



An
Bord
Pleanála

Board Order ABP-318091-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kilkenny County Council

Planning Register Reference Number: 22/644

Appeal by Sustainability 2050 care of John Callaghan of 10 The Cloisters, Oldcastle Road, Kells, County Meath against the decision made on the 29th day of August, 2023 by Kilkenny County Council to grant subject to conditions a permission to Elgin Energy Services Limited care of Tobin Consulting Engineers of Block 10-4, Blanchardstown Corporate Park, Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: Solar farm and storage park consisting of linear arrays of solar photovoltaic (PV) panels mounted on steel supported structures with associated cabling and ducting (including underground cable connection to the proposed on-site 110kV substation), 50 number inverter substations, a storage park (including 55 number containers with cells and 15 number containers with PCS and inverters), perimeter fencing, six number palisade double security gates, three number temporary construction compound/material storage areas, two number steel storage containers, 25 number turning bays, on-site pole mounted CCTV cameras (at 60 locations), and two number temporary construction stage Moby Dick type wheel wash systems (with over ground settlement tank) and all associated ancillary development services and works, all to be provided within an application boundary of 112 hectares. Permission is sought for the proposed solar farm and storage park for a period of 10 years with an operational period of 40 years, all at Brownstown,

Kilkenny, County Kilkenny, as revised by the further public notices received by the planning authority on the 5th day of October, 2023 which included an updated Natura Impact Statement.

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.

Reasons and Considerations

Having regard to the following:

- (a) the nature and scale of the proposed development,
- (b) the consideration of the main grounds of appeal in relation to the proposed development,
- (c) the likely significant effects on the environment arising from the proposed development,
- (d) the likely significant effects on European Sites arising from the proposed development, including the location of the proposed development and the separation distance from the European Sites,
- (e) the likely consequences for the proper planning and sustainable development in the area arising from the proposed development and the relevant provisions of the Kilkenny City and County Development Plan 2021-2027 and objectives and the results of the Strategic Environmental Assessment and Appropriate Assessment of this plan undertaken in accordance with the SEA Directive (2001/42/EC),
- (f) the planning application particulars submitted by the applicant, including the response to submissions on the appeal,
- (g) the submissions made by prescribed bodies and reports of the planning authority in respect of the proposed development, 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 would be in accordance with the provisions of the Kilkenny City and 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 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 River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) 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 site was designated, and in the connections to and distance between the application site, the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) 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 Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233). 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 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 Barrow and River Nore Special Area of Conservation (Site Code: 002162) and the River Nore Special Protection Area (Site Code: 004233) 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, as amended by the further plans and particulars received by the planning authority on the 6th 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 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 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, 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. All of the environmental, construction, operation and decommissioning phase mitigation measures set out in the 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.

6. 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.

7. Prior to 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. 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.

9. A finalised Landscape Mitigation Plan and Biodiversity Management Plan for the proposed development, in accordance with that submitted, 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.

10. (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 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 unless otherwise agreed in writing with the planning authority.

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

11. Site development and building works shall be carried out only between the hours of 0800 to 1800 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.

12. The construction of the proposed 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 proposed 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.
- (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.

13. 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 interest of traffic safety.

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. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest existing 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.

16. (a) All mitigation measures in relation to archaeology and cultural heritage set out in the report titled 'Archaeological Impact Assessment Report Brownstown, Co. Kilkenny Excavation Licence No. 23E0081 Detection Device Licence No. 23R0091', by Courtney Deery Heritage Consultancy, shall be implemented, except as may otherwise be required in order to comply with the following conditions.
- (b) The developer shall retain the services of a suitably qualified archaeologist to advise on and establish 20 metres radius concentric buffer zones-comprising an inner Exclusion Buffer Zone measuring 10 metres and an outer No-Dig Buffer Zone measuring 10 metres-around the external-most elements of the archaeological sites identified under Licence Numbers 23E0081 and 23E0081.
- (c) No groundworks of any kind (including but not limited to advance geotechnical site investigations) shall be permitted in buffer zones of either type.
- (d) Exclusion Buffer Zones shall be fenced off for the duration of construction works in the vicinity of the monuments. No machinery, storage of materials or any other activity related to construction shall be permitted within Exclusion Buffer Zones.
- (e) Only non-invasive above ground solar panel supports shall be used within No-Dig Buffer Zones and all cable connections or other necessary service conduits shall be placed in above-ground housings. Protective matting shall be put in place during installation to prevent machine rutting. Machine access and transits shall be limited to essential works for installation only. No other activity related to construction shall be permitted within No-Dig Buffer Zones.
- (f) The developer shall employ a suitably qualified archaeologist to monitor all ground disturbance required for this development. No groundworks of any type (including any enabling works or advance site investigations) shall take place in the absence of the archaeologist without his/her express consent.

- (g) The archaeological monitoring programme shall be carried out under licence from the Department of Housing, Local Government and Heritage and the planning authority in accordance with an agreed method statement; a period of 5-6 weeks should be allowed to facilitate processing and approval of the licence application and method statement.
- (h) Should archaeological material be found during the course of the archaeological monitoring, the archaeologist shall stop work on the site pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Department of Housing, Local Government and Heritage and the planning authority with regard to any necessary mitigating action, for example, preservation in situ, and/or excavation. The developer shall facilitate the archaeologist in recording any material found.
- (i) The Department of Housing, Local Government and Heritage and the planning authority shall be furnished with a report describing the results of the monitoring.
- (j) The Construction Environment Management Plan (CEMP) shall incorporate all significant findings from the report titled 'Archaeological Impact Assessment Report Brownstown, Co. Kilkenny Excavation Licence No. 23E0081 Detection Device Licence No. 23R0091', by Courtney Deery Heritage Consultancy, including (but not limited to) the location of any archaeological or cultural heritage constraints relevant to the proposed development. The CEMP shall clearly describe all identified likely impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of construction activity. It shall have particular regard to the requirements as set out at part (b) of this condition above in relation to the establishment and characteristics of the protective buffer zones that will be implemented to ensure preservation in situ of archaeological sites and monuments.

- (k) The developer shall retain the services of a suitably qualified archaeologist to advise on an archaeological mitigation plan for decommissioning of the development, to include mitigation measures for the removal of the solar panels and the protection of the archaeological sites and monuments that are in situ at the site. The Decommissioning Statement for the Proposed Solar PV Array shall be updated to include the location of any archaeological or cultural heritage constraints. It shall clearly describe all identified likely impacts from decommissioning, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during decommissioning works.

Reason: To ensure the continued preservation of places, caves, sites, features or other objects of archaeological interest.

17. 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.

18. 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.



Tom Rabbette

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this  day of  2024.