



Planning and Development Acts 2000 to 2018

Planning Authority: Kerry County Council

Planning Register Reference Number: 18/720

Appeal by Peter Sweetman and Associates of 113 Lower Rathmines Road, Dublin, by Tullamore Action Group care of John O'Carroll of Tullamore, Listowel, County Kerry and by Terra Solar II Limited care of RPS Group Limited of Inishmore, Ballincollig, County Cork against the decision made on the 11th day of September, 2018 by Kerry County Council to refuse permission to the said Terra Solar II Limited for the proposed development.

Proposed Development: Planning permission with a duration of 10 years for a Solar PV farm with an operational lifespan of 35 years to export up to 50 megawatts of electricity to the national grid. The development will comprise approximately 357,500 square metres of solar panels together with all ancillary cabling and electrical infrastructure including approximately 25 number combined inverter/transformer stations (with option to provide these as separate inverter transformer units); provision of new access tracks and upgrading of existing agricultural access tracks; landscaping; temporary construction compound; battery storage and control units; boundary and security fencing; CCTV security system; new vehicular access point to the L-1009 (at site of existing agricultural gate); approximately four metres telecommunications mast and all ancillary site development works all on a site

of approximately 99.2 hectares at Tullamore, Drombeg and Coolkeragh, Listowel, County Kerry.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Appropriate Assessment Stage 1

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Assessment and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Lower River Shannon candidate Special Area of Conservation (Site Code 002165) is the only European Site in respect of which the proposed development has the potential to have a significant effect.

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 proposed development for the European Site, namely, the Lower River Shannon candidate Special Area of Conservation (Site Code 002165), 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:

- (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 for the European Site.

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 Sites, 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 European Site, in view of the site's conservation objectives.

Reasons and Considerations

Having regard to the provisions of national and regional policy objectives in relation to renewable energy, to the “Rural General” designation of the area in the current Kerry County Development Plan 2015-2021, the nature and scale of the proposed development, the continued agricultural use and improved biodiversity which would result and the proximity of a potential grid connection, it is considered that, subject to compliance with the conditions set out below, the proposed development would support national and regional renewable energy policy objectives, would not conflict with the provisions of the development plan, would not seriously injure the residential amenities of property in the vicinity, would not have unacceptable impacts on the visual amenities of the area, would not adversely affect the archaeological or natural heritage, would be acceptable in terms of traffic safety and convenience and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. 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 submitted on the 31st day of August, 2018, 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 ten years from the date of this Order.

Reason: In the interest of clarity.

3. (a) All structures including foundations hereby authorised shall be removed not later than 25 years from the date of commissioning of the development, and the site reinstated unless planning permission has been granted for their retention for a further period prior to that date.
- (b) Prior to commencement of development, a detailed restoration plan, 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. 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. The mitigation measures identified in the Natura Impact Statement 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.

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

Reason: In the interest of clarity.

6. The landscaping proposals shall be carried out within the first planting season following commencement of construction of the solar PV array. All existing hedgerows (except at access track openings) 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.

Reason: To assist in screening the proposed development from view and to blend it into its surroundings in the interest of visual amenity, and to mitigate any glint impact from the proposed development upon adjoining residential amenities.

7. The inverter/transformer stations, battery storage and control units and all fencing shall be dark green in colour.

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

8. (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) 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.
- (d) The solar panels shall have driven or screw pile foundations only, unless otherwise authorised by a separate grant of planning permission.
- (e) Cables within the site shall be located underground.

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.

9. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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 prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.
 - (c) A 40 metre buffer zone shall be preserved around the recorded monument Ke010025 (Ringfort). The buffer zone shall be measured from the outer edge of the feature.
 - (d) The buffer zone shall be security fenced during construction works on the site.
 - (e) No storage of materials, excavation or traffic of machinery shall be permitted within the buffer zone.

The assessment, which shall include a programme of archaeological testing, shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

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, avoidance and/or archaeological excavation) prior to commencement of construction works. 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.

10. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be in accordance with, and shall include the measures outlined in, the Outline Construction Environmental Management Plan submitted to the planning authority on the 18th day of July, 2018, and which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

11. 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.

Reason: In the interest of environmental protection and public health.

12. 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 upgrading of the section of public road from the junction of the R-552/L-1009 to the proposed site entrance and 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.

13. (a) Sightlines shall be provided in both directions of the proposed entrance to the site in accordance with details submitted to the planning authority on the 18th day of July, 2018.
- (b) A pre and post construction road survey shall be carried out and submitted to the planning authority.

Reason: In the interest of traffic safety.

14. 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.

Reason: To ensure satisfactory reinstatement of the site.

15. 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.

Terry Prendergast
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this day of 2019.