



An
Bord
Pleanála

**Inspector's
Supplementary Report
ABP 306915-20
(previously ABP
301028-18)**

Development

Solar Farm

Location

Fiddane, Ballyhea, Charleville, Co.
Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

17/5799

Inspector

Pauline Fitzpatrick

1.0 Introduction

The Board previously made a decision on this appeal by order dated 15th November, 2018 under reference number ABP 301028-18. That decision was quashed by order of the High Court, perfected on 20th March, 2020 subsequent to the Court's written judgement of the 31st January 2020. The case was remitted back to the Board to determine the planning application concerned in accordance with law.

2.0 Section 131 Notices

By way of Board Direction dated 2nd June, 2020 a section 131 notice was issued to all existing participants in the case and the applicant in the judicial review proceedings, inviting submissions/observations as to how An Bord Pleanala should further process the application/appeal, having regard to the High Court judgement and order.

Two responses were received.

Entrust Planning and Environmental on behalf of the applicant is of the view that the Board should conduct a screening for appropriate assessment. If the outcome of that screening is that a Stage 2 appropriate assessment is required, then the applicant should be invited to submit a Natura Impact Assessment.

Peter Sweetman refers the Board to the Opinion of Advocate General Kokott on Case C-254/19 Friends of the Irish Environment Limited v. An Bord Pleanala delivered 30th April 2020 (copy attached).

3.0 Board Direction

The Board referred the case back to the undersigned Inspector to review the Appropriate Assessment, having regard to emerging case law and evolving best practice, and provide a report to advise and inform its determination as to whether a full Stage 2 Appropriate Assessment is warranted and on what grounds one may be sought from the applicant.

4.0 Case Law

Case C-323/17 People over Wind v. Coillte Teo addressed the issue as to whether mitigation measures could be relied upon by a competent authority when carrying out a screening exercise for the purposes of Article 6(3) of the Habitats Directive. The question was referred to the CJEU which concluded that such measures could not lawfully be taken into account at the screening stage.

Peter Sweetman v An Bord Pleanala, and the Attorney General. Judgement delivered on 31st January 2020. This refers to the subject case. Justice McDonald concluded that it is clear from the CEMP and the screening exercise carried out by the Inspector on behalf of the Board that the measures set out in the CEMP to protect watercourses from pollution (in particular silt laden run-off) were intended to avoid or reduce the harmful effects on the SAC. In those circumstances, having regard to the decision of the CJEU in People over Wind the measures in question could not be taken into account at the screening stage.

5.0 Appropriate Assessment - Screening

A Screening for Appropriate Assessment report accompanies the application which was amended by way of further information received by the planning authority on the 15th November 2017. It concludes that there will be no effect on Natura 2000 sites as a result of the project following standard best practice procedures and mitigation measures and that no additional site specific avoidance or mitigation measures are required.

5.1. **Project Description and Site Characteristics**

The site, which has a stated area of 67.8 hectares, is in the townland of Fiddane c. 3.2km to the south of Dromina, c. 3.3km to the north of Churchtown, 5km west/north-west of Ballyhea and 6.5 km to the south-west of Charleville in north County Cork. It comprises of in the region of 20 fields in agricultural use with falls from north to south/southeast. The field boundaries are, to a large extent, delineated by hedgerows. There are a number of agricultural tracks throughout. The lands adjoining are in agricultural use with a commercial coniferous woodland to the east.

The site is currently served by four accesses from the local road with farm buildings located within the north-western corner.

Ardglass Stream is located close to the western site boundary with the Oakfront River adjacent to the eastern site boundary. The site is c.550 metres north of Annagh Bogs which is part of the Blackwater River (Cork/Waterford) SAC.

The proposal is seeking permission for a solar farm with a maximum installed capacity of up to 30.6 MW. The main elements of the proposed development can be summarised as follows:

- Solar PV modules (total number estimated to be 87,536).
- Underground cabling and ducting
- 14 no. transformer stations
- 38kV ESB networks control room
- Boundary security fencing (mammal accessible)
- Site entrance via existing farm access in the north-west corner.
- CCTV
- Landscaping
- Temporary construction compound near access

The PV modules are ground mounted on galvanised steel support structures/frames in an east to west alignment which are fixed at an angle of up to 30 degrees facing south. The panels will have a maximum height above ground of 2.1 metres.

Connection to Charleville 110kV substation via a c. 3.8km underground 38kV line along the local road is proposed.

5.2. ***Relevant Natura 2000 Sites, Qualifying Interests and Conservation Objectives***

The following 2 sites are noted within a 15km radius of the site:

Blackwater River (Cork/Waterford) SAC (site code 002170) is c. 550 metres to the south of the appeal site. The qualifying interests are:

- Estuaries
- Mudflats and sandflats not covered by seawater at low tide

- Perennial vegetation of stony banks
- Salicornia and other annuals colonising mud and sand
- Atlantic salt meadows
- Mediterranean salt meadows
- Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation
- Old sessile oak woods with Ilex and Blechnum in the British Isles
- Alluvial forests with Alnus glutinosa and Fraxinus excelsior
- Freshwater Pearl Mussel
- White-clawed Crayfish
- Sea Lamprey
- Brook Lamprey
- River Lamprey
- Twaite Shad
- Salmon
- Otter
- Killarney Fern

Ballyhoura Mountain SAC (site code 002036) which is c.10km to the east of the appeal site. The qualifying interests are:

- Northern Atlantic wet heaths with Erica tetralix
- European dry heaths
- Blanket bogs (* if active bog)

Detailed conservation objectives have been drawn up for both sites, the overall aim being to maintain or restore the favourable conservation status of habitats and species of community interest.

5.3. ***Assessment of likely effects***

As the site is not within a designated site no direct impacts will arise.

In view of the separation distance and the site's location downslope of Ballyhoura Mountain SAC I consider it reasonable to conclude that the proposed development would not have significant effect on the qualifying interests of the designated site.

Annagh Bogs which is c.550 metres to the south of the site is within the Blackwater River (Cork/Waterford) SAC. The Ardglass Stream to the west and Oakfront River to the east discharge to the Blackwater SAC c. 662m and 1.9km downstream of the site respectively. Water quality is a key environmental factor underpinning the conservation condition of a number of the qualifying interests. The nearest mapped qualifying interests are the white-clawed crayfish and semi-natural woodland c. 3km and 8km to the south respectively.

The AA-Screening Report concludes that there is no significant potential source-pathway-receptor link between the appeal and Natura 2000 sites (Table 1). It notes that there are no streams within the site and that no operations are considered likely to affect the drains therein.

Notwithstanding this conclusion I submit that there is a hydrological connection between the site via the said drainage ditches to the designated site. Field drains within the site discharge into the adjacent watercourses noted above. As a consequence, there is potential for indirect effects from emissions to ground and surface water during the construction and early operational phases such as silt laden run off, hydrocarbons or other pollutants.

As per the amended Construction Environmental Management Plan received by the Planning Authority on the 15th November 2017, the potential pollution receptors are identified as the Oakfront and Ardglass Streams. The installation of silt fences is proposed to prevent any silt laden waters entering the drainage ditches/seasonal streams and in turn discharging to the streams. The silt fences are to remain in place until the site has been fully landscaped and the risk of silt laden run-off is minimised. In addition, straw bales are to be placed in the ditches as an additional precaution to intercept silt laden or potentially polluting run-off migrating towards the streams due to any potential unforeseen failure of silt fencing. The bales are to be

replaced and disposed of accordingly and will be removed once construction is completed.

In terms of the operational phase surface/stormwater from each transformer will discharge to a soakaway. The solar panel arrays are not predicted to increase runoff rates. The proposed grid connection will cross two watercourses. The construction of the ducts will be within the road or verge extents of each bridge structure and will not require or involve any works within the watercourses. Best practice measures are to be implemented in the vicinity of the watercourse bridge crossings.

Whilst it may be argued that the measures to be employed during the construction phase as detailed above entail best practice, such measures would not be required were the development not in proximity to the said Oakfront and Ardglass Streams. They are therefore, in effect, mitigation measures. This appears to be tacitly acknowledged by reference to '*management plan and mitigation measures*' in section 6 of the CEMP.

In light of recent case law as summarised above and best practice, screening for appropriate assessment must be without the benefit and consideration of such measures. In other words, in the absence of an appropriate assessment potential significant effects must be ruled out without mitigation. On this basis therefore, I am not satisfied that the proposed development would not be likely to have a significant effect on the Blackwater River (Cork/Waterford) SAC (site code 002170) having regard to its qualifying interests and should, therefore, be subject to an appropriate assessment.

5.4. ***Appropriate Assessment Screening - Conclusion***

On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on European site No. 002170 or any other European site, in view of the site's Conservation Objectives.

6.0 Conclusion

I recommend that the applicant be afforded the opportunity to submit a Natura Impact Statement. Both the provisions of Section 132 and Section 177T(5) of the Planning and Development Act, 2000, as amended, could be invoked in order to request the necessary documentation. I consider the most appropriate course would be by way of a notice under section 177T(5) of the Planning and Development Act, 2000. The requirements in terms of public notices as set out in Article 240 of the Planning and Development Regulations, 2001, as amended, will apply.

A period of 8 weeks for submission of the NIS is considered appropriate.

7.0 Recommendation

I recommend that a Section 177T(5) notice be issued to the applicant as follows:

It is considered that the application documentation as lodged, and in particular the Appropriate Assessment Screening Report, received by the Planning Authority on the 15th day of November 2017, does not adequately address the indirect impacts of the proposed development on the integrity of the European Site - Blackwater River (Cork/Waterford) SAC (site code 002170).

Having regard to the above, the Board may consider that, in the absence of a Stage 2 Appropriate Assessment, which deals with the potential for impacts from the development, including indirect impacts on the above named European Site, it cannot be satisfied that the proposed development, individually or in combination with other plans or projects, would not adversely affect the integrity of this site in view of its conservation objectives and qualifying interests.

You are therefore required to provide a Natura Impact Statement, prepared by a suitably qualified person(s), dealing with these matters and including, but not confined to accidental spillage and release of pollutants and silt during construction and to the use of silt fences and straw bales.

Note: The applicant is advised of its obligations in terms of public notices as set out in Article 240 of the Planning and Development Regulations, 2001, as amended.

Pauline Fitzpatrick
Senior Planning Inspector

August, 2020