Observation

Online Reference
SID-OBS-001979

BPL4 OV
Put on file ✓
Update file cover ✓

FR
3/07

Online Observation Details

Contact Name
peter sweerman ✓

Lodgement Date
23/07/2024 12:01:51 ✓

Case Number / Description
320010

Payment Details

Payment Method
Online Payment

Cardholder Name
P SWEETMAN

Payment Amount
€50.00 ✓

Fee Refund Requisition

Please Arrange a Refund of Fee of

€

Lodgement No

LDG-073524-26

Reason for Refund

Documents Returned to Observer

Yes No

Request Emailed to Senior Executive Officer for Approval

Yes No

Signed

EO

Date

Finance Section

Payment Reference

ch_3PfgTbB1CW0EN5FC0frX22Sx

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount

€

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board Member

Date

Date

PETER SWEETMAN

Wild Ireland Defense CLG PO Box 13611 Bantry Co Cork

An Bord Pleanála
64 Marlborough Street,
Dublin 1

15.Submission re 320010

The index of this development states that an NIS was submitted to An Bord Pleanála with the appeal. There is no Natura Impact Statement listed in the documents submitted to the County Council therefore I am unable to comment on the on the natural impact statement.

It is also our submission that the planning authority did not carry out an Appropriate Assessment on this development.

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

"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."

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

ADDITIONAL GROUNDS

Pete Sweetman

Peter Sweetman Director

Wild Ireland Defense CLG PO Box 13611 Bantry Co Cork

Registered office of Wild Ireland Defence CLG North Allihies Beara Co. Cork

PLEASE RESPOND **ONLY BY EMAIL TO** sweetmanplanning@gmail.com

As the Planning Authority has failed to assess this application according to its legal requirements, particularly the decisions of the CJEU and The Irish High Court. We request An Bord Pleanála to award our outgoing costs 240 euro against the Planning Authority.