



An
Bord
Pleanála

Board Direction
PL15.248764

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 18th 2018.

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

Reasons and Considerations

1. The site is located in a rural area where it is an objective of the Louth County Development Plan 2015-2021 "to protect and provide for the development of agriculture and sustainable rural communities and to facilitate certain resource based and location specific developments of significant regional or national importance. Critical infrastructure projects of local, regional or national importance will also be considered within this zone". This objective is considered reasonable. The general locational requirements for large scale industrial and commercial activities is to require that such facilities are located on zoned lands in designated settlements. Furthermore, having regard to the nature and scale of the commercial development in this instance and its location in a rural area, it is considered that the development for which retention is sought would be detrimental to the character and amenity of the rural area. It is considered, therefore, that the development would materially contravene the overall zoning objective and policies relevant to the area as set out in the Louth County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.

2. Having regard to the proposal to provide mitigation measures, as set out in the documentation submitted with the application and appeal, in order to avoid or reduce the impacts of the subject development on nearby watercourses, and having regard to the proposal to implement operating procedures so as to prevent the storage or parking of any non-depolluted vehicles or parts in the extensive hard cored areas of the site, in order to avoid or reduce the impact of the development on groundwater, both of which would represent measures to avoid or reduce any significant effects on the Dundalk Bay Special Area of Conservation (site code 000455) and to the Dundalk Bay Special Protection Area (site code 004026), to which there is a direct pathway via such watercourses, and where, in the absence of such measures it could not be established, beyond reasonable scientific doubt, that there would not be significant effects on these European sites, in the light of the conservation objectives of these European sites, the Board is not satisfied, in the absence of the submission of a Natura Impact Statement, that the development for which retention is sought, either individually or in combination with other plans or projects, would not adversely affect the integrity of those European sites. The Board is, therefore, precluded from granting planning permission for the subject development.

Note 1. In reaching its decision to include the second reason for refusal set out above, the Board had regard to case law, that is, the decision of the European Court of Justice in case C-323/17, dated 12th April 2018, which judgement was made subsequent to the date of the Inspector's report. Accordingly, the Board did not share the Inspector's opinion that the development would not be likely to have a significant effect on the specified European sites, in the light of the conservation objective for those sites, as her conclusion was based on the mitigation measures and operating procedures included with the application. The Board decided to include this refusal reason, notwithstanding that it might be deemed to be a new issue in the context of the appeal, having regard to the statutory requirement on it to carry out screening for appropriate assessment in all appeals. The Board noted, in relation to this matter, that it had previously determined that appropriate assessment

was required in respect of this development, and was satisfied that the documentation submitted with the present application did not satisfy it, as the competent authority under the Habitats Directive, that the development would not have significant effects on a European site, particularly in the light of this case law.

Note 2: The Board concurred with the second reason for refusal recommended by the Inspector, but considered that, as the matter of traffic hazard was not raised in the appeal, it would represent a new issue, and the Board decided not to include it, in the light of the substantive reasons for refusal set out above. It noted, however, that a similar reason had been included in its decision of January 2015 in relation to the same development (which does not appear to have altered in any fundamental respect since that decision).

[Please issue a copy of this Direction with the Board Order to the parties.]

Board Member

Date: 18th December 2018

Philip Jones