



An
Bord
Pleanála

Inspector's Report ABP 304925-19 Addendum Report

Development	Solar PV energy development within a site area of c. 15ha. This area was removed by condition no. 2 in previous planning reference PL2 16/246.
Location	Clonin, Rhode, Co. Offaly.
Planning Authority	Offaly County Council.
Planning Authority Reg. Ref.	19/194.
Applicant(s)	Highfield Solar Limited.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Highfield Solar Limited.
Observer(s)	None.
Site Inspection	4 th November 2020.
Inspector	Dáire McDevitt.

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1.0 Introduction

1.1 This addendum report should be read in conjunction with my original report on file dated 20th December 2019.

1.2 Section 132 of the Planning and Development Act 2000, as amended, provides that the Board may serve on any party, or on any person who has made submissions or observations to the Board a notice requiring that person, within a period specified in the notice to submit to the Board such document, particulars or other information as is specified in the notice.

1.3 Board Direction BD-005033-20 contains the Board's decision to defer consideration of this case and to issue a Section 132 Notice.

1.4 The Board issued a notice to the applicant under section 132 on 29th January 2020 requiring the applicant to submit the following information on or before 20th May 2020:

1. A Visual Impact Assessment, including professionally prepared view photomontages, in greater detail than that submitted with the planning application, illustrating the impact of the proposed development on the inter-visibility between Croghan Hill and Clonin Hill, to be submitted. This shall include views before and after the proposed development. The photomontages shall illustrate the inter-visibility between the two monuments in clear weather from both hills.
2. A results of an archaeological survey of a systematic programme of field walking, which assesses the archaeological potential of Field No. 3 and 4, to be submitted. If Archaeological remains are identified in the field survey, further archaeological work, such as geophysical survey, should be submitted, in order to resolve the archaeology of the site.

1.5 The applicant responded to said notices on the 10th July 2020 (Period for response was extended to 17th July 2020 due to Covid 19 pandemic emergency legislation).

2.0 Responses to Section 132 Notices

2.1 Response to Item No. 1

2.1.1 The response refers to the LVIA prepared for the original application (PL2 16/246 where 4 fields were removed by condition). These included an assessment of the fields which are the subject of the current application.

2.1.2 An updated Visual Impact Assessment and photomontages have been prepared to include the two viewpoints requested have been prepared and submitted.

2.1.3 Viewpoint 1 (From Clonin Hill looking west towards the two proposed fields and Croghan Hill):

The VIA concluded that the visibility of the additional panels is limited and is also seen in the context of the permitted solar panel. Both permitted and proposed panels sit low in the context of the entire view, with undisturbed views towards the bog and Croghan Hill.

The assessment concludes that the addition of the proposed two fields results in a moderate/minor adverse impact.

2.1.4 Viewpoint 2 (From Croghan Hill looking east towards the overall development and Clonin Hill):

The VIA noted that entire site is visible from the location. However, the addition of solar panel in the proposed two fields is insignificant when viewed in the context of the already permitted solar panels.

The assessment concludes that the addition of the proposed two fields results in a minor adverse impact.

It is presented that the addition of the proposed two fields to the already permitted solar farm would not have significant adverse visual effects upon the outward views to or for Clonin Hill or Croghan Hill.

2.2 Response to Item No. 2

2.2.1 The applicant's response to item no 2 includes Chapter 4 (Archaeology, Architectural Heritage and Cultural Heritage) of an Environmental Report and refers to a walkover survey dated 1st April 2016 carried out for a development consisting of 13 fields (99.7 hectares).

2.2.2 The applicant is of the view that notwithstanding that the survey was undertaken in 2016, the results are considered to remain appropriate and relevant for the consideration of this appeal. At the time no archaeological features were encountered and as such no further archaeological work is considered necessary.

It is also stated that while the survey results stated that the fields were under crop at the time, is put forward by reference to plate 5 and 6 that this is likely to have been young crop or possibly grass and did not prohibit visibility of the ground for the walkover survey.

3.0 Planning Authority Response to Section 131 Notice

3.1 Section 131 of the Acts provides that where the Board is of opinion that it is appropriate in the interests of justice to request any party, observer or any other person or body to make submissions or observations in relation to any matter which has arisen, the Board may serve a notice requesting that person to submit a submission or observation in relation to the matter in question.

3.2 The Board issued a notice to the Planning Authority under section 131 on 5th August 2020 requesting submissions or observations in relation to the submission received from the applicants on the 10th July 2020. The submissions or observations in relation to this matter were invited on or before 25th August 2020.

3.3 Offaly County Council in their response, received by An Bord Pleanála on the 25th August 2020, noted that the details of the First Party are noted and have been considered. The Planning Authority respectfully requested that An Bord Pleanála support its decision in this instance.

4.0 Assessment

Having reviewed the notices and responses received, I consider that the following principal issues arise for further consideration since my previous report on file:

- Visual Impact and Inter-visibility between Croghan Hill and Clonin Hill.
- Archaeology.
- Material Contravention.

4.1 Visual Impact and Inter-visibility between Croghan Hill and Clonin Hill.

4.1.1 I have examined the applicants response to the Section 132 Notice and I am of the view that the applicant has addressed the outstanding issues requested by the Board

4.1.2 As stated in my previous report dated 20th December 2020 that while I acknowledge that the proposed development would be sited on sloping land within line of sight of Croghan Hill and intermittently from surrounding rural areas at lower levels. It is my opinion that the inclusion of the application site (fields 3 and 4 as identified in the documentation on file) would have a marginal increase in the footprint and visual impact of the overall solar PV energy development when viewed from the surrounding area.

4.1.3 Having carried out a second inspection on the site on the 4th November 2020 and surrounding area and having reviewed information submitted by the application on the 10th July 2020. I am of the view that the visual impact of the proposed development on sensitive receptors will be limited. With regard to the inter-visibility between the two sites, I draw the Boards attention to the Planning authority's grant of permission for c.71 hectare solar farm in 2017, which the current proposal forms part of. The application site is located in an area identified as one of 'low sensitivity' for development in the current Offaly County Development Plan. The surrounding area has large expanses of heavily worked out bogland, a 110kv substation, a number of 110kv powerlines and pylons, an industrial plant adjacent to the site, permission for a wind farm to the north of Clonin Hill and an extant permission for a 71 hectare solar farm, of which the current proposal would be part of.

4.1.4 I note that the Planning Authority in their response under Section 131 respectfully request that An Bord Pleanála support its decision in this instance.

4.1.5 The premise of the Planning Authority's reason for refusal relates to the visual impact of the proposed development given the context of the site and its location within a sensitive landscape. The principle of a solar farm was considered acceptable at this general location in 2017 subject to the omission of 4 fields for reasons relating to visual amenity given their proximity to Clonin Hill and visibility from the surrounding area and Croghan Hill in particular. I have examined the current Offaly County Development Plan and I note that these views are not included in the list of views and prospects contained in Table 7.11.5.

4.1.6 I am of the view that the proposal for a 15 hectare solar PV energy development as part of a permitted c.71 hectare development which results in an overall solar development of c.86 hectares at this location. And given the nature, scale and height of the solar ground mounted panels, that the proposal would contribute the patchwork appearance of the landscape arising from the varied uses within the immediate vicinity ranging from Rhode Village and its built environment, worked bogland, agricultural lands, etc. Furthermore the views-referred to by the Planning Authority in their original submission do not lie with the corridor of any designated protected views in the current County Development Plan and the impact of 15 hectares in the context of c.71 hectares that are permitted is minimal. I am satisfied that the landscape can absorb the proposal as part of a larger permitted development and would not have a significant impact on the character of the landscape or the cultural and archaeological heritage of the area.

4.2 Archaeology

4.2.1 I note that the applicant's response to item no 2 includes Chapter 4 (Archaeology, Architectural Heritage and Cultural Heritage) of an Environmental Report and refers to a walkover survey dated 1st April 2016 carried out for a development consisting of 13 fields (99.7 hectares) lodged under Planning Register Reference number PL2 16/246. The fields which are the subject of the current appeal before the Board were omitted by condition No. 2 at the time. No archaeological features were encountered and as such no further archaeological work is considered necessary.

4.2.2 The survey results stated that the fields were under crop at the time, it is put forward by reference to plate 5 and 6 that this is likely to have been young crop or possibly grass and did not prohibit visibility of the ground for the walkover survey.

4.2.3 I would concur with the applicant that these surveys remain relevant given the lack of significant disturbance to the fields since then. Furthermore these surveys refer to a larger developemtn which has the benefit of an extant permission and present.

4.2.4 The Department of Community Heritage and The Gaeltacht submission on the current application, which I addressed in my report dated 20th December 2020, recommended that an Archaeological Assessment should be carried out, to consider in detail the effects of the proposed development on the visual amenity of the monuments on Croghan Hill and Clonin Hill and the indivisibility between the two groups. I remain of the view that given the nature of the development and works required, this matter can be dealt with by condition if the Board considers granting permission.

4.3 Material Contravention

4.3.1 The Planning Authority in their response under Section 131 respectfully request that An Bord Pleanála support its decision in this instance.

4.3.2 The Planning Authority recommended permission be refused for the following reason:

The proposed development of a solar farm located on sloping land within line of sight of Croghan Hill and from surrounding rural areas and the proposal is deemed to materially contravene objective LAO-01 of the Offaly County Development Plan which states that “It is an objective of the Council to preserve and enhance the character of the County’s landscape where, to the extent that in the opinion of Offaly County Council, the proper planning and sustainable development of the area requires.” And the proposal is therefore considered to be contrary to the proper planning and sustainable development of the Area.

4.3.3 In this context, if the Board are minded to grant permission for the proposed development, Section 37(2) of the Planning and Development Act 2000 must be considered.

4.3.4 Section 37(2)(b) of the Act of 2000 (as amended) states that where the Planning Authority has decided to refuse permission on the grounds that the proposed development contravenes materially the Development Plan, the Board may only grant permission in accordance with paragraph (a) where it considers that –

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned,*

or

- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,*

or

(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

4.3.5 The development before the board is part of a larger solar farm that was permitted by the Planning Authority in 2017. As set out in my assessment above I am satisfied that the proposal would not detract from the character of the area. I do not share the view of the Planning Authority that the development would materially contravene the Development Plan for the area. The objective referenced in the reasons for refusal is a general objective rather than an objective which specifically relates to the appeal site. Furthermore I have examined the current Offaly County Development Plan and I note that these views are not included in the list of views and prospects contained in Table 7.11.5.

4.3.6 Accordingly, I do not consider that the proposed development, if permitted, would materially contravene the applicable Development Plan and Section 37(2) of the Act requires no further consideration.

5.0 Recommendation

Having regard to the above and to the content of my original report dated 20th December 2020, I recommend that permission be granted based on the following reasons and considerations and subject to the conditions set out below

6.0 Reasons and Considerations

Having regard to:

- (a) National and local policies in relation to renewable energy, in particular,
- The National Renewable Energy Action Plan 2010,
 - The Strategy for Renewable Energy 2012-2020,
 - Ireland's Transition to a Low Carbon Energy Future 2015-2030,
 - The Offaly County Development Plan 2014-2020
- (b) the scale, extent and layout of the proposed development, and

(c) the pattern of development in the area, including the extant permission for a solar farm and associated facilities,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with national and local policy, would not seriously injure the visual or residential amenities of the area, would be acceptable in terms of landscape impacts and traffic safety and convenience and would not endanger human health or the environment. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

7.0 Conditions

1. Apart from any departures specifically authorised by this permission, the development shall be carried out in accordance with the terms and conditions of the permission granted on the 27th January, 2017 under Planning Register Reference number PL2 16/246 and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

2. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 10th July 2020, 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

3. 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.

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. (a) Prior to the commencement of development a detailed landscaping plan shall be submitted for the written agreement of the planning authority, this shall include details of boundary treatment and proposals to augment existing boundaries.

(b) The landscaping proposals shall be carried out within the first planting season following commencement of construction of the solar PV array. All existing hedgerows (except at access track openings) shall be retained. The landscaping and screening shall be maintained at regular intervals. Any trees or shrubs planted in accordance with this condition which are removed, die, become seriously damaged or diseased within two years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

(c) Additional screening and/or planting shall be provided so as to ensure that there is no glint impact on adjoining houses as a result of the development. Upon commissioning of the development and for a period of two years following first operation, the developer shall provide detailed glint surveys on an annual basis to the planning authority in order to confirm that no such glint impact has taken place, and shall provide such further mitigation measures, as the planning authority may specify in writing, to ensure that this is achieved.

(d) The construction compound shall be removed at the end of the construction phase and the resultant area covered with topsoil and reseeded.

Reason: To assist in screening the proposed development from view and to blend it into its surroundings in the interest of visual amenity, and to mitigate any glint impact from the proposed development upon adjoining residential amenities.

7. The inverter/transformer stations and all fencing shall be dark green in colour. The external walls of the proposed substations shall be finished in a neutral colour such as light grey or off-white; the roof shall be of black tiles/slates.

Reason: In the interest of the visual amenity of the area.

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) Each fencing panel shall be erected such that for a minimum of 300 millimetres of its length, its bottom edge is no less than 150 millimetres from ground level.

(d) The solar panels shall have driven or screw pile foundations only, unless otherwise authorised by a separate grant of planning permission.

(e) Cables within the site shall be located underground.

Reason: In the interest of clarity, of visual and residential amenity, to allow wildlife to continue to have access to and through the site, and to minimise impacts on drainage patterns and surface water quality.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and 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.

10. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

- (a) Engage the services of a suitably qualified archaeologist (licenced under the National Monuments Acts 1930-2004) to carry out a systematic programme of field walking, in order to assess the archaeological potential of these fields and pre-development testing at the site to include the potential archaeological geophysical anomalies identified together with areas where topsoil is to be stripped. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her express consent.
- (b) The archaeologist is required to notify the Department of Culture, Heritage and the Gaeltacht in writing at least four weeks prior to the commencement of site preparations. This will allow the archaeologist sufficient time to obtain a licence to carry out the work
- (c) The archaeologist shall carry out any relevant documentary research and may excavate trenches at locations chosen by the archaeologist, having consulted the proposed development plans.
- (d) Having completed the work, the archaeologist shall submit a written report to the Planning Authority and the Department of Culture, Heritage and the Gaeltacht.
- (e) Where archaeological material is shown to be present, avoidance, preservation in situ, preservation by record (excavation) and/or monitoring may be required and the Department of Culture, Heritage and the Gaeltacht will advise the Developer with regard to these matters.
- (f) No site preparation or construction work shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the Planning Authority in consultation with the Department of Culture, Heritage and the Gaeltacht.

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. Water supply and drainage arrangements including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

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

13. 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 that may be damaged by construction transport 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 the reinstatement of public roads that may be damaged by construction transport.

14. 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.

15. 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.

Dáire McDevitt
Planning Inspector

15th December 2020