

An
Bord
Pleanála

Board Direction
BD-015954-24
ABP-314474-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 21/03/2024.

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 National Planning Framework - Ireland 2040,
- b. The Climate Action Plan 2023,
- c. The Regional Spatial & Economic Strategy for the Southern Region, 2020,
- d. The policies of the planning authority as set out in the Clare County Development Plan, 2023 to 2029,
- e. The Government Statement on the Role of Data Centres in Ireland's Enterprise Strategy, July 2022,
- f. The distance to dwellings or other sensitive receptors,
- g. The submissions made in connection with the application and appeal.
- h. 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,

- i. The report and recommendation of the Inspector.

Conclusions on Proper planning and sustainable development:

It is considered that subject to compliance with the conditions set out below the proposed development would accord with European, national, regional and local planning and related policy, it would not have an unacceptable impact on the landscape or ecology, it would not seriously injure the visual or residential amenities of the area or of property in the vicinity, and it would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment:

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the following European sites are the only sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment: -

- Old Domestic Building (Keevagh), SAC - Site code: 002010
- Dromore Woods & Loughs SAC - Site code: 000032
- Old Domestic Buildings (Rylane) SAC - Site code: 002314
- Lower River Shannon SAC - Site code: 002165

- Ballyallia Lough SPA - Site code: 004041
- River Shannon & Fergus Estuaries SPA - Site Code: 004077
- Slieve Aughty Mountains SPA - Site code: 004168
- Corofin Wetlands SPA - Site code: 004220

The Board considered the consolidated Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the site's Conservation

Objectives for these SACs and SPAs. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's conservation objectives using the best available scientific knowledge in the field.

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

- (i) Site Specific Conservation Objectives for these European Sites,
- (ii) Current conservation status, threats and pressures on the qualifying interest / special conservation interest features,
- (iii) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (iv) view of the Department of Arts, Heritage and the Gaeltacht,
- (v) mitigation measures which are included as part of the current proposal,

In completing the AA, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the site's Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment:

The Board completed an environmental impact assessment of the proposed development taking account of:

- (a) the nature, scale, location and extent of the proposed development on a site,

- (b) the Environmental Impact Assessment Report (EIAR), the consolidated EIAR report, and associated documentation submitted in support of the application,
- (c) the submissions received from the prescribed bodies, planning authority and third parties.
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report (EIAR) and consolidated EIAR report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board agreed with the examination, set out in the Inspector's report, of the information contained in the EIAR report and consolidated EIAR report and associated documentation submitted by the applicant and submissions made in the course of the application.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

- The ***risk of pollution of ground and surface waters, or changes to ground water flow paths during the construction phase*** through a lack of control of surface water during excavation and construction, the mobilisation of sediments and other materials during excavation and construction. The construction of the proposed project could also potentially impact negatively on ground and surface waters by way of contamination through accidents and spillages, and disrupting flow paths. These impacts would be mitigated by the implementation of the Drainage Management Plan, agreement of measures within a Construction and Environment Management Plan, and the implementation of mitigation measures related to: - design and avoidance; accidental spills and contamination; sediment and erosion control; and drainage management.
- ***Biodiversity impacts*** arising from habitat loss and fragmentation, changes to the vegetation on the site, loss of foraging habitat and disturbance to otters, badgers, birds and bats, connections to foraging, aquatic and water dependent habitats and general disturbance during the construction and

operational phases. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan, the measures contained in the Landscape and Biodiversity Management Plan, and the implementation of mitigation measures which include: - Pre-construction Bird, Bat & Mammal Surveys; Water Quality protection measures (as above); an Invasive Species Management Plan; and the appointment of a Project Ecologist.

- The proposed project gives rise to an increase in **vehicle movements and resulting traffic impacts** during the construction phase and significant impacts on the road network can be avoided by the proposed works along the road network. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan and the implementation of mitigation measures related to: - pre-construction road condition surveys; deliveries; and implementation of a Construction Traffic Management Plan and Construction and Demolition Waste Management Plan.
- **Air pollution and noise during the construction and operational phase** which would impact negatively on sensitive ecological receptors and populations in the vicinity of the site. These impacts are substantially avoided by the limited number of sensitive receptors in close proximity to the proposed development. Any remaining impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan and the implementation of mitigation measures related to: - air quality, dust and noise.
- The impacts on **residential amenity** during the construction and operational phases would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and the consolidated EIAR report which include specific provisions relating to the control and management of dust, noise, water quality and traffic movement.
- The impacts on **cultural heritage** during the construction and operational phases would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and the consolidated

EIAR report, and by compliance with the recommended conditions in relation to archaeological assessment of the site.

- The proposed development would have ***potentially positive environmental impacts*** during the operational phase arising from the undergrounding of the existing overhead transmission cables, and from the future switch to the use of sustainable / renewable gas supplies in the energy centre for energy generation, with a corresponding reduction in carbon emissions.

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 the conditions set out below, 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. In doing so, the Board adopted the report and conclusions of the Inspector.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including the further information received by the planning authority on the 25th day of February 2022 and the Clarification of Further Information received in the 10th day of June 2022, and the documents received by the Board on 30th day of August 2022, 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. This permission shall be for a period of 10 years from the date of the order.

Reason: In the interest of clarity and orderly development.

3. The mitigation measures identified in the EIAR, NIS and other plans and particulars submitted with the planning application and appeal, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the conditions of this permission.

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

4. The developer shall comply with the following general requirements:
 - a. The developer shall submit full details in relation to all external finishes of all buildings, to the planning authority for written agreement prior to the commencement of development.
 - b. No additional artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.
 - c. Operational noise levels shall not exceed 55dB(A) L_{eq} 1hr at the nearest existing noise sensitive locations between 0800 and 2000

hours (Monday to Friday inclusive) and shall not exceed 45dB(A) L_{eq} 1hr at any other time.

- d. Each fencing panel shall be erected such that for a minimum of 300 millimetres of its length, its bottom edge is no less than 150 millimetres from ground level.
- e. Cables within the site shall be located underground.
- f. No additional signage or advertising shall be erected on the lands or buildings without a prior grant of planning permission.

Reason: In the interest of clarity, of visual and residential amenity, to allow wildlife to continue to have access to and through the site, and to minimise impacts on drainage patterns and surface water quality.

5. The developer shall comply with the following nature conservation requirements:

- a. A suitably qualified and experienced Project Ecologist shall be appointed to oversee the protection of biodiversity during the construction phase, and for a monitoring period of 5 years following completion of development.
- b. The Project Ecologist shall certify that the completed are compliant with the EIAR / NIS mitigation measures and the following conditions.
- c. No felling or vegetation removal shall take place during the period 1st March to 31st August.
- d. A pre-construction bat survey shall be carried out by a suitably qualified ecologist during the active bat season.
- e. Any destruction of bat roosting sites or relocation of bat species shall be carried out by a suitably qualified ecologist under a Derogation Licence granted by the Minister for Housing, Local Government and Heritage.
- f. A pre-construction otter survey shall be carried out by a suitably qualified ecologist.
- g. Any destruction or relocation of otter holts shall be carried out by a suitably qualified ecologist under a Derogation Licence granted by the Minister for Housing, Local Government and Heritage.

- h. Mammal friendly fencing shall be installed during the construction and post construction phases.

Reason: In the interest of biodiversity and nature conservation.

- 6. The developer shall implement mitigation measures to lessen the potential for impacts on badgers arising from the excavation and construction works: -
 - a. A 30m cordon shall be installed around any badger sett entrances, which shall be screened and remain in place throughout the construction works,
 - b. There shall be no artificial lighting of any badger sett entrances during the construction and operational phases,
 - c. During the breeding season, no works shall take place within 50m of the sett for general construction and 150m for noisy and vibratory activities, and
 - d. The built-in construction design shall allow for escape from trenches.

Reason: To ensure appropriate monitoring of the impact of the development on the badger species of the area.

- 7. The landscaping proposals shall be carried out within the first planting season following commencement of construction of the proposed development during the first phase of the works. Only native species of trees and hedgerow shall be planted. All existing roadside hedgerows (except at access point openings) and hedgerows around the outer perimeter of the site shall be retained. The landscaping and screening shall be maintained at regular intervals. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those original required to be planted. The landscaped berms located in the southern section of the site, shall be constructed during the first phase of the works.

Reason: To assist in screening the proposed development from view and to blend it into its surroundings in the interest of visual amenity, in the interest of biodiversity and to protect wildlife.

8. The developer shall comply with the following transportation requirements:
- a. Provide a final Traffic Management Plan for the construction phase of the development to the planning authority for written agreement prior to the commencement of development.
 - b. This Plan shall ensure that there is not a back of construction traffic from the M18 / Junction 13 and shall include for staggered deliveries to the site.
 - c. Construction of the proposed right hand turning lane at the main access shall be commenced concurrently with the commencement of the site works and be completed within 6 months of the commencement of development on the site. The site access and right-hand turning lane including the proposed pavement overlay shall be undertaken as indicated in the details submitted with the application and detailed design including drainage arrangements along the R352 Tulla Road. Works shall be carried out by the developer at their own expense.
 - d. Submit design details in relation to the proposed pedestrian crossing points on the R352 Tulla Road to the planning authority for written agreement prior to the commencement of development. The crossing points shall be fully in situ prior to occupation of the development and the works shall be carried out by the developer at their own expense.
 - e. Submit design details in relation to the proposed shared use footpath / cycle track to the planning authority for written agreement prior to the commencement of development. The shared use footpath / cycle track shall be located on both sides of the R352 Tulla Road along the extent of the development boundary to a point just east of the L8168 side road junction, and the works shall be carried out by the developer at their own expense.
 - f. Submit details of the exact location of the bus stop to the planning authority for written agreement prior to the commencement of development, which should be construction prior to the operation of any part of the development.
 - g. CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining properties or the road.

Reason: In the interest of pedestrian, cyclist and traffic safety, infrastructure provision, and the proper planning and sustainable development of the area.

9. Water supply and drainage arrangements, including the attenuation and disposal of surface water, and flood risk management shall comply with the requirements of Irish Water and the planning authority for such works and services as appropriate.

Reason: In the interest of public health and to ensure a proper standard of development.

10. The developer shall comply with the following additional water supply and drainage requirements:

- a. The storm water attenuation pond and primary network shall be installed in Phase 1 of the development.
- b. Drainage on to the R352 Tulla Road and the site access shall be by means of a separate drainage network and attenuation system that discharges directly to the Ballymacahill / Spancelhill Stream. This system shall be independent of the M18 Motorway Drainage network.
- c. The final size, volume and design of the proposed attenuation pond and associated infrastructure shall comply with section 2.2.5 of the Engineering Report received by the planning authority on the 25th day of February 2022 and the Clarification response received on the 10th day of June 2022.
- d. The developer shall install the storm water network, hydrocarbon interceptors and attenuation area as part as per the designer's requirements and the manufacturer's instructions, and a suitability qualified Engineer shall certify same. The certification shall be submitted to the planning authority for written agreement prior to the occupation of any part of the development.
- e. The developer shall submit details in relation to the maintenance requirements and schedules for the storm water network and attenuation area to the planning authority for written agreement prior to the occupation of any part of the development.

- f. The proposed development shall provide 48-hour storage in respect of the adiabatic cooling waters.

Reason: In the interest of public health and to ensure a proper standard of development.

11. 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 provide details of intended construction practice for the development, including hours of working, noise management measures, traffic management, protection of wayleaves, an invasive species management plan, an asbestos management plan, and off-site disposal of construction /demolition waste.

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

12. 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.

Reason: In order to safeguard the residential amenities of property in the vicinity.

13. The site development and construction works shall be carried out such a manner as to ensure that the adjoining roads are kept clear of debris, soil and other material and cleaning works shall be carried on the adjoining public roads by the developer and at the developer's expense on a daily basis.

Reason: To protect the residential amenities of property in the vicinity.

14. The developer shall comply with the following archaeological requirements:

- (a) Pre-development archaeological testing shall be undertaken by a suitably qualified archaeologist, licensed under the National Monuments Acts 1930-2004. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her written consent.
- (b) 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. A copy of the report shall be submitted to the Department of Housing Local Government and Heritage.
- (c) The planning authority and the Department of Housing Local Government and Heritage shall be notified in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development.

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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

15. The developer shall submit details in relation to the occupation, operation and management of the Vertical Farm, to the planning authority for written agreement prior to the commencement of development.

Reason: In the interest of orderly development.

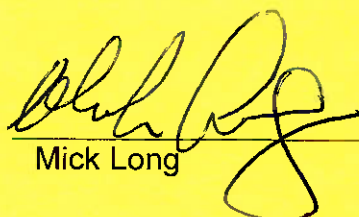
16. Prior to commencement of development, the developer shall lodge with the planning authority a bond of an insurance company, a cash deposit, or other security to secure the provision and satisfactory completion of the development, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of any part of the development.

Reason: To ensure the satisfactory completion of the development.

17. The developer shall pay a financial contribution to the planning authority 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. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authorities 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 the Board 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: 27/03/2024