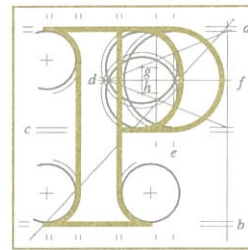


Our Ref: 06S.JA0040
P.A.Reg.Ref:

Your Ref: 1639/LTR/001



An
Bord
Pleanála

Paul Keogh
Paul Keogh Architects,
Cathedral Court,
New Street,
Dublin 8.

Date: 26 JUN 2020

Re:

Dublin Mountain Visitors Centre and all associated works
in the:
Townlands of Mountpelier, Killakee and Jamestown in South Dublin.

Dear Sir/Madam,

An order has been made by An Bord Pleanála determining the above-mentioned case. A copy of the order is enclosed.

In accordance with section 146(3) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The attachment contains information in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board.

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Kieran Somers
Executive Officer
Direct Line: 01-8737250

JA18.LTS

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended

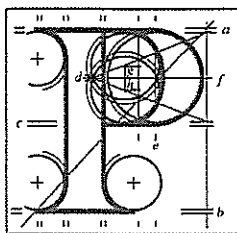
A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, [**www.citizensinformation.ie**](http://www.citizensinformation.ie).

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.



An
Bord
Pleanála

Board Order
06S.JA0040

Planning and Development Acts, 2000 to 2019

Planning Authority: South Dublin County Council

Application by South Dublin County Council for approval under section 175 of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including an Environmental Impact Assessment Report, lodged with An Bord Pleanála on the 31st day of July 2017, as amended by the further information submitted on the 30th day of November, 2017 and the 12th day of September, 2018 and by the Natura Impact Statement and further information received by An Bord Pleanála on the 24th day of December, 2019.

Proposed Development: Proposed development which includes:

- (a) The conversion of 26 hectares of Coillte's Hell Fire forest property from productive conifer forest to mixed deciduous woodland for use primarily as amenity open space.
- (b) Modifications, including new sections of trail and upgrade of the existing network of walking and equestrian trails throughout the Hell Fire and Massy's Wood forest properties.
- (c) Construction of a 'tree canopy walk'/pedestrian bridge over the R115 to link the trail networks of the two properties with a 'bridge house' at the Hell Fire end of the bridge.
- (d) Conservation works to the Hell Fire Club building (South Dublin Record of Protected Structures reference 388) and the architectural heritage of the

Massy's Wood property including the walled garden (part of South Dublin Record of Protected Structures reference 384).

- (e) Installation of heritage interpretation signage along the network of trails.
- (f) Construction of a new parking area for 275 number cars (including 14 number disabled spaces) and five coach spaces to replace the existing parking area on the Hell Fire forest property.
- (g) Construction of a visitor centre comprising two buildings (one single storey and one two-storey) side-by-side at an elevation of circa 300 metres on the Hell Fire forest property with a combined gross floor area of 980 square metres accommodating the following uses/spaces: audio-visual/exhibition facility (101 square metres), education room (55 square metres), café with seating area (175 square metres), servery (36 square metres) and kitchen (60 square metres), 'Ramblers' lounge (43 square metres), retail (45 square metres), kiosk (27 square metres), toilets (66 square metres), facility management offices (55 square metres) and associated reception, circulation, plant and storage spaces.
- (h) Construction of a stand-alone electricity substation (23 square metres).
- (i) Installation of a new watermain line and sewage pipe under the R115 from the Hell Fire property to the existing watermain and public sewer network.
- (j) Construction of a network of swales and ponds for attenuation of surface run-off and a culvert beneath the R115 to channel overflow of surface water into the Glendoo Brook.
- (k) Modifications to the existing entrance to the Hell Fire forest property.
- (l) Installation of new fences along sections of the Hell Fire property boundary.
- (m) All ancillary works and landscaping on the Hell Fire and Massy's Wood properties.

It is proposed to make modifications to the stretches of the R115 and R113 roads connecting the site to the urban area to the north, including the provision of a footpath (minimum 1.5 metres width) and an advisory cycle lane (1.5 metres width) and the retention of a carriageway of sufficient width for two-way traffic except at one location where a single lane traffic shuttle is proposed. The proposed modifications to the roads do not require encroachment into adjoining private lands, but do require

localised widening of the R115 by 1.2 metres into the Massy's Wood property for a stretch of circa 100 metres. All on a site of Coillte's Hell Fire and Massy's Wood forest properties (totalling circa 152 hectares) in the townlands of Mountpelier, Killakee and Jamestown in South Dublin. Development is also proposed along stretches of the R115 and R113 Regional Roads connecting the site to the urban areas of Woodtown and Ballycullen to the north.

Decision

Approve the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

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.

Reasons and Considerations

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

- (a) EU legislation, including, in particular, Directive 92/43/EEC (The Habitats Directive) and Directive 79/409/EEC, as amended by Directive 2009/147/EC (The Birds Directive) which set the requirements for conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- (b) The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (The EIA Directive) on the assessment of the effects of certain public and private projects on the environment.

- (c) The Water Framework Directive (2000/60/EC).
- (d) National Policy, including, in particular:
- The National Planning Framework (NPF), issued in February 2018.
- (e) Regional Policy, including, in particular:
- The Regional Spatial and Economic Strategy for the Eastern and Midland Region 2019-2031.
- (f) Local Planning Policy, including, in particular:
- The provisions of the South Dublin County Development Plan 2016 - 2022.
- (g) The following matters:
- The likely consequences for the environment and the proper planning and sustainable development of the area in which is it proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites.
 - The conservation objectives, qualifying interests and special conservation interests of the Wicklow Mountains Special Protection Area (Site code: 004040), and the Wicklow Mountains Special Area of Conservation (Site code: 002122).
 - The documentation and submissions of the applicant, including the amended Environmental Impact Assessment Report, the Natura Impact Statement and associated documentation submitted with the application, and the range of mitigation and monitoring measures proposed.
 - The submissions and observations made to An Bord Pleanála in connection with the application and at the oral hearing.
 - The nature and extent of the proposed development as set out in the application for approval.

- The report (including the Inspector's Addendum Report) and recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment screening and environmental impact assessment.

Appropriate Assessment:

The Board completed an appropriate assessment exercise in relation to the potential effects of the proposed development on the affected Natura 2000 sites, namely the Wicklow Mountains SAC (Site code: 002122) and the Wicklow Mountains SPA (Site code: 004040) and, in doing so, took into account the nature, scale and location of the proposed development, the Natura Impact Statement submitted with the application as part of the further information submitted to An Bord Pleanála on the 24th day of December, 2019 (inclusive of the Walker Survey Report and additional Bird Surveys), the submissions on file and the report of the Inspector's assessment. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that the proposed development would not be likely to have a significant effect individually or in combination with other plans and projects on the environment, on the amenities of the area or on the European sites referred to. The Board concluded that the proposed scheme would not have an adverse effect on the integrity of the European sites, having regard to the Conservation Objectives for the sites.

Environmental Impact Assessment:

The Board completed in compliance with section 172 of the Planning and Development Act 2000 an environmental impact assessment of the proposed development, taking into account:

- the nature, scale, location and extent of the proposed development,
- the amended Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- the submissions from the applicant, the observers and the prescribed bodies, including submissions made to the oral hearing, and
- the Planning Inspector's reports.

The Board considered that the Environmental Impact Assessment Report, supported by the information submitted by the applicant identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

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 is satisfied that the Inspector's reports set out how these were addressed in the assessment and recommendation (including environmental conditions) and are incorporated into the Board's decision.

Reasoned Conclusion on the Significant Effects:

Having regard to the examination of environmental information contained above, to the Environmental Impact Assessment Report and supplementary information provided by the applicant, and the submissions from the observers and prescribed bodies in the course of the application, including submissions made to the oral hearing and in response to the additional information, including the amended Environmental Impact Assessment Report, it is considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

Biodiversity: Impacts to habitats and species could arise during construction of the visitor centre, car park and other structural elements due to disturbance and loss of habitat. These impacts will be mitigated following measures outlined in the Construction Management Plan and specific mitigation measures for Key Ecological Receptors and other environmental mitigation measures. With respect to operation, based on the additional baseline surveys and information presented in the amended Environmental Impact Assessment Report, the Board is satisfied that the potential impacts have been adequately assessed and mitigated with respect to the impact of the increase in footfall on the environment and the replacement of 26 hectares of conifer plantation (subject to a condition to limit the conifers to be replaced to those which are over-mature). The Board is now satisfied that the information submitted by the applicant enables the Board to conclude that there will not be a significant effect on the biodiversity of the area.

- **Population and Human Health:** The Board is satisfied that impacts on amenities of local landowners due to increases in the numbers of people potentially trespassing will be mitigated by the installation of additional fencing and the increased presence of management staff.

- **Material Assets, Landscape and Visual Impact:** The Board is satisfied that impacts on the landscape and impacts on protected views have been mitigated with the design of the visitor centre and the car park as well as the landscape strategy.
- **Material Assets, Cultural Heritage:** The Board is satisfied that impacts on the archaeology and architectural heritage of the area have been mitigated by the minimal interference approach on the existing structures and the improvements of existing trails. Potential impacts as a result of the new structures and trails will be mitigated by monitoring and test excavations.
- **Material Assets, Traffic and Transportation:** The Board is satisfied that impacts during construction will be mitigated by the implementation of a Construction and Traffic Management Plan. Impacts during operation will be mitigated by improvement in access to the site for other sustainable modes of transport, as well as an increase in the car parking availability thereby avoiding the need to park on the external road.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as set out in the Environmental Impact Assessment Report, and, subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and cumulatively with other development in the vicinity would be acceptable. In doing so, the Board adopted the reports and conclusions of the reporting Inspector.

Section 34 (10) – Reasons for not accepting Inspector’s recommendation to omit elements of the proposed development

In deciding not to accept the Inspector’s recommendation to omit the treetop bridge and canopy, and the bridleway in Massy’s Woods, the Board had regard to the additional walkers and ecological surveys carried out in response to the Board’s further information request. The Board considered that the Inspector’s concerns in

relation to the potential impact of the treetop bridge on biodiversity, particularly bats and red squirrels, had been addressed by the recent bat and red squirrel surveys carried out in response to the Board's further information request, which established the key ecological receptors within the baseline environment and informed the mitigation measures included in the updated Operational Management and Monitoring Commitments submitted with the further information on 24th day of December, 2019 (including the Red Squirrel Management Plan and bat mitigation measures). The established baseline environment would also enable the Strategic Oversight Group to undertake future meaningful monitoring of the development. The Board also noted the commitment to appoint an Ecological Clerk of Works to supervise and provide recommendations on the execution of any and all works which have the potential to give rise to negative effects on biodiversity including the exact route of the canopy bridge and new trail and surface water drainage in Massy's Woods. Furthermore, the Board had regard to the relevant photomontages of the proposed treetop bridge and in the context of the existing vegetation screening did not consider that there would be any unacceptable visual impacts associated with it.

In deciding not to accept the Inspector's recommendation to omit the bridleway in Massy's Woods, the Board considered that the additional habitat, bryophytes, vegetation and other ecological surveys that were carried out in response to the further information request also established the baseline environment for the proposed bridleway and was satisfied that the updated Operational Management and Monitoring Commitments including the commitment to appoint an Ecological Clerk of Works to supervise and provide recommendations on new trails would ensure that the bridle path would not have an unacceptable adverse impact on ecology. The Board also noted the Inspector's concerns in relation to potential conflicts between people and horses in Massy's Woods but was satisfied that the Operational Management Plan which provides for the establishment of a Strategic Oversight Group and for ongoing monitoring and management programmes for the trails network would adequately address this operational issue.

Proper Planning and Sustainable Development:

It is considered that the principle of the proposed development is acceptable and would support the aim of encouraging access to the Dublin Mountains at a national and regional level and support the development of a visitor facility in or adjacent to the High Amenity – Dublin Mountains zone (HA-DM), as identified at a local level.

It is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the environment, would not seriously injure the amenities of the area, would respect the existing character of the area and would be acceptable in terms of traffic and pedestrian safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 30th day of November, 2017, the 12th day of September, 2018 and by the further plans and particulars received by An Bord Pleanála on the 24th day of December, 2019, except as may otherwise be required in order to comply with the following conditions. Where any mitigation measures set out in the Environmental Impact Assessment Report and Natura Impact Statement or any conditions of this Approval require further details to be prepared by or on behalf of the local authority, these details shall be placed on the file and retained as part of the public record.

In default of agreement, the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of clarity.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the application shall be carried out in full, except as may otherwise be required in order to comply with other conditions. Prior to commencement of the development, details of a time schedule for implementation of the mitigation measures and associated monitoring shall be prepared by South Dublin County Council and placed on the file and retained as part of the public record.

Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

3. The mitigation measures contained in the Natura Impact Statement which was submitted with the application shall be implemented in full.

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

4. The Operational Management Plan shall be updated to include proposals to ensure that there is no potential for conflicts between pedestrians and horses in Massy's Woods.

Reason: In the interest of clarity.

5. A revised Forest Management Plan to retain the majority of the mature conifers on the Hellfire plantation to support the red squirrel shall be prepared by South Dublin County Council in consultation with the National Parks and Wildlife Service.

Reason: In the interest of protecting the environment, and in the interest of sustainable development and proper planning.

6. Prior to the commencement of development, South Dublin County Council or any agent acting on its behalf shall prepare in consultation with the relevant statutory agencies, a Final Construction Environmental Management Plan (CEMP), that adheres to best practice environmental management. The CEMP shall include the appointment of a full-time liaison officer and specific proposals for monitoring of the effectiveness of the environmental management measures outlined in the CEMP and shall be placed on the file and retained as part of the public record.

Reason: In the interest of protecting the environment, and in the interest of sustainable development and proper planning.

7. A suitably qualified ecologist shall be appointed as an Ecological Clerk of Works by South Dublin County Council to oversee the site set-up and construction of the proposed development in accordance with the mitigation measures set out in the Environmental Impact Assessment Report. Upon completion of the construction stage, an audit report of the site works shall be prepared by the appointed ecologist and submitted to the local authority to be maintained on the file as part of the public record.

Reason: To ensure the protection of the environment during construction.

8. During construction stage, any site operation (including hydrological and geotechnical investigations) associated with the proposed scheme shall be subject to full time archaeological monitoring by a suitably qualified archaeologist under licence from the Department of Culture, Heritage and the Gaeltacht. Provision shall be made available for the resolution of any archaeological features or deposits that may be identified.

Reason: To conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

9. Prior to the commencement of development, the planning authority shall enter into water and waste water connection agreements with Irish Water.

Reason: In the interest of public health.

DR. Maria Fitzgerald

**Maria Fitzgerald
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 25th day of June

2020

