



An
Bord
Pleanála

Board Direction
BD-001930-18
ABP-301959-18

The submissions on this file and the Inspector's report were considered at a Board meeting held on 06/12/2018.

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

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 (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directive) which set the requirements for conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
 - The relevant provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU (EIA Directive) on the assessment of the effects of certain public and private projects on the environment.
 - EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy.
- (b) National Legislation including, in particular:
 - Section 182A of the Planning and Development Act 2000, as amended, which sets out the provisions in relation to electricity transmission lines.
- (c) National Policy including, in particular:
 - The National Planning Framework (NPF) published in February 2018.

- Government Policy Statement on the Strategic Importance of Transmission and Other Energy Infrastructure issued in July 2012.

(d) Regional Policy including, in particular:

- The Mid-West Regional Planning Guidelines 2010-2022.

(e) Local Planning Policy including, in particular:

- The provisions of the North Tipperary County Development Plan 2010-2016.

(f) 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 Lower River Shannon Special Area of Conservation (site code: 002165), the Lower River Suir Special Area of Conservation (site code: 002137) and the Slievefelim to Silvermines Mountains Special Protection Area (site code: 004165).
- The documentation and submissions of the applicant, including the Environmental Impact Assessment Report and the Natura Impact Statement and associated documentation submitted with the planning application, and the range of mitigation and monitoring measures proposed.
- The submissions and observations made to An Bord Pleanála in connection with the planning application and the submission from the local authority.
- The nature and extent of the proposed development as set out in the application for approval.
- The report and recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

Proper Planning and Sustainable Development:

It is considered that the proposed development would be in accordance with European, national, regional and local planning policy and is generally in accordance with the strategic policy in relation to provision of such infrastructure.

Environmental Impact Assessment:

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

- (a) the nature, scale, location and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the planning application,
- (c) the submissions from the local authority, the observers and the prescribed bodies in the course of the planning application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which was reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the reasoned conclusion is up to date at the time of making the decision. The Board, however, is not 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 or Section 172 of the Planning and Development Act, as amended, with regard to providing an adequate or robust description of the reasonable alternatives studied, which are relevant to the proposed development and its specific characteristics.

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 planning application. The Board is satisfied that the Inspector's report sets out how these submissions were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusion on the Significant Effects:

It is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- **Biodiversity:** Impacts to hen harrier will arise from a reduction or loss of suitable foraging habitat and disturbance resulting from works within and close to sensitive roosting and breeding areas for the hen harrier. There will be a net permanent loss of 3.14 hectares in the wider study area. The significance of this impact is considered to be moderate (negative). The Board is not satisfied that adequate mitigation measures have been set out in the Environmental Impact Assessment Report to address this issue and that adverse impacts will not occur. The efficacy of measures, such as concealed roads within the Special Protection Area to mitigate against habitat loss may also be inadequate and, therefore, it cannot be ruled out beyond all scientific doubt that no adverse impacts to the integrity of the Special Protection Area will occur.
- **Water:** Impacts to aquatic habitats and species are likely to arise during the construction phase, particularly in terms changes in flow in watercourses, disturbance/displacement of fish, riparian habitat degradation and spread of aquatic invasive species. Water quality could be impacted by sediment laden run-off, contamination from fuels, oils, chemical spills and cement run-off as well as run-off from permanent hardstanding areas and access roads. These impacts would be mitigated against by implementing a range of Project Design Environmental Measures set out in the Environmental Impact Assessment Report. These include measures to prevent contamination of water and prevent sedimentation release to water.

The Board is not satisfied, based on the assessment and analysis set out in the Environmental Impact Assessment Report, that, in the consideration of potential alternatives route options, adequate weight has been given to biodiversity matters. It is considered that the selected route option will result in a significant intervention in the

natural environment and adverse impacts to biodiversity. Lesser damaging alternatives are available that could avoid negative impacts on the environment with regard to biodiversity.

The Board is not satisfied that sufficient consideration has been provided regarding the routing of the cable in the local road network or consideration of alternative grid connection technologies such as overhead line alternatives. Furthermore, no information has been provided in relation to alternative connection locations where the windfarm could potentially connect to the national electricity grid.

The Board is not satisfied that following mitigation, no significant residual negative impacts on the environment would remain as a result of the proposed development with respect to the hen harrier species. The proposed development may, therefore, have an unacceptable indirect effect on the environment.

Appropriate Assessment:

The Board agreed with the screening assessment and adopted the conclusion carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (site code: 002165), the Lower River Suir Special Area of Conservation (site code: 002137) and Slievefelim to Silvermines Mountains Special Protection Area (site code: 004165) are the only European Sites in respect of which the proposed development has a significant effect.

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 Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for the affected European Sites, namely the Lower River Shannon Special Area of Conservation (site: 002165), the Lower River Suir Special Area of Conservation (site code: 002137) and the Slievefelim to Silvermines Mountains Special Protection Area (site code: 004165) in view of the sites' Conservation Objectives. In completing the appropriate assessment, the Board considered, in particular, the following:

- The likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects.

- The mitigation measures which are included as part of the current proposal.
- The conservation objectives for the European Sites.

In completing the appropriate assessment, the Board generally accepted and adopted the screening and the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' Conservation Objectives.

Having regard to the scale and nature of the proposed development, in particular, the proposal to develop an underground cable through part of the Slievefelim to Silvermines Mountains Special Protection Area (with the single conservation objective to maintain or restore the favourable conservation condition of the hen harrier) and, notwithstanding the mitigation measures proposed by the applicant, there remains reasonable scientific doubt that the proposed development would not lead to a reduction or loss of suitable foraging habitat or to the disturbance of the hen harrier within its sensitive roosting and breeding areas.

The Board cannot therefore be satisfied that the proposed development individually, or in combination with other plans or projects, would not adversely affect the integrity of this European Site in view of the site's Conservation Objectives. In such circumstances, the Board is precluded from granting permission and the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Schedule of Costs

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amount due to be reimbursed to the applicant is **€45,514**

A breakdown of the Board's costs is set out in the attached Appendix 1.

Board Member

Date: 12/12/2018

Eugene Nixon