

An  
Bord  
Pleanála

**Board Order**  
**ABP-318433-23**

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**Planning and Development Acts 2000 to 2022**

**Planning Authority: Kilkenny County Council**

**Planning Register Reference Number: 2360069**

**Appeal** by Susan Moss and others care of BPS Planning and Development consultants of Ballinatone Lower, Greenan, Rathdrum, County Wicklow against the decision made on the 13<sup>th</sup> day of October 2023 by Kilkenny County Council to grant, subject to conditions, a permission to Lighrsorce Renewable Energy Ireland Limited care of Helena McDonnell of 83-85 Bridge Street, Ballymena, County Antrim, in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** A 10 year planning permission: The development will consist of permission for a solar PV energy development with associated battery storage compound with a total site area of circa 103.64 hectares, to include solar panels mounted on steel support structures, associated cabling and ducting, inverters, transformers, switchgear substations, auxiliary transformer, permanent storage container, monitoring houses, composting toilet, BESS customer substation, battery blocks, BESS inverters, BESS interface cabinets, BESS MV skids, temporary construction compounds, tracks, boundary security fencing and security gates, CCTV, landscaping and ancillary works, with a 40 year operational period. It is proposed that the

proposed development will be accessed from three separate access points of: site access 1 will be a newly created access point of the L4205 and site access 2 and 3 will utilise two existing access points of an unnamed local road which runs along the northern boundary of the application site, both site access 2 and 3 will require upgrading, all on lands within the townlands of Castlegarden and Cloghscregg, Thomastown, County Kilkenny. A Natura Impact Statement (NIS) has been submitted to the planning authority with the application.

## **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**

In coming to its decision, the Board had regard to the totality of information on the file including the following:

- (a) The nature, scale and extent of the proposed development,
- (b) the pattern of development within the area and context of the receiving environment,
- (c) the national targets for renewable energy contribution to the overall national grid,
- (d) the national, regional and local policy support for developing renewable energy, in particular:

- (i) the Board to perform its functions in a manner consistent with the Climate Action Plan 2024 and the Climate Action Plan 2025,
  - (ii) the Board to perform its functions in a manner consistent with the Climate Action and Low Carbon Development (Amendment) Act 2021,
  - (iii) Project Ireland 2040 National Planning Framework (2018),
  - (iv) National Biodiversity Action Plan 2023-2030,
  - (v) National Development Plan 2021-2030,
  - (vi) National Energy Security Framework (April 2022),
  - (vii) National Energy and Climate Action Plan 2021-2030,
  - (viii) Southern Regional Spatial & Economic Strategy, and
  - (ix) Kilkenny City and County Development Plan 2021-2027,
- (e) 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 Natura 2000 sites,
- (f) 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),

- (g) measures proposed for the construction, operation and decommissioning of the development,
- (h) the submissions on the file,
- (i) the documentation submitted with the application and the appeal, including the response to submissions on the appeal, and
- (j) the report and recommendation of the Inspector.

The Board 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, including Objective 11A, would not have an unacceptable impact on the character of the landscape or on cultural or archaeological heritage, would not seriously injure the visual and residential amenities of the area, would be acceptable in terms of public health, traffic safety and convenience, would not have undue impacts on surrounding land uses, would not have an unacceptable impact on ecology or on any European Site, would not lead to an increased risk of flooding within the site or adjoining lands, and would make a positive contribution to Ireland's requirements for renewable energy in accordance with national regional and local policy. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

#### **Appropriate Assessment Screening:**

The Board noted that the proposed development is not directly connected with, or necessary for the management of a European Site. The Board considered the documents submitted with the application, and all the other relevant submissions on file, and carried out 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 River Barrow and River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233) are the only European Sites in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for those sites and that a Stage 2 Appropriate Assessment is, therefore, required.

### **Appropriate Assessment: Stage 2:**

The Board considered the Natura Impact Statement, and all the other relevant submissions on file, and carried out an Appropriate Assessment of the implications of the proposed development on the River Nore Special Area of Conservation (Site Code 002162) and River Nore Special Protection Area (Site Code 004233) in view of the sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' Conservation Objectives using the best scientific knowledge in the field. In completing the assessment, the Board considered, in particular, the following:

- (i) the site-specific Conservation Objectives for the European Sites,
- (ii) the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects, and
- (iii) mitigation measures which are included as part of the current proposal, and
- (iv) the report and recommendation of the Planning Inspector.

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.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of these European Sites in view of the sites' Conservation Objectives and that there is no reasonable scientific doubt as to the absence of such effects.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application submitted to the planning authority and the further plans and particulars submitted on the 19<sup>th</sup> day of September 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 mitigation measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

**Reason:** To protect the integrity of European Sites.





3. All of the environmental, construction, ecological and heritage-related mitigation measures, as set out in the Planning Report and its associated appendices, Biodiversity Enhancement Action/ Management Plan and the Construction and Environmental Management Plan, and other particulars submitted with the application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the conditions of this Order.

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

4. 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 development, the Board considers it appropriate to specify a period of validity of this permission in excess of five years.

5. (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, and the site reinstated 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 having regard to the circumstances then prevailing, and in the interest of orderly development.

6. 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.

7. 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.



8. (a) 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.
- (b) Any tree or vegetation removal works that are required as part of this development shall be done outside of the bird nesting season from March 1<sup>st</sup> until August 31<sup>st</sup> inclusive.

**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. (a) No additional artificial lighting, beyond that permitted as part of this application, 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 power stations, transformers/ inverters, BESS containers and security fencing shall be dark green in colour.

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

11. The developer 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. 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.

13. 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:

- (a) The developer shall employ a suitably qualified archaeologist (licensed under the National Monuments Acts) to carry and Archaeological Impact Assessment to include pre-development archaeological testing in areas of proposed ground disturbance and to assess the results and veracity of the results of the geophysical survey that was carried out under Licence number 22R0307.
- (b) The archaeologist shall submit an Archaeological Impact Assessment report for the written agreement of the planning authority, following consultation with the Department of Housing, Local Government and Heritage, in advance of any site preparation works or groundworks, including site investigation works/ topsoil stripping/ site clearance and/or construction works. The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record (archaeological excavation) and/or monitoring may be required.
- (c) Any further archaeological mitigation requirements specified by the planning authority, following consultation with the Department of Housing, Local Government and Heritage shall be complied with by the developer. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority.
- (d) The planning authority and the Department of Housing, Local Government and Heritage shall be furnished with a final archaeological report describing the results of any subsequent

archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer.

- (e) The Construction Environment Management Plan (CEMP) shall incorporate all significant findings from any archaeological or cultural heritage constraints relevant to the proposed development and decommissioning.

**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.

- 14. 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.

15. The construction of the development shall be managed in accordance with a Construction and Environmental 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 Environmental Management Plan shall be kept for inspection by the planning authority.

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

16. 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.

17. 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.



18. (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" 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.

19. 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 reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. 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:** In the interest of traffic safety and the proper planning and sustainable development of the area.


20. 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.



21. 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.

  
Stephen Bohan

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



Dated this 2<sup>nd</sup> day of May 2025.