



An
Bord
Pleanála

Inspector's Report

ABP-307702-20

Development	The construction of a 43MW Solar PV development.
Location	Kyleagarry Kyle Ballyryan East and Gortdrum , Donohill, Co. Tipperary
Planning Authority	Tipperary County Council
Planning Authority Reg. Ref.	19601430
Applicants	Ensource Ireland Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellants	Ensource Ireland Limited
Date of Site Inspection	8 th September
Inspector	Dolores McCague

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1.0 Site Location and Description

- 1.1.1. The site is located in the townlands of Kyleagarry, Kyle, Ballyryan East and Gortdrum, Donohill, Co. Tipperary, c 4km north west of Tipperary town and 330m north east of Limerick Junction railway station.
- 1.1.2. The dominant topographical features in the area are the spoil heaps for the quarry, the perimeter of the tailings pond, and railway infrastructure. There are two railway bridges to the west of the site one a road bridge at Ballyryan West / Ballyryan East and the other an elaborate double arched bridge at Milltown: one arch for the road and the adjoining arch for the river, a tributary of Pope's River.
- 1.1.3. The railway line carried over these bridges runs north west from Limerick Junction to Limerick city. The line running north east from Limerick Junction to Thurles (and onwards to Portarlinton and Dublin) adjoins the southern boundary of the site and also includes a number of bridges in the vicinity of the site. The site mainly comprises two portions divided by a local road, the L4212. A substantial part of the larger portion north of the local road is comprised of an elevated filled area which was the tailings pond associated with the former Gortdrum Mine. The part south of the road is flat pasture land which falls slightly to the south. Cauteen substation, 110kV, is c1.5km north of the site.
- 1.1.4. The site is given as 70.5ha.

2.0 Proposed Development

- 2.1.1. The proposed development is the construction of a 43MW Solar PV development comprising of:
 - c. 155,000 no. photovoltaic panels laid out in arrays,
 - the construction of a 38 kV substation, (c. 114.9m² X 4.75m high) and transformer unit (c. 15.25m² X 2.4m high) along with associated ancillary development including:
 - 24 no. Power Hubs (c. 15.25m² X 2.4m), which incorporate the inverters and the transformers within the same unit,
 - 1 no. single storey communications building (11.1m² X 2.5m),

1 no. single storey client building (15.25m² X 2.9m), 1 no. single storey equipment storage container (7.5m² X 2.7m),

15 no. CCTV cameras mounted on 4m high poles; and
perimeter security fencing.

The proposed development will also see the installation of ten (10 no.) ISO shipping container units for the purpose of battery storage (30.5 m² X 2.9m).

Each PV panel will have a length of 5.9m and a width of 6.11m mounted to achieve a maximum height above ground of 2.5m. Mounted on aluminium framework assembled on site, on columns driven 1.5m into the ground; panels will be angled at 15 degrees from horizontal to face due south.

Construction is to take 45 weeks.

During the operational period there will be 2/3 visits per annum. Remote monitoring is proposed.

The battery storage will house lithium-ion battery arrays.

The grid connection will be via the proposed substation on site to the Cauteen 110kV substation. The proposed grid connection will consist of underground cables. The route is indicative and will be determined by ESB Networks, who will be responsible for the connection from the site to the substation.

2.1.2. The application was accompanied by a number of documents:

2.1.3. AA Stage 1 Screening Report

Description – hydrological features. Gortdrum River is located c65m west of the site boundary. It flows in a northerly direction, draining to the Pope's River c620m north. Per WDF 2010-2015 Pope's River is of moderate status and at risk of not achieving good status. It is within the Dead River sub-catchment part of the Lower Shannon River catchment.

An unnamed artificial surface water lake is located immediately north east of the site occupying the former open cast mining pit, and is currently in use as a fish farm. This lake is not hydrologically connected to any other hydrological features in the local area, and there are no records of any historic overflow or flooding from the waterbody. No watercourses bisect the site, however a network of drainage ditches

was noted within the site boundary. These are not hydrologically connected to the Gortdrum River. The EPA report on historic mine sites noted that very little water appeared to flow off the Gortdrum Mine site, and instead drained to the flooded open pit lake.

Battery storage facility – the proposed development will see the installation of 10 no. ISO shipping container units. These are sealed, self contained units with the internal batteries loaded into cabinet arrays. These will house lithium ion battery arrays. The containers will be equipped with control features to monitor and respond to temperature variations and voltage protection. The 10 units will each comprise: battery yard, transformer and transformer bund, and underground cable trench. The grid connection at Cauteen substation located c1.5km north will consist entirely of underground cables along the unnamed road adjacent to the north western boundary. The cable will continue in a northerly direction and will then traverse west along another local road before accessing Cauteen substation. This is an indicative route. ESB Networks will be responsible for ensuring the most appropriate connection option in terms of both ecological and environmental impacts.

Drainage – no alteration to existing; no specific drainage infrastructure required.

Sites identified – SACs - Lower River Suir (5.6km E), Philipstown Marsh (5.1km NE), Lower River Shannon (7km NW), Moanour Mountain (9.7km SW), Galtee Mountains (12.4km S), Anglesea Road (14.8km NE); SPA Slievefelim to Silvermines Mountains (12.6km N).

Impacts identified – loss of or disturbance to habitats and or species; and potential impairment to water quality.

It is unlikely that there would be loss of or disturbance to habitats and or species at protected sites because of distances and buffers.

Re. potential impairment to water quality – should run-off of potential pollutants from the construction area reach the surface water or groundwater and flow into the Gortdrum River, this could adversely affect the water quality within the river, and also downstream into the Pope's River, Dead and Lower Shannon River, subsequently impacting both protected habitats and species within the protected Natura 2000 network. Potential pollutants resulting from the construction works could include suspended solids and/or diesel leaks or spills.

However, there is no direct hydrological connection between the site and any Natura 2000 sites (refer to section 3.1.1 and Figure 3-1 and 3-2) Furthermore, there will be no direct discharges to any adjacent watercourses or drainage ditches during the construction or operational phases. Additionally, as part of sensitive design, a minimum setback of 5m will be maintained for all onsite drainage ditches during construction.

Nonetheless, all construction works will be undertaken in accordance with recognised best practice guidance. It can therefore be concluded that the proposed development will not have any adverse effects on either the surface water or groundwater quality of any protected natura 2000 sites. it will not have any in - combination effects.

- 2.1.4. The EIA Screening Report is divided into 2 volumes the main volume containing 15 chapters, and volume 2 containing 10 appendices:

The appendices include:

Biodiversity Management Plan

Water Assessment including Site Specific Flood Risk Assessment

Noise Assessment

Landscape and Visual

Glint and Glare (Appendix H 1-6).

Cultural and Archaeological Assessment

Roads and Traffic Assessment.

The main report chapter headings are 1 Introduction, 2 EIA screening, 3 Methodology, 4 Policy, Planning and Development, 5 Proposed Development Details, 6 Biodiversity, 7 Water, 8 Noise, 9 Landscape and Visual, 10 Glint and Glare, 11 Cultural Heritage, 12 Material Assets – Traffic, 13 Conclusions, 14 Environmental Commitments, and 15 References. The headings are similar to those required for Environmental Impact Assessment with notable omissions: population and human health, land, soil, air and climate.

- 2.1.5. Decommissioning plan – a listed document, but blank

- 2.1.6. Preliminary Construction Environmental Management Plan – sets out the schedule of works, risk management etc.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to refuse permission for two reasons:

1 It is the policy of the Council as set out in Policy T12, National Road Infrastructure Programme, to seek the implementation of Strategic Transport Priorities identified in the SERPGs and the MWRPGs and the strategic transport documents for the region. The Council will seek to support the implementation of these schemes by reserving the corridors of the proposed routes free from inappropriate development so as not to compromise the future road scheme. The site of the proposed development is located within the study corridor for the proposed alignment of the N24 Cahir – Limerick Junction, the protection of which is an objective of the South Tipperary County Development Plan 2010, as varied, and the Regional Planning Objective 167 of the Regional Spatial Economic Strategy for the Southern Region. Having regard to the nature and scale of the development proposed, involving extensive overground and underground infrastructure, the proposed development would be premature pending the determination of a preferred alignment option for the N24 Cahir to Limerick Junction Scheme, would materially contravene Policy T12 of the South Tipperary County Development Plan 2010, as varied and would, therefore, be contrary to the proper planning and sustainable development of the area.

2 Policy DM 1 (Development Standards) of the South Tipperary County Development Plan 2010, as varied, states that it is a policy of the Council to require development to comply with the relevant standards identified in Chapter 10. Having regard to the failure of the applicants to demonstrate compliance with these requirements with respect to the demonstration of sight lines, and the precedent that a grant of permission for the proposed development would create for other, similar developments in the vicinity, it is considered that the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users. The proposed development is therefore considered to be contrary to Policy DM 1

(Development Standards) of the South Tipperary County Development Plan 2010, as varied, and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The first planning report, 20th February 2020, recommending a request for further information, includes:

- Municipal Engineer (verbal communication) – the details submitted in respect of the sightlines from the construction and operational accesses is not acceptable. Entrances are not shown on the site layout depicting sightlines. A road crossing is indicated, no details provided.
- Irish Rail have had no correspondence from the applicant and object owing to concerns regarding glint and glare. The analysis did not have full regard to the level of the railway line which for the most part is above the surrounding landscape.
- National Renewable Energy Action Plan (NREAP) is referred to.
- South Tipperary County Development Plan 2010 is referred to.
- The 11 photomontages have been examined and the reporter is satisfied with the range of views illustrated. Noting the existing mature hedgerow around and within the site that are to be retained and supplemented and existing field hedgerows and topography between the site and public roadways. The existing hedgerows and set back from the north of the L4212 would be sufficient to mitigate views from the local roadway to the south. To the south of the L4212 solar arrays immediately adjoin the public road but the proposals include mitigation screen planting.
- The substation, storage battery containers, communications building, client building and equipment storage are located along the western boundary. Screen planting and 2m high fencing is proposed along the western boundary with the public road and 2.4m high fencing around the battery facility and DNO substation. The closest dwelling to the battery storage area is 50m

distance and will be mitigated through the screen planting and perimeter fencing.

- Glint and glare – 86 dwellings, local roads and Dublin Cork railway line. Screening would remove views from dwellings and local roads. On the Dublin Cork railway line 76 receptor points were examined and glint and glare is theoretically possible at 63. Taking account of existing screening and on-site verification 8 rail receptors may have the potential to be materially affected. Interim mitigation: 3m high temporary screen along the southern boundary until such time as the proposed landscape mitigation planting becomes established and achieves its desired height. Further to Irish Rail's submission, further information required.
- Impact on residential amenity – noise and vibration - the site compound is located to the rear of the landowner's dwelling. Inverter and control cabins cooling fans generate a small amount of noise, not significant. Noise impact assessment – 8 sensitive receptors identified, closest 10m and 14m north and north west. Existing baseline noise 39dB to 57dB. Construction noise limits may be exceeded at NSRs, best practice mitigation will be employed. Dust during construction can be mitigated. Health – it has been accepted under previous applications (Ref 16600465, 16600565 and 16600640) that solar farm developments do not present health concerns.
- Ecology – the Lower River Suir is the closest habitat of national/international importance; 5.6km distance and not hydrologically connected.
- Archaeology and Cultural Heritage – a recorded monument on site is located c 7m below the surface of the tailings pond. No impact is likely.
- Services - Roads – further information required re sightlines. The reservation corridor for the N24 is immediately to the south and the submitted glint and glare assessment has not included same; further information required. Surface water – no alterations. All existing open drains are adequate to provide drainage.

- Flood Risk – the site has been identified as at risk of pluvial flooding. A flood risk assessment has been carried out and identifies no potential risk. The proposed development will have no impact off-site.
- EIA pre screening: no EIA or screening required.
- AA screening: AA not required.
- Further information on 3 points, which issued:
 - Glint and glare; road crossing and sightlines; and update the index map showing viewpoints 6A & 6B.

3.2.2. Response to FI request

3.2.3. A response received 2nd June 2020 includes:

- Supplementary Glint and glare including the reservation corridor for the N24, from the current Tipperary CDP. An extremely small section of the route corridor could in the absence of screen planting be very slightly impacted on a limited number of days. The small number of panels which could impact are located in a portion of the tailings pond where perimeter screen planting is already proposed. This will ensure no impact.

Further to a detailed review undertaken by Irish Rail, their only outstanding issue was in relation to potential impacts on a specific number of signals along the railway track. Coordinates for these points allowed confirmation that they would not be impacted. A letter from Irish Rail confirming their acceptance of the findings is attached. They request a number of further measures, which the applicant finds acceptable.

- Sightlines – the required sightlines are available from all site accesses, per table 10.1 of the CDP: 4.25m x 90m. The construction access is in accordance with TII DMRB: 160m, from 2m setback. For the construction phase, all deliveries will be via the established access on the L4213, for temporary storage in a construction compound near the entrance. It will be transported to the southern section in smaller vehicles via existing gateways. The contractor will ensure careful co-ordination as part of a Traffic Management Plan. An un-named cul de sac accesses this land and is used by one residential dwelling. The contractor will liaise with this resident in preparing the Traffic Management Plan.

- No road crossing is proposed. The red line (site boundary) crossing the road is explained as arising from a previous invalidation of the applicant's application.
- Viewpoints 6A and 6B are shown on map.

3.2.4. Other Technical Reports

3.2.5. Executive Engineer, 19th June 2020 request site layout plan identifying site accesses; for each entrance a layout showing roadway width, setback distance, entrance splays and visibility splay distances clearly marked; any works to establish the entrance details to be completed in advance of works.

3.2.6. National Roads Design Office Mid West, 25th June 2020 – This is a substantial development located within the study area for the proposed N24 Cahir to Limerick Junction Scheme. Therefore this application is deemed to be premature at this point in time. Accordingly they recommend that permission is not granted at this time.

3.2.7. Executive Engineer, 25th June 2020 – the applicant did not submit any revised drawings only referred to those in the original submission where were not clear or in parts legible. The site layout does not clearly identify all access, defining if they are permanent or construction only. For each site entrance, both permanent entrances and construction, an entrance layout including but not limited to nature of entrance, roadway width, setback distance, entrance splays and visibility splay distances clearly marked should be detailed.

3.2.8. Roads Capital Projects, 26th June 2020 –

Having regard to:

- The location of the proposed development within the Study Area for the N24 Cahir to Limerick Junction Scheme,
- The nature and scale of the proposed development,
- The proximity to the previously reserved corridor,
- The extensive underground or overground infrastructure that would be required to service this type of development,
- The fact that options for the N24 Cahir to Limerick Junction Scheme are at an early stage of development, and

- The potential for obstruction of options for the N24 Cahir to Limerick Junction, Roads Capital Projects Section recommend that the development is refused, as premature pending the development of a preferred alignment option for the N24 Cahir to Limerick Junction Scheme.

Having regard to:

- The report by Tipperary Cahir Cashel District,
 - The fact that sightlines have not been demonstrated to an acceptable standard,
 - The ambiguity within the documents with respect to the different entrances,
- Roads Capital Projects Section recommend that the development is refused, as a potential traffic hazard.

3.2.9. Planning Reports

The second planning report, 29th June 2020, recommends refusal; which issued.

3.3. Prescribed Bodies

3.3.1. DAU – Archaeology – conditions, 24m buffer around recorded monument RMP TS058-021 moated site, etc.

3.3.2. Irish Rail – Have submitted a copy of a letter which they sent to the applicant’s agent – accepting the glint and glare study; proposed security fence should be a palisade type and be 2.4m instead of 2m; the section provided shows lineside vegetation, they would require details. Agreement would need to be reached re. species, to ensure planting does not introduce or increase low rail adhesion issues along this length of line. They would also require a management plan to be supplied showing how this vegetation will be maintained throughout the lifespan of this development. As the planting proposed will be up to the existing railway line boundary there will be a need for a 2m strip left clear and maintained along the railway boundary to allow Irish Rail access to the boundary fence for future maintenance / replacement of the fence. Security fence to be installed prior to installation of panels. Any glint and glare issues arising to be addressed. Railway mounds and ditches to be preserved, except with the written consent of Iarnród Éireann. Lights should not cause glare or impair vision of train drivers or personnel operating track machines. Any proposed services required to cross along, over or under the railway property must be the subject of a

licence agreement with Iarnród Éireann/CIE. All works adjacent are required to meet the terms of the Railway Safety Act 2005.

3.4. **Third Party Observations**

Third party observations on the file have been read and noted, including:

Close proximity of panels surrounding dwelling,

Scale

impact,

Glint and glare

Artificial light at night,

Security cameras,

Devaluation of property,

Impact on road

Impact on birds

Human health

Noise

Water supply

Electromagnetic radiation

Lack of consultation

Major accident – fire

The history of the site should have been researched in more detail. The former open cast mine (60's) followed the significant discovery of the Gortdrum Cu-Ag-Hg deposit in 1963 and the mines were worked from 1967 until mining was deemed unviable in 1975. The Canadian exploration company effectively abandoned the site and there was no long term site redevelopment or rehabilitation by local or central government.

4.0 **Planning History**

S 261 Quarry 4.

Preplanning - P6653.

5.0 Policy Context

5.1. National Development Plan

- 5.1.1. The Government's long-term strategic planning framework will guide national, regional and local planning and investment decisions over the next 25 years.

National Strategic Outcome 2 Enhanced Regional Accessibility

Building on a more compact approach to urban development requirements, enhancing connectivity between centres of population of scale will support the objectives of National Planning Framework. This will focus initially between Cork and Limerick. Better accessibility between the four cities and to the Northern and Western region will enable unrealised potential to be activated as well as better preparing for potential impacts from Brexit.

5.2. Regional Spatial Economic Strategy for the Southern Region

This regional plan includes:

RPO 166 - Investment in Strategic Inter Regional Multi-Modal Connectivity to Metropolitan Areas and Economic Corridors

It is an objective to:

- a. Achieve and maintain the sustainable development of infrastructure that strengthens the quality of inter-regional connectivity between the metropolitan areas of Cork, Limerick-Shannon and Waterford to each other and to other regions on the Atlantic Economic Corridor, extended Dublin-Belfast Eastern Corridor and to ports and airports
- b. Strengthen the quality of Cork to Limerick connectivity (proposed M20 and Rail), Cork to Waterford connectivity (N25) and Limerick to Waterford connectivity (N24 Cahir to Limerick Junction and N24 Waterford to Cahir and rail) as identified in the NDP.

c. Maintain the efficiency and safety of the existing national primary and secondary roads network by targeted transport demand management and infrastructure improvements.

d. Facilities for sustainable transport are supported in strengthening the quality of inter-regional connectivity National Road Projects The provision of National Road Projects to be delivered during the period up to 2027 to achieve NSO: Enhanced Regional Accessibility subject to the required appraisal planning and environmental assessment processes are supported.

Under this RPO, where works to any part of the strategic road network are supported, the potential for improved sustainable transport shall be considered. The potential for nature-based design solutions for mitigation design shall be considered.

Part (A) Projects Identified Under the NDP Including Pre-Appraisal Stages

National Road Related Schemes and Projects under Project Ireland 2040 National Development Plan for National Roads which are supported are listed (10 in all).

The progression of the following National Road Projects at pre-appraisal stages to achieve NSO: Enhanced Regional Accessibility, subject to robust feasibility studies and site/ route selection to reduce impacts on the environment and required appraisal, planning and environmental assessment processes: this list includes - N24 Waterford to Cahir/Cahir to Limerick Junction;

5.3. Mid West Regional Planning Guidelines , 2010-2022

5.3.1. The Regional Priorities for road improvements includes:

The Plan (as varied) also acknowledges and supports the delivery of key regional infrastructure in the South Tipperary County Development Plan area as follows

- N24 Waterford to Limerick Dual Carriageway

5.4. Development Plan

5.4.1. South Tipperary County Development Plan 2010 as varied is the operative plan, relevant provisions include:

Policy T12: National Road Infrastructure Programme

It is the policy of the Council, to seek the implementation of Strategic Transport Improvement Priorities identified in the SERPGS and the MWRPGs and the any strategic transportation documents for the Region. The Council will seek to support the implementation of these schemes by the reserving the corridors of the proposed routes free from inappropriate development, so as not to compromise the future road schemes.

In 2016, the Council prepared a Renewable Energy Strategy to provide a detailed planning framework for the development of renewable energy in the County. The Tipperary Renewable Energy Strategy 2016 sets out planning policy and objectives for the development of renewable energy and should be read in conjunction with the County Development Plan (as varied), set out as Appendix 6 of the Plan.

Policy DM 1: Development Standards - It is the policy of the Council to require proposed development to comply with the relevant standards identified in Chapter 10 Development Management Standards.

The sight visibility triangle is measured at the entrance from a set-back distance of 2.4 m (single residential) or 4.5 m (multiple residential/commercial/agricultural/other) (the 'X' distance) from the road edge at the centre of the entrance, to points in both directions on the nearside road edge which are the sight distance ('Y' distance) away. The Value of the sight distance 'Y' relates to typical road speeds and can be obtained from Table 10.1.

The 'road edge' is the edge of road surface (bituminous material) subjected to general vehicular traffic. Forward visibility requirements as per Figure 10.2 must also be satisfied.

Renewable Energy Strategy

There has been recent interest in the development of large-scale ground mounted solar PV installations. The Council will facilitate proposals for solar PV installations; subject the demonstration by the applicant that the proposal will not have a significant adverse impact on the built and natural environment, the visual character of the landscape or on residential amenity. Particular care must be taken in respect to proposals for commercial PV in Primary and Secondary Amenity Areas, where the Council may require a Visual Impact Assessment (VIA) in support of the proposal, particularly where there is potential for cumulative visual impact as a result on existing and permitted solar development in the area.

Key considerations are:

- (a) Site aspect, area and topography,
- (b) Availability and method of grid connection,
- (c) Impact on sensitive receptors including roads, residential development, areas of tourism and landscape amenity value, airfields and ecology,
- (d) The visual impact of the proposal and other permitted large-scale solar PV developments on the visual character of the area having regard to the provisions of the LCA 2016,
- (e) Management, fencing and upkeep of the site,
- (f) Construction phase activities and impacts,
- (g) Proposed lifespan of the development,
- (h) Decommissioning and reinstatement of site subject to the satisfaction of the council.

In the absence of Irish guidelines, the provisions of 'Planning guidance for the development of large scale ground mounted solar PV systems' BRE 2013, may be consulted.

SO1 - It is an objective of the Council to support the implementation of the targets and objectives of the White Paper for Energy 2015.

SO13 - It is an objective of this Renewable Energy Strategy to support the objectives of the White Paper for Energy 2015 as they relate to energy storage as an important element of renewable energy systems in the county.

5.5. Natural Heritage Designations

- 5.5.1. The nearest Natura site is the Lower River Suir SAC (site code 002137) which is c 7 km, straight line distance, north east of the subject site, with no hydrological connection. The Lower River Shannon SAC (site code 002165) is c 9km straight line distance, north of the subject site, and it is hydrologically connected at greater distance via Pope's River and The Dead River, to the north west of subject site.

5.6. Environmental Impact

- 5.6.1. The proposed development is not of any type included in Schedule 5 of the Planning and Development Regulations 2001 (as amended), i.e. development for which mandatory EIA is required nor is it integral to any project that is of a type included in Schedule 5. Environmental Impact Assessment is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. Malone O'Regan Environmental have submitted the appeal, against the decision to refuse, on behalf of the first party. It includes:
- Tipperary County Council provided no details on the study corridor for the proposed alignment of the N24 during the planning application process. There were opportunities to raise this issue:
 - Pre planning consultation, 24th October 2019 – minutes attached.
 - Planning submission - Mid West National Roads Design Office did not make any submission during the statutory consultation period.
 - Planning report – the report notes that the reservation corridor is immediately to the south of the application site.
 - Request for further information – refers to the reservation corridor being immediately to the south of the application site.
 - Consultation with Tipperary County Council in preparation of the response to the request for further information, TCC's Senior Executive Engineer Roads confirmed the reservation corridor, that it was 300m wide, and advised that they view planning GIS.
 - Potential direct effects on a future N24 Cahir – Limerick Junction Road Scheme –
Avoidance of tailings pond – although the tailings pond has been rehabilitated, it still presents a significant constraint in regards to any future road infrastructure. Given the elevation of the tailings pond, it would present a

significant constraint for the vertical alignment of any road scheme. It also comprised of significant quantities of contaminated materials that would add major costs and risk to any road project. There would be a significant difference between installing solar PV panels on top of a rehabilitated tailings pond compared to the construction and operation of a major road scheme. It would be reasonable to conclude that the designers of any future road scheme will come to a similar conclusion to the alignment presented currently in the Development Plan in that it would avoid the tailings pond. The proposed solar development would unlikely be directly impacted by any future road.

- Road project will take 10 years

The planning application for the solar farm sought a 10 year permission. The intention of the appellant was to progress with the construction of the solar development in a timely manner on receipt of planning consent. Based on information provided by the Mid West National Roads Design Office the following timelines are applicable to the N24 Cahir – Limerick Junction Scheme: consultant appointed to undertake planning and design March 2020; options selection commence September 2020; preferred route option Q2 2022.

The preliminary design of a preferred route will only commence in Q2 2022. The current N24 Cahir – Limerick Junction Scheme is included in the NDP, even if funding was in place, it is unlikely this road would be open for traffic within the lifetime of the NDP. There is no guarantee that the scheme will be operational during the lifetime of the proposed solar farm development.

The by-pass for Tipperary Town is used as an example: first consultation 1999, corridor in CDP 2005, design process has recommenced.

- Potential in-direct effects on a future N24 Cahir – Limerick Junction Road Scheme –

Effect of glint and glare – the second planner’s report considered the further information response adequate.

The Mid West National Roads Design Office's recommendation for refusal is similar to another in the county, no two developments are the same, therefore it appears generic.

- Precedent with existing road users and other corridors.

Examples of solar farms adjoining national roads or motorways given.

- Traffic hazard and adequacy of sightlines.

Drawings are provided which show adequate sightlines, appendix E.

Construction access proposals are listed.

Operational access proposals are outlined.

Preplanning consultation – former mine – sightlines of 70-90m to be shown from a setback of 4.5m, were requested to be shown.

Response to the RFI – appendix J of the environmental report.

Planner's report stated that the District Engineer had no objection subject to conditions.

Precedence for L4212 – P12/420 for fish rearing cages etc was examined by Senior Executive Engineer Road Design and Construction who concluded that the '*application which uses an existing entrance off the public road conforming to current design standards. The Roads Section have no objections to this development*'. This is the same entrance. In 2018 the Roads Section had no objection to continuation of use of the fish farm.

They should have been satisfied with the sightlines.

A legal opinion from Arthur Cox is submitted, which shows that the decision is unlawful.

6.1.2. Appendix A - legal advice memorandum – which includes:

Post decision the applicant sought a map showing the study area from TII.

They were informed that there are currently no maps or routes available or published. The study area will be refined as part of the Options Selection

process for the scheme, which is due to commence in September 2020. The

Options Selection report, detailing the preferred route options, is programmed for publication in Q2 2022.

Summary

The refusal is unlawful as the reasons provided for it are a combination of inadequate, inconsistent and irrational. The applicant has been denied and continues to be denied the opportunity to know, even in general terms, the reasons why it was refused planning permission.

No SEA was carried out for the proposed Road Scheme and so in any event it has no legal status and is not something which the Council, in making its decision, or the Board, in determining this appeal, can legally have regard to.

The study corridor relied on in the reasons for the refusal was not indicated in the development plan and therefore in itself would necessitate a material deviation of the development plan. It has no status in planning law.

The applicant has never been provided with a copy of the study area for the proposed road scheme and it was not mentioned in any of the discussions with the Council, in the planner's first report or in the RFI. In fact, the first time that it appeared was on the last day of the decision making process. The applicant has never been given an opportunity to comment on it.

The second reason for refusal: sightlines and site access – the Council has failed to provide any adequate planning basis for its conclusion. Its own District Engineer recommends that a site layout be submitted and any entrance be completed in advance of works on site.

The Council must make like decisions in like manner and has previously granted planning permission for a mining operation on the site. It is precluded from saying that sightlines are not adequate.

Invalid Reason – ultra vires:

To alter the corridor of the existing route indicated in the adopted plan under section 5.4 Strategic Development would be a material alteration and has no legal status unless adopted by the elected members after a public participation exercise.

The planning authority is bound by the development plan in force at the time of the decision – *Abenglen Properties Ltd v Dublin Corporation* (1984) IR383.

The planning authority is not entitled to refuse permission by relying on a corridor which was not published at the time the planning decision was made. A developer is entitled to know the constraints on his development from a development plan and his property rights can only be constrained by objectives published in advance which entitle him to address them – *Hoburn Homes v An Bord Pleanála* (1993) ILRM 368 and *O'Connor v Clare County Council* High Court, 11 February 1994.

The Council had previously granted planning permission for mining on the site: P374, P3247 and P3749, using the same junction. The receiving road environment has not fundamentally changed. The Council is not entitled to say that the access and sight lines are not adequate.

Under the SEA regulations the public must have an opportunity to participate in the making of the plan. No SEA was carried out on the proposed Roads Scheme. It has no legal status.

No road would be built over a tailings pond.

No glint and glare would arise for future users of the proposed roads scheme.

The planning permission for the solar farm would be a 10 year permission with an operational life of 25 years. Based on a review of typical time lines for the construction of Irish roads it is unlikely that the road will be built in 10 years.

If there is a conflict between the need for a road and the need for the alternative energy facility, the requirements for sustainable development, the National Climate Mitigation Plan and the Paris Agreement and the interests of the environment favour the alternative energy facility. The former mine is an ideal location for the energy facility. Its use as such is a beneficial and appropriate use of such a site.

The reasons are inadequate – *Connelly v An Bord Pleanála* (2018) IESC 31 para 6.15 is quoted and highlighted; para 7.6 is quoted and highlighted.

Damer v An Bord Pleanála (2019) IEHC 505 Mr Justice Garrett Simons para. 41 is quoted and highlighted.

The refusal lacks sufficient reasoning, clarity and evidence, specifically in relation to the details of the Proposed Road Scheme and the Study Area.

It has been referred to by 4 different titles:

- Project office - N24 Cahir to Limerick Junction
- TII - - N24 Pallasgreen to Cahir
- FRI (request for further information) re-aligned N24
- The refusal - proposed alignment of the N24 Cahir to Limerick Junction

It is impossible for the applicant to know what the Proposed Road Scheme is.

The refusal is unlawful, invalid and not based on grounds of proper planning and sustainable development.

6.1.3. Appendix B – record of pre-planning consultation – which includes:

Sightlines of 70/90 to be shown from a setback of 4.5m from the road edge.

The carrying out of this consultation will not prejudice etc.

6.1.4. Appendix C – copy of decision.

6.1.5. Appendix D – e-mail from Senior Executive Engineer to agent, 7th July 2020.

6.1.6. Appendix E – Photographs of access points.

6.1.7. Drawings submitted with the appeal – Figure 1 site context (access locations are indicated); drawings no MG190913 Rev 2 – access B & C; drawings no MG190913 Rev 1 – drawing 1 (Entrance A is indicated on the drawing); drawings no MG190913 Rev 1 – drawing 2 (Entrance D is indicated on the drawing).

6.2. **Planning Authority Response**

The planning authority has not responded to the grounds of appeal.

6.3. **Observations**

No valid observations were received.

7.0 Assessment

- 7.1.1. The issues which arise in relation to this appeal are, appropriate assessment, material contravention, road access and sightlines, residential amenity, contaminated site and other issues and the following assessment is dealt with under these headings.

7.2. Appropriate Assessment

- 7.2.1. The application was accompanied by a Stage 1 AA Screening Assessment report. It refers to an unnamed artificial surface water lake, located immediately north east of the site occupying the former open cast mining pit, and is currently in use as a fish farm. This lake is not hydrologically connected to any other hydrological features in the local area, and there are no records of any historic overflow or flooding from the waterbody. No watercourses bisect the site, however a network of drainage ditches was noted within the site boundary. These are not hydrologically connected to the Gortdrum River. The EPA report on historic mine sites noted that very little water appeared to flow off the Gortdrum Mine site and instead drained to the flooded open pit lake.
- 7.2.2. In describing the proposed development it refers to the battery storage facility – the proposed development will see the installation of 10 no. ISO shipping container units. These are sealed, self contained units with the internal batteries loaded into cabinet arrays. These will house lithium ion battery arrays. The containers will be equipped with control features to monitor and respond to temperature variations and voltage protection. The 10 units will each comprise: battery yard, transformer and transformer bund, and underground cable trench.
- 7.2.3. Impacts identified – loss of or disturbance to habitats and or species; and potential impairment to water quality.

It is unlikely that there would be loss of or disturbance to habitats and or species at protected sites because of distances and buffers.

Re. potential impairment to water quality – should run-off of potential pollutants from the construction area reach the surface water or groundwater and flow into the Gortdrum River, this could adversely affect the water quality within the river and also

downstream into the Pope's River, Dead and Lower Shannon River, subsequently impacting both protected habitats and species within the protected Natura 2000 network. Potential pollutants resulting from the construction works could include suspended solids and/or diesel leaks or spills.

However, there is no direct hydrological connection between the site and any Natura 2000 sites (refer to section 3.1.1 and Figure 3-1 and 3-2). Furthermore, there will be no direct discharges to any adjacent watercourses or drainage ditches during the construction or operational phases. Additionally, as part of sensitive design, a minimum setback of 5m will be maintained for all onsite drainage ditches during construction.

Nonetheless, all construction works will be undertaken in accordance with recognised best practice guidance. It can therefore be concluded that the proposed development will not have any adverse effects on either the surface water or groundwater quality of any protected natura 2000 sites. It will not have any in-combination effects.

7.2.4. Screening

I accept that the list of identified sites is comprehensive in relation to sites which require to be considered in relation to screening:

Sites identified – SACs - Lower River Suir (5.6km E), Philipstown Marsh (5.1km NE), Lower River Shannon (7km NW), Moanour Mountain (9.7km SW), Galtee Mountains (12.4km S), Anglesea Road (14.8km NE); SPA Slievefelim to Silvermines Mountains (12.6km N).

I consider that only the Lower River Shannon SAC (site code 002165), which is hydrologically connected to the subject site, could potentially be impacted.

7.2.5. Appropriate Assessment

Site specific conservation objectives have been developed for the site which could be summarised as conserving the habitats and species for which the site has been designated; many of which are water dependent river habitats and species.

7.2.6. The statement in the AA Screening that the surface water will be contained within the site, cannot be supported, without detailed hydrological investigation.

7.2.7. Only construction impacts are considered in relation to potential impairment to water quality. Potential operational impacts e.g. from the transformers, substation or

battery storage facility are not given any consideration. The statement that the battery storage containers are sealed, self-contained units with the internal batteries loaded into cabinet arrays, without considering any potential impact from leakage, fire etc, is an inadequately account of the potential impacts from this aspect of the development.

7.2.8. In the absence of the submission of a detailed investigation of the nature and extent of the contaminated soil, in this contaminated site, detailed information in relation to the containment measures in place for the contaminated soil and runoff, and a comprehensive hydrological report, which details the potential for surface and groundwater contamination and the risks associated with site development works and the operational phase, which have not been given any or adequate consideration in the information submitted, I am unable to appropriately assess the potential for effect on the designated site.

7.2.9. 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. 002165, or any other European site, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission.

7.3. Material Contravention

7.3.1. The first refusal reason is based on material contravention of policy T12 of the South Tipperary County Development Plan, 2010 as varied. It is stated that policy T12 National Road Infrastructure Programme, seeks the implementation of strategic transport priorities identified in the SERPGs (South Eastern Regional Planning Guidelines) and the MWRPGs (Mid West Planning Guidelines), and the strategic planning documents for the region. The Council will seek to support the implementation of these schemes by reserving the corridors of the proposed routes free from inappropriate development so as not to compromise the future road scheme. The site of the proposed development is located within the study corridor for the proposed alignment of the N24 Cahir – Limerick Junction, the protection of which is an objective of the South Tipperary County Development Plan 2010, as

varied, and the Regional Planning Objective 167 of the Regional Spatial Economic Strategy for the Southern Region. Having regard to the nature and scale of the development proposed, involving extensive overground and underground infrastructure, the proposed development would be premature pending the determination of a preferred alignment option for the N24 Cahir to Limerick Junction Scheme, would materially contravene Policy T12 of the South Tipperary County Development Plan 2010, as varied and would, therefore, be contrary to the proper planning and sustainable development of the area.

7.3.2. Policy T12: National Road Infrastructure Programme states:

It is the policy of the Council, to seek the implementation of Strategic Transport Improvement Priorities identified in the SERPGS and the MWRPGs and the any strategic transportation documents for the Region. The Council will seek to support the implementation of these schemes by the reserving the corridors of the proposed routes free from inappropriate development, so as not to compromise the future road schemes.

7.3.3. N24 Cahir to Limerick Junction is listed as a strategic infrastructural project in the Regional Spatial Economic Strategy for the Southern Region.

7.3.4. NRA schemes such as the N24 are regional priorities for road improvements in the West Regional Planning Guidelines, 2010-2022.

7.3.5. The project is also listed in the National Development Plan, as a core priority for pre-appraisal and early planning proceeding to construction, under National Strategic Outcome 2 Enhanced Regional Accessibility.

7.3.6. The TII website identifies on map, a study area boundary, within which the subject site is located. The N24 Cahir to Limerick Junction section of the website states that the project is currently at Phase 2 Option Selection. The constraints study is currently underway and it is expected that potential options will be identified by Q2 2021.

7.3.7. The proposed development of this large site, located centrally within the study area for Phase 2 Option Selection, materially contravenes policy T12 National Road Infrastructure Programme, to seek the implementation of identified strategic transport priorities.

- 7.3.8. The applicant had an understanding as to the route of the N24, and produced a map which they submitted a map, stated to be from the development plan, in response to a further information request, regarding the potential impact of glint and glare on the future road. I have not seen such a map in the County Development Plan.
- 7.3.9. Support for the N24 Waterford to Limerick Dual Carriageway is a listed item of key regional infrastructure in the County Development Plan and policy T12 seeks the implementation of these schemes by the reserving the corridors of the proposed routes free from inappropriate development, so as not to compromise the future road schemes.
- 7.3.10. The case is made that despite pre-planning engagement, and a further information request, the route selection process which included within its scope, the subject site, was not notified to the applicant / appellant until the decision issued. Although appears to have been the case, it does not alter the fact however that the subject site is in the middle of the route selection study area.
- 7.3.11. The other argument advanced, that the existence of the tailings pond is a constraint which the road is likely to need to avoid, is not in my opinion, a relevant argument. There are many constraints in the vicinity of the site, including two railway lines immediately adjoining or relatively close to south, west and east. It would clearly not accord with the objective to support the delivery of key regional infrastructure, to create a further constraint, by permitting an extensive development which would generate a further barrier effect.
- 7.3.12. Neither do I accept that the several terms which have been used for this section of the N24 road project have in any way impacted on the appellants in their engagement with the application/appeal.
- 7.3.13. I consider that section 37(2)(b) of the Planning and Development Act 2000, as amended, is applicable in this instance in that the planning authority has decided to refuse permission on the grounds that the development materially contravenes the development plan. I would concur with the said conclusion for the reasons set out above. The Board is only at liberty to grant permission save where a development meets one of four criteria. In this regard I submit that:
- (a) The proposed development is not of strategic or national importance,

(b) The objectives of the development plan are quite clear insofar as the proposed development is concerned.

(c) There are no specific requirements set out in policy directives, relevant policies of the government nor regional planning guidelines which would support such a proposal.

(d) The pattern of development and permissions granted in the area since the making of the development plan do not suggest a predisposition to such type development.

As the proposal does not meet any of the criteria I do not consider that this provision can be invoked, therefore the Board may not overturn this refusal reason of the planning authority's decision.

7.4. Road Access and Sightlines

- 7.4.1. The second refusal reason refers to the proposed accesses to the development from local roads. It is stated that having regard to the failure of the applicants to demonstrate compliance with the development management requirements with respect to the demonstration of sight lines, the development would be contrary to Policy DM 1 (Development Standards) and would endanger public safety by reason of traffic hazard or obstruction of road users.
- 7.4.2. The grounds of appeal states that the sightlines are adequate, and in a legal opinion state that the construction access has previously been found acceptable for other permitted development and can not now be found lacking.
- 7.4.3. The applicant submitted details of the proposed accesses with the application, and also in response to the further information request; and has submitted further details in support of the appeal. None of these indicate compliance with the development plan standards. Sightlines are normally drawn as a sight triangle, showing the actual line of sight available from the set back point to the inner edge of the road, at a distance from the access. This is indicated on a schematic drawing in the development plan. As depicted on the drawings provided by the applicant, distances are indicated by a line, not related to the road edge, and not as a line of sight.
- 7.4.4. It is not entirely clear whether the failure to provide the required sight line drawings arises from an inability to achieve the necessary sightlines, or from some

misunderstanding of the information required. In itself, notwithstanding that it was the subject of a further information request, it is considered that this is a matter for clarification, rather than refusal.

7.5. Residential amenity

- 7.5.1. Residential amenity arises an issue, having regard to the proximity of the site to isolated rural houses. The application is accompanied by an Environmental Report which includes an assessment of noise. Construction noise is identified as exceeding guidance levels, but mitigation can be carried out and the impact will be temporary. In relation to operational noise, it will be concentrated at the northern end of the site, where a number of noise sensitive receptors (NDRs) (dwellings) are located in close proximity to the main noise emission sources. The background noise recorded on the single night of survey, indicates a quiet noise environment: 29-30 dB. The night time of recording was at 22.04 and 22.20.
- 7.5.2. Predicted operational phase noise experienced at these houses would be as shown in table 8-11 which gives the predicted noise levels at 10m from source for the plant/equipment to be used. The cumulative levels are given in table 8-12 for the noise sensitive receptors. For NSR01 it will be $L_{Aeq, T}$ 33dB.
- 7.5.3. I have concerns in relation to the noise sensitive receptors NSR 01-04 and NSR 08, and noise monitoring (NM) location NM1. These receptors are in the quietest area and where the most operational noise will occur. Only one night time noise monitoring location was used and the period of monitoring at 22.04 and 22.20 may not be fully representative of the night time period; being likely to be higher than if recording took place later in the night or in the early morning. Even so, the results indicate that the operational noise which will be experienced at these NSRs, will be up to 4dB higher than the background level. The applicant relies on the EPA recommended night time level of 35dB between the hours of 23.00 and 07.00. In my opinion the noise impact on the houses in this area is significant, and indicates that a much more robust survey, noise modelling exercise and justification of the location of these plant items is required, prior to any permission.
- 7.5.4. Wind induced noise is referred to in the application document as broadband turbulence, noise created by the obstruction of site infrastructure to the passage of

wind resulting in a broadband noise, which is the same for any other structure in the existing environment. Aeolian noise is created by the passage of wind over or through objects and is characterised by tones and whistles that vary in frequency depending on the wind speed.

The report considers that wind induced noise impacts on identified NSRs caused by broadband and Aeolian noise will be insignificant given that the small structures will be dispersed over a relatively large landholding, containing both boundary and dividing hedgerows which will be maintained and reinforced. The closest NSR will be to the north at c10m from the site boundary (NSR 02).

- 7.5.5. Glint and glare and visual impact: the impact from glint and glare has been presented in an expert report, which shows it will not impact on residential amenity.
- 7.5.6. The visual impact of the proposed development is documented in photomontages submitted. Mitigation proposed in relation to glint and glare will ensure that there will be little visual impact.

7.6. **Contaminated Site**

- 7.6.1. Contaminated land makes up a significant portion of the site. No information has been provided in the environmental report, in this regard. Detailed information is required in relation to the containment of the contamination and the hydrology of the site in order to assess the likely environmental impact of the proposed development.

7.7. **Other Issues**

7.8. Property value

- 7.8.1. Observations to the planning authority expressed concern that there would be depreciation of the value of properties arising from the proposed development. I am not satisfied that the proposed solar farm in this rural area would injure the amenities of the area to such an extent that it would adversely affect the value of residential property in the vicinity.

7.9. Screening

- 7.9.1. It is proposed to supplement perimeter hedgerows with under planting and inter planting. A new hedgerow is proposed to be planted around the perimeter of the

tailings pond, a small section of the northern section of the site, as well as along some of the road-facing sections of the southern portion of the site. It is proposed to install 2m high horticultural wind stop netting along the western and southern perimeter of tailings pond and 3m high horticultural wind stop netting along the Dublin-Cork rail line facing the southern boundary of the southern section.

7.9.2. The erection of 3m high horticultural wind stop netting would be a significant visual intervention and would require pole supports in addition to the proposed perimeter fencing, further details of which would be required, in order to assess the visual impact.

7.9.3. It should be noted that the Royal Horticultural Society website gives the time to ultimate height (2.5-4m) for some of the listed species as 10 to 20 years.

7.10. Duration

7.10.1. The proposed duration of the solar farm is variously described, including: as long as the proposed development is in place – 30 years (p94 landscape impact); and the proposed development will have a design life of approx. 20 years (p152 Conclusions). The intended duration requires clarification.

7.11. Planning History

7.11.1. No planning history is stated on the application form. Previous planning permissions for mining on the site: P374, P3247 and P3749, are referred to in the legal advice provided to the applicant and forwarded with the grounds of appeal. The planning history should be properly documented.

8.0 Recommendation

8.1.1. In accordance with the foregoing I recommend that permission should be refused, for the following reasons and considerations.

9.0 Reasons and Considerations

1 Development of the kind proposed would be premature pending the determination by the planning authority or the road authority of a road layout for the area.

2 It is the policy of the Council as set out in Policy T12, National Road Infrastructure Programme, to seek the implementation of Strategic Transport Priorities identified in the SERPGs and the MWRPGs and the strategic transport documents for the region. The Council will seek to support the implementation of these schemes by reserving the corridors of the proposed routes free from inappropriate development so as not to compromise the future road scheme. The site of the proposed development is located within the study corridor for the proposed alignment of the N24 Cahir – Limerick Junction, the protection of which is an objective of the South Tipperary County Development Plan 2010, as varied, and the Regional Planning Objective 167 of the Regional Spatial Economic Strategy for the Southern Region. Having regard to the nature and scale of the development proposed, involving extensive overground and underground infrastructure, the proposed development would be premature pending the determination of a preferred alignment option for the N24 Cahir to Limerick Junction Scheme, would materially contravene Policy T12 of the South Tipperary County Development Plan 2010, as varied and would, therefore, be contrary to the proper planning and sustainable development of the area.

3 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. 002165, or any other European site, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting permission.

Planning Inspector
11th November 2020

Appendices

Appendix 1: photographs

Appendix 2: South Tipperary County Development Plan 2010, as varied, extract
Appendix 3: Regional Spatial Economic Strategy for the Southern Region, extract
Appendix 4: Mid West Regional Planning Guidelines, 2010-2022, extract
Appendix 5: National Development Plan, extract
Appendix 6: TII major projects for national roads <https://www.n24cahirlimerick.ie/>
extract