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**Planning and Development Acts 2000 to 2019**

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: 18/1514**

**Appeal** by Bord na Mona Powergen Limited and ESB Wind Development Limited care of MKO, Planning and Environmental Consultants of Tuam Road, Galway against the decision made on the 22<sup>nd</sup> day of October, 2019 by Kildare County Council to refuse permission for the proposed development.

**Proposed Development:** A ten year planning permission to develop a renewable energy development. The proposed renewable energy development will comprise of (a) the construction and operation of two areas of solar photovoltaic arrays mounted on metal frames over an area of approximately 200 hectares, and having a maximum overall height of three metres over ground level; (b) internal solar farm underground cabling; (c) two number temporary construction compounds; (d) recreation and amenity works, including looped walk (upgrade of existing tracks and provision of new tracks, car parking and vehicular access); (e) one number battery storage compound; (f) upgrade of existing tracks and provision of new site access roads; (g) site drainage; (h) forestry felling and replanting; (i) permanent signage; and (j) all associated site development and ancillary works. The proposed renewable energy development will have an operational life of 35

years from the date of commissioning. The overall renewable energy project also includes the provision of a 110kV substation with associated electrical plant, welfare facilities, waste water holding tank, security fencing, upgrade of existing tracks and provision of new site access roads, 110kV overhead line grid connection cabling with associated angle lattice masts and supporting polesets and all ancillary works, which is subject to a separate planning application made directly to An Bord Pleanála in accordance with Section 182A of the Planning and Development Act 2000 (as amended). An Environmental Impact Assessment Report (EIAR) and Natura impact statement (NIS) has been prepared in relation to the project and accompanies this planning application in the townlands of Drehid, Mulgeeth, Ballynamullagh, Mucklon, Kilmurry (Carbury By), Killyon and Timahoe East, County Kildare as revised by the further public notices received by the planning authority on the 28<sup>th</sup> day of August, 2019 consisting of; further information response report; updated Environmental Impact Assessment Report and Appendices; updated Natura impact statement; amended planning application drawings, showing; amended access/amenity track (relocated to accommodate Marsh Fritillary habitat), updated amenity signage, clarification of road sectional drawings, additional substation cross section drawing. Updated photomontage booklet.

## **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.

## **Reasons and Considerations**

Having regard to:

- the nature, scale and extent of the proposed development,
- the decisions made in respect of an Appropriate Assessment and Environmental Impact Assessment,
- national and local policy support for developing renewable energy, in particular the:-
  - Government's Strategy for Renewable Energy, 2012-2020,
  - National Planning Framework, 2018, and
  - Objectives (particularly SE 1 and SE 2) set out in the Kildare County Development Plan 2017-2023,
- the location of the proposed development within a brownfield site with a medium capacity to accommodate solar farm developments in the Western Boglands as set out in the Kildare County Development Plan, 2017-2023,
- the separation distances between the proposed development and dwellings or other sensitive receptors,

- the history of industrial uses on the application site and the planned connection of the proposed development to the national electricity grid (ABP-303249-18 refers),
- the submissions made in connection with the planning application and appeal, and
- 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 absence of likely significant effects of the proposed development on European Sites.

### **Appropriate Assessment Stage 1**

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

The Board agreed with the screening report submitted with the application and with the screening exercise carried out by the Inspector. The Board concluded that, having regard to the qualifying interests for which the sites were designated and in the absence of a hydrological connection between the application site and the European Sites that Ballynafagh Bog Special Area of Conservation (Site Code: 000391), The Long Derries, Edenderry Special Area of Conservation (Site Code: 000925), The Mouds Bog Special Area of Conservation (Site Code: 002331) could be screened out from the further consideration and that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effects on these European Sites or any other European Sites in

view of the sites' conservation objectives and that a Stage 2 appropriate assessment is therefore not required in relation to these European Sites.

### **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 Ballynafagh Lake Special Area of Conservation (Site Code: 001387), the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299) and the River Boyne and River Blackwater Special Protection Area (Site Code: 004232) 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 as well as the report of the Inspector.

In completing the assessment, the Board considered the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the mitigation measures which are included as part of the current proposal and the Conservation Objectives for this 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 Site, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the Ballynafagh Lake Special Area of Conservation (Site Code: 001387), the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299) and the River Boyne and River Blackwater Special Protection Area (Site Code: 004232) or any other European Site in view of the sites' Conservation Objectives.

## **Environmental Impact Assessment**

The Board completed an Environmental Impact Assessment of the proposed development. The Board considered that the Environmental Impact Assessment Report (EIAR), supported by the documentation submitted by the application adequately considers alternatives to the proposed development, and identified and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

Having regard to the examination of environmental information contained within the Inspector's report, to the EIAR and supplementary information provided by the applicant and the submission from the observers, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

- Impacts on biodiversity are likely to arise during construction due to the removal of shrub/tree and grassland habitat and the laying out of the solar array and associated plant particularly in the circa 260 hectares associated with these works. It is noted, however that these areas largely comprise cut-over bog and are the less ecologically important areas within the application site and that the solar array and associated infrastructure have been located to minimise the ecological impacts. The impacts arising from the removal of habitat and disturbance would be mitigated by minimising the removal of existing vegetation and reinstatement of vegetation, and following best practice and procedures during the construction phase.
- Potential impacts on water quality are considered under the relevant headings. The site drains to the Mulgeeth stream. The watercourses adjoining the application site are unsuitable for sensitive species (salmon, lamprey or trout) and the measures to prevent the release of sediments or hydrocarbons set out in the EIAR are specific and practicable. The proposed development, therefore, will not give rise to

water pollution in the water courses within the site, in the Mulgeeth stream or in the wider Blackwater/Boyne catchment and it is concluded that significant impacts are not likely to arise.

- Impacts on population and human health will be generally positive in terms of employment creation. Construction phase impacts in the form of short term increases in the traffic (private cars and HGVs) on the local road network are recognised, addressed in the EIAR and, specifically in the construction and environment management plan (appendix 4-5 of the EIAR). The noise and vibration mitigation measures, such as the limiting of construction hours, the use of plant with low potential of noise and/or vibration, the use of noise barriers and locating plant away from noise sensitive receptors are reasonable and practicable. Noise and vibration levels would be within acceptable emissions limits during normal operation.
- The site is a relatively flat brownfield site which is not prominent in views from a wide area. Landscape and visual impacts will be mitigated by existing and proposed screening and screen planting. No impacts will arise for residential uses in the area or for the aviation from glint or glare. The visual impact assessment submitted with the EIAR demonstrates that there will be cumulative visual impacts with other development in the area including the proposed grid connection under ABP-303249-18 and the Drehid windfarm under ABP-306500-20. These cumulative are considered to be proportionate and reasonable.

The Board concluded, that subject to the implementation of the mitigation measures set out in the EIAR, and, subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

## **Conclusions on Proper Planning and Sustainable Development**

The Board considered that the proposed development, subject to compliance with the conditions set out below, would:

- not have an unacceptable impact on the character of the landscape or on the cultural or archaeological heritage,
- not seriously injure the visual and residential amenities of the area,
- be acceptable in terms of public health, traffic safety and convenience,
- not have an unacceptable impact on the ecology,
- make a positive contribution to Ireland's requirements for renewable energy,
- be in accordance with:-
  - Government's Strategy for Renewable Energy, 2012-2020,
  - the National Planning Framework, 2018 and
  - Objectives SE 1 and SE 2 of the Kildare County Development Plan, 2017-2023 in relation to the promotion of solar energy infrastructure and the assessment of solar energy proposals.

The proposed development 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 12<sup>th</sup> day of August 2019 and including the mitigation measures specified in the Environmental Impact Assessment Report 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. All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Assessment Report and the Natura impact statement, 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.

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

4. (a) The permission shall be for a period of 35 years from the date of the commissioning 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, 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.

5. (a) No additional 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 storage containers 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 interests of clarity and of visual and residential amenity.

6. 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 (National Roads Authority 2008).

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

7. Prior to commencement of development, the developer shall submit a finalised Invasive Species Management Plan for the written agreement of the planning authority. This plan shall include updated details of invasive species surveys, the location of such species, and the proposed method of managing these species during the construction and operational phase of the development.

**Reason:** To ensure that the spread of invasive species is minimised.

8. 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, and
  - (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works.

The assessment shall address the following issues:

- (a) the nature and location of archaeological material on the site, and
- (b) 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, 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

9. 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 public health.

10. (a) Existing field boundaries shall be retained, notwithstanding any exemptions available and new planting undertaken in accordance with the plans submitted to the planning authority with the application and by plans submitted to An Bord Pleanála.
  
- (b) All landscaping shall be planted to the written satisfaction of the planning authority prior to commencement of development. Any trees or hedgerow that are removed, die or become seriously damaged or diseased during the operative period of the solar farm as set out by this permission, shall be replaced within the next planting season by trees or hedging of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In the interests of biodiversity, the visual amenities of the area, and the residential amenities of property in the vicinity.

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, the National Parks and Wildlife Services and Inland Fisheries Ireland. 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. The construction of the development shall be managed in accordance with a Construction 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) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
  - (b) location 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;
- (k) details of on-site re-fuelling arrangements, including use of drip trays;
- (l) details of how it is proposed to manage excavated soil;
- (m) 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.

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 environmental protection, amenities, public health and safety.

13. (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 measurement shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with respect of Community Response” as amended by ISO Recommendations R 1996 1, 2 or 3 “Description and Measurement of Environmental Noise” as applicable.

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



14. 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.

15. 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.

16. 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.

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**Maria FitzGerald**  
**Member of An Bord Pleanála**  
**duly authorised to authenticate**  
**the seal of the Board**

**Dated this            day of            2020**