



An  
Bord  
Pleanála

**Board Direction**  
**BD-015330-24**  
**ABP-314431-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 30/01/2024.

The Board decided to grant permission, for the following reasons and considerations, and subject to the following conditions.

### **Reasons and Considerations**

In coming to its decision, the Board had regard to the following:

- Climate Action Plan 2023
- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- EU Renewable Energy Directives 2009/28/EC and 2018/2001/EU which aims to promote the use of renewable energy.
- National Planning Framework - Ireland 2040
- The Government of Ireland Climate Action Plan, 2023
- Regional Spatial Economic Strategy for the Southern Region
- Cork County Development Plan 2022-2028
- the nature, scale and design of the proposed development as set out in the planning application and the pattern of development in the vicinity of the site, including:

- permitted Solar Farm developments and proposed amendments to same, and;
  - proposed solar farm developments,
  - including scientific data available on and pertaining to those applications in the vicinity of the site
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites,
  - the submissions made to An Bord Pleanála in connection with the planning application, and
  - the report and recommendation of the Inspector and the supplementary report from the Board's Senior Ecologist in relation to the Appropriate Assessment, including the examination, analysis and evaluation undertaken in relation to the appropriate assessment and environmental impact assessment screening.

### **Environmental Impact Assessment Screening**

The Board carried out a preliminary examination of the proposed development and was satisfied that the proposed development is not a project defined by Part 1 and Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, requiring a mandatory Environmental Impact Assessment Report (EIAR).

Notwithstanding that the applicant prepared and submitted a screening assessment based on the criteria of Schedule 7 of the Planning and Development Regulations, 2001 as amended, the Board noted that an electrical substation and/or underground cabling is not a class of development contained in Parts 1 or 2 of Schedule 5 of the Regulations which sets out the prescribed classes of development and thresholds that trigger a mandatory EIAR and neither a mandatory EIA, nor screening for EIA, is required for the substation and/or the underground cable.

Furthermore, the Board agreed with the Inspector as set out in Section 11.3 of the Inspector's report that the internal access track is not a "private road" for the purposes of EIA screening.

### **Appropriate Assessment – Stage 1**

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the Kilcolman Bog SPA, site code 004095 and Blackwater River (Cork/Waterford) SAC, site code 002170, are the European sites for which there is a likelihood of significant effects.

### **Appropriate Assessment – Stage 2**

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the Kilcolman Bog SPA, site code 004095 and Blackwater River (Cork/Waterford) SAC, site code 002170, 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 information regarding the potential in-combination impact of proposed and permitted developments in the area and their potential impact on the Whooper Swan who use the immediate environs of the proposed development site for foraging and roosting, and which are identified as an ex-situ Special Conservation Interest for Kilcolman Bog SPA,
- (b) the consideration of the effect of displacement that may arise from the cumulative impact of permitted and proposed developments in the area and how this may impact the proposed development site,
- (c) the conservation objectives for the Kilcolman Bog SPA to maintain or restore the favourable conservation condition of the Whooper Swan for this SPA.

In completing the appropriate assessment, the Board considered the appropriate assessment carried out in the Inspector's report and the Ecologist's report in respect of the potential effects of the proposed on the aforementioned European sites, having regard to the sites' conservation status.



In overall conclusion, the Board:

- (a) was satisfied that the proposed development in combination with other plans or projects, with the application of mitigation measures outlined, would not adversely affect the integrity of the Kilcolman Bog SPA, in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects;
- (b) was satisfied that the proposed development, with the application of mitigation measures outlined, would not adversely affect the integrity of the Blackwater River (Cork/Waterford) SAC, in view of the site's conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board also considered the findings of the Supplementary report by the Office's Senior Ecologist. The Board noted the concerns raised in relation to the integrity of the Kilcolman Bog SPA and the potential in combination impact of the proposed and permitted developments in the area and their potential impact on the Whooper Swan. The Board also noted that the report of the Senior Ecologist which concludes that the proposed development in combination with other solar developments will not result in any significant level of disturbance or displacement of the Whooper Swan. Therefore the Board was satisfied there will be no adverse effects from the proposed development due to the loss of Whooper Swan foraging habitat.

### **Proper Planning and Sustainable Development / Likely Effects on the Environment**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have significant negative effects on the environment or the community in the vicinity, would not give rise to negative impacts on water environment as a result of pollution, would not be detrimental to the visual or landscape amenities of the area, would not adversely impact on the cultural, archaeological, and built heritage of the area, would not interfere with the existing land uses in the area, and would improve the standard and safety of the public road. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars received by An Bord Pleanála, 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.</p> <p><b>Reason:</b> In the interests of clarity and of proper planning and sustainable development of the area.</p>
2.	<p>(a) All of the environmental, construction, ecological and heritage-related mitigation measures, as set out in the Natura Impact Statement (April 2023), and the Construction and Environmental Management Plan, and other particulars submitted with the application, 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.</p> <p>(b) Submission of a Mitigation and Monitoring report prepared by a suitably qualified ecologist clearly indicating compliance with all ecological conditions listed in those reports from Section a).</p> <p><b>Reason:</b> In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.</p>
3.	<ol style="list-style-type: none"><li>1. All mitigation measure in relation to Archaeology and cultural heritage shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this permission.</li><li>2. The Construction Environmental Management Plan (CEMP) shall clearly identify and highlight the location of all archaeological and cultural heritage constraints located in proximity to the proposed</li></ol>



works the CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.

3. The applicant is required to employ a suitably qualified, archaeologist to monitor all ground disturbance required for this development. No groundworks of any type (including any enabling works or advance site investigations) are to take place in the absence of the archaeologist without his/her express consent. The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.
  - a) The archaeological monitoring programme must be carried out under license from NMS and in accordance with an approved method statement, note a period of 5-6 weeks should be allowed to facilitate processing and approval of the licence application and method statement.
  - b) Should archaeological material be found during the course of the archaeological monitoring, the archaeologist shall have work on site stopped pending a decision regarding appropriate mitigation. The developer shall be prepared to be advised by the National Monuments Service with regard to any mitigating action (preservation *in situ* and/or excavation). The developer shall facilitate the archaeologist in recording any material found.
4. The planning authority and National Monuments Service shall be furnished with a final archaeological report describing the results of archaeological monitoring and of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation

	<p>specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.</p> <p>Reason: To ensure the continued preservation (either <i>in situ</i> or by record) of places, caves, sites, features and other objects of archaeological interest.</p>
4.	<p>The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall incorporate all mitigation measures set out in the application documentation and provide details of intended construction practice for the development, including:</p> <ul style="list-style-type: none"> <li>(a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse, site offices, construction parking and staff facilities, re-fuelling arrangements security fencing and hoardings;</li> <li>(b) a comprehensive construction phase traffic management plan including details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;</li> <li>(c) a comprehensive decommissioning and operation phase traffic management plan similar to the requirements for the construction phase plan;</li> <li>(d) measures to prevent the spillage or deposit of clay, rubble, or other debris on the public road network;</li> <li>(e) details of appropriate mitigation measures for noise, dust, and vibration, and monitoring of such levels;</li> <li>(f) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater;</li> </ul>



	<p>(g) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;</p> <p>(h) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses.</p> <p>(i) Surface water discharge from compounds will be via a class 1 oil interceptor.</p> <p>(j) An audit list of all construction and operational mitigation measures, their timelines for implementation and responsibility for reporting.</p> <p>A record of daily checks that the works are being undertaken in accordance with the Construction and Environmental Management Plan shall be kept for inspection by the planning authority.</p> <p><b>Reason:</b> In the interest of environmental protection, amenities, public health, and safety</p>
5.	<p>(a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest noise sensitive location shall not exceed:</p> <p>i. An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]</p> <p>ii. An LAeqT value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.</p> <p>At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.</p> <p><b>Reason:</b> To protect the amenities of property in the vicinity of the site</p>
6.	<p>The developer shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice and to liaise with consultants, the site contractor, the NPWS and Inland Fisheries Ireland. A report on the implementation of these measures shall be</p>



	<p>submitted to the planning authority and retained on file as a matter of public record.</p> <p><b>Reason:</b> To protect the environmental and natural heritage of the area.</p>
7.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the amenities of property in the vicinity.</p>
8.	<p>Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p><b>Reason:</b> In the interest of public health.</p>
9.	<p>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 at the developer's expense. Prior to commencement of development, a road condition survey shall be carried out 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.</p> <p><b>Reason:</b> In order to ensure a satisfactory standard of development.</p>
10.	<p>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.</p> <p><b>Reason:</b> To ensure satisfactory reinstatement of the site.</p>

11. 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 Scheme made under section 48 of the Act be applied to the permission.

Board Member

  
Mick Long

Date: 06/02/2024