



The submissions on this file, including the Inspector's initial report and the applicant's response to the S. 132 Notice issued by the Board on 27<sup>th</sup> August 2015 and the appellants observations and comments on response from the applicant and the inspectors addendum report were further considered at a Board meeting held on 16<sup>th</sup> June 2016.

The Board decided to grant permission in accordance with the following reasons, considerations and conditions.

### **Reasons and Considerations**

Having regard to –

- a. the European and national policies to increase the proportion of energy that is generated from renewable sources including wind set out in the Renewable Energy Directive 2009/28/EC and the National Renewable Energy Action Plan which sets a target that 40% of the electricity generated in Ireland would be from renewable sources by 2020,
- b. the Guidelines for Planning Authorities on Wind Energy Development issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- c. the provisions of the Kerry County Council's Renewable Energy Strategy 2012

- d. the provisions of the Kerry County Development Plan 2015-2021, including objectives EP-11 and EP-12 and the designation of the area as one where wind energy development is open to consideration,
- e. the character of the landscape of the area,
- f. the distance to dwellings and other sensitive receptors from the proposed development,
- g. the separation of the site of the proposed development from sites designated as part of the Natura 2000 network and the nature of the connections between them
- h. the environmental impact statement and further information submitted by the applicant, including information submitted in relation to the grid connection.
- i. the submissions made in the course of the planning application, and
- j. the initial report of the planning inspector (28.05.15) and addendum report of the inspector (24.03.16) following receipt of further information (

It is considered that the proposed development would be in keeping with national energy policy and with national and local planning policy on wind energy development and the protection of landscapes and scenic routes.

### **Appropriate Assessment Screening**

The Board accepted and adopted the Inspector's screening assessment in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's Conservation Objectives. The

Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the following European Sites; the Moanveanlagh Bog Special Area of Conservation (Site code 002351), Kerry Head SPA (Site code 004189), the River Shannon and River Fergus Estuaries (Site Code 004077) in view of the sites' Conservation Objectives.

The Board further agreed with the Inspector's screening assessment that the Lower Shannon cSAC (Site code 002165), and the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (site code 004161) are the European sites for which there is a likelihood of significant effects.

### **Appropriate Assessment**

The Board considered the NIS submitted with the planning application, the further supplemental and additional information received in relation to the RNIS including grid connection, the documentation submitted at appeal stage, the submissions on file and the Inspector's report and completed an Appropriate Assessment of the implications of the proposed development for European Sites where there is a likelihood of significant effects. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered, in particular, the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the mitigation measures included as part of the proposed development and the Conservation Objectives for these European Sites. The Board concurred with the Inspector's view (paragraphs 12.13.1 & 12.13.2 of Addendum Report dated 24.03.16) that, on the basis of the detailed mitigation measures proposed, significant impact on the qualifying interests associated with the Lower Shannon SAC (002165) and Stacks to Mullaghareirk Mountains, West

Limerick Hills and Mount Eagle Special Protection Area (site code 004161) are not likely.

In completing the AA, the Board accepted and adopted the Inspector's Appropriate Assessment in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' Conservation Objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the sites' Conservation Objectives.

### **Environmental Impact Statement**

The Board considered that the Environmental Impact Statement submitted with the application, supported by the further information submitted to the planning authority, the Addendum Environmental Impact Statement incorporating the grid connection proposed, the reports, assessment and conclusions of the Inspector with regard to this file and other submission on file, was adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development.

The concern of the inspector in his initial report regarding noise was noted however the Board adopted his subsequent amended conclusion with respect to noise in his addendum report whereby the inspector was satisfied that the noise level would generally comply with national guidelines and would be acceptable.. The Board further noted the inspector's concerns regarding shadow flicker however it considered that the imposition of condition 5 which requires compliance with national guidelines that limit the impacts of shadow flicker on residential properties to acceptable levels adequately addresses those concerns by way of appropriate mitigation measures.

The Board completed an Environmental Impact Assessment, and assessed the likely significant effects of the proposed development, and concluded that the mitigation

measures proposed and residual effects were acceptable. The Board concluded that, subject to the implementation of the mitigation measures proposed, the effects on the environment of the proposed development would be acceptable.

### **Conclusion on Proper Planning and Sustainable Development**

It is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the landscape, would not seriously injure the visual or residential amenities of the area and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the foregoing and in relation to the inspectors recommendation to refuse permission on the basis of a material contravention of the Kerry County Development Plan Objective EP-12 the Board examined County Level policy in relation to renewable energy, and considered that the policy cited EP-12 conflicted with other policies in the Wind Energy Strategy for the county, and in the County Development Plan that are supportive of the deployment of greater levels of wind farms. The Board considered that the policy was impractical in terms of implementation and would create an unacceptable level of uncertainty of when any future developments might be permitted. Furthermore the Board considered that the policy would run contrary to national policy and guidance in relation to increasing renewable energy penetration.

For these reasons the Board considered it would not be reasonable or appropriate to refuse planning permission on the basis of Policy EP-12.

In relation to the inspectors refusal recommendation in respect to shadow flicker the Board considered that the imposition of condition 5 adequately addresses the Inspectors concerns by way of appropriate mitigation measures.

## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information received by the planning authority on the 25<sup>th</sup> day of July 2015 by the further plans and particulars received by An Bord Pleanála on the 27<sup>th</sup> day of October 2015, except as may otherwise be required in order to comply with the following conditions. In particular the mitigation measures identified in the environmental impact statement and the further information shall be implemented in full by the developer. Where the conditions below require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The appropriate period of this permission during which the authorised development may be carried out shall be ten years from the date of this order.

**Reason:** Having regard to the nature and extent of the proposed development, the planning history of the site the Board considered that ten years was reasonable given the nature and complexity of the development concerned.

3. The authorised windfarm shall operate for no more than 25 years from the date on which electricity is first exported from it or from date of the expiry of the appropriate period, whichever is the sooner.

**Reason:** To clarify the nature of authorised development in accordance with the details submitted with the application.

4. Noise levels emanating from the authorised development following commissioning, when measured externally at noise-sensitive locations, shall not exceed the greater of 45dB(A)L90, 10 min or 5dB(A) above background levels between the hours of 0700 and 2300, or 43dB(A)L90, 10 min between 2300 and 0700. All noise measurements shall be made in accordance with I.S.O. Recommendations R1996/1 and 2 “Acoustics – Description and measurement of Environmental Noise”.

The noise mitigation measures described in the environmental impact statement shall be implemented in full. Prior to the commencement of development, the developer shall agree a noise compliance monitoring programme for the operational wind farm with the planning authority. The operator shall maintain and make available for inspection by the planning authority, records of the noise compliance monitoring,

**Reason:** In the interest of residential amenity.

5. Shadow flicker arising from the proposed development shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors. The measures to mitigate the impact of shadow flicker described in the environmental impact statement, shall be implemented to ensure that any turbines which might cause an exceedance of this limit are stilled. Details in this regard to be submitted to and agreed in writing with the planning authority proper to commencement of development. Prior to the commencement of the export of electricity from the proposed windfarm, the developer shall submit certification from a suitably qualified person who was not previously engaged in the construction of the windfarm that the equipment necessary to implement those measures has been properly installed and is functional

**Reason:** In the interest of residential amenity.

6 Prior to the commencement of development the developer shall submit for the written agreement of the planning authority a plan for the decommissioning of the authorised windfarm and the reinstatement of the site which shall provide for the removal of the turbines, towers, meteorological monitoring masts and all plant and equipment and the reinstatement of the turbine bases and hard standing areas, as well as a time frame for the completion of such works which shall not be greater than 12 months from the cessation of the operation of the windfarm.

**Reason:** To ensure the satisfactory reinstatement of the site and to prevent an accumulation of obsolete functional structures in the interests of orderly development.

7. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory reinstatement of the site and to prevent an accumulation of obsolete functional structures in the interests of orderly development.

8 The construction of the proposed development shall be carried out in accordance with a Construction and Environment Management Plan prepared having regard to CIRIA Guideline C848 which shall set out a construction method statement and timetable for all works and measures that are integral to the proposed development. The plan shall be submitted and agreed in writing with the planning authority prior to the commencement of development.



The Construction and Environment Management Plan shall include a comprehensive Construction-Stage Drainage Report and Management Plan with -

- (a) Details of the proposed water monitoring protocol and drainage inspection regime.
- (b) Full details of measures for the control of drainage during and after construction (including tree-felling prior to construction), including the use of settlement ponds, swales and silt traps, and measures for the control of run-off from temporary spoil storage areas.
- (c) Details of the nature of all materials used in constructing access tracks to the turbines.
- (d) Full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction.
- (e) Details of all aspects of the management of excess spoil, such that slope stability measures and prevention of water pollution are fully implemented. Soil, rock, peat and sand/gravel excavated during construction shall not be left stockpiled on site following completion of works.

**Reason:** In the interest of environmental protection and orderly development.

- 9 Prior to the commencement of development, the following details shall be submitted and agreed in writing with the planning authority –
- (i) a Transport Management Plan, including details of the road network/haulage routes and the vehicle types to be used to transport materials and parts on and off site,
  - (ii) a condition survey of the roads and bridges along the haul routes to be carried out at the developer's expense by a qualified engineer both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes and, in particular, regional and local roads in to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority prior to commencement of development.
  - (iii) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority.
  - (iv) detailed arrangements for temporary traffic arrangements/controls on roads.
  - (v) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.

All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

**Reason:** To protect the public road network and to clarify the extent of the permission in the interest of traffic safety and orderly development.

10. Prior to the commencement of development, the developer shall lodge with the planning authority, a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer

**Reason:** In the interest of road safety and the proper planning and sustainable development of the area.

11. The construction of the development shall not give rise to emissions of dust that exceed 350mg/m<sup>2</sup>/day, or emissions of noise that result in recorded levels at the facades of houses above 65dB(A)LAeq 1hour. The hours of work shall normally be restricted to between 0700 and 1900 Monday to Saturday and not at all on Sundays or public holidays, unless the prior written agreement of the planning authority has been obtained. Prior to the commencement of construction activities the developer shall agree, in writing, with the planning authority a plan to control such emissions for the duration of the construction works. The plan shall include details of the method and locations dust monitoring, measures to be implemented to reduce emissions and actions to be taken in the event of complaints.

**Reason:** In the interest of environmental protection and orderly development.

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

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and prepare a report on the results of such monitoring to be submitted to the planning authority and to the Department of Arts, Heritage and the Gaeltacht,

(c) provide arrangements, acceptable to the planning authority, for the recording and removal of any archaeological material which the authority considers appropriate to remove. In particular, archaeological excavation shall be carried out at Areas of Archaeological Potential identified in the environmental impact statement submitted,

A comprehensive report on the completed archaeological excavation shall be prepared and submitted to the planning authority and to the National Monuments Service within a period of six months or within such extended period as may be agreed with the planning authority.

**Reason:** In order to conserve the archaeological heritage of the site, it is considered reasonable that the developer should facilitate the preservation and protection or the preservation by record of any archaeological features or materials which may exist within it.

13. Cables within the site shall be laid underground. The wind turbines shall be geared to ensure that the blades rotate in the same direction. The colour and finishes of the turbines shall comply with the requirements of the planning authority.

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

14. Prior to commencement of development, details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority. Subsequently, the developer shall inform the planning authority and the Irish Aviation Authority of the coordinates of the 'as constructed' turbines and the highest point of the turbines.

**Reason:** In the interest of air traffic safety.

15. In the event that the proposed development causes interference with telecommunications signals in the area effective measures shall be implemented to minimise such interference. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines, and following consultation with the relevant authorities.

**Reason:** In the interest of orderly planning and residential amenity.

16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

**Note:**

This grant of planning permission does not authorise any works that relate to any grid connection route that is located outside the boundary of the site of the proposed development as indicated (outlined in red) in the plans and particulars referred to in condition number 1 above.

Please circulate a copy of the direction with the Order.

**Board Member** \_\_\_\_\_

Paul Hyde

**Date:** 24.06.16

Decision Quashed