



An
Bord
Pleanála

Board Direction
BD-004659-19
ABP-304853-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on December 4th, 2019.

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

Reasons and Considerations

1. On the basis of the information provided with the application and appeal the Board is not satisfied that the proposed development does not comprise the disposal of waste, which is development within Class 11(b) of Part 11 of Schedule 5 to the Planning and Development Regulations 2001, as amended. Notwithstanding that the proposed development may not reach the threshold within that Class, the Board, in the light of the nature of the receiving environment, and the environmental sensitivities of the subject site and its surroundings, concludes that the Environmental Impact Assessment would be necessary for the proposed development and that therefore the application should have been accompanied by an Environmental Impact Assessment Report. In the absence of such a Report the Board is precluded for granting planning permission.
2. On the basis of the information provided with the application and appeal and, in the absence of a Natura Impact Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Slaney River

Valley Special Area of Conservation (site code 000781), in view of the site's Conservation Objectives. In this regard, the Board noted that the submitted Appropriate Assessment Screening Statement relies on measures (described in the submitted documentation as "preventative measures") which would have the effect of avoiding or reducing the impact of silt and other potential pollutants arising from the proposed development on the stream that leads directly into this European site. In the light of the judgement of the European Court of Justice in the case of People Over Wind (C-323/17), reliance on such measures is not appropriate in the context of screening for Appropriate Assessment. Accordingly, it is considered by the Board that a Natura Impact Statement should have been submitted with the application. In the absence of such a Statement, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects, would not be likely to have a significant effect on the Slaney River Valley Special Area of Conservation (site code 000781), and therefore is precluded from granting planning permission.

Note: In making its decision, the Board did not consider it appropriate to defer the application, with a view to seeking the submission of an EIAR and a NIS, as to do so would have the potential, depending on the conclusions of such documents, to materially alter the nature and extent of the proposed development from that as originally submitted with the application, which would thereby have implications for third party rights.

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

Board Member

Philip Jones

Date: 4th December 2019