



An
Bord
Pleanála

Board Direction
BD-005710-20
ABP-304624-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/05/2020.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In coming to its decision, the Board had particular regard to:

- (a) the relevant provisions of the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001-2020;
- (b) the relevant provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU (EIA Directive);
- (c) the relevant provisions of Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives), Wildlife Acts 1976, as amended;
- (d) national and regional policies of relevance, as set out in the inspector's report including policies aimed at securing the establishment of a national cycle network, policies that promote walking and cycling and an active lifestyle and policies in support of recreation and tourism;
- (e) the provisions of the Fingal Development Plan 2017- 2023 and the Donabate Local Area Plan 2016;
- (f) the conservation objectives, qualifying interests and special conservation interests for the relevant European sites including in particular, those related

- to the Malahide Estuary Special Protection Area (site code: 004025) and the Malahide Estuary Special Area of Conservation (site code: 000205);
- (g) the nature and extent of the proposed works as set out in the application for approval;
 - (h) the information submitted with the application including the Planning Report, Environmental Impact Assessment Report, Natura Impact Statement and associated documentation, and the range of mitigation measures set out;
 - (i) the likely effects and consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites;
 - (j) the submissions received from the local authority, prescribed bodies and observers in the course of the application,
 - (k) the report and recommendation of the inspector and
 - (l) the report of the ecologist.

Appropriate Assessment – Stage 1 (Screening)

The Board agreed with and adopted the screening determination reached in the Inspectorate Ecologist's report that the proposed Broadmeadow Way may result in significant effects on Malahide Estuary Special Area of Conservation (SAC) and Malahide Estuary Special Protection Area (SPA) in view of the conservation objectives of those sites. Due to the potential for interactions of Special Conservation Interest bird species from other SPA sites in the wider Dublin Bay area, significant effects could not be excluded for the following European sites: Lambay Island. SPA, Ireland's Eye SPA, Rogerstown Estuary SPA, Bull Island SPA, Baldoyle Bay SPA and Skerries Islands.

Appropriate Assessment - Stage 2

The Board considered the Natura Impact Statement and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspectorate Ecologist's assessment. The Board completed an Appropriate Assessment of the implications of the proposed greenway development for the affected European Sites, namely Malahide Estuary SAC and Malahide Estuary SPA and SPAs in the wider Dublin Bay

area where interaction with Malahide Estuary SPA was likely, namely, Lambay Island. SPA, Ireland's Eye SPA, Rogerstown Estuary SPA, Bull Island SPA, Baldoyle Bay SPA and Skerries Islands SPA in view of those sites' conservation objectives. The Board considered that the information before it was adequate to allow for a complete assessment of all aspects of the proposed development alone and in combination with other plans and projects.

In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the proposed greenway development both individually or in combination with other plans or projects;
- (b) the mitigation measures which are included as part of the current proposal, and
- (c) the conservation objectives for the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspectorate Ecologist's report in respect of the potential adverse effects of the proposed greenway development on the aforementioned European Sites, having regard to the sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed Broadmeadow Way development, by itself or in combination with other plans and projects, would not adversely affect the integrity of Malahide Estuary SAC (Site Code: 000205), Malahide Estuary SPA (Site Code: 004025) or any other European site in view of the sites' conservation objectives and there is no reasonable scientific doubt remaining as to the absence of such effects.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the characteristics, nature, scale and location of the proposed greenway development;
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application;

- (c) the submissions received from the local authority, prescribed bodies and observers in the course of the application, and
- (d) the inspector's report and the report of the inspector.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application. The Board was satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusion on the Significant Effects on the Environment:

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the Local Authority, provided information that is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed greenway development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report, is up to date and complies with the provisions of EU Directive 2014/52/EU, amending Directive 2011/92/EU and with the provisions of the Planning and Development Regulations 2001-2020. The Board considered that the main significant effects of the proposed development on the environment are those arising from the impacts listed below. Where short term negative impacts have been identified, including traffic delays and inconvenience during the course of construction, these would be avoided, managed or mitigated by measures forming part of the proposed development, proposed mitigation measures and measures within suitable conditions. The Traffic Management Plan would provide for interaction between residents and the appointed contractor, such as would minimise potential impacts on residents as a result of construction traffic.

The main significant effects, both positive and negative are:

The development would result in significant positive impacts/benefits on **Population and Human Health** arising out of the delivery of a recreational amenity, which would bring health benefits by encouraging an active lifestyle in the form of cycling and walking. The proposal would also attract visitors into the area which would result in a positive benefit to tourism and the economy of the area. It would also improve connectivity between Malahide and Donabate. The linking of the proposed greenway into the wider walking and cycle network would be greatly positive in that it would encourage users to arrive by bicycle or foot, reducing car dependency and minimising impacts on existing traffic. As complementary infrastructure is delivered, the proposed development would have a positive cumulative impact.

- Impacts on **biodiversity** including key ecological receptors of wintering water bird species, mammals including bats, natural and seminatural habitats, watercourses, could arise from human disturbance, habitat modification, accidental spillages of construction related contaminants or release of sediment laden water runoff during construction. Mitigation measures to be applied follow a mitigation hierarchy of avoidance where possible and mitigation by design and remedy with monitoring measures also to be implemented. Possible significant disturbance to birds would be prevented due to the timing of construction works, the proposed continuous solid wall providing screening along the viaduct, proposed lighting design and measures including fencing to prevent egress of people and in particular, loose dogs onto the shoreline. Pollution control measures would prevent deterioration of riparian, estuarine and coastal habitats. With the application of mitigation measures, there would be no adverse effects on sites designated for nature conservation including Malahide Estuary SAC and SPA. Such measures would be implemented through a Construction and Environmental Management Plan and ecological supervision and monitoring would be undertaken by a suitably qualified and experienced ecologist.
- While it is acknowledged that an increased flow of cyclists and pedestrians would result along O’Hanlon’s Lane, given the context, layout and orientation and established building lines and setbacks available, the

increase in such activity would not adversely affect the established amenity or privacy of these properties to an unacceptable level and would not give rise to any **traffic** hazard. This is particularly so as traffic speeds and volumes are low on the existing laneway and no through vehicular traffic would occur.

- Impacts identified on farms including **landtake**, severance and disturbance during the construction and operational phase would arise. A farm, identified as Farm 6, comprising approximately 18 hectares, would be subject to a major adverse impact arising from separating the farmyard from the remainder of farm. It is noted that land loss cannot be mitigated, however, compensation for the compulsory acquisition of land and all related matters is dealt with separately under the CPO procedure. In relation to this farm, the severed land parcel would be provided with permanent agricultural crossings on the proposed greenway and it is proposed to provide an agricultural access from the public road.
- Impacts on the receiving **water** environment and on key ecological receptors could arise from accidental spillages of chemicals, hydrocarbons or other contaminants or release of sediment laden water runoff during construction, but such impacts are proposed to be mitigated by design and avoidance in the first instance and thereafter by the adoption of specific measures including the development and adherence to a Construction and Environmental Management Plan and the adherence to Inland Fisheries Ireland guidelines. Consultation would continue between the developer and the Inland Fisheries Ireland and National Parks and Wildlife Service and a suitably qualified and experienced ecologist would be engaged during the construction phase to advise on the preservation of biodiversity.
- Positive impacts would arise on **air quality** and **climate** change due to encouraging a modal shift to cycling and walking as an alternative to the private car with a consequent reduction in greenhouse gas emissions and improved air quality.
- Positive impacts on **cultural heritage** would result because of improved access to key historic structures, Malahide Castle and Newbridge House and their associated parklands which would enhance the understanding of

archaeological and architectural sites as is encouraged in the current Fingal Development Plan.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures referred to above, and other measures set out in the Schedule of Commitments that accompanied the application and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the inspector.

Proper Planning and Sustainable Development

There is clear planning policy support for the proposed greenway at a national, regional and local policy level. The need for the proposal has been strongly justified in terms of improving tourism facilities and providing a safe and sustainable transportation route, both which are in accordance with multiple wider policies. It would form part of an identified network of greenways within Fingal and the Greater Dublin Area. The development would bring significant benefits in terms of addressing the impacts of climate change, economic development, tourism, health and leisure amenity. Its design including the route selected is considered acceptable and can readily exist alongside residential areas without any unacceptable impacts on existing residential amenity. No traffic hazard would arise and the development is considered appropriate and justified in terms of flood risk. Notwithstanding some inconveniences noted, it is considered that, subject to compliance with conditions, the delivery of the greenway would be in the interest of the common good and would be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars and other associated documentation, lodged with An Bord Pleanála on the 6th day of June, 2019, and the further information received by An Bord Pleanála on 22nd November 2019, except as may otherwise be required in

order to comply with the following conditions. Where such conditions require details to be prepared by the local authority, these details shall be placed on file prior to commencement of development and retained as part of the public record.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the environment.

2. Prior to commencement of development, the local authority, or any agent acting on its behalf, shall prepare in association with the relevant statutory agencies a Construction and Environmental Management Plan (CEMP) based on the preliminary CEMP submitted and it shall incorporate all mitigation measures indicated in the Environmental Impact Assessment report, the Natura impact statement and the application documentation. The CEMP shall include hours of working, an invasive species management plan to prevent the spread of hazardous invasive species and pathogens. The CEMP shall be placed on file prior to the commencement of development and retained as part of the public record.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

3. (a) The mitigation measures and associated monitoring, outlined in the plans and particulars relating to the proposed development, shall be carried out in full, except as may otherwise be required in order to comply with the following conditions.

(b) A suitably qualified ecologist shall be retained by the local authority, or any agent acting on its behalf, to oversee site set-up and the construction of the proposed development and implementation of mitigation and all monitoring measures relating to ecology set out in the NIS and preliminary CEMP. The ecologist shall be present during site construction works. Ecological monitoring reports detailing all monitoring of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record.

Reason: In the interest of nature conservation and the protection of terrestrial and marine biodiversity.

4. A qualified ecologist /ornithologist with relevant experience shall be appointed by the local authority to develop, undertake and co-ordinate a bird monitoring programme during the construction phase and for the operational phase of the development with surveys being undertaken in year 1, year 3 and year 5 of the operation of the greenway. Such monitoring may be a continuation of surveys of the overall bird usage of the inner and outer Estuary using standard survey methodologies, but it must also include the following:

- Targeted monitoring of distribution, abundance and behaviour of diving ducks including Red Breasted Merganser, Great Crested Grebe and Goldeneye within 500m of the Greenway crossing of the inner Estuary
- Bird distribution and usage of agricultural lands through which the greenway traverses (including Kilcrea North, Kilcrea South and Corballis)

Data collected over the survey period should be analysed taking account of greenway user numbers and reports shall be put on the public file.

Reason: In the interest of nature conservation and the protection of terrestrial and marine biodiversity.

5. The design and construction of culverts and stream crossings shall have regard to the provisions of National Roads Authority (now Transport Infrastructure Ireland) publication 'Guidelines For the Crossing of Watercourses During the Construction of National Road Schemes' and Inland Fisheries Ireland 'Requirements for the Protection of Fisheries Habitat during the Construction and Development Works at River Sites'.

Reason: In the interest of ecological and fisheries protection.

6. (a) The local authority shall facilitate the preservation, recording and protection of archaeological materials or features that may exist along the route or lands immediately adjoining the route. In this regard, the local authority shall:

(i) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works along the route, and

(ii) provide arrangements for the recording and for the removal of any archaeological material which the local authority considers deemed appropriate to remove.

(b) Works carried out within the curtilage of protected structures along the route including traffic calming works and road crossings shall seek the prior agreement of the local authority's conservation officer.

Reason: In order to conserve the archaeological and architectural heritage of the area.

7. Where the greenway would cross the estuary, a solid wall with a height not exceeding 1.2m with a minimum of a 0.2m high quality railing on top shall be provided on the west side and the details of this boundary treatment shall be set out in a detailed drawing (based generally on Drawing 12-160-007 submitted to the An Bord Pleanála on the 22nd day of November 2019) and the details shall be placed on the public file.

Reason: To ensure the boundary treatment allows users to experience the overall appreciation of the surrounding landscape, while also meeting the requirements of the National Parks and Wildlife service and in the interest of safety and visual amenity.

8. (a) Landscaping shall be carried out at the locations set out in the Environmental Impact Assessment. Worked up detailed drawings shall be developed and maintained on the public file with the local authority.

(b) The security fence proposed to be placed along the west side of the railway line, east of the proposed greenway, as it crosses the Malahide Estuary shall be galvanised welded wire mesh fence, green in colour. Details of the fence shall be maintained on the public file with the local authority.

Reason: In the interest of visual amenity.

Board Member

Date: 07/05/2020