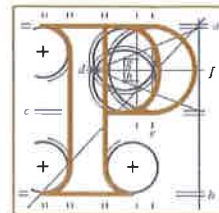


**Our Case Number:** ABP-307637-20



**An  
Bord  
Pleanála**

Clare County Council  
Planning Department  
New Road  
Ennis  
Co. Clare



**Date:** 9 NOV 2020

**Re:** Construction of a flood protection embankment, land raising, penstock/sluiice, pump station and associated site works.  
Springfield, Cappavilla North, Cottage and Illaunyregan Co. Clare

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](http://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,

Sarah Kerley  
Executive Officer  
Direct Line: 01-8737287

AA14

**Tel**  
Glaos Áitiúil  
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Láithreán Gréasáin  
Ríomhphost

**Tel** (01) 858 8100  
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**Website** [www.pleanala.ie](http://www.pleanala.ie)  
**Email** [bord@pleanala.ie](mailto:bord@pleanala.ie)

64 Sráid Maoilbhríde 64 Marlborough Street  
Baile Átha Cliath 1 Dublin 1  
D01 V902 D01 V902

## **Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Acts (as amended).**

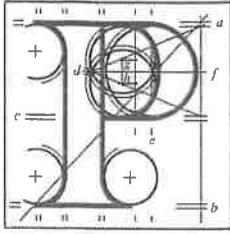
A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 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(7) 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**  
**ABP-307637-20**

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**Planning and Development Acts, 2000 to 2020**

**Planning Authority: Clare County Council**

**Application** by Clare County Council for approval under section 177AE of the Planning and Development Act 2000, as amended, in accordance with plans and particulars, including a Natura impact statement, lodged with An Bord Pleanála on the 20<sup>th</sup> day of July, 2020.

**Proposed Development:** The construction of a flood protection embankment, land raising, penstock/sluiice, pump station and associated site works at Springfield, Cappavilla North, Cottage and Illaunyregan, County Clare.

### **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) the EU Habitats Directive (92/43/EEC),
- (b) the Water Framework Directive (2000/60/EC),
- (c) the likely 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 a European Site,
- (d) the conservation objectives, qualifying interests and special conservation interests for the Lower River Shannon Special Area of Conservation (Site Code: 002165), the River Shannon and River Fergus Special Protection Area (Site Code: 004077),
- (e) the policies and objectives of the Clare County Development Plan, 2017-2023,
- (f) the nature and extent of the proposed works as set out in the application for approval,
- (g) the information submitted in relation to the potential impacts on habitats, flora and fauna, including the Natura impact statement,
- (h) the submissions and observations received in relation to the proposed development, and
- (i) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

### Appropriate Assessment

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (Site Code: 002165), the River Shannon and River Fergus Special Protection Area (Site Code: 004077) are the European Sites for which there is a likelihood of significant effects.

The Board considered the Natura impact statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the Lower River Shannon Special Area of Conservation (Site Code: 002165) and the River Shannon and River Fergus Special Protection Area (Site Code: 004007), and in view of the Sites' conservation objectives, considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the assessment, the Board considered, in particular, the following:

- i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the Lower River Shannon Special Area of Conservation (Site Code: 002165) and the River Shannon and River Fergus Special Protection Area (Site Code: 004077),
- ii. Mitigation measures which are included as part of the current proposal,
- iii. Conservation objectives for these European Sites and
- iv. The views of the Department of Culture, Heritage and the Gaeltacht.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the Sites' conservation objectives.

In overall 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 Sites, in view of the Sites' conservation objectives.

**Proper Planning and Sustainable Development/Likely effects on the environment:**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not seriously injure the amenities of property in the vicinity, would not adversely impact on the cultural,

archaeological and built heritage of the area and would not interfere with the existing land uses in the area. 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, except where otherwise may be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. All mitigation and environmental commitments identified in the Natura impact statement shall be implemented in full as part of the proposed development.

**Reason:** In the interest of development control, public information and clarity.

3. The local authority and any agent acting on its behalf shall ensure that all plant and machinery used during the works shall be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

4. The local authority and any agent acting on its behalf shall ensure that all imported soils to the site are thoroughly screened for the presence of invasive species prior to the delivery to the site to prevent the spread of invasive species. The local authority shall also ensure that all excavations carried out within the site are monitored for the presence of invasive species and if encountered, are disposed of in a manner which will not give rise to further spread of the species.

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

5. The local authority and any agent acting on its behalf shall facilitate the preservation, recording, protection or removal of archaeological materials or

features that may exist within the site. A suitably qualified archaeologist shall be appointed by the local authority to oversee the site set-up and construction of the proposed development and the archaeologist shall be present on-site during excavation works.

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

6. Trees shall be examined prior to felling to determine the presence of bat roosts. Any works shall be in accordance with the TII Guidelines for the Treatment of Bats during the construction of National Road Schemes.

**Reason:** In the interest of wildlife protection.

7. All works shall have regard to Inland Fisheries Ireland's published guidelines for construction works near waterways (Guidelines on Protection of Fisheries during Construction Works in and Adjacent to Waters, 2016). A programme of water quality monitoring shall be prepared in consultation with the contractor, the local authority and relevant statutory agencies and the programme shall be implemented thereafter.

**Reason:** In the interest of the protecting of receiving water quality, fisheries and aquatic habitats.


**Dave Walsh**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board.**

Dated this 6<sup>th</sup> day of November 2020