



An
Bord
Pleanála

Board Direction
BD-013203-23
ABP-313007-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 10/08/2023.

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

Reasons and Considerations

1. Development Objective 12-20 of the Kerry Development plan 2022-2028 seeks to - Ensure that commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'. These areas are presented on Map 12.4: Wind Energy Areas of the development plan. The proposed development site is located outside of areas designated as being either a 'Repower Area' or an area that is 'Open-to-Consideration'. The Board was not satisfied that, notwithstanding the benefits of renewable energy proposals and the support at a national level, that the proposed development would in this instance be plan led as it would not be in accordance with the stated objective in the development plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

Notes:

Appropriate Assessment

The Board noted the concerns raised by the inspector that the proposed development may adversely affect the integrity of European sites no.s 002165

(Lower River Shannon SAC) or 004188 (Tralee Bay SPA), in view of the sites' Conservation Objectives.

It is evident from a review of the inspector's report and addendum report collectively that the issue of flooding was addressed in the further information response, including the flood risk assessment, to the satisfaction of the inspector (section 4.1.1 of the inspector's addendum report). Based on the information before it including the detailed measures set out in the applicant's response in respect of water quality protection, as identified in the inspectors addendum report, the Board was satisfied that the inspector's original concern (expressed in the first inspector's report) that a flood event occurring during construction could lead to water pollution that in turn could adversely affect the integrity of the Lower River Shannon SAC (Site Code 002165) in view of its conservation objectives can be mitigated. Accordingly, the Board was satisfied that with the mitigation in place, adverse effects on the integrity of the Lower River Shannon SAC (Site code 002165) in view of its conservation objectives can be excluded with scientific certainty.

The inspector's remaining concerns relate to the Whooper Swan which is an Annex 1 Species and a species of conservation interest associated with the Tralee Bay Complex SPA (Site Code 004188). The specific concern relates to the disturbance of the Whooper Swan, noting that flight paths traverse the area in and around the grasslands and riverbanks in the vicinity of Turbine numbers T5 and T7 in particular and other areas. The Board noted the applicant's response to the request for further information on this matter. It is evident that the key foraging (and roosting) sites are located over 750m from the nearest proposed turbine and the nearest road is c.500m from the nearest proposed turbine. Smaller numbers of Whooper Swan forage in the remaining areas. Habitats within 300m would be avoided and enhancement measures are proposed to address the potential impact at the remaining locations (appendix 7-7 of the EIAR) that would ensure no significant impacts on this species. The board also noted that it that in the event of any grant of permission, it was open to the Board to require the omission of turbines T5, T7 and/or any other turbine, if considered necessary, to ensure that adverse effects on the integrity of the Tralee Bay Complex SPA (Site Code 004188) in view of the site's conservation objectives, including 'to maintain the favourable conservation condition of Whooper Swan species' are excluded. Accordingly, the Board did not attach the

inspector's recommended second reason for refusal on appropriate assessment grounds.

Environmental Impact Assessment

Notwithstanding the reason for refusal on policy grounds as outlined above, including that the development would be contrary to Development Objective 12-20 of the Kerry Development plan 2022-2028, the Board generally agreed with the 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 application. The Board also agreed with and adopted the inspector's reasoned conclusion on the significant effects of the environment as set out in Section 13 (Reasoned Conclusion on the significant effects) of the inspector's report and addendum report. The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, and, subject to compliance with conditions, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable.

Flooding

The Board noted and agreed that the inspector's initial concern regarding flooding was subsequently addressed as outlined in Section 4.1.1 of the inspector's addendum report. Accordingly, the issue of flooding did not form a part of the Board's decision to refuse permission.

Procedural

The Board noted and agreed with the inspector's commentary and assessment on the matter of compliance with the development plan as set out in Section 4.15 and 4.16 of the inspector's addendum report and further noted the change in circumstances whereby the Ministerial Direction process has since concluded.

Board Member

Patricia Calleary
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Date: 10/08/2023