



An
Bord
Pleanála

Board Direction
BD-006124-20
ABP-303081-18

The submissions on this file, including the applicant's response to the Board's Section 132 notice (which incorporates a Natura Impact Statement) and the responses to the public notices required by the Board, together with the Inspector's reports, were considered at a Board meeting held on July 13th, 2020.

The Board decided to refuse permission for the following reasons and considerations.

Reasons and Considerations

It is considered, on the basis of the documentation submitted by the applicant, including Appropriate Assessment Screening and a Natura Impact Statement, that the proposed construction works involved in the subject development have the potential to have significant effects on The Murrough Wetlands Special Area of Conservation (site code 002249) and The Murrough Special Protection Area (site code 004186), in the light of the conservation objectives and qualifying interests of these two European Sites, through negatively affecting water quality in these sites via groundwater, and that, in the absence of mitigation measures, as set out in the submitted Natura Impact Statement, the development would adversely affect the integrity of these European Sites. Since the planning application, as submitted, involves not only future development but also the retention of existing development that has already taken place, and because that existing development also involved construction works on the subject site, including substantial removal of soils and excavation into the site to the rear, the Board cannot be satisfied, beyond reasonable scientific doubt, that the development for which retention is sought would not have

had significant effects on these European sites and therefore that the development for which retention is sought would have required Appropriate Assessment. In such circumstances, having regard to case law and to the provisions of Section 34 (12) of the Planning and Development Act, 2000, as amended, the Board is precluded from granting planning permission or the subject development.

In deciding not to accept the Inspector's recommendation to grant permission, the Board did not agree with the Inspector's screening assessment, and accepted the documentation in this regard submitted by the applicant. The Board considered that the measures, as set out in the Appropriate Assessment Screening Report and in the Natura Impact Statement submitted by the applicant, were of a type to which the European Court of Justice referred in Case C-323/17 *People over Wind v Coillte*, that is, measures which are intended to avoid or reduce the impacts of the development on the European sites in question, and did not agree with the Inspector in relation to his interpretation of case law in this context. The Board therefore was fully satisfied that the proposed development works required to be the subject of Stage 2 Appropriate Assessment. Accordingly, as the application is expressed to be for the retention of the development that has taken place, as well as future development, and as the previous planning permission (Wicklow County Council register reference number 08/1704), under which the existing development took place, was not the subject of Appropriate Assessment, the Board is precluded from considering a grant of permission in this instance, as recommended by the Inspector.

Board Member

Date: 22nd July 2020

Philip Jones