



An
Bord
Pleanála

Board Direction
BD-009135-21
ABP-307891-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 23/09/2021.

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

Reasons and Considerations

Having regard to

- the provisions of national and regional policy objectives in relation to renewable energy,
- the provisions of the Carlow County Development Plan 2015 to 2021.
- the nature and scale of the proposed development,

it is considered that, subject to compliance with the conditions set out below, the proposal would support national and regional renewable energy policy objectives, notwithstanding the relevant provisions of the Development Plan, would not seriously injure the residential amenities of property in the vicinity, would not have unacceptable impacts on the visual amenities of the area, would not result in a serious risk of pollution, would be acceptable in terms of traffic safety and convenience, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board considered that, while the planning authority's first reason for refusal did not specifically cite a material contravention in respect of compliance with Energy

Policy 9, in light of the difference between the figure of 10MW of output provided for in the Carlow County Development Plan and the proposed 95MW output set out in the application, the proposed development would materially contravene the County Development Plan. In such circumstances, the Board considers that, having regard to the provisions of section 37(2) of the Planning and Development Act 2000, as amended, the grant of permission in material contravention of the County Development Plan would be justified for the following reasons and consideration.

In relation to section 37(2)(b)(ii) of the Planning and Development Act 2000 (as amended):

There is a contradiction within the County Development Plan whereby the planning authority is committed (see especially policy set out in Chapter 6) to following national climate change policy to increase the proportion of energy from renewable resources, to promote Carlow as a low carbon county and raise awareness of necessity to reverse fossil fuel dependency, while at the same time, setting a low limit on solar energy production facilities unsupported by any rationale for the restrictive policy.

In relation to section 37(2)(b)(iii) of the Planning and Development Act 2000 (as amended):

The policy set out in the County Development Plan conflicts with the National Planning Framework in that it does not have reasonable regard to the NPO 55 to promote renewable energy on a scale to meet national objective to achieve a low-carbon economy or the State's overarching climate policy as set out in the Climate Action Plan 2019 which is to reduce CO₂ emissions in the electricity generating sector by 50-55% relative to 2030 pre-National Development Plan. In addition, the policy also conflicts, inter alia, with Regional Objectives RPO 95, 96, 100 and 221 of the RSES for the Southern Region which state that County Development Plans *shall* support the sustainable development of renewable energy. In light of these policy provisions, the low limit imposed within the current County Development Plan is not consistent.

Having regard to the above, the Board considered that a material contravention of the County Development Plan would therefore be justified for the proposed development.

Appropriate Assessment: Screening

The Board completed an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the nature, scale and location of the proposed development, the Natura Impact Statement Report submitted with the application, the Inspector's report, and submissions on file. In completing the screening exercise, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other development in the vicinity, the proposed development would not be likely to have a significant effect on any European Site in view of the conservation objectives of such sites, other than the River Barrow and River Nore SAC (Site code: 002162), and Slaney River SAC (Site code: 000781) which are European Sites where the likelihood of significant effects could not be ruled out.

Appropriate Assessment: Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions on the file and carried out an Appropriate Assessment of the implications of the proposed development on the River Barrow and River Nore SAC (Site code: 002162), and Slaney River SAC (Site code: 000781), in view of the Sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- a) the site-specific conservation objectives for the European sites,
- b) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, and in particular the risk of impacts on surface water and ground water quality,
- c) the mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted 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.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of European Sites in view of the Sites' conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects. This conclusion is based on the measures identified to control the quality of surface water discharges which provide for the interception of silt and other contaminants prior to discharge from the site during construction and operational phases.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of the development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this Order.

Reason: Having regard to the nature of the proposed development, the Board considered it reasonable and appropriate to specify a period of the permission in excess of five years.

3. All of the environmental, construction and ecological mitigation measures, as set out in the Planning and Environmental Report and other particulars submitted with the application and appeal, shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.

4. All mitigation measures set out in the Natura Impact Statement shall be implemented by the developer in conjunction with the timelines set out therein.

Reason: In the interests of protecting European Sites.

5. (a) This permission shall be for a period of 25 years from the date of the commissioning of the solar array. The solar array and related ancillary structures shall then be removed unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

(b) Prior to commencement of development, a detailed restoration plan, including a timescale for its implementation, providing for the removal of the solar arrays, including all foundations, anchors, inverter/transformer stations, substation, CCTV cameras, fencing and site access to a specific timescale, shall be submitted to, and agreed in writing with, the planning authority.

(c) On full or partial decommissioning of the solar farm, or if the solar farm ceases operation for a period of more than one year, the solar arrays, including foundations/anchors, and all associated equipment, shall be dismantled and removed permanently from the site. The site shall be restored in accordance with this plan and all decommissioned structures shall be removed within three months of decommissioning.

Reason: To enable the planning authority to review the operation of the solar farm over the stated time period, having regard to the circumstances then prevailing, and in the interest of orderly development.

6. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

7. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority the location(s) and construction details of passing bays on the L-7111 and/or L-7112 required to serve the proposed development.

Reason: In the interests of traffic safety and convenience.

8. (a) All existing hedgerows (except at access track openings) shall be retained notwithstanding any exemptions available and new planting undertaken in accordance with the plans submitted to the planning authority with the application.

(b) All landscaping shall be planted to the written satisfaction of the planning authority prior to commencement of development. Any trees or hedgerow that are removed, die or become seriously damaged or diseased during the operative period of the solar farm as set out by this permission, shall be replaced within the next planting season by trees or hedging of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interests of biodiversity, the visual amenities of the area, and the residential amenities of property in the vicinity.

9. (a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.

(b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.

(c) Cables within the site shall be located underground.

(d) The inverter/transformer stations shall be dark green in colour.

Reason: In the interest of clarity, and of visual and residential amenity.

10. The construction of the development shall be managed in accordance with a Construction Environment Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including but not limited to, hours of working, noise and dust management measures, surface water management proposals, the management of construction traffic, and the off-site disposal of construction waste.

Reason: In the interests of public safety, residential amenity and protection of the environment.

11. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Surface water from the site shall not be permitted to drain onto the adjoining public road or adjoining properties.

Reason: In the interest of environmental protection and public health.

12. All road surfaces, culverts, watercourses, verges and public lands shall be protected during construction and, in the case of any damage occurring, shall be reinstated to the satisfaction of the planning authority. Prior to commencement of development, a road condition survey on the section of local road L-7111 and L-7112 which forms part of the identified access route for the site shall be taken to provide a basis for reinstatement works. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In order to ensure a satisfactory standard of development.

13. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 in respect of the provision of passing bay(s) on the local roads, L-7111 and/or the L7112. The amount of the contribution shall be agreed

between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site on cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure satisfactory reinstatement of the site.

15. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and

