



An
Bord
Pleanála

Inspector's Report ABP-305395-19

Development	10 Year Permission for a solar farm, substation building and associated site works.
Location	Killiniskyduff, Arklow, Co. Wicklow.
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	19/668
Applicant(s)	Sylvester Bourke
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Sylvester Bourke
Date of Site Inspection	27 th November 2019
Inspector	Paul O'Brien

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1.0 Site Location and Description

- 1.1. The subject site with a stated area of 0.86 hectares is located approximately 160 m to the west of the R772, M11 to Arklow regional road. The site is an irregular shape and forms part of a larger site area that is in agricultural use. To the north east of the site is the Arklow 220kV substation and several powerlines cross the site. The site is narrow and runs along a watercourse known as the Templerainey Stream, to the west. The site slopes downwards on an east to west axis towards the stream; from the submitted plans the ground level to the east is at circa 28 m and to the west is between 17 and 18 m. There is a mix of trees and shrubs along the banks of this stream.
- 1.2. Included within the site area is sufficient land for an access roadway from the main part of the site running west to east along the northern boundary of the site and which turns south east to provide a connection to an existing gateway/ access to the R772.
- 1.3. Lands to the west, on the opposite side of the river are in agricultural use with a farmyard and associated buildings visible from the site. To the south east of the site is a dormer house. The site is located within an area that is primarily agricultural on the northern and western sides of Arklow forming a greenbelt between the M11 motorway and the urban area of Arklow.

2.0 Proposed Development

- 2.1. The proposed development consists of:
 - Solar photovoltaic panels erected on steel frames.
 - An inverter and transformer housing unit.
 - An electricity substation building.
 - Ancillary site works, including underground ducts and cables, fencing, entrance improvements and access road.

Planning permission is sought for a period of 10 years.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for two reasons as follows:

1. *Having regard to the location of the site within lands zoned 'OS2: Open Space' in the Arklow and Environs Local Area Plan 2018 which are intended to be 'maintained in its current undeveloped natural state in the interest of visual and natural amenity' and the stated Objective of the Council To protect and enhance existing open, undeveloped lands' taken in conjunction with the nature of the proposed development which requires the extensive removal of existing trees and natural habitat in order to facilitate its development, it is considered that the proposal would materially contravene the Objectives of the Arklow and Environs Local Area Plan 2018 and would set an undesirable precedent for similar type proposals in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*
2. *In the absence of a detailed Environmental Report to outline and quantify the impacts of the proposed solar farm on the surrounding area which should include a visual impact assessment, glint and glare assessment, habitat & wildlife assessment, surface water assessment, flooding assessment and provide such information to justify the development of a solar farm at this sensitive location, it is considered that the proposed development would lead to the unnecessary removal of an important local habitat, would detrimentally impact upon the visual amenity of the area, could prejudice the future development of surrounding lands and impact upon on the current and future residential amenities of the area, could give rise to a public health risk and flood hazard and could impact upon traffic safety in the area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report, prepared by the Planning Authority Case Officer, noted National Policy regarding the promotion of renewable energy and also referred to Regional and County policy in this regard. The Case Officer considered that the proposed development ‘*..would be open to consideration subject to other normal planning criteria being satisfied as outlined below*’. The Case Officer then identifies a number of criteria such as a Visual Impact Assessment, Glint and Glare Assessment, impact on trees in the area, drainage details, lighting, details of grid connection and flood risk assessment.

3.2.2. An extensive further information request was recommended by the Case Officer, however, the Senior Engineer decided to refuse permission on the basis of materially contravening the Objectives of the Arklow and Environs Local Area Plan 2018 - 2022 and also due to the lack of a detailed environmental report, the development would be contrary to the proper planning and sustainable development of the area.

3.2.3. **Other Technical Reports**

Arklow Area Engineer: Notes that no details have been provided with regards to the proposed ducting to the national grid. Whilst the site is adjacent to the ESB substation to the north, the location of ducting is not clear.

Senior Engineer – Roads: Further information requested with regards to Glint and Glare that may affect the R772 and need to clarify if there is a restriction on development due to the location of the existing powerlines crossing the site.

Executive Scientist – Pollution Control: No objection subject to conditions.

3.2.4. **Prescribed Bodies Reports**

Irish Aviation Authority (IAA): No observations.

Inland Fisheries Ireland (IFI): No objection subject to conditions – comply with a Construction Environmental Management Plan (CEMP), minimum of 10 m buffer between site and watercourse, and detail required on the access road/ its drainage.

3.2.5. **Objections/ Observations**

A letter of objection from the occupant of Templeraíney House, located 1.5 km north of the subject site was received to the original application. Issues raised included the following:

- The provision of an additional solar farm will turn the landscape into an industrial type area. A number of other solar PV developments have been granted in this area in recent years and whilst the subject development is not large, there is a cumulative impact and an Environmental Impact Assessment should be undertaken.
- No details have been provided with regards to the route of the electricity grid connection. This connection will require its own planning application.
- Pollution is likely during the construction phase especially to the Brittas Dunes SAC and having regard to the cumulative impact of the approved/ solar farms/ those under consideration.
- The effect of increased rainwater run-off is unknown and flooding is possible in the area.
- The size of the ancillary structures appears excessive for the scale of development proposed.

4.0 Planning History

There are no recent, relevant applications on this site.

The Wicklow County Council Planning Report references a number of relevant planning applications in the immediate area:

P.A. Ref. 19/627 refers to an August 2018 decision to grant permission for solar photovoltaic development on a site of 19 hectares, circa 1.6 km to the north east of the subject site. This decision was subsequently appealed and **ABP Ref. 305289-19** refers.

P.A. Ref. 17/1497 and **ABP Ref. 301726-18** refers to a February 2019 decision to grant permission for a solar photovoltaic development on a site of 39 hectares located 2.85 km to the north east of the subject site. This development as submitted would provide for 22 MW of power output.

P.A. Ref. 17/1440 and **ABP Ref. 302037-19** refers to a February 2019 decision to grant permission for a solar photovoltaic development on a site of 59 hectares located 2.2 km to the north of the subject site. The development as submitted would have provided for between 26 MW and 30 MW of power.

P.A. Ref. 16/1285 refers to an April 2017 decision to grant permission for a solar photovoltaic development of 21.5 hectares, located 0.8 km to the north of the subject site/ north of the M11 motorway.

5.0 Policy and Context

5.1. Development Plan

5.1.1. Under the **Arklow and Environs Local Area Plan 2018 – 2024**, the subject site is zoned OS2 – Open Space. Arklow is a Level 3 Town in the Wicklow County Development Plan 2016 – 2022. OS2 lands are *‘intended to be maintained in its current undeveloped natural state in the interest of visual and natural amenity’*. The objective for OS2 lands is *‘To protect and enhance existing open, undeveloped lands’* and the description of these lands is *‘To protect, enhance and manage existing open, undeveloped lands that comprise flood plains, buffer zones along EU and nationally protected sites (Natura 2000 sites, NHAs etc), watercourses and rivers, steep banks, green breaks between built up areas, green corridors and areas of natural biodiversity’*.

5.1.2. The lands to the east, between the subject site and the R772 road are zoned RE – Existing residential and the lands to the west of the site/ stream are zoned MU – Mixed Use and these lands are designated as AAP4 - Coolboy lands, for development of up to 220 residential units and active open space.

5.1.3. Under the **Wicklow County Development Plan 2016 – 2022**, Solar Energy is referenced under section (2) of Electricity Generation, Chapter 9 – Infrastructure. The following objectives are relevant:

CCE9 *To facilitate the development of solar generated electricity.*

CCE10 *To positively consider all applications for the installation of building mounted PV cells at all locations, having due regard to architectural amenity and heritage.*

CCE11 *To support the development of commercial scale ground mounted solar PV ‘Solar Farms’ subject to compliance with emerging best practice and available national and international guidance.*

A footnote to CCE11 references the lack of National Guidance in 2016, however there is guidance available in other jurisdictions which may be consulted.

5.2. National Planning Framework

- 5.2.1. National Policy Objective 55 – *‘Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050’.*

5.3. Natural Heritage Designations

- 5.3.1. The subject site is not located within any designated site but Buckroneys-Brittans Dunes & Fen SAC is located 3.7 km to the north east.

5.4. EIA Screening

- 5.4.1. Schedule 5 of the Planning and Development Regulations, 2001 as amended, sets out Annex I and Annex II projects which mandatorily require an Environmental Impact Assessment Report (EIAR). Part 1, Schedule 5, outlines the classes of development that require EIAR and Part 2, Schedule 5 outlines classes of developments that require EIAR but are subject to thresholds. Solar farms are not listed as a class of development under either Part 1 or 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, and therefore, I conclude that a mandatory EIA, and the submission of an EIAR, is not required. There are projects under No. 3 of Part 2, ‘Energy Projects’ which relate to energy production, but I suggest that none of these listed projects would be applicable to a solar farm as currently proposed. The Board will note that a similar conclusion has been reached in relation to previously decided solar farm developments.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant has appealed the decision of Wicklow County Council and the following comments are made:

- The subject site has been found to be unsuitable for forestry and it is considered suitable as a solar farm as the land is effectively waste ground. The proximity of the site to an ESB substation will allow for an easy and inexpensive grid connection.
- The site is not a natural habitat but is a planted site. The ESB clear vegetation under the powerlines and photographs have been provided in support.
- A photograph of the solar panels on the Municipal Arklow swimming pool have been submitted and demonstrate no issues with glint or glare that would affect residential areas.
- The land at Coolboy may be rezoned in accordance with National/ Regional requirements.
- The likely power output from the development is 270 kW. Connection to an existing substation at the Arklow substation adjacent to the site could be made or else to the Glenhaven food factory located less than 100 m from the site. The applicant has stated that the Glenhaven Management have indicated an interest in a power purchase agreement.
- References that this application could have been put forward as a Material Contravention of the Local Area Plan as it is in accordance with National and Regional Policy on climate change.
- Photographs, a map of the lands forming the applicant's farm and a copy of a Deed between the applicant and the ESB to cross the land/ place structures for the carrying of electricity across the lands, have been provided in support of the appeal.

7.0 Assessment

7.1. The main issues that arise for assessment in relation to this appeal can be addressed under the following headings:

- Nature and scale of Development
- Principle of Development
- Impact on the Amenity of the Area
- Other Issues
- Appropriate Assessment Screening

7.2. Nature and scale of Development

7.2.1. The application and subsequent appeal have provided very little information in terms of technical details in support of what is proposed on this site. Elevations, cross sections and support details have been provided of the solar panels though two different types have been indicated and it is not clear which one is proposed to be used on site. On the submitted site layout plan, the solar panels are labelled 'Provisional positions of solar panel s (sic) shown hatched in BLUE' and therefore the location of these may not be certain.

7.2.2. It is accepted that this is a relatively small-scale solar farm. The stated site area at 0.86 hectares is not large and the presence of reservations where no panels can be placed due to the ESB lines, the access road and the land for the substation/ transformer room, further reduces the development area such that the intensity of solar panels will be low. The location on a relatively steep slope further reduces the number that can be provided. In support of the appeal the applicant states that the expected output will be 270 kW and again this is not significant in comparison to other much larger solar farms permitted in County Wicklow.

7.2.3. As National Policy is to promote the development of such renewable energy sources, it is considered that the applicant has adequately justified the need for the proposed development, though not the location. The applicant has identified locations for suitable connections for the use of the generated electricity.

7.3. Principle of Development

- 7.3.1. The site is zoned OS2 – Open Space in the Arklow and Environs Local Area Plan 2018 – 2024. OS2 lands are *‘intended to be maintained in its current undeveloped natural state in the interest of visual and natural amenity’*. I note that the Arklow and Environs LAP includes different types of open space zonings providing for active recreation, AOS and OS1, and for the maintenance of the existing natural landscape OS2. From reading the description of the OS2 zoning, its function is similar to the green belt zoning that applies in other places and which seeks to control/ limit the spread of urban areas. The OS2 zoning description is very clear in that it functions as a buffer between urban development and rural areas whilst allowing for the protection of existing green corridors and areas of natural biodiversity.
- 7.3.2. Map No. 1 – Land Use Zoning Objectives of the Arklow and Environs LAP, clearly indicates that the use of this zoning is sparingly applied in the Arklow area, mostly on the urban fringe, along watercourses and between the M11 and urban areas. I would therefore consider that the zoning has been carefully applied to the locations where designated.
- 7.3.3. As worded, the OS2 zoning operates on the basis of as little development as possible within the designated area. I accept that the placing of solar panels will allow for sheep to graze and certain crops to grow, however there would be a definite development intrusion on the landscape and the construction of substations/ transformer rooms, no matter how small, would erode the existing character of the area. This would therefore erode the function of the OS2 zoning, and I would consider it to be a Material Contravention of the Arklow and Environs Local Area Plan.
- 7.3.4. I have had full regard to local and national policy regarding the development of sustainable energy sources, but the development in the form submitted would be contrary to the OS2 zoning. The LAP and lands outside of the LAP provide numerous opportunities for the development of such solar farms in the Arklow area. The zoning here has a very specific function and whilst in place, it limits development to agricultural/ open space uses. It is therefore considered that permission should be refused.

7.4. Impact on the Amenity of the Area

- 7.4.1. I note the second reason for refusal issued by the Planning Authority included a wide range of issues that if further information had been requested, the applicant may have been able to satisfactorily address these matters. It is unclear what the 'important local habitat' is other than the existing trees and shrubs along part of the river though it may be the case that the Planning Authority are aware of habitats of importance here. The need for a flood assessment was included in the reason for refusal; I do not foresee that the scale of the proposed access road or the ancillary units would give rise to flooding especially in this location. I am unsure as to where a public health hazard would arise from the proposed development.
- 7.4.2. The need for a glint and glare assessment was raised; this matter could be addressed by way of condition. There are numerous different types of solar panels and the technology is developed to such an extent, that reflection does not arise as an issue. The proposed location of the solar panels will ensure that they are not visually obtrusive when viewed from the public road.
- 7.4.3. I do not foresee how the development could impact on traffic hazard either. The development at construction and operation phases is unlikely to generate any significant volumes of traffic. The proposed entrance is located at an existing agricultural access where sightlines in both directions are good. The internal road network will not be used by members of the public and only those familiar with the site will access this internal route. As already identified, issues of glint and glare can be addressed by the type of panel used and which should not give rise to any concerns.
- 7.4.4. It is possible that the proposed development could impact on the future development of the adjoining lands, however this is speculative until a definite proposal for the residential development is provided. The proposed solar panels, allowing for their indicative location (see 7.2.1) allow for a buffer/ undeveloped zone of 10 m to their eastern side. In general, the proposed development is unlikely to prevent the development of the adjoining lands to the maximum possible as stated in the LAP. These lands are zoned for uses that would not result in any development and I would consider their use for active amenity use to not be permitted. They would not

therefore form part of the public amenity space for the future development of the residential lands through the current zoning and its description.

- 7.4.5. The Planning Authority recommended refusal under Reason no. 2 on the basis of a lack of a detailed Environmental Report. It is considered that the matters listed could be addressed by such a report, however I do not consider that the development in its current format would adversely impact on the environment.

7.5. **Other Issues**

- 7.5.1. The subject site is restricted by its zoning, topography and the presence of the powerlines that cross the site in a number of locations. I can understand why the applicant considered this to be a good location for the proposed development as the sloped banks would allow for maximum use of the site, reduce visual impact and allow for a suitable use of a restricted site. West facing panels would be provided with a significant amount of suitable sunlight and the location adjacent to an existing substation would allow for a simple connection to the existing grid.
- 7.5.2. I note in the letter of objection, that the issue of scale regarding the proposed substation and transformer was raised as an issue of concern. I would agree that these units appear to be large and it is unclear why such would be required in such close proximity to an existing ESB facility.
- 7.5.3. It is considered that the applicant could address most of the matters raised in the reasons for refusal as issued by the Planning Authority, however the issue of Material Contravention of the OS2 zoning cannot be addressed at this time.

7.6. **Appropriate Assessment Screening**

- 7.6.1. Having regard to the nature and scale of the proposed development and the location of the site and the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on an European site.

8.0 Recommendation

- 8.1. It is recommended that permission be refused for the reason and considerations set out below.

9.0 Reason and Considerations

The proposed development is located in an area zoned OS2 – Open Space, in the current Arklow and Environs Local Area Plan 2016 - 2022 for which the objective is '*To protect and enhance existing open, undeveloped lands*'. This objective, which is applied to limited and specific locations in the Arklow Area, is considered reasonable. It is a policy of the planning authority, as set out in the plan, to protect, enhance and manage existing open, undeveloped lands especially along rivers, steep banks and green corridors. The proposed development would result in development along an existing riverbank and would erode the currently open, undeveloped lands. The proposed development would, therefore, contravene materially the development objective as set out in the development plan and would be contrary to the proper planning and sustainable development of the area.

Paul O'Brien
Planning Inspector

3rd December 2019