



An  
Bord  
Pleanála

## Inspector's Report ABP-300230-17

### Development

Development on a site of circa 42.58 hectares. The development will consist of a 10-year permission for the construction of a Solar PV Energy Development comprising installation of photovoltaic panels on ground mounted frames/support structures within existing field boundaries; underground cabling and ducting; 9 No. inverter/transformer stations with 6 No. HV Cabins; 1 No. communications and storage structure; 2 No. substations; perimeter (stock proof) security fencing; CCTV security cameras; site access tracks; landscaping and all associated ancillary site development works. A Temporary construction compound will also be provided.

### Location

Kilsallaghan, Co. Dublin

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F16A/0562

### Applicant(s)

JBM Solar Developments Ltd.

<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	JBM Solar Developments Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	14 <sup>th</sup> March 2018
<b>Inspector</b>	Patricia Calleary.

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## 1.0 Site Location and Description

- 1.1. The appeal site, with a stated area of 42.58 hectares, is located in the townland of Kilsallaghan, 5km west of the built-up area of Swords in north County Dublin. It is laid out across five fields currently under grass and arable crops and is bounded by mature hedgerows. It slopes gently from west to east between 77m OD and 68.4m AOD. A rural cluster of houses lies to the north east of the site at Kilsallaghan and there are also individual houses located further away on the east and west sides along the surrounding road network. Corrstown golf club is located c.1km to the south and Dublin Airport is situated c.5.5km to the southeast.
- 1.2. With the exception of the site access to the northeast corner, the site itself is not bounded by any public roadways. The access at the northeast connects with the R122 regional road to the east. The R130 regional road is located 160m to the west and Glebe road is situated 200m to the north of the site. The M2 motorway is located c.1.5km to the west of the site.
- 1.3. The surrounding area is predominately in agricultural use with numerous greenhouses and polytunnels in place in the immediate area. At its southeast corner, the appeal site adjoins the previously proposed Thornton Hall prison campus site.

## 2.0 Proposed Development

- 2.1. The development is for the construction of a Solar Photovoltaic (PV) Energy Development comprising the installation of arrays of photovoltaic panels. As presented with the documentation that accompanies the planning application, the panels would be laid out in an east-west alignment erected on ground mounted steel support structures. They would be fixed in position at 45 degrees with a height of 3m above ground level and ground clearance of 0.5m. Rows of panels would have a separation distance of between 3m and 6 m (depending on the final configuration and angle of the array).
- 2.2. The development would also include: underground cabling and ducting; nine inverter/transformer stations with six HV Cabins; one communications and storage

structure; two substations; perimeter (stock-proof) security fencing; CCTV security cameras; site access tracks; landscaping and all associated ancillary site development works. A temporary construction compound is also proposed.

- 2.3. The solar farm would have an installed capacity of 25-30 Mega Watt peak (MWp) over a net area of 39.42 ha within the overall gross site area, which is stated to be 42.58ha. It is also stated that the expected grid connection would be via an existing ESB 110kV substation, located at Glasmore, c.6km to the south of the site.
- 2.4. The applicant is seeking a 10-year permission period for the project and estimates that it would take 20 weeks to construct and would have an operational life of 30 years thereafter. Following the operation period, the solar arrays and infrastructure would be decommissioned and the site would be returned to agricultural use. It is stated that taking account of ongoing solar PV technology advances, it is intended to utilise the most efficient infrastructure at the time of construction.
- 2.5. In addition to the application drawings, the planning application was accompanied by the following:
  - Planning and Environmental Report
  - Archaeological Assessment
  - Transport Assessment (inc: Chapter 7: Outline Construction Traffic Management Plan)
  - Flood Risk Assessment (inc: Chapter 5: Environmental Assessment)
  - Solar Photovoltaic Glint and Glare Study
  - Landscape and Visual Impact Assessment
  - Ecological Impact Assessment
  - Appropriate Assessment Screening Report (attached to Ecological Impact Assessment)
  - Outline Construction Environmental Management Plan (Outline CEMP)
- 2.6. Further information was requested by the planning authority during their assessment of the application. The response to this request was accompanied by the following reports and drawings:

- Archaeology Assessment (Updated)
- Outline Construction Traffic Management plan (Chapter 7 Extract from Transport Assessment submitted with the planning application)
- Solar Photovoltaic Glint and Glare study (Updated)
- Glint and Glare response letter
- Response from applicant to third party observation on the planning application
- Hydrological Response and appendix (drawings and details)
- Drainage Layout (Dwg:101), Drainage Details (Dwg No. P1362-1-0417-A3-501-00A), Landscape Mitigation Plan (Dwgs LMP01, LMP02).

### 3.0 Planning Authority Decision

#### 3.1. Decision

3.1.1. The Planning Authority issued a decision to refuse permission for three reasons, summarised as follows:

1. Development would contravene the 'RU' zoning objective which seeks to protect and promote the rural landscape and Objective DMS138 (renewable energy) due to the scale of the proposal.
2. In the absence of guidance at a national, regional and local level, the Planning Authority is not satisfied that the proposed development would not seriously injure the amenities and the development would be premature.
3. Applicant has failed to demonstrate that the development would not impact on important aviation receptors at Dublin Airport and would materially contravene Objective DA13 which seeks to promote appropriate land use patterns in the vicinity of flight paths.

#### 3.2. Planning Authority Reports

3.2.1. The initial Planning Officer's report recommended seeking further information on matters of surface water, revised Glint and Glare assessment (taking the planned Northern runaway and visual control tower into consideration), access, construction phase traffic management, landscape proposals and archaeology.

3.2.2. The final Planning Officer's report considered the further information submitted and the following is a summary of the principal points contained in their assessment.

- Refers to the Board's decision to refuse permission under PL26.247217 (which at the time of writing was the subject of Judicial Review proceedings).
- Pending local level guidance, including the strategy for renewable energy envisaged in the Fingal Development Plan 2017-2023, permitting the development would be premature.
- Development would be contrary to Objective DA16 (taking account of advice of the Irish Aviation Authority) and Objective DA13 (promote appropriate land use patterns in the vicinity of flight paths). Planning Officer is not satisfied that the development would not unduly impact upon important aviation receptors.
- To date, three solar farm developments have been permitted within Fingal with a fourth currently on appeal. Current proposal would be the largest in the Fingal area.
- Proposed development would represent an incongruous and dominant feature in the rural landscape, notwithstanding screening proposals.

3.2.3. Other Technical Reports

- Water Services: Following receipt of further information, no objections subject to conditions.
- Consultant Archaeologist for the Planning and strategic infrastructural department of Fingal County Council: Following receipt of further information, methodology outlined in Archaeological Assessment report is acceptable subject to the approval of the Department of Culture, Heritage & the Gaeltacht (DCHG).
- Environmental Health Officer: Development acceptable, subject to conditions.
- Transportation Planning: Following receipt of further information, no objection subject to conditions.
- Parks and Green Infrastructure Division: No response.
- Biodiversity Officer: No response.



### 3.3. Prescribed Bodies

- Irish Water: No objection subject to standard conditions.
- Dublin Airport Authority (DAA): Following receipt of further information, notes findings of revised Glint and Glare Assessment and states that all applications with potential for Glint and Glare on aviation receptors should be referred to Irish Aviation Authority (IAA).
- DCHG: Initially requires that archaeological impact assessment should be carried out. No subsequent report on file.
- IAA: Following receipt of further information, general comments received on glint and glare.
- ESB: Planning Officer's report states that no report was received.

### 3.4. Third Party Observations

3.4.1. One third party submission was received by the Planning Authority from a neighbouring home owner to the north east of the site. The following issues were initially raised:

- Concerned with the use of the existing farm access as the primary development entrance
- Surface water impacts
- Security fence relative to dwelling house
- Boundary planting
- Grid connection
- Artificial lighting

3.4.2. An observation subsequently received from the same third party post the receipt of additional information raised matters in relation to landscape screening. The observer also stated that he does not wish to comment on any other aspect of the additional information received.

## 4.0 Planning History

### 4.1. Appeal Site

- There is no recent planning history associated with the appeal site.

### 4.2. Surrounding Area

- PL06F.237928 (FCC Ref: F10A/0342) – Permission was granted on appeal for a horticultural nursery including a single-storey nursery glasshouse building and associated works.

### 4.3. Other Similar Developments

4.3.1. The Board will be aware of multiple solar farm planning applications which it has received on appeal. At the time of my consideration of this appeal, c.56 appeal cases have been formally decided on appeal. These appeals relate to solar farms proposed across the administrative areas of 18 Planning Authorities with the majority of proposals in Counties Wexford, Waterford, Cork and Wicklow. To date, one other appeal has been recently decided by the Board in the Fingal County Council administrative area, detailed below:

- File Ref: PL06F.249174 (Fingal Ref: F17A/0340): Permission **granted** (20<sup>th</sup> March 2018) for a solar farm proposed to be sited on a 63 ha site at Mainscourt, Ballyboghil, Co. Dublin. This site lies c.7 km north east of the current appeal site.

4.3.2. The outcome of two solar farm applications granted by Fingal County Council, which were not appealed, are detailed below.

- F17A/0268: Permission **granted** (14<sup>th</sup> August 2017) for solar PV development on a 13.3 ha site at Ballykea & Tyrrelstown Big, Co. Dublin.
- F16A/0105: Permission **granted** (14<sup>th</sup> Feb 2017) for a 5 MW solar PV development on a 10.1 ha site at Ballykea, Loughshinny, Co. Dublin.

## 5.0 Policy Context

### 5.1. EU Directive 2009/28/EC - Energy from Renewable Resources

- 5.1.1. EU Directive 2009/28/EC sets a target of 20% of EU energy consumption from renewable sources and a 20% cut in greenhouse gas emissions by 2020. As part of this Directive, Ireland's legally binding target is 16% energy consumption from renewable sources by 2020. Ireland has set a non-legally binding target of 40% of renewable energy share for electricity by 2020 (from a 2012 position of 19.6%).

### 5.2. 7<sup>th</sup> Environment Action Programme to 2020.

- 5.2.1. This is an EU Action Programme which aims to guide the EU into a resource-efficient, green and competitive low-carbon economy.

### 5.3. The Paris Agreement 2015

- 5.3.1. This is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC) dealing with greenhouse gas emissions mitigation, adaptation, and finance starting in the year 2020, which aims to keep the global average temperature rise this century to below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

### 5.4. Ireland's Transition to a low carbon Energy Future 2015-2030

- 5.4.1. This **White paper on Energy policy** (Department of Communications, Energy and Natural Resources – Dec 2015) provides a complete energy policy update for Ireland. It sets out a vision to reduce greenhouse gas (GHG) emissions of between 80% and 95% by 2050, compared to 1990 levels, falling to zero or below by 2100. The policy document recognises that solar photovoltaic (PV) technology is rapidly becoming cost competitive for electricity generation and that the deployment of solar power in Ireland has the potential to increase energy security, contribute to our renewable energy targets and support economic growth and jobs.

### 5.5. Strategy for Renewable Energy, 2012 – 2020

- 5.5.1. This Strategy reiterates the Government's position that 'the development and deployment of Ireland's abundant indigenous renewable energy resources, both onshore and offshore, clearly stands on its own merits in terms of the contribution to

the economy, to the growth and jobs agenda, to environmental sustainability and to diversity of energy supply’.

#### 5.6. **National Renewable Energy Action Plan (NREAP) submitted to the EC in 2010**

5.6.1. The NREAP was submitted to the European Commission in 2010. It sets out Ireland’s approach to achieving its legally binding targets, with a target of 40% of electricity consumption to be from renewable sources by 2020. **A fourth progress report** on the NREAP was submitted to the European commission in **February 2018**. Reference is included in the report to a total contribution / installed capacity, gross electricity generation from solar PV as 5.93 MW in 2016, up from 2.35 MW in 2015.

#### 5.7. **Climate Action and Low Carbon Development Act 2015**

5.7.1. This Act provides the statutory basis for national transition objectives. It commits to a carbon neutral situation by 2050 and to also match Ireland’s targets with those of the EU. It requires that the Minister for Communications, Climate Action and Environment must make and submit to Government a series of successive National Mitigation Plans (NMPs) and National Adaptation Frameworks (NAFs).

#### 5.8. **Project Ireland 2040 –National Planning Framework (NPF)**

5.8.1. Chapter 3 (Effective Regional Development)

- Key future planning and development and place - Making policy priorities for the Eastern and Midland Region include: Harnessing the potential of the region in renewable energy terms across the technological spectrum from wind and solar to biomass and, where applicable, wave energy, focusing in particular on the extensive tracts of publicly owned peat extraction areas in order to enable a managed transition of the local economies of such areas in gaining the economic benefits of greener energy.

5.8.2. Planning and Investment to Support Rural Job Creation

- Energy Production - Rural areas have significantly contributed to the energy needs of the country and will continue to do so, having a strong role to play in securing a sustainable renewable energy supply. In planning Ireland’s future energy landscape and in transitioning to a low carbon economy, the ability to diversify and adapt to new energy technologies is essential. Innovative and

novel renewable solutions have been delivered in rural areas over the last number of years, particularly from solar, wind and biomass energy sources.

#### 5.8.3. National Strategic Outcomes

- National Strategic Outcome 8 (Transition to Sustainable Energy) - New energy systems and transmission grids will be necessary for a more distributed, more renewables focused energy generation system, harnessing both the considerable on-shore and off-shore potential from energy sources such as wind, wave and solar and connecting the richest sources of that energy.

#### 5.8.4. National Policy Objectives

- National Policy Objective 55 seeks to 'promote renewable energy generation at appropriate locations within the built and natural environment to meet objectives towards a low carbon economy by 2050'.

### 5.9. **Regional Planning Guidelines (RPGs) for the Greater Dublin Area (GDA) 2010-2022**

#### 5.9.1. Section 6.6.5 Renewable Energy

- Renewable energy provision within the GDA will continue to become a more central issue in terms of environmental concerns, economic viability and development, and employment creation in green technologies. Approximately 5,500 MW of renewable generation by 2020 is required to meet the government target of 40% total consumption from renewable energy.
- Achievement of these national targets will require development of renewable energy options such as offshore wind generation, marine based energy generation, **solar energy** and geothermal both within, adjacent to, and outside the GDA.

#### 5.9.2. Section 6.6.7 include the following Strategic Recommendations

- **PIR26:** Development Plans and Local Authorities support, through policies and plans, the targets for renewable generation so that renewable energy targets for 2020, and any further targets beyond 2020 which become applicable over the duration of the RPGs, are met.

- **PIR27:** That low carbon sustainable renewable energy systems, bio-energy and energy conservation potentials are exploited to their full potential through the advancement of EU and national policy at regional level and the promotion of existing and emerging green technologies.

### 5.9.3. Strategic Policy

- **PIP4:** That the ICT and energy needs of the GDA shall be delivered through the lifespan of the RPGs by way of investment in new projects and corridors to allow economic and community needs to be met, and to facilitate sustainable development and growth to achieve a strong and successful international GDA Gateway.

## 5.10. Fingal Development Plan 2017-2023

5.10.1. The appeal site and surrounding area are zoned for 'Rural/(RU)' land-use objectives. This zoning objective seeks to protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.

5.10.2. 'Sustainable Energy Installations' and 'Utility Installations' are permitted in principle under the RU zoning objective. Appendix 4 (Technical Guidance) of the Development Plan sets out Technical Guidance Notes for Use Classes and describes 'Sustainable Energy Installation' and includes solar energy.

5.10.3. With regard to solar energy, Section 7.3 states:

- There are a range of technologies available to exploit the benefits of the sun, including solar panels, solar farms, solar energy storage facilities all of which contribute to a reduction in energy demand.
- Larger solar farms have potential to be considered on suitable sites within the County.
- In the publication 'Adding Solar Power to Irelands Energy Mix, Lightsource Renewable Energy Limited' estimate that by 2020 over 20% of Ireland's energy could be generated by solar photovoltaic (solar PV). By adding solar PV to Ireland's energy mix, it will complement existing infrastructure as well as drive further renewable energy production. It is considered that solar PV farms are generally inconspicuous at ground level and are hidden by hedgerows.

Additionally, such farms can facilitate the regeneration of natural habitats in rural areas.

5.10.4. The following provisions and objectives are also included.

- **Objective PM30:** Encourage the production of energy from renewable sources, such as from Bio-Energy, Solar Energy, Hydro Energy, Wave/Tidal Energy, Geothermal, Wind Energy, Combined Heat and Power (CHP), Heat Energy Distribution such as District Heating/Cooling Systems, and any other renewable energy sources, subject to normal planning considerations and in line with any necessary environmental assessments.
- **Objective EN01:** Support International, National and County initiatives for limiting emissions of greenhouse gases through energy efficiency and the development of renewable energy sources using the natural resources of the County in an environmentally sustainable manner where such development does not have a negative impact on the surrounding environment, landscape or local amenities.
- **Objective EN07:** Support the implementation of the 'Strategy for Renewable Energy 2012-2020' Department of Communications, Energy and Natural Resources (now Department of Communications, Climate Action and Environment) and the related National Renewable Energy Action Plan (NREAP) and National Energy Efficiency Action Plan (NEEAP).
- **Objective EN12:** Support Ireland's renewable energy commitments outlined in national policy by facilitating the exploitation of solar power where such development does not have a negative impact on the surrounding environment, landscape, historic buildings or local amenities.
- **Objective EN13:** Encourage and support the development of solar energy infrastructure, including solar PV, solar thermal and seasonal storage facilities.
- **Objective EN14:** Promote and encourage the development of suitable sites within the County for use as Solar PV farms where such development does not have a negative impact on the surrounding environment, landscape, historic buildings, biodiversity or local amenities.

- **Objective RF106:** Facilitate and encourage the development of the alternative energy sector, in line with a Local Renewable Energy Strategy, and work with the relevant agencies to support the development of alternative forms of energy where such developments do not negatively impact upon the environmental quality, and visual, residential or rural amenity of the area.

5.10.5. Chapter 12 of the Development Plan sets out development management standards.

In respect of renewable energy, it notes that while it is important that Fingal welcomes proposals for new and innovative technologies in respect of renewable energies, it is also necessary to ensure such proposals would not have a negative impact on the surrounding environment both in terms of residential and visual amenities of the area. This position is supported by the following Objective:

- **Objective DMS138:** Permit renewable energy developments where the development and any ancillary facilities or buildings, considered both individually and with regard to their incremental effect, would not create a hazard or nuisance, including risks of land stability and would take cognisance of the following:
  - i. Residential amenity and human health,
  - ii. The character or appearance of the surrounding area,
  - iii. The openness and visual amenity of the countryside,
  - iv. Public access to the countryside and, in particular, public rights of way and walking routes,
  - v. Sites and landscapes designated for their nature conservation or amenity value,
  - vi. The biodiversity of the County,
  - vii. Sites or buildings of architectural, historical, cultural, or archaeological interest, and
  - viii. Ground and surface water quality and air quality.

5.10.6. The Landscape Character Assessment for Fingal divides the County into six landscape character types. The appeal site is located within the 'Landscape Character Type – Rolling Hills with Tree Belts', described as: mainly agricultural land



characterised by rolling landscapes across the Ward and Broadmeadow river valleys. The undulating nature of the countryside together with the presence of larger properties and tree belts has resulted in a varied landscape. The trees together with the river corridors help create a rich landscape, both visually and ecologically. Views are generally contained by the rolling landscape, which creates a landscape of short horizons’.

5.10.7. The landscape character type is designated as being of ‘modest’ value and ‘medium’ sensitivity and the Development Plan notes that ‘these landscapes can absorb a certain amount of development once the scale and forms are kept simple and surrounded by adequate screen boundaries and appropriate landscaping to reduce impact on the rural character of the surrounding roads’.

#### **5.11. Planning and Development Guidance Recommendations for Utility Scale Solar Photovoltaic Schemes in Ireland (October 2016)**

5.11.1. This is a research report prepared by Future Analytics and funded by the Sustainability Energy Authority of Ireland (SEAI). The report contains a set of planning policy and development guidance recommendations, which it is suggested may contribute to the evidence base that will inform the development of Section 28 planning guidance for Utility-Scale Solar Photovoltaic (USSPV) developments in Ireland. It notes that over a hundred applications for USSPV developments have been lodged with planning authorities and that an estimated 594 MW have been granted or were on appeal at the time of publishing (October 2016). The combined site area for these schemes at the time of the study is stated as being 1331.9 hectares. This constitutes 0.03% of the area of land available for agriculture.

5.11.2. Recommendations include that Development Plans set out policy objectives to support USSPV development and put in place development management standards. Agricultural lands are listed amongst the list of types of locations where such development is particularly suited.

#### **5.12. Solar PV Development Guidelines in the UK**

5.12.1. While there is currently no specific statutory planning guidance regarding the location or siting of solar PV in Ireland, guidance is well developed in the UK and can be considered useful as a reference source for good practice. The following guidance is considered relevant:

#### 5.12.2. PPG for Renewables and Low Carbon Energy (DCLG 2015)

- This guidance includes advice on planning considerations relating to specific renewable technologies, including solar power. It advises against inflexible buffer zones or separation distances.

#### 5.12.3. Planning Practice Guidance for renewable and low carbon energy (BRE National Solar Centre [UK] 2013)

- This UK national guidance provides similar advice to the PPG, but also includes advice on Environmental Impact Assessment in relation to solar farms.

### 5.13. Natural Heritage Designations

5.13.1. The appeal site is not located in or adjacent to any designated Natura 2000 sites. There are five Special Areas of Conservation (SACs) and five Special Protection Areas (SPAs) located within 15km of the proposed development site, listed under as follows:

- Malahide Estuary SAC (Site Code 000205), Malahide Estuary SPA (Site Code 004025), Rogerstown Estuary SAC (Site Code 000208), Rogerstown Estuary SPA (Site Code 004015), Baldoyle Bay SAC (Site Code 000199), Baldoyle Bay SPA (Site Code 000199), South Dublin Bay & River Tolka Estuary SPA (Site Code 004024), North Dublin Bay SAC (Site Code 000206), North Bull Island SPA (Site code 001006), Rye Water/Cartron SAC (Site Code 001398).

## 6.0 The Appeal

### 6.1. Grounds of Appeal

6.1.1. An appeal was received by the Board from Tom Phillips + Associates, representing the applicant. The grounds of the appeal can be summarised as follows:

- Applicant considers that insufficient weight was given to the findings of the assessments carried out by experts in support of the planning application and advising on the potential impact of the proposal on the surrounding environment.

- The Planning Authority has drawn on appeal case PL26.247217 (which was refused planning permission) and is not comparable to the subject development proposal.
- Proposed development accords with 'RU' zoning objective and can be assimilated into the landscape without undue visual impact.
- Proposals accord with objective DMS138 set down in the current Fingal Development Plan.
- Development would not be premature pending adoption of guidance or strategy for solar power.
- Development would not impact upon aviation receptors at Dublin Airport.
- Assessments demonstrate that the proposed development would not adversely affect surface or ground water, archaeology, traffic safety or convivence, glint and glare, residences/roads. A positive impact on ecology/biodiversity is expected as a result of the development.

## 6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Requests An Bord Pleanála have regard to the Planning Officer's reports.
- Having regard to the recent High Court judgement (Haughton G. unreported, 28<sup>th</sup> September 2017), requests the Board to disregard Reason No.2 of the Planning Authority's decision.
- Should permission be granted, requests the Board attach a Section 48 financial contribution condition.

## 6.3. Observations

- None

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. This application relates to a solar farm which would have an installed capacity of 25-30 MWp over a net area of 39.42 ha within an overall gross site area of 42.58 ha. It is stated that the expected grid connection would be via an existing ESB 110kV substation at Glasmore, c.6km to the south of the site. A 10-year permission is sought. It is stated that the construction period would be c.20 weeks and that the operation period would be 30 years, after which time the solar panels and related structures would be decommissioned and the site would be restored to full agricultural use.
- 7.1.2. The development was refused permission for three reasons relating to the scale of the development in a rural setting, prematurity in the absence of guidance on solar farms and unresolved impacts on aviation receptors at Dublin Airport. In response to the appeal, the Planning Authority requests the Board to disregard Reason No.2 of the Planning Authority's decision to refuse permission relating to the prematurity of the development.
- 7.1.3. I consider that the key issues in determining the appeal now before the Board, include those which arise in the reasons for refusal and other such planning and environmental considerations relevant to the development proposal. In addition, I also consider the development in the context of the requirement for Environmental Impact Assessment and I also consider the matter of Appropriate Assessment. I intend therefore to consider the appeal under the following headings:
- Principle of the Development
  - Landscape and Visual
  - Absence of Guidance or Strategy for Solar Power proposals
  - Glint and Glare impact including on aviation receptors
  - Ecology
  - Archaeology
  - Access and Traffic

- Surface water drainage
- Flood risk
- Other Matters – Design Detail and Material Contravention
- Requirement for Environmental Impact Assessment
- Appropriate Assessment Screening

## 7.2. Principle of the Development

- 7.2.1. Refusal Reason No.1 attached to the Planning Authority's decision centred upon the Planning Authority's view that the development would result in a dominant feature which would be incongruous and which could not be fully assimilated into the rural landscape. It was considered that permitting the development would therefore materially contravene the 'RU' zoning objective of the current Fingal Development Plan 2017-2023, which is to protect and promote the rural landscape. Regarding Objective DMS138 of the Plan, which seeks to permit renewable energy subject to meeting certain criteria, the Planning Authority hold the view that by virtue of the scale of the proposal, the development would fail to take cognisance of two of the criteria associated with this objective and as such would as a result, materially contravene the objective.
- 7.2.2. In their appeal, the applicant asserts that this reason for refusal conflicts with the findings of the expert assessments carried out to inform the planning application, in that such assessments demonstrated that the development would not have a negative impact on the surrounding environment including on residential or visual amenity. Reference is made to the planner's report in which it is stated that the proposal would represent 0.23% of the total quantum of 'RU' zoned lands in Fingal, which the applicant contends could not be considered significant and that this is especially so given that agricultural use albeit in a de-intensified form (grazing) would remain during the project life.
- 7.2.3. In considering the principle of the development, I am satisfied that there is increasing policy support for renewable energy projects at EU, national, regional and local level, which collectively support a move to a low carbon future and the need to encourage the use of renewable resources to reduce greenhouse gas emissions. I have set out

a number of these key legislative and policy documents in Section 5.0 of my assessment report above.

- 7.2.4. At a national level, Ireland's 'Transition to a low carbon Energy Future 2015-2030 - White paper on Energy policy' recognises that solar energy would become more cost effective as technology matures and that it would be an integral part of the mix of renewables going forward. Within Project Ireland 2040 –National Planning Framework (NPF), National Policy Objective 55 seeks to 'promote renewable energy generation at appropriate locations within the built and natural environment to meet objectives towards a low carbon economy by 2050'. Within the Regional Planning Guidelines for the Greater Dublin Area (GDA) 2010-2022, achievement of renewable energy targets is stated to require development of renewable energy options, including solar energy, within, adjacent to and outside of the GDA.
- 7.2.5. At a local level, the Fingal Development Plan 2017-2023 contains a number of Policies and Objectives which support reductions in greenhouse gas emissions and seek to facilitate and encourage renewable energy projects, subject to normal planning criteria. Objectives PM30, EN01, EN07, EN12, EN13, EN14 and RF106 are of particular relevance in this regard, the contents of which I have set out under Section 5.0 of my report above. I also note that Section 7.3 of the Fingal Development Plan sets out that larger solar farms have potential to be considered on suitable sites within the County.
- 7.2.6. The appeal site and surrounding area are zoned as 'Rural' (RU) under the Fingal Development Plan 2017-2023. This zoning objective seeks to protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage. 'Sustainable Energy Installations', the definition of which includes solar energy, are permitted in principle under the RU zoning objective.
- 7.2.7. The Planning Authority, in their first reason for refusal, stated that the proposed development would materially contravene the 'RU' zoning objective because of its impact on the rural landscape. I have addressed the potential landscape impact in Section 7.3 below, however I do not consider that the proposed development would materially contravene the zoning objective, and instead I consider that it would be

acceptable in principle, subject to consideration of the planning issues identified above.

- 7.2.8. The Planning Authority also considered that the proposed development would materially contravene Objective DMS138, which seeks to permit renewable energy developments where they would not create a hazard or nuisance, and where they take cognisance of a series of criteria. The Planning Authority considered that the proposed development fails to take cognisance of two of these criteria: the character or appearance of the surrounding area and the openness and visual amenity of the countryside. I have addressed these issues under Section 7.3 below.
- 7.2.9. It is stated that the mounting system for the solar panels would be specifically designed to allow the site to be used for agricultural grazing and that no fertilizers would be spread on the lands during the life of the project. The solar farm would have an installed capacity of 25-30 MWp. It would clearly contribute to the national targets set for Ireland of 40% of the country's electricity to come from renewable sources by 2020, as part of its mandatory obligation under the EU Renewable Energy Directive 2009/28/EC to source 16% of all energy consumed from renewable sources by 2020. These targets are required to reduce greenhouse gas emissions and to ensure a secure energy supply and the positive benefits, which the development would make towards achieving these targets is a strong material consideration in favour of the proposal.
- 7.2.10. I am satisfied that there is a presumption in favour of the proposal, which is supported by policy referenced above and the proposal would also contribute to the diversity of sources of energy supply and hence the security of supply. Therefore, the development would be acceptable in principle unless adverse impacts of the proposal would significantly outweigh the benefits, when assessed against wider planning policy. I consider these in the remainder of my assessment.
- 7.2.11. At this point in my assessment, I do not consider the development would materially contravene the RU zoning objective. As stated above, I revisit visual and landscape aspects in relation to the zoning in the section of my assessment which immediately follows.

### 7.3. Landscape and Visual

- 7.3.1. Refusal Reason No.1 attached to the Planning Authority's decision concluded that the development would result in an incongruous and dominant feature in the rural landscape and the Planning Authority were not satisfied that the development would be capable of being assimilated into the landscape and that it could affect the amenities of the rural area and its setting.
- 7.3.2. In terms of landscape policy for Fingal, the proposed solar development is contained within the Landscape Character Type (LCT) – Rolling Hills with Tree Belts, categorised as a 'modest value' and 'medium sensitive'. I have considered the Landscape and Visual Impact Assessment (LVIA) and photomontages submitted with the application supplemented by other information on file and gathered during my site inspection. I note that the site is enclosed and is bounded by mature trees and dense hedgerows. Additional planting to further augment the hedgerows is also proposed as part of a landscape mitigation plan.
- 7.3.3. The proposed development would no doubt introduce a regular pattern of modern utilitarian structures into a predominately rural landscape, resulting in a change to the rural landscape. However, the changed landscape character would be largely contained within the appeal site boundaries and lands close to the site.
- 7.3.4. Visual impacts were assessed at six viewpoint locations. The solar farm would be almost entirely screened along the boundaries. As the site is not immediately bounded by public roads, it receives further screening along the existing roadside boundaries, which restrict views from the surrounding road network towards the site. It is submitted in the grounds of appeal that a noticeable impact at pre-mitigation stage would only arise at one location, from a gate access point, across a field and through gaps in a hedgerow. Post mitigation and once screening becomes established, visual impacts would reduce even further according to the applicant. The applicant's findings are that post mitigation, involving additional screening, the significance of visual impact would be imperceptible.
- 7.3.5. I am satisfied, that while the proposed development would be a departure from the established landscape locally, it would not adversely impact on the landscape setting or the visual amenities of the area or outweigh the benefits of providing a renewable energy source and consequently would not warrant a refusal on landscape or visual



amenity grounds. This is particularly so having regard to the low lying nature of the development and to the enclosed nature of the site, setback from receptors, the existing landscape and the landscape mitigation plan on file, in which augmentation of existing hedgerows is proposed. I am satisfied that the significance of the proposals on landscape and on visual impacts to be in the order of slight to imperceptible, which I consider to be acceptable.

- 7.3.6. In considering the criteria associated with Objective DMS138, while the scale of the development can be considered extensively large, based on the information on file and in particular the findings of the LVIA, the character or appearance of the surrounding area and the openness and visual amenity of the countryside, which are stated criteria to be satisfied in meeting Objective DMS138 would not be compromised to any noticeable degree. Accordingly, neither do I recommend that permission be refused on landscape and visual grounds or because it would materially contravene landscape related criteria of Objective DMS138.

#### **7.4. Absence of Guidance or Strategy for Solar Power proposals**

- 7.4.1. The absence of guidance at a national, regional and local level in relation to the appropriate location, scale and distribution of future proposals for solar power led to the attachment of reason No.2 in the Planning Authority's decision to refuse permission. In this regard, the Planning Authority also referenced potential for seriously injuring the amenities of the area and interfering with the character of the landscape and they considered the development may be premature in such a context. I have dealt with landscape matters under Section 7.3 above.
- 7.4.2. There is currently no national Guidance or Policy documents specifically referencing spatial distribution or guidance on where Solar PV Development in terms of location or appropriate scale. Neither are there any such documents under preparation or in draft stage and as such it can be concluded that there is no such policy or guidance underway or planned. By reference to the Development Management Guidelines for Planning Authorities (DEHLG), 2007, and where there is no realistic prospect of policy documents being completed within a specific stated timeframe, the absence of such policy or guidance, and that the development would be premature as a result, is not in my view, a reason for refusal based on prematurity. I recommend that the issue of prematurity pending the preparation and adoption of guidance or policy

specific for solar power would not constitute a reason for refusal. It is acknowledged that in their response to the appeal, the Planning Authority requested the Board to disregard Reason No.2, noting the recent High Court Judgement, (Haughton G. unreported, 28th September 2017).

- 7.4.3. Notwithstanding the absence of such national guidance or policy documents, the development is assessed against broader policy which clearly supports renewable energy at EU, national and regional level. In addition, the current Fingal Development Plan is clearly supportive of renewable energy, including solar farms at a local level in Fingal. I have set out my considerations on policy support under Section 7.2 above.

## **7.5. Glint and Glare impacts including on aviation receptors**

- 7.5.1. The third reason for the Planning Authority's reason for refusal centred on the impact on aviation receptors at Dublin Airport and that the development would materially contravene Objective DA16 of the Development Plan (seeks to take account of the advice of the Irish Aviation Authority), as well as DA13 (promote appropriate landuse patterns in the vicinity of flight paths).
- 7.5.2. The applicant sets out that following a request for further information, the Glint and Glare Assessment was updated to assess the planned northern runway and that the application was referred to both the DAA and the IAA whose stated requirements (including a requirement to update the Glint and Glare Assessment) were complied with in full.
- 7.5.3. Having reviewed the information on the file, I note that both the application and the further information received were referred to both the DAA and the IAA. The DAA commented on the application, recommending that the Glint and Glare Assessment would be updated to include the planned northern runway and associated air traffic control tower at the airport. This informed a request for further information issued to the applicant by the Planning Authority. No comment appears to have been received from the IAA on the application as initially lodged.
- 7.5.4. I note the contents of the Glint and Glare Assessment as updated following the request for further information. The USA Federal Aviation Administration (FAA) Solar Glare Hazard Analysis Tool (SGHAT) was used in the study to determine the risk

arising from solar farms. It concludes that glare is not possible at the existing or proposed air traffic control towers. The assessment also concluded that along the planned northern runway where glare would be possible that it would result in having a low potential to temporarily alter image and would be oblique to the line of approach.

- 7.5.5. The updated Glint and Glare Assessment appears to have been referred to both the DAA and IAA post its receipt at further information stage. The DAA noted the conclusions of the assessment. IAA's submission at this stage noted that the development should be assessed for any potential glint and glare issues which might arise in relation to aviation receptors. The submission makes specific reference to the USA FAA Guidance document and the SGHAT tool, both of which have been used by the applicant's expert in their assessment of glint and glare.
- 7.5.6. It remains unclear whether or not the IAA had had an opportunity to consider the findings of the revised Glint and Glare assessment at the time of furnishing its comments on the planning application as its comments were not specific to the revised Glint and Glare Assessment.
- 7.5.7. In any case, the findings of the Glint and Glare Assessment (as updated) are clear. I am satisfied that the requirements of the DAA and IAA have been adequately addressed. It has been demonstrated that there is no glint and glare possible from the existing and proposed air traffic control towers and that glint and glare along the existing and proposed northern runway falls within acceptable limits having regard to USA FAA Guidance.
- 7.5.8. Notwithstanding the fact that the IAA did not respond on the specific findings, there is no issue with Glint and Glare which remains unresolved or which would warrant withholding permission. Therefore, I do not share the views of the Planning Authority that the development would materially contravene Objective DA16 (take account of the advice of the IAA) or DA13 (promote appropriate Landuse patterns in the vicinity of flight paths).
- 7.5.9. In relation to glint and glare on other receptors generally, the Glint and Glare study noted that five houses have potential to be affected, four of which are located west of the development site and one of which is located to the north east. As part of the mitigation strategy, it is proposed to augment hedgerows within and around the site

with a native mix of planting, which would also add to screening. Having regard to the assessment findings and the additional landscape screening proposed, I am satisfied that the residual glint and glare magnitude of effect on the identified properties would be very low to negligible. I am equally satisfied that the development would not result in any significant nuisance or hazard to the surround road network arising from glint and glare from the proposed solar farm. I therefore recommend that permission for the development should not be refused on the grounds of glint and glare.

## 7.6. Ecology

- 7.6.1. The contents of the applicant's submitted Ecological Impact assessment are noted. The report concludes that the proposed development site is currently considered to be of low to moderate value and that the development would be sited on agricultural lands, which are of low ecological value. In relation to the hedge and tree-lined boundaries, these are proposed to be maintained and augmented and areas would be enhanced by seeding of an area with cereal and wildflower mix. I am satisfied that any impacts on the ecological environment would be largely confined to the construction phase, which would be short term and would be managed through appropriate construction environmental management. In this regard, I note the contents of the Outline Construction Environmental Management Plan (CEMP) submitted with the application, the principles proposed to be adhered to and the outline commitments and measures that would be implemented.
- 7.6.2. I am further satisfied that the proposed development would result in a neutral to slight positive impact on flora and fauna in the operational/long term phase, given the de-intensification of agricultural land use that would occur in addition to the proposed seeding of an area with cereal and wildflower mix. Taken into account the evidence presented within the Ecological Impact Assessment, potential ecological impacts on designated sites arising from the operation of the proposed solar farm are considered neutral. I deal with this further below under the heading Appropriate Assessment (see Section 7.13). Overall, I recommend that permission for the development should not be refused for ecological reasons.

## **7.7. Archaeology**

- 7.7.1. At the outset, I consider the development intervention on the archaeological environment would be low as less than 2% of the site area would be disturbed by ground works.
- 7.7.2. There are no recorded monuments within the appeal site or the proposed cabling route. The closest site is that of an excavated ring-ditch c.140m to the north-northwest of the site. The planning application included an Archaeological Assessment report. As updated at further information stage, it included the findings of a geophysical survey and test trenching of 83 test trenches across the site. Subsurface features of archaeological interest were revealed. The report recommends undertaking the preservation by record of the archaeological remains in advance of development commencement. The report further recommends that all archaeological works should be carried out under licence. In order to preserve unrecorded archaeology, it is also recommended that topsoil stripping should be monitored by a qualified archaeologist and should any features of archaeological potential be discovered during construction, further archaeological mitigation may be required, such as the preservation in-situ or by record under the approval from the DCHG.
- 7.7.3. The consultant archaeologist for the Planning and Strategic Infrastructural Department of Fingal County Council states that the proposed methodology is acceptable subject to the approval of the National Monuments Service of the DCHG. The further information was submitted to the DCHG, however, no response was received. While it is open to the Board at this stage to engage with the DCHG, I do not think it is necessary as the archaeological assessment was comprehensive and the follow-on strategy for ensuring the preservation of features of archaeological interest including unrecorded archaeology is acceptable and would involve appropriate engagement with and licence from the DCHG. Accordingly, the development should not be refused for archaeological reasons.

## **7.8. Access and Traffic**

- 7.8.1. Access to the development would be from an existing access lane along the east of the site onto the R122 regional road. The lane would be widened from 3.7m to form

an access of 6m in order to accommodate HGVs. During the peak of construction activities, it is stated that there would be a maximum of seven inbound and seven outbound daily HGV trips. It is also stated that approximately 35 and maximum of 60 staff would operate during the construction phase and that the majority would arrive to site by bus, arriving outside of peak AM and PM traffic hours. The primary transport route for construction vehicles would be the R122, R108 and M50. A map of the route is presented as Figure 7.2 (Construction Traffic Route) of the applicants Traffic Assessment.

- 7.8.2. Visibility sightlines of 53m and 59m to the north and south are achievable. While I have some concerns regarding the restricted visibility at the access, I am satisfied that the main traffic would occur during the construction phase, which would be short term in nature and would be managed through measures, including the presence of a banksman who would be located adjacent to the access for the duration of the working day during the construction period, temporary traffic signals, timing of deliveries outside of network peaks and the implementation of a construction management plan. In this regard, I note the contents of the Outline Construction Traffic Management Plan on the planning application file.
- 7.8.3. The proposed development would generate minimal levels of operational traffic (comprising occasional light vans), which would be for occasional maintenance visits, which I consider is unlikely to be any greater than existing traffic generated by the current agricultural activities on site. During operation, I am satisfied that there would not be a requirement for the same measures as proposed for the construction stage, including the banksman and traffic signalling to control traffic.
- 7.8.4. I am therefore satisfied that no material intensification would arise because of the operation of the proposed development, and that the safety and carrying capacity of the road network would accordingly not be prejudiced during the construction or operational phases. I also note the Transportation Division of Fingal County Council expressed no objection to the development subject to conditions.
- 7.8.5. Overall, I am satisfied that the traffic, which would likely be generated during the construction and operation phases, would not constitute a traffic hazard and the development should not be refused for traffic reasons.

## 7.9. Surface water

- 7.9.1. Drainage proposals are proposed to be in line with SuDS Best Practice methods, such that there will be no increase in greenfield runoff rates as a result of the development. It is stated under Chapter 5 (Environmental Assessment) of the Flood Risk Assessment, which accompanies the application, that there would be no alteration to the local surface water hydrology. It is also stated that the rainfall which would be intercepted by the solar panels would spread out and infiltrate into the ground beneath the panels.
- 7.9.2. Water Services section of Fingal County Council were satisfied with the proposal, subject to conditions. I am equally satisfied with the proposals for the management of surface water, given the open nature of the site and as it would be grassed, and that while the surface water drainage paths to ground would alter locally across panels, most of the site would remain a permeable area and rain falling from individual panels would drain freely onto the ground below at multiple locations across the site. Any change to the surface water regime would not be significant and I am satisfied that surface water is not an issue that would warrant withholding planning permission.

## 7.10. Flood Risk

- 7.10.1. By reference to the Flood risk assessment and available OPW Preliminary Flood Risk Assessment Map (PFRA), I note that most of the appeal site is in an area characterised as 'Flood Zone C', where a probability of fluvial flooding is less than 0.1% Annual Exceedance Probability (AEP) flood event, which relates to a 1 in 1,000 chance of a flood occurring in any given year. The development is one of a type acceptable in 'Flood Zone C' lands and does not require any justification test by reference to 'Table 3.1: Classification of vulnerability of different types of development' and 'Table 3.2: Matrix of vulnerability versus flood zone to illustrate appropriate development and that required to meet the Justification Test', as set out in 'The Planning System and Flood Risk Management – Guidelines for Planning Authorities, DEHLG and OPW' (2009). The PFRA mapping indicates a small area of the appeal site is located within 'Flood Zone A' with a probability of 1% flood risk, or a 1 in a 100 chance of flood occurring in any given year. It is stated that this area

would be avoided for any development. OPW records show that there is no history of recurring flooding incidences in the proposed appeal site location.

7.10.2. I am satisfied that the risk of flooding posed by the development would be low and therefore the development should not be refused because of flood risk.

## 7.11. Other Matters

### Design

7.11.1. The point is made by the applicant that solar technology is continuously advancing leading to increased efficiency and that the most efficient infrastructure and configurations would be used at the time of construction which may vary slightly from the components proposed. In that context, the applicant states that they would welcome a condition requiring written agreement from the Planning Authority regarding the final position and design details of non-substantive elements of the overall development.

7.11.2. In order not allow for such technological changes, I recommend that, should the Board be minded to grant permission, that a condition should attach to allow for final position and design details to be agreed with the Planning Authority while stipulating the overall height proposed of 3m and the stated site area which would be occupied (of 39.42 ha, or rounded up to 40 ha) on which the application was assessed, should not be exceeded.

### Material Contravention

7.11.3. The decision of the Planning Authority includes that if the development were permitted, it would materially contravene the 'RU' zoning objective attributed to the site and also three other objectives including DMS138, DA13 and DA16. In this regard, noting the provisions of Section 37(2) of the Planning and Development Act 2000, as amended, the matter of material contravention needs consideration. Section 37(2) requires that if the Planning Authority have decided to refuse permission on the grounds that a proposed development materially contravenes the Development Plan, the Board may only grant permission in certain circumstances.

7.11.4. In my assessment above, I have dealt with the substantive matters in relation to these referenced objectives, which the Planning Authority consider would be



contravened. Specifically, in relation to the 'RU' zoning objective, I have concluded that the proposed development would not materially contravene this zoning objective, and instead consider that the development would be acceptable in principle within such a zoning category. The other objectives referenced in the reasons for refusal (DA138, DA13 and DA16) are general objectives and are not specific to the appeal site. I do not share the view to the Planning Authority that the development would lie contrary to these four referenced objectives or that it would materially contravene the terms of the Development Plan for the area. Accordingly, Section 37(2) of the Act requires no further consideration.

## **7.12. Requirement for Environmental Impact Assessment (EIA)**

7.12.1. Solar farms are not listed as a class of development under Annex I and II of the EIA Directive (2011/92/EU) amended by 2014/52/EU or under Parts 1 and 2 of Schedule 5 of the Planning and Development Regulations 2001-2018, whereby a mandatory EIA and the submission of an EIA report (EIAR) is required. I note that there are some projects under No. 3 of Part 2, 'Energy Projects', which relate to energy production. I consider that none of these projects would be applicable to the proposed solar farm. Article 92 of the Planning and Development Regulations 2001-2018 defines sub-threshold development for the purposes of EIA as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'. As I have considered above that the solar panel development is not a development set out in Schedule 5, accordingly, I also consider that the subject development is a not 'sub-threshold development' for the purpose of EIA and an EIAR is not required for the proposed development.

## **7.13. Appropriate Assessment Screening**

7.13.1. The appeal site is not located in, or adjacent to, any designated Natura 2000 sites. The closest Natura 2000 sites are the Malahide Estuary SAC (Site Code 000205) and Malahide Estuary SPA (Site Code 004025), both located c. 7km to the west when measured by direct distance.

7.13.2. Other Natura 2000 sites within a 15km buffer area include: Rogerstown Estuary SAC (Site Code 000208), Rogerstown Estuary SPA (Site Code 004015), Baldoyle Bay SAC (Site Code 000199), Baldoyle Bay SPA (Site Code 000199), South Dublin Bay & River Tolka Estuary SPA (Site Code 004024), North Dublin Bay SAC (Site Code 000206), North Bull Island SPA (Site Code 001006), which are all located to the west, north west and south west. The Rye Water/Cartron SAC (Site Code 001398) lies to the south east of the appeal site.

7.13.3. An Appropriate Assessment Screening Report was submitted with the application, and the Report considers the potential impacts of the proposed development and the grid connection route options on the designated Natura 2000 sites, as identified above.

7.13.4. The conservation objectives for the Malahide Estuary SAC (site Code 000205) is 'to maintain or restore the favourable conservation condition of the conservation condition of the qualifying habitats'. These include:

- Mudflats and sandflats not covered by seawater at low tide [1140]
- Salicornia and other annuals colonising mud and sand [1310]
- Spartina swards (*Spartinion maritimae*) [1320]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120]
- Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]

7.13.5. The conservation objectives for the Malahide Estuary SPA (Site Code 004025) is 'to maintain favourable conservation condition of the bird species listed as Special Conservation interests for this SPA'. These include:

- Great Crested Grebe *Podiceps cristatus* [A005]
- Brent Goose *Branta bernicla hrota* [A046]
- Shelduck *Tadorna* [A048]
- Pintail *Anas acuta* [A054]

- Goldeneye *Bucephala clangula* [A067]
- Red-breasted Merganser *Mergus serrator* [A069]
- Oystercatcher *Haematopus ostralegus* [A130]
- Golden Plover *Pluvialis apricaria* [A140]
- Grey Plover (*Pluvialis squatarola*) [A141]
- Knot (*Calidris canutus*) [A143]
- Dunlin (*Calidris alpina*) [A149]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Bar-tailed Godwit (*Limosa lapponica*) [A157]
- Redshank (*Tringa totanus*) [A162]
- Wetland and Waterbirds [A999]

7.13.6. The appeal site has a hydrological connection with the Malahide Estuary via on site streams/drains that flow onwards to the Fieldstown Stream, which is a tributary of the Broadmeadow River and this river discharges to the Malahide Estuary. Hence there is a pathway to the Malahide Estuary SAC (Site Code 000205) and Malahide Estuary SPA (Site Code 004025) which are located c.13.5km downstream of the proposed development site when measured along the watercourses. No hydrological links exist between the development site and any other Natura 2000 sites.

7.13.7. The most likely grid connection route considered (as shown in Fig 2.1 of the applicant's Appropriate Assessment Screening Report) is that which would follow the public road network to Glassmore sub-station via an overhead line or an underground cable. This likely option also has a hydrological connection with the Malahide Estuary SAC and Malahide Estuary SPA. No hydrological links exist between the likely grid connection route and any other Natura 2000 sites.

7.13.8. Having regard to the nature of the proposed development, there is potential for indirect effects to arise on the European sites in view of their conservation objectives arising from the effects of run-off or discharge into the aquatic environment and which could result in release of siltation and nutrients into the receiving watercourses.

- 7.13.9. A series of measures are outlined in the Outline CEMP submitted with the application and construction works would be carried out in accordance with Best Practice regarding environmental protection (Ref: CIRIA 2010). Of relevance, there will be no in-stream works and the storage of spoil would not be located within 15m of any watercourses. I consider that proposals outlined in the Outline CEMP represent standard good practice construction measures for works near watercourses, and can be considered to be an intrinsic part of the work to be carried out. Having regard to this, and the significant distances from the Natura 2000 sites, I am satisfied that the measures outlined will be sufficient to ensure that there will be no significant impact on water quality in the stream, or any downstream waterbodies.
- 7.13.10. In relation to the likely grid connection, if the connection infrastructure would involve an overhead line, intervention to the ground or water courses would be minimal and therefore the potential for watercourse impacts would be low. Should the connection cable be underground, it would be buried in a trench. It is stated that the trench would be formed using cut and fill analysis to minimise the ground disturbance and all trenches would be covered in wet weather during the construction, to prevent surface water entering the trench and to minimise the release of siltation. The cabling option has been considered in the outline CEMP. The closest designated site would be separated by c.3km downstream of the closest waterway crossing (Newtown stream). I am satisfied that noting the best practice measures proposed, no significant impacts on Natura 2000 sites are likely because of the proposed grid connection route.
- 7.13.11. Operation phases and decommissioning phases would involve less intervention / disturbance to the site or to ground or water features. There would be no disposal of wastewater during operation and surface water run-off during operation would be similar to pre-construction levels. I am satisfied that there would be no significant indirect hydrological impacts on Natura 2000 sites during these phases. It follows that there would not be any significant in-combination contribution by the project such as would give rise to adverse effects on Natura 2000 sites.
- 7.13.12. Having regard to the above, it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the Malahide

Estuary SAC (Site Code 000205), Malahide Estuary SPA (Site Code 004025), or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a NIS is not therefore required.

## 8.0 Recommendation

8.1. Further to the above assessment of matters pertaining to this appeal, including the consideration of the submissions made in connection with the appeal and including my site inspection, I recommend that permission is **granted** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

9.1. Having regard to the provisions of EU, national and regional policy objectives in relation to renewable energy, the provisions of the Fingal Development Plan 2017–2023, the nature and scale of the proposed development, the pattern of development in the area, the topography of the site, the level of hedgerow screening available and the proposed additional screening, the continued agricultural use and improved biodiversity which would result, it is considered that, subject to compliance with the conditions set out below, the proposed development would support national and regional renewable energy policy objectives, would not conflict with the provisions of the Development Plan, would not injure residential, road users or aviation receptors by virtue of glint and glare, would not have an unacceptable impact on the landscape and visual amenities of the area, would not be harmful to the continued preservation of the archaeological heritage of the area, would be acceptable in terms of traffic and road safety, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 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 20<sup>th</sup> day of September 2017, 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 considers it appropriate to specify a period of validity of this permission in excess of five years.

3. Prior to the commencement of the development, details including a site layout showing the final position of the PV solar arrays (with an overall height not exceeding 3m and the net area occupied not exceeding 40 ha) together with the design details of the PV infrastructure proposed to be installed, shall be submitted to, and agreed in writing with, the Planning Authority. The development shall be carried out in accordance with the agreed details.

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

4. (a) All structures including foundations hereby authorised shall be removed not later than 30 years from the date of commissioning of the development, and the site reinstated unless planning permission has been granted for their retention for a further period prior to that date.

(b) Prior to commencement of development, a detailed restoration plan, providing for the removal of the solar arrays, including all foundations, anchors, inverter/transformer stations, substation, CCTV cameras, fencing and site access to a specific timescale, shall be submitted to, and agreed in writing with, the planning authority. On full or partial decommissioning of the solar farm, or if the solar farm ceases operation for a period of more than one year, the solar arrays, including foundations/anchors, and all associated equipment, shall be dismantled and removed permanently from

the site. The site shall be restored in accordance with this plan and all decommissioned structures shall be removed within three months of decommissioning.

**Reason:** To enable the planning authority to review the operation of the solar farm over the stated time period, having regard to the circumstances then prevailing, and in the interest of orderly development.

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

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

6. The proposed development shall be undertaken in compliance with all environmental commitments made in the documentation supporting the application.

**Reason:** To protect the environment.

7.
  - a. Existing field boundaries shall be retained, notwithstanding any exemptions available and new planting undertaken in accordance with the landscape mitigation plan (Drawing Nos: LMP01, LMP02) submitted to the planning authority on the 20<sup>th</sup> day of September 2017.
  - b. All landscaping shall be planted to the written satisfaction of the planning authority prior to commencement of development. Any trees or hedgerows 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.
  - c. The construction compound shall be removed at the end of the construction phase and the resultant area covered with topsoil and reseeded.

**Reason:** In the interest of biodiversity, the visual amenities of the area, and

to prevent occurrence of unacceptable glint and glare on receptors.

8.
  - a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.
  - b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road.
  - c) Cables within the site shall be located underground.
  - d) The inverter/transformer stations shall be dark green in colour. The external walls of the proposed substation 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:** To protect the visual and residential amenities of the area.

9. Prior to commencement of development on site, details of the structures of the security fence showing provision for the movement of mammals shall be submitted for prior written agreement to the planning authority. This shall be facilitated through the provision of mammal access gates every 100 metres along the perimeter fence and in accordance with standard guidelines for provision of mammal access (National Roads Authority 2008) or as may otherwise be agreed with the planning authority.

**Reason:** To allow wildlife to continue to have access across the site.

10. 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 relating to the proposed development, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site (including archaeological testing) and monitor all site development works.



The assessment shall address the following issues:

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

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, 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.

11. 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 but not limited to, hours of working, noise and dust management measures, surface water management proposals, the management of construction traffic and off-site disposal of construction waste.

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

12. 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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Patricia Calleary  
Senior Planning Inspector

09<sup>th</sup> May 2018