



An
Bord
Pleanála

Board Direction

BD-015931-24

ABP-317188-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/03/2024.

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) European, national, regional and county level support for renewable energy development as follows:
 - the provisions of the Waterford City and County Development Plan 2022-2028,
 - Climate Action Plan 2023,
 - Project Ireland 2040 National Planning Framework,
 - Regional Spatial and Economic Strategy for the Southern Region 2020-2032,
- b) the nature, scale, extent and layout of the proposed development,
- c) the documentation submitted with the planning application including the Planning and Environmental Report, the Natura Impact Statement, and the Construction and Environmental Management Plan,

- d) the nature of the landscape and any specific conservation or amenity designation for the site,
- e) mitigation measures proposed for construction, operation and decommissioning of the site,
- f) the submissions on file including those from prescribed bodies, the planning authority, and other third parties,
- g) the report and recommendation of the Inspector on the 15th day of November 2023, the report of the Inspectorate Ecologist on the 8th day of March 2024, and the addendum report of the Inspector on the 11th day of March, as requested by the Board,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance in European, national and regional renewable energy policies and with the provisions of the Waterford City and County Development Plan 2022-20238, would not seriously injure the visual or residential amenities of the area, would be acceptable in terms of traffic safety, would not be likely to have significant effects on the environment, would not adversely affect the integrity of the European Site, by itself or in combination with other plans or projects, in view of the site's conservation objectives, would not negatively impact upon the ecology or cultural heritage of the area and would not be prejudicial to public health. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Stage 1

The Board considered the Appropriate Assessment Screening Report and relevant submissions, and agreed with the screening assessment contained in the Inspector's report (pages 55 - 58 of the Inspector's report on the 15th day of November 2023) that the Lower River Suir Special Area of Conservation (002137) and River Barrow and River Nore Special Area of Conservation (002162) are the only European Sites

in respect of which the proposed development has the potential to have a significant effect and must, therefore be subject to Appropriate Assessment.

Appropriate Assessment Stage 2

The Board considered the submitted Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment in relation to the potential effects of the proposed development on the Lower River Suir Special Area of Conservation (002137) and River Barrow and River Nore Special Area of Conservation (002162), in view of the sites' conservation objectives. The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the reports of the Inspector and the Inspectorate Ecologist. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In carrying out the Appropriate Assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives of the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the appropriate assessment carried out in the report of the Inspector (pages 59 – 62 of the Inspector's report on the 15th day of November 2023) and concluded that the proposed development, by itself, or in combination with other plans or projects in the vicinity, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended

by particulars received by An Bord Pleanála on the 5th day of July 2023, 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 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. (a) The permission shall be for a period of 40 years from the date of the commissioning to decommissioning 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.

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

Reason: In the interest of clarity.

5. The mitigation measures identified in the Natura Impact Statement which was submitted with the application shall be implemented in full. The Planning and Environmental Considerations Report, the Construction and Environmental Management Plan, and the Biodiversity Management Plan shall fully incorporate the mitigation measures contained in the Natura Impact Statement. The Planning and Environmental Considerations Report, the Construction and Environmental Management Plan and the Biodiversity Management Plan shall then be submitted to, and agreed in writing with, the planning authority prior to commencement of development as set out below.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European sites.

6. Double silt traps shall be provided at all watercourses. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To prevent water pollution.

7. Prior to the commencement of development pre-commencement surveys for protected plant, animal species and invasive species shall be undertaken at the site and where required the appropriate licence to disturb or interfere with same shall be obtained from the National Parks and Wildlife Service.

Reason: In the interest of wildlife protection.

8. During the construction phase, the developer shall adhere to the 'Guidelines for the Treatment of Badgers prior to the Construction of National Road Schemes', published by the National Roads Authority in 2006. In particular, there shall be no blasting or pile driving within 150 metres of an active badger sett during the breeding season (December to June) or construction works within 50 metres of such an active sett during the breeding season.

Reason: In the interest of wildlife protection.

9. Before construction commences on site, details of the structures of the security fence showing provision for the movement of mammals at regular intervals along the perimeter of the site shall be submitted for prior approval to the Planning Authority. This shall be facilitated through the provision of mammal access gates designed generally in accordance with standard guidelines for provision of mammal access (NRA 2008).

Reason: To allow wildlife to continue to have access across the site, in the interest of biodiversity protection.

10. The Landscape Mitigation Plan and Biodiversity Management Plan for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The site shall be managed in accordance with the agreed plans. These plans shall cover a period of at least five years and shall include details of the arrangements for its implementation.

Reason: To ensure the preservation and protection of flora and fauna within the site, and provide for the satisfactory future maintenance of this development in the interest of visual amenity.

11. The applicant 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, and the planning authority. A report on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.

Reason: To protect the environmental and natural heritage of the area.

12. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. The developer shall agree such details in writing with the planning authority prior to commencement of development.

Reason: In the interest of environmental protection.

13. All of the environmental, construction, operation and decommissioning phase mitigation measures set out in the Planning and Environmental Considerations Report 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. Where such measures 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.

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

- 14.(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. The external walls of the proposed substation shall be finished in a neutral colour such as light grey or off-white and the roof shall be of black slate or tiles.

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

- 15. 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 or 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 amenities of property in the vicinity.

16. The construction of the development shall be managed in accordance with a Construction Management Plan, to include a Construction Traffic 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:
- (a) Details of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
 - (b) Details of areas for construction site offices and staff facilities;
 - (c) Details of site security fencing and hoardings;
 - (d) Details of on-site car parking facilities for site workers during the course of construction;
 - (e) 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;
 - (f) Measures to obviate queuing of construction traffic on the adjoining road network;
 - (g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
 - (h) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
 - (i) 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;
 - (j) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; and

(k) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities, public health and safety

17. No construction phase traffic shall be permitted to use the L7064 save for the purposes of crossing it perpendicular at the identified crossing point.

Reason: In the interest of public safety and traffic hazard.

18. The final details of the operational access arrangements shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. Any gates shall open inwards only.

Reason: In the interests of traffic safety.

19. 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 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.

- 20.(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:

(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.]

(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.

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.

- (b) All sound measurements shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics – Description and Measure of Environmental Noise.

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

21. 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) 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,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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.

22. Prior to commencement of development, the developer shall lodge with the Waterford City and County Council 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

23. 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

Eamonn James Kelly
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Date: 26/03/2024

Note

The Board were satisfied that the paragraph in the Inspector's recommended Reasons and Considerations section of their report that indicated the proposed development screened out for appropriate assessment represented a clerical error.

The Board had regard to the application for inter alia an operational period of forty years. While the Board noted the Inspector's recommendation for a 25-year operational condition in order to align with phase 1 development and enable the planning authority to review the operation of the solar farm, the Board was satisfied with a 40-year operational timeframe because the applicant had specifically applied for a 40-year permission for reasons of economic viability, the necessity for alignment between phases was not sufficiently justified in this instance, and the planning authority had originally approved the proposed development for a 40-year period.

The Board noted the Inspector's recommended condition for triple silt traps. However, the Board conditioned a double silt trap because the Supplementary Report of the Board's Ecologist advocated conditioning a double layer of silt fencing.