

An
Bord
Pleanála

Board Direction
BD-009275-21
ABP-309987-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/10/2021.

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:

- (a) the nature, scale and extent of the proposed development,
- (b) the national targets for a renewable energy contribution of 40% to gross electricity consumption by 2020,
- (c) national and local policy support for developing renewable energy, in particular the:

Government's Strategy for Renewable Energy, 2012-2020,

National Planning Framework, 2018,

Delivering a Sustainable Energy Future for Ireland - the Energy Policy Framework, 2007-2020,

Government Policy Statement on the Strategic Importance of Transmission and Other Energy Infrastructure 2012,

Eastern and Midlands Region Regional Spatial & Economic Strategy,

Carlow County Development Plan 2015 2021,

- (d) the distance to dwellings or other sensitive receptors from the proposed development,
- (e) the submissions on file,
- (f) the documentation submitted with the application, including the Natura Impact Statement and the Environmental Report,

It is considered that the proposed development,

- (a) would not have an unacceptable impact on the character of the landscape or on the cultural or archaeological heritage,
- (b) would not seriously injure the visual and residential amenities of the area,
- (c) would be acceptable in terms of public health, traffic safety and convenience,
- (d) would not have an unacceptable impact on ecology,
- (e) would make a positive contribution to Ireland's requirements for renewable energy, and
- (f) would be in accordance with:-

- (i) Government's Strategy for Renewable Energy, 2012-2020,
- (ii) the National Planning Framework, 2018,
- (iii) the Climate Action Plan, 2019 and
- (iii) the Regional Spatial and Economic Strategy for the Southern Region.

The proposed development 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 45MW 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 the 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), which is a European Site 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), in view of the Site's 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 Site, having regard to the Site's 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 the River Barrow and River Nore SAC (Site code: 002162) or any other European Site in view of the Site's 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.

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 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 this permission may be implemented shall be 10 years from the date of this Order.

Reason: In the interest of clarity.

3. (a) This permission shall be for a period of 30 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 the plan referred to at (b) above, 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.

4. This permission shall not be construed as any form of consent or agreement to a connection to the national grid.

Reason: In the interest of clarity.

5. 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.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) Engage the services of a suitably qualified, licenced, archaeologist.

- (b) The archaeologist is required to notify the planning authority and the Department of Housing, Local Government and Heritage, National Monuments Service, in writing at least four weeks prior to the commencement of site preparations.

- (c) The archaeologist shall carry out any relevant documentary research and may excavate trenches at locations chosen by the archaeologist.

- (d) Having completed the work, the archaeologist shall submit a written report to the Planning Authority and the Department of Housing, Local Government and Heritage for consideration.

(e) Where archaeological material is shown to be present, avoidance, preservation in situ, preservation by record (excavation) and/or monitoring may be required, and the Department of Housing, Local Government and Heritage will advise the Developer with regard to these matters.

(f) No site preparation or construction work shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the Planning Authority in consultation with the Department of Housing, Local Government and Heritage.

Reason: To ensure the continued preservation (either *in situ* or by record) of places, caves, sites, features or other objects of archaeological interest.

7. The proposed development shall be undertaken in compliance with all environmental commitments made in the documentation supporting the application, in particular all of the relevant measures to protect surface water.

Reason: To protect the environment.

8. The construction of the development shall be managed in accordance with the Construction Environmental Management Plan (CEMP) which shall be submitted to, and agreed in writing with the planning authority prior to commencement of the development. This plan shall provide details of intended construction practice for the development, including hours of working, details of traffic and environmental management measures proposed including but not limited to operational controls for dust, noise and vibration, and protection of groundwater.

Included shall be a traffic management plan showing that all construction movements entering the site shall be from the R725 and shall be left turn only movements from this road; and that all construction movements exiting shall be to the L6113.

Any necessary measures to prevent spillage or deposit of clay, rubble or other debris on the public road, including the provision of a wheel wash, and to maintain the public road by removing material shall be implemented with full costs to be borne by the developer

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

9. Details of materials, colours, textures and finishes to the ancillary structures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenity of the area.

10. (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.

11. Upon commissioning of the development and for a period of two years following first operation, the developer/operator shall provide detailed glint and glare surveys on an annual basis to the Planning Authority to confirm that no significant impact has occurred, and shall undertake such further mitigation measures as the Planning Authority may specify in writing, to ensure the absence of significant impact from glint and glare is achieved.

Reason: To mitigate against any glint impact.

12. 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 within five years from planting 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 interest of biodiversity and the visual amenities of the area.

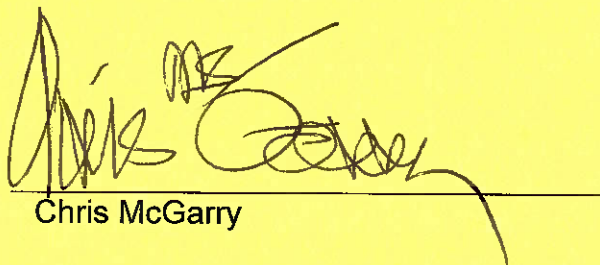
13. Prior to commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the Planning Authority, to secure the reinstatement of public roads that may be damaged by construction transport 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 the reinstatement of public roads that may be damaged by construction transport.

14. 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 the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution.

Board Member



Chris McGarry

Date: 15/10/2021