



An
Bord
Pleanála

Board Direction
BD-000227-18
ABP-300746-18

The Strategic Infrastructure Division of the Board convened on 10th April 2018 to consider this file, which had been remitted to An Bord Pleanála (ABP) by the High Court. At a further meeting held on 24/04/2018, the Board further considered the file.

The Board noted the specific instructions of the Perfected Order of the High Court dated 14th November 2017, whereby ABP was required to consider its decision based on the information, observations and submissions already before it on the 6th of October 2016. This followed from the judgement of the High Court (Haughton J) delivered on the 28th day of September 2017 [2016/920 JR], the content of which was also noted.

Taking the foregoing into account, having considered the entirety of the case including the submissions on file and the report of the Senior Planning Inspector (and her assistant inspector and specialist consultant), and notwithstanding the passage of time since the preparation of the Inspector's report, the Board considered it appropriate to proceed to decide the case without requesting further information or seeking any further submissions from the parties.

The Board decided unanimously to refuse permission for the proposed development, for the following reasons and consideration.

REASONS AND CONSIDERATIONS

1. The Board considered that the widely dispersed cluster-based layout adopted in the present proposal would have inevitable adverse effects including a disproportionately large visual envelope, the need for extensive underground cabling in poor quality minor roads and undue proximity to areas of sensitivity from a heritage or residential point of view. The Board considered that in a situation where such adverse effects were absent the energy output from the proposed development might be realised in a more efficient and less intrusive manner by a more spatially concentrated development. The Board determined that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. Having regard to the nature, structure and condition of the existing public road network serving the development, which includes substantial sections of substandard legacy roads and to the extensive cable trenching works proposed it is considered that the proposed development could have significant adverse effects on the long term structural integrity of significant elements of the local road network, is thereby likely to give rise to the creation of traffic hazards and to potentially increased maintenance costs to the local authority. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's further reasons for refusal, the following observations by the Board apply.

Leinster Outer Orbital Route

The Board noted the existence of a Route Protection Corridor for the Leinster Outer Orbital Route in the current Development Plans for Co.s Kildare and Meath and the potential conflict between the corridor as outlined and elements of the present proposed development. The Board did not consider that this potential conflict was in itself an appropriate reason for refusal given the present very early stage of planning for the route corridor and the clear scope that exists for mutual accommodation.

Grid Connection

The Board did not agree with the Inspector's view in relation to the proposed grid connection and considered that there was sufficient information to hand to allow an

environmental impact assessment of the proposed grid connection to the Dunfirth sub-station to be undertaken and completed.

Aviation Safety

The Board noted the very strong and contrary cases made by both the Department of Defence/Air Corps and the applicant's specialist aviation consultants in relation to the compatibility of wind turbines and air navigation in the subject area. The Board determined not to seek additional information on this matter in the light of the substantive reasons given for refusal. The Board considered the matter to be one that would benefit from a definitive policy-based resolution given the specialist nature of some of the issues involved and the apparent potential relationship to aspects of national security.

Visual Impact

The Board declined to accept the Inspector's recommendation to refuse permission on grounds relating to visual impact as the Board considered that notwithstanding the various landscape designations set out in Chapter 14 and Appendix 3 of the Kildare County Development Plan the local landscape is one of considerable robustness wherein extensive cross-country views, while possible given the basin-like nature of the current and former bogland, are rarely achieved due to the extent and depth of barrier and boundary vegetation. This limits, in the Board's view, any adverse visual impact of the proposed development to a number of key localised areas of particular sensitivity, specifically the canal corridors (and associated human settlements) and the setting of the historical sites at Carbury and Lullymore. In other circumstances these concerns could have been addressed by the omission of selected turbines and/or clusters.

Equine Industry

The Board noted the Inspector's recommendation to refuse permission on the grounds that the proposed development would have a potentially significant adverse effect on the equine industry – mainly through reputational damage. While this industry is undoubtedly of major significance in the economy of Co. Kildare the Board disagreed with the Inspector's view and noted the lack of any specific evidence that wind turbines pose a threat to the welfare of horses and declined to cite the matter as a reason for refusal of permission.

Hydrology, Hydrogeology and Water Quality

Notwithstanding the Inspector's concerns in relation to potential impacts on hydrogeology and on public and private drinking water supplies in the area, the Board did not consider it reasonable to expect the applicant to have completed a detailed or final design for turbine foundations at this stage of the process. The Board further considered that the local environment was relatively robust, that it was reasonable to

assume that good engineering practice would prevail and that any construction impacts would be limited in space and time. Thus it was not accepted that there would be significant adverse impacts on the surface and ground water environment warranting refusal.

Noise and Human Settlement

The Board accepted that there were some deficiencies in the environmental information provided including in relation to noise measurements in the Environmental Impact Statement and the potential impact on residential dwellings in the vicinity. The Board considered that this matter was not in itself a reason for refusal, that it might have been addressed by seeking further information but decided not to do so in the light of the substantive reasons cited above for refusal of permission.

Ecology

The Board accepted that there were deficiencies in the environmental information provided including in relation to ecology in the Environmental Impact Statement and in particular in relation to insufficient baseline data across all ecological receptors. The Board considered that this matter was not in itself a reason for refusal, that it might have been addressed by seeking further information but decided not to do so in the light of the substantive reasons cited above for refusal of permission.

Appropriate Assessment

The Board accepted that there were deficiencies in the information provided in relation to European sites in the application and the Further Information submitted. In particular, the Board noted the failure to consider the potential hydrological effects arising from forestry clearance, replanting and the possible spread of alien invasive species. The Board further noted the failure to develop and design detailed mitigation measures relating to these effects until after the determination of the application which would result in a significant level of uncertainty regarding the effectiveness of such measures. As a consequence, the Board did not consider it was in a position to complete an Appropriate Assessment of the potential effects of the proposed development on nearby European sites. However, the Board decided not to cite the above deficiencies as a reason for refusal as they might have been addressed by seeking further information but in the light of the substantive reasons cited above for refusal of permission this option was not pursued.

Roads and Traffic Matters

The Board noted the Inspector's concerns in relation to the information provided in the application and the Further Information submitted in relation to traffic flows, visibility splays and the carrying capacity of a number of the rural roads within which underground cables are to be installed. These were judged not to be matters which in themselves warranted a refusal of permission. They could have been addressed by

seeking further information but the Board decided not to do so in the light of the substantive reasons cited above for refusal.

DETERMINATION OF COSTS

The Board noted the details of costs arising on the case for An Bord Pleanála and considered the claims made by the planning authorities and by the following observers: Kildare Environmental Awareness Group; Meath Environmental Alliance; Moyvalley Engineering and Mr. Dermot Ennis.

The Board determined that the sums sought by the two planning authorities were reasonable and decided to award costs accordingly.

The Board decided **not to award costs** to the observers in the case for the Reasons and Considerations set out below.

Having regard to:

- the submissions made on the case by the observers in writing;
- the detailed and reasoned reports of the Board's inspector, and
- the Board's decision in the case,

it is considered that the Strategic Infrastructure Development application process has enabled full participation by the observers in the case and there are no particular circumstances arising that would justify the developer having to make a contribution towards the costs of the observers in this case.

In conclusion:

The Board determined costs to be paid by the applicant as follows:

To ABP:	€52,198
To Kildare County Council:	€16,068
To Meath County Council:	€ 4,126

Board Member:

Date: 24/04/2018

Conall Boland