

An  
Bord  
Pleanála

## Board Order ABP-316303-23

**Planning and Development Acts 2000 to 2022**

**Planning Authority: Offaly County Council**

**Planning Register Reference Number: 23/20**

**Appeal** by Derrycarney Solar Limited care of Halston Environment and Planning Limited of IHUB, Westport Road, Castlebar, County Mayo against the decision made on the 22<sup>nd</sup> day of March, 2023 by Offaly County Council in relation to the application by the said Derrycarney Solar Limited for the development of a Solar Photovoltaic (PV) Energy Development consisting of (i) Solar PV panels on ground mounted frames/support structures within existing field boundaries, (ii) 30 number medium voltage power station (MVPS) enclosures (6.058 metres long by 2.348 metres high), (iii) six number weather monitoring stations, (iv) two number temporary construction compounds (50 metres long by 35 metres wide), (v) internal site access tracks and underground cables (UGC), (vi) UGC in the public road network (L70095, L70099, L70208-3 and R357), which will electrically connect the development to the Derrycarney 110kV Substation located within the townland of Lumcloon, and (vii) all ancillary development, including perimeter fencing with access gates at vehicle site entrances along public roads (L70095 and the R357), CCTV security cameras, landscaping, and all associated civil engineering works. Planning permission is also being sought for a period of 10 years, all within the townlands of Lumcloon, Bun, Derrycarney, Falsk, Derries, Rin, Lea Beg and Lea More, County Offaly (which decision was to refuse permission).

## Decision

**GRANT permission for the area referred to as Zone 1 (the western land parcel) based on the reasons and considerations marked (1) under and subject to the conditions set out below. REFUSE permission for the area referred to as Zone 2 (the eastern land parcel) for the reasons and considerations marked (2) under.**

## Reasons and Considerations (1)

Having regard to:

- (a) European, national, regional and county level support for renewable energy development as follows:
  - (i) the provisions of the Offaly County Development Plan 2021-2027,
  - (ii) the Eastern and Midland Regional Spatial and Economic Strategy 2019- 2031 (RSES),
  - (iii) Project Ireland 2040 The National Planning Framework, and
  - (iv) Ireland's Climate Action Plan 2023,
- (b) the nature, scale, extent and layout of the proposed development,
- (c) the documentation submitted with the planning application and the appeal, including the Appropriate Assessment Screening and Natura Impact Statement, the Planning and Environmental Considerations Report, including Preliminary Construction and Environment Management Plan, Ecological Impact Assessment, Bat and Bird Surveys, Traffic and Transport Assessment, Stage 1 Road Safety Audit, Stage 3 Flood Risk Assessment, Glint and Glare Assessment, Landscape and Visual Assessment, Landscape Management Plan, and Archaeological Assessment,



- (d) the nature of the landscape, the topography of the area, and any specific conservation or amenity designation for the site,
- (e) the separation distances between the proposed development and dwellings or other sensitive receptors,
- (f) the mitigation measures proposed for construction, operation and decommissioning of the site,
- (g) the submissions on file, including those from prescribed bodies, the planning authority, and other third parties, and
- (h) the report and recommendation of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development in Zone 1 (western land parcel) would be in accordance with European, national, and regional renewable energy policies and with the provisions of the Offaly County Development Plan 2021-2027, would not seriously injure the visual amenities of the area or have an unacceptable impact on the character of the landscape, areas of high amenity or archaeological heritage, would not have a significant adverse impact on ecology, would be acceptable in terms of traffic safety and would make a positive contribution to Ireland's renewable energy and security of energy supply requirements. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



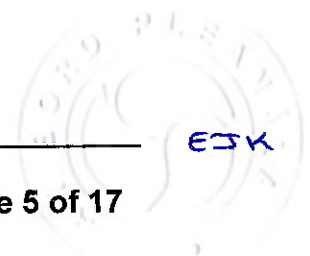
### **Appropriate Assessment: Stage 1:**

The Board considered the 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 the Ferbane Bog Special Area of Conservation (Site Code: 000575) located circa 4.46 kilometres from the development 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 planning application and with the screening exercise carried out by the Inspector. The Board concluded that, having regard to the qualifying interests for which the site was designated, and in the absence of connections to and distance between the application site, the Ferbane Bog Special Area of Conservation (Site Code: 000575) could be screened out from further consideration and that the proposed development, individually or in combination with other plans or projects, would not be likely to have significant effects on this European Site in view of the site's Conservation Objectives and that a Stage 2 Appropriate Assessment is, therefore, not required in relation to this European Site.

The Board considered that an Appropriate Assessment of the implications of the proposed development for the River Shannon Callows Special Area of Conservation (Site Code: 000216), the Middle Shannon Callows Special Protection Area (Site Code: 004096) and the Slieve Bloom Mountains Special Protection Area (Site Code: 004160) required further investigation.

## **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 River Shannon Callows Special Area of Conservation (Site Code: 000216), the Middle Shannon Callows Special Protection Area (Site Code: 004096) and the Slieve Bloom Mountains Special Protection Area (Site Code: 004160). The Board considered that the information before it, as well as the report of the Inspector, was adequate to allow the carrying out of an Appropriate Assessment. 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 these European Sites. 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 sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the River Shannon Callows Special Area of Conservation (Site Code: 000216), the Middle Shannon Callows Special Protection Area (Site Code: 004096) and the Slieve Bloom Mountains Special Protection Area (Site Code: 004160) or any other European Site in view of the sites' Conservation Objectives.



## Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 the development and the proposed 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 time period.  
  
(b) Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority 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.

- (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
- (i) a connection to the national grid, or
  - (ii) a high-voltage transmission line where the voltage would be 110 kilovolts or more.

**Reason:** In the interest of clarity.

5. All of the environmental, construction and ecological mitigation and monitoring measures, as set out in the application documentation, including the Planning and Environmental Considerations Report, the Green Infrastructure and Mitigation Plan, the Flood Risk Assessments, the Natura Impact Statement, the Landscape and Visual Impact Assessment, the Ecological Impact Assessment, the Traffic and Transport Report, Bird and Bat Survey Reports and the Preliminary Construction Environmental Management Plan submitted with the planning 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 permission.

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

6. (a) Prior to commencement, a mitigation planting plan in accordance with the Glint and Glare Assessment undertaken by Macroworks (dated December 2022) shall be agreed in writing with the planning authority to ensure that significant impacts do not arise.
- (b) Upon commissioning of the proposed development, and for a period of two years following first operation, the developer/operator shall provide detailed glint and glare surveys on an annual basis to the planning authority to confirm that no significant impact has occurred and shall undertake such further mitigation measures as the planning authority may specify in writing, to ensure that the absence of significant impact from glint and glare is achieved.

**Reason:** To mitigate against any glint and glare impact.

7. (a) Prior to commencement of development, an accurate tree and hedgerow survey shall be carried out by an arborist or landscape architect. Based on the survey, a detailed Green Infrastructure and Mitigation Plan shall be prepared and agreed in writing with the planning authority.
- (b) Five lines of solar arrays in the north-western corner of Zone 1 shall be replaced by a circa 30-metre woodland to screen the proposed development from the Grand Canal walkway. This shall be agreed in writing with the planning authority.
- (c) Existing field boundaries shall be retained, notwithstanding any exemptions available, and new planting shall be undertaken in accordance with the Green Infrastructure and Mitigation Plan, which shall be agreed in writing with the planning authority.

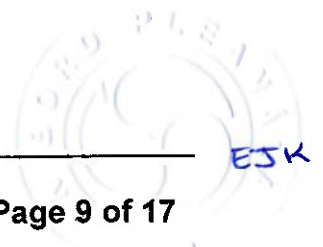


- (d) All landscaping shall be planted to the written satisfaction of the planning authority prior to commencement of development and shall be carried out within the first planting season following commencement of construction of the solar PV arrays. Any trees or hedgerow that are removed, die or become 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.
- (e) There shall be no felling or scrub clearance within the bird nesting season (1<sup>st</sup> March to 31<sup>st</sup> August).

**Reason:** In the interest of clarity, biodiversity and of the protection of the environment and visual amenity.

8. Prior to commencement of development, the developer shall agree a method statement for the following matters in writing with the planning authority:
- (a) planting in the 10-metre riparian zone along the banks of the Silver River,
  - (b) the detailed design of any watercourse crossings and bridges,
  - (c) the detailed plans of the site drainage scheme,
  - (d) the delineation of buffer zones across the site, and
  - (e) livestock shall be restricted from drinking directly from the riverbank and alternative drinking facilities for livestock shall be provided.

**Reason:** In the interest of biodiversity and of the protection of the environment.



9. (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 unless otherwise agreed with the planning authority.
- (d) The inverter stations and all fencing shall be dark green in colour unless otherwise agreed with the planning authority prior to commencement.

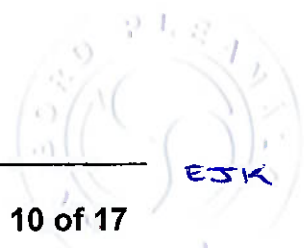
**Reason:** In the interest of clarity and of visual amenity.

10. (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.



11. Prior to commencement of development, details of the structure of the security fence showing provision for the movement of mammals shall be submitted for prior agreement 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.

12. The construction of the proposed 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 proposed development, including, but not limited to:
- (a) the 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,
  - (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,
  - (c) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
  - (d) details of appropriate mitigation measures for noise, dust, and vibration, and monitoring of such levels,

- (e) 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,
- (f) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- (g) 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,
- (h) surface water mitigation measures set out in Section 6 of the submitted Stage 3 Flood Risk Assessment to be applied, and
- (i) an audit list of all construction and operational mitigation and monitoring measures, their timelines for implementation and responsibility for reporting.

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.

**Reason:** In the interest of environmental protection, amenities, public health and safety.

13. 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 shall 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.

14. (a) Prior to commencement of development, the results of a pre-construction survey of the condition of delivery routes, bridges and culverts shall be submitted to the planning authority for written agreement.
- (b) The developer shall carry out at its expense the necessary upgrades of roads and/or junctions in advance of delivery operations.
- (c) A post-construction survey of the condition of delivery routes, bridges and culverts shall be submitted to the planning authority for its written agreement within six months of completion of construction works. Any damage to the road and/or junctions shall be repaired to its previous condition within one year following the receipt of the post-construction survey by the planning authority.

**Reason:** In the interest of traffic safety.

15. Prior to commencement of development, and in accordance with the Stage 1 Road Safety Audit, a Stage 2 Road Safety Audit shall be submitted to the planning authority for written agreement. Prior to opening to traffic, a stage 3 Road Safety Audit shall be submitted to the planning authority for written agreement.

**Reason:** In the interest of traffic safety.

16. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Surface water from the site shall not be permitted to drain onto the adjoining public road or adjoining properties.

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

17. (a) All mitigation measures in relation to archaeology, as set out in the archaeological impact assessment carried out by Archaeological Consultancy Services Unit submitted with the application documentation, as they relate to Zone 1, shall be implemented in full, except as may otherwise be required in order to comply with other conditions here specified.
- (b) 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:
- (i) notify the planning authority in writing at least four weeks prior to the commencement of any site operations (including hydrological and geotechnical investigations) relating to the proposed development,
  - (ii) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - (iii) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the planning 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.

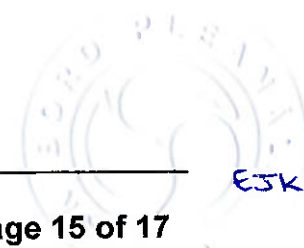
**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

18. 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.

19. 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.



## Reasons and Considerations (2)

Having regard to the provisions of the Offaly County Development Plan 2021-2027, including Objective BLO-22 to ensure that new development, whether individually or cumulatively, does not impinge in any significant way on the character, integrity and distinctiveness or the scenic value of the Areas of High Amenity, and Policy BLP-35 to protect and preserve the county's areas of high amenity, it is considered that Zone 2 (the eastern land parcel) of the proposed development, being located within the Lough Boora Discovery Park 'High Amenity Area' (AHA) as designated in the development plan, and located in a high sensitivity landscape, would significantly impinge upon the character of the area and would set an undesirable precedent for similar proposals into the future. The proposed development would be contrary to Policy BLP-35 and Objective BLO-22 of the Offaly County Development Plan 2021-2027 and would, therefore, be contrary to the proper planning and sustainable development of the area.



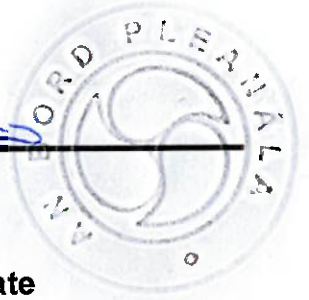
In deciding not to accept the Inspector's recommendation to grant permission for Zone 2 (the eastern land parcel), the Board considered that the Offaly County Development Plan 2021-2027 designated Lough Boora Discovery Park as an Area of High Amenity that must be protected and preserved and a High Sensitivity Landscape that has an extremely low capacity to absorb new development. The Board concurred with the view of the planning authority that the proposed development and associated mitigation in Zone 2 would have an adverse visual impact on the landscape, the amenities of the area or the established character, and would not be appropriate at this location.

*Eamonn James Kelly*

**Eamonn James Kelly**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board**



Dated this *19<sup>th</sup>* day of *April*, 2024.