



An
Bord
Pleanála

Report to Inspector (Appendix to main report) ABP-318925-24

Development

Permission for development at a c. 44.4 ha site at Ballinvuskig, Douglas, Cork. The development will consist of modifications to the permitted solar farm (Pl. Ref. No: 19/5371, ABP Ref. PL04.305186).

Type of Application

First Party Appeal

Topic: Ornithology

Adequateness of information for purpose of Ecological Impact assessment and Appropriate Assessment

Ecological Impact Assessment and Appropriate Assessment

Ecologist

Maeve Flynn BSc. PhD. MCIEEM

Senior Planning Inspector

Una O'Neill

Contents

1.0 Background.....	3
2.0 Scope of this report.....	3
3.0 Proposed Development.....	5
4.0 Main issues	6
5.0 Conclusion	10

1.0 Background

- 1.1. File ABP-38925-24 was lodged with ABP on 25th January 2024. The proposal is for modifications to a permitted solar farm and all associated site works. A Natura Impact Statement (NIS) has been prepared in respect of the proposed development.
- 1.2. Cork City Council planning authority refused permission for the development on 20th December 2023. The reason for refusal is as follows:

The Planning Authority is not satisfied based on the information submitted with the planning application that the applicant has demonstrated that the proposed development would not have significant adverse impacts upon the sensitive bird species during the breeding season and upon the waterbird species listed for Cork Harbour SPA (Site Code: 004030). Therefore, the granting of permission for this development at this time would not be in accordance with the policy objective indicated in the Cork City Development Plan 2022 - 2028, namely Objective 6.23 for the protection of Designated Sites and Protected Species. The development, if permitted would therefore be contrary to the proper planning and sustainable development of the area.

- 1.3. The planning authority documentation includes assessments of the proposal and further information by consultant Ecologist Dr Lesley Lewis on behalf of Cork City Council. Dr Lewis was critical of the approach to aspects of the Ecological impact assessment (EcIA) and the NIS and this informed the Planning Authority's decision.
- 1.4. First party grounds of appeal have been submitted by MKO Planning and Environmental Consultancy on behalf of the applicant Ballinvuskig Solar Farm Limited. Ecologists for MKO dispute the findings of Cork City Council's consultant Ecologist and have submitted a detailed rationale for their approach to the EcIA and NIS.
- 1.5. The Planning Inspector for the case requested technical support from the Inspectorate Ecologist in view of the issues raised and conflicting scientific opinions.

2.0 Scope of this report

- 2.1. This report This report to the Inspector and available to the Board aims to address the following:

- The adequacy of assessment undertaken in relation to breeding birds at the site (of the proposed modifications)
- Implications of the proposed development in relation to the integrity of Cork harbour SPA with particular reference to wintering waterbirds that utilise ex-situ feeding on agricultural grassland.

2.2. I have had regard to the issues raised by Dr Lesley Lewis whose professional opinion was relied upon by Cork City Council in their planning determination.

2.3. I have focused my examination on the subject of the appeal which is for modifications to the permitted development. I do not revisit the assessment undertaken for the extant permission.

2.4. I have examined the following documents:

- Ecological impact assessment (MKO, March 2023)
- Natura impact statement (MKO, 2023)
- Construction and Environment Management Plan (CEMP, MKO 2023)
- Response to further information request from Cork City Council ()
- Submission from MKO which accompanied the first party appeal.
- Ecological appraisal reports prepared by Dr Lesley Lewis on behalf of Cork City Council (x 3).

2.5. In addition, I have had regard to the following:

- Guidelines for Ecological Impact Assessment in the UK and Ireland. Terrestrial, Freshwater, Coastal and Marine (CIEEM, 2018) (amended 2021)
- EC (2018) Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC
- EC (2021) Assessment of plans and projects in relation to Natura 2000 sites. Methodological guidance on Article 6(3) and 6(4) of the Habitats Directive 92/43/EC

- Conservation objectives Cork Harbour SPA (site code 004030)¹
- Cork Harbour SPA conservation objectives supporting document (2014)²

2.6. This report does not comprise the AA, rather it is a professional opinion as to adequateness of the information for the purpose of AA and for the EclA.

3.0 **Proposed Development**

- 3.1. The proposed development comprises modifications to the previously permitted application -ABP-305186-19 Ballinvuskig Solar Farm. The modifications include a reduction in scale of the permitted development including the removal of 38KV substation and grid connection, the removal of a battery storage unit and reduced number of inverter/transformer stations. An increase of an additional 5% of photovoltaic panels footprint is proposed.
- 3.2. The permitted Ballinvuskig Solar Farm is located within existing intensively managed farmland. The site currently comprises agricultural fields which are used for grazing (improved agricultural grassland) with field boundaries comprised of hedgerows and treeline. These habitats are considered of local importance being common and widespread in the wider area. The modifications proposed are located entirely within this site.
- 3.3. I note that the permitted solar farm development will result in the loss of agricultural grassland and hedgerow habitat which was assessed in the EclA that accompanied the planning application for the permitted development (Cork County Council Planning Ref: 19-5371, ABP Ref. 305186). The proposed modifications to the permitted layout and design will not result in any additional loss of hedgerow habitat (the primary habitat of ecological value within the site). The proposed modifications provide for an increase in the overall area to be covered in solar panels, including the area that would have been utilised for the substation. Therefore, there will be no

¹ [Cork Harbour SPA | National Parks & Wildlife Service \(npws.ie\)](https://npws.ie)

² [Report \(npws.ie\)](https://npws.ie)

additional land take, and no increase in the loss of agricultural grasslands as a result of the proposed modifications.

- 3.4. I note also that a landscape plan has been prepared for the permitted development which provides for the planting of 965m of new hedgerow and the bolstering of 4,324 m of existing hedgerow with native whips, which the applicant states will provide potential nesting habitat for a range of bird species.
- 3.5. Ballinvuskig Solar Farm is not located within or immediately adjacent to a European Site. Cork Harbour Special Protection Area is within 3.4km of at its closest point. The development site is within the Owenboy catchment which drains into the estuary at Carrigaline, also part of the SPA which is 6km distant. The intervening areas are under agricultural management and urban development.

4.0 Main issues

- 4.1. As outlined, in their refusal of the proposed development, Cork City Council did not consider that adequate information was provided to exclude the possibility of significant adverse effects on sensitive bird species during the breeding season or wintering birds associated with the SPA. This determination was informed the critical assessment of the EclA and NIS by Dr Lewis which related to modifications to the already permitted solar farm at Ballinvuskig Co. Cork but also took account of a perceived lack of survey effort for the permitted solar farm.
- 4.2. There was a back and forth over these issues where the applicant engaged with Cork City Council through further information requests and reviews of same. I note that following an initial examination of the EclA and NIS, further information was sought by Cork City Council (May 2023) regarding a number of ecology issues with a focus on a request for breeding bird survey during optimum timing and a request for a programme of surveys for wintering birds. An ecological appraisal of the MKO response dated 29th August 2023 and a further ecological assessment of the MKO response dated 22nd November 2023 (December 2023) were undertaken by Dr Lewis.
- 4.3. In the response to further information for Cork City Council and in their submission with the first party appeal, MKO Ecologists are firm in their professional opinion that

the level of survey and assessment undertaken for the proposed modifications at the site are appropriate and proportionate to inform the planning assessment and the Appropriate Assessment.

4.4. The main issues of relevance and that were material in Cork City Councils refusal of the proposed development are summarised below:

- Breeding birds

Potential impacts to birds during the breeding season and lack of breeding bird survey to inform presence/ absence of sensitive species.

- Wintering birds

Further information required to inform AA regarding importance of the site as an ex-situ site for birds species associated with the SPA (SCI species).

4.5. Breeding Birds

4.5.1. The lack of a dedicated breeding bird survey at the solar farm site in accordance with standard methodology and at the appropriate time (mid-March to mid-June) was a key issue in the critical review undertaken on behalf of Cork City Council. Dr Lewis was not satisfied that the approach taken by the applicant could rule out the presence of sensitive breeding bird species at the site.

4.5.2. A multidisciplinary ecological survey was undertaken by MKO Ecologists on 13th July 2022 to inform the EclA. This survey was stated to provide baseline data on the ecology of the site and determine if further detailed habitat or species-specific surveys were required. It was determined that wintering birds required further survey as the agricultural grassland provide potential foraging for a number of bird species listed as Special Conservation Interest. The need for further dedicated breeding bird survey was not determined (which would have had to be undertaken the following year to fit in with the active breeding bird season).

4.5.3. The July 2022 survey recorded 12 species of common birds, typical of the habitats present and that none of the species recorded were of conservation concern. As detailed by Dr Lewis, I accept that a dedicated breeding bird survey may have

captured more bird species/ numbers of birds as breeding activity and bird song is much reduced by mid-July.

- 4.5.4. In their report accompanying the first party appeal MKO ecologists clarify that the survey in July 2022 and again in July 2023 was a breeding bird habitat appraisal and that based on the habitats present and locations of the proposed modifications within open agricultural fields there would be no loss of potential breeding habitat and therefore no significant effects could arise, and that this conclusion could be reached without a dedicated breeding bird survey.
- 4.5.5. I note that in her appraisal of further information for the Local authority planning application Dr Lewis cites CIEEM guidance (2018) among others related to the 'collecting of information and describing the ecological conditions in the absence of the proposed project to inform the assessment of impacts'.
- 4.5.6. I also draw attention of the Inspector and the Board to the page 10 of those guidelines related to differing scale of EclA and a proportionate approach.

..the level of detail required in an EclA will inevitably be proportionate to the scale of the development and complexity of its potential impacts. These Guidelines do not prescribe exactly how to undertake an EclA, but provide guidance to practitioners for refining their own methodologies.

Scoping (Chapter 2) should be proportionate to potential effects on ecological features. Professional ecologists need to use their knowledge and experience to judge the resources required to complete an adequate and effective EclA. The MKO ecologists reiterate this point throughout their documentation and in the report that accompanies the planning appeal. They are experienced professional ecologists with knowledge of the site in question and I consider that they present a robust justification for their approach.

- 4.5.7. Given the already extant permission, I consider that the MKO approach is reasonable and proportionate to the works proposed which amount to a reduction in some aspects of infrastructure on the site. The proposed modifications don't include any additional impacts on habitats such as hedgerows and treelines that are of

significance to breeding birds in the agricultural landscape and therefore do not combine to create further additive effects to that already granted in that respect.

4.6. Wintering Birds

- 4.6.1. Monthly surveys for wintering birds were carried out by MKO in from October 2022 to March 2023 at alternate high and low tides. Survey effort is detailed in section 3.2.4.1 of the EclA and 4.1.2.2 of NIS. I note that a number of species that are Special Conservation interest for the Cork Harbour SPA were recorded foraging or flying over the site and adjacent farmland and these are detailed in Table 4.5 of the NIS and also in the EclA (Table 5.3).
- 4.6.2. Curlew, Blackhead gull, Golden plover and Lapwing, species which commonly utilise agricultural habitats outside of SPA sites were recorded on occasion in varied numbers.
- 4.6.3. Cork City Council makes the case that further survey and assessment should have been undertaken to further determine use of and importance of the site by SCI species. The MKO ecologists defend their approach to survey and assessment throughout their documentation and in the report that accompanies the planning appeal. They rely on the evidence presented related to the intensive agricultural practices within the site, the abundance of similar habitat in the wider environment and the minor scale of the proposed modifications which would not add significantly to any cumulative impacts with the extant permission. The NIS prepared concludes that the proposed modifications would not adversely affect the site integrity of Cork Harbour SPA in view of the conservation objectives of the site.
- 4.6.4. I draw the Inspectors and the Board attention to the Conservation objectives for the SPA. The overarching objectives for all the species recorded on the site is to maintain the favourable conservation status. To achieve this the population trend should be stable or increasing and there should be no significant decrease in the range timing or intensity of use of areas (within the SPA) other than that occurring from natural patterns of variation. Of relevance is the supporting document for conservation objectives which provides additional detail with particular reference to ex situ sites and their relevance to supporting the functions of the SPA.

- 4.6.5. Ex-situ factors: several of the listed waterbird species may at times use habitats situated within the immediate hinterland of the SPA or in areas outside of the SPA but ecologically connected to it. The reliance on these habitats will vary from species to species and from site to site. Significant habitat change or increased levels of disturbance within these areas could result in the displacement of one or more of the listed waterbird species from areas within the SPA, and/or a reduction in their numbers (for further information on this topic please refer to Section 5.2).
- 4.6.6. In terms of wintering birds and the use of the site as an ex-situ site for SCI bird species of Cork Harbour SPA, I consider that the applicant has demonstrated that the site is part of the wider network agricultural land that is utilised occasionally for foraging/ commuting by species including Curlew, Golden Plover, Lapwing, and black headed gull. Having reviewed the documentation, I agree with the rationale put forward by MKO ecologists.
- 4.6.7. I consider that (a) the proposed modifications to the permitted solar farm do not significantly alter the availability of grassland on this site and (b) overall, the loss of foraging area for wintering birds alone or in combination with other permitted solar farms in the area is not significant given the widespread availability of similar habitat throughout the area. While the proposal may result in localised displacement of low numbers of wintering SCI birds, such disturbance and habitat change is highly unlikely to result in displacement of the listed waterbird species from areas within the SPA as referenced in the conservation objectives supporting document and thus I concur with the findings that the proposal will not undermine the conservation objectives of the Cork Harbour SPA and adverse effects on site integrity can be excluded.

5.0 Conclusion

- 5.1. Based on the information available on the proposed development including the report prepared by MKO as part of the first party appeal I consider that the level of survey effort and assessment was proportional to the modifications proposed.
- 5.2. The permitted solar farm will be located within an area of intensively managed agricultural grassland, a widespread habitat in this location. The proposed

modifications to not affect hedgerows with the site and there is very limited potential for sensitive ground nesting bird species in the grass sward.

- 5.3. In terms of wintering birds and the use of the site as an ex-situ site for SCI bird species of Cork Harbour SPA, I consider that the applicant has demonstrated that the site is part of the wider network agricultural land that is utilised occasionally for foraging/ commuting by species listed for the SPA. While the proposal may result in localised displacement of varied numbers of wintering SCI birds from the site itself, there is no lack of similar habitat in the wider area. Disturbance and loss of grassland foraging at the Solar farm / proposed modifications to same is highly unlikely to result in displacement of the listed waterbird species from areas within the SPA as there is abundant similar habitat in the vicinity of the solar farm taking account of other proposals in the area and thus I concur with the findings that the proposal will not undermine the conservation objectives of the Cork Harbour SPA and adverse effects on site integrity can be excluded.
- 5.4. I consider that the rationale provided by the MKO Ecologists is acceptable and can be relied upon to inform the planning determination by the Board.



Dr Maeve Flynn
Inspectorate Ecologist

26th June 2024