



An
Bord
Pleanála

Board Direction
PL10.248392

The submissions on this file and the Inspector's report were considered at Board meetings held on 25th May 2018, 16th October 2018 and the 14th August 2019.

At the meeting of the 25th May 2018, the Board decided to defer consideration of the case and to issue a Section 137 notice to the parties, noting that the proposed substation element of the proposed development (within the planning authority area of Laois under (PL.11.248518) ought to be the subject of pre-application discussions with An Bord Pleanála.

At a further meeting dated 16th October 2018, the Board considered the submission received from the applicant in response to the Section 137 notice and decided at this meeting to again defer consideration of this case and case PL.11.248518. The Board advised the applicant to enter into pre-application consultations with the Board to determine whether the substation element of the proposed development with the Laois planning authority area and included within PL.11.248518 comes within the definition of Strategic Infrastructure Development.

Following pre-application consultation between the applicant and the Board, a provisional determination was made that the proposed substation constituted Strategic Infrastructure Development and that subject to the formal conclusion of the pre-application consultation process, this element of the application would require a separation Strategic Infrastructure Development application.

At the meeting of 14th August 2019, the Board noted that the proposed development is part of a larger development which also extends onto lands in the townlands of Knockardugar, Boleybawn, Garrintaggart, Ironmills (Kilrush) and Graiguenahown, in Co. Laois. The Board considered the file for the elements of the project that are within the Laois planning authority area under file reference PL.11.248518 at the same meeting. The applications were accompanied by an Environmental Impact Statement and Natura Impact Statement which addressed the entirety of the project (including the proposed substation element of the project in Laois which was subject to pre-application consultations and would be subject to the requirement for a separate application under the provisions of Strategic Infrastructure) under file references PL.10.248392.and PL.11.248518.

At the meeting of the 14th August 2019, the Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations.

Reasons and Considerations

Having regard to:

- (a) national policy with regard to the development of sustainable energy sources,
- (b) the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- (c) the character of the landscape in the area and the topography surrounding the site,
- (d) the location of the site outside of any European Site, and the distance to such sites,
- (e) the pattern of development in the area,
- (f) the provisions as set out in the current Kilkenny County Development Plan 2014-2020, including those regarding renewable energy development,
- (g) the distance to dwellings or other sensitive receptors from the proposed development, and
- (h) the submissions made in connection with the planning application and the appeal, including the Environmental Impact Statement submitted with the planning

application (including mitigation measures therein), the further supplementary information submitted by the applicant in the course of the planning application and the appeal,

(i) the Natura Impact Statement and the further information submitted in relation to ecology by the applicant in the course of the planning application and appeal

The Board decided to grant permission for the proposed development (PL10.248392).

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 not give rise to any significant impacts on the natural heritage of the area or affect the integrity of any European Site or any protected species. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening:

The Board completed an appropriate assessment of the proposed development which was accompanied by a Natura Impact Statement which addressed the entirety of the project (including the proposed substation) under file references PL.10.248392 and PL.11.248518.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) is the European Site for which there is a likelihood of significant effects.

Appropriate Assessment

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for the River Barrow and River Nore Special Area of

Conservation in view of the site's Conservation Objectives (Site Code: 002162). 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, and the mitigation measures which are included as part of the current proposal (including the provision of a temporary berm adjacent to junction upgrade works) and the Conservation Objectives for this European Site.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Site, having regard to the site's Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objective.

Environment Impact Assessment

The Board completed an environmental impact assessment of the proposed development which was accompanied by an Environmental Impact Statement which addressed the entirety of the project (including the proposed substation) under file references PL.10.248392 and PL.11.248518 and, taking into account:

- (a) the nature, scale and location of the proposed development at Crutt, Co. Kilkenny,
- (b) the environmental impact statement and associated documentation submitted with the application,

- (c) the submissions from the applicant, the planning authorities, the observers and the prescribed bodies in the course of the application, and the further information received during the appeal, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Statement, supported by the documentation submitted by the applicant, identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Inspector's report, of the information contained in the Environmental Impact Statement and associated documentation submitted by the applicant and submissions made in the course of the application.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- Drainage impacts during construction and operation have been mitigated by the development and implementation of a surface water management plan,
- Traffic impacts during construction and decommissioning will be mitigated by the implementation of the recommended measures from the road safety audit and the Traffic Impact Assessment.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that subject to the implementation of the mitigation measures proposed as set out in in the EIS and the NIS and subject to compliance with the conditions set out below, the effects on the environment of the proposed development by itself and in combination with other developments in the vicinity would be acceptable. In doing so the Board adopted the report and conclusions of the Inspector.

Conclusion on Proper Planning and Sustainable Development:

It is considered that the need for the overall proposed development has been demonstrated in national policy and that, subject to compliance with the conditions set out below, including compliance with the mitigation measures set out in the environmental impact statement, the proposed development:

- would have acceptable effects on the environment,
- would not be likely to have a significant effect on any European Site,
- would not have an unacceptable impact on the landscape,
- would not seriously injure the visual or residential amenities of the area or of property in the vicinity, 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.

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 plans and particulars submitted to the planning authority on the 10th day of February 2017 and by the further plans and particulars received by An Bord Pleanála on 19th November 2018 and 28th June 2019 (following pre-application consultation between the application and the Board in relation to the proposed substation at Knockardugar, Co. Laois) including the detailed mitigation measures set out in the EIS and NIS, except as may otherwise be required in order to comply with the following conditions. Where such conditions 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 period during which the development hereby permitted may be carried out shall be 10 years from the date of this order.

Reason: Having regard to the nature of the development, the Board considers it appropriate to specify a period of validity of this permission in excess of five years.

- 3 This permission shall be for a period of 25 years from the date of commissioning of the wind turbines. The wind turbines and related ancillary structures shall then be decommissioned and removed unless, prior to the end of the period planning permission shall have been granted for their retention for a further period.

Reason: To enable the planning authority to review its operation in the light of the circumstances then prevailing.

- 4 All environmental mitigation measures set out in the Environmental Impact Statement, Natura Impact Statement, and associated documentation submitted by the applicant to the planning authority and An Bord Pleanála, shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of protection of the environment.

- 5 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

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

6. Prior to the commencement of works on site, a surface water management plan shall be submitted to and agreed in writing with the Planning Authority and shall set out the detailed measures to be undertaken to protect water quality during tree harvesting, construction and operation phase, as well as a schedule for water quality monitoring. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site clerk of works who will report on compliance with the relevant mitigation measures. The clerk of works shall be empowered to halt works where he/she considers that continuation of the works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or of damage to a river, these reports will be made available to the relevant statutory authorities and on site works will cease until authorised to continue by the Planning Authority.

Reason: To prevent water pollution.

7. (a) Roads, hardstanding areas and other hard-surfaced areas shall be completed to the written satisfaction of the planning authority within three months of the date of commissioning of the wind farm.

(b) Soil, rock or sand excavated during construction shall not be left stockpiled on site following completion of works. Details of the treatment of stockpiled materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. Prior to commencement of development, the developer shall submit and agree in writing with the planning authority a detailed Construction Management Plan, including a monitoring regime. The Plan shall make provision for inclusion of all relevant mitigation proposed in the EIS and NIS and shall in any event ensure that its scope extends to the following parameters:

(a) surface water management during construction to prevent runoff from the site onto the public roads, unnatural flooding and/or the occurrence of any deleterious matter in the rivers and the tributaries and watercourses of their catchments or other waters within and adjoining the site including groundwater in accordance with best practice

(b). Detail of treatment of stockpiled material arising from excavation during construction, management of peat storage and disposal

(c) dust minimisation including dust potentially generated from vehicles, measures to include appropriately located wheel wash facilities and appropriate good practice in the covering of laden and unladen vehicles;

(d) management of public roads in the vicinity/ so that they are kept free of soil, clay, gravel, mud or other debris and general site management to the satisfaction of the planning authorities;

(e) provision of detailed plans for all temporary facilities and operations, including the storage of hydro-carbons, and proposals for reinstatement as appropriate on completion of the construction phase;

(f) preparation of a formal Project Construction and Demolition Waste Management Plan;

(g) control of adverse noise and disturbance by reference to construction working hours, noise limits and traffic management arrangements;

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the relevant planning authorities. The developer shall satisfy the requirements of the planning authority in relation to measures to be proposed to prevent pollution run-off into water courses. The development shall thereafter be implemented in accordance with the agreed details.

Reason: In the interest of amenities, public health and safety, and to protect the adjoining surface watercourses and areas subject to environmental designations.

9. 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 1:

The Board noted that, for the purposes of Section 37(A) of the Planning and Development Act 2000 (as amended), which provides for categories of development specified in the Seventh Schedule to be considered for direct application to An Bord Pleanála, Pinewood Windfarm was of a class of development specified but that it did not comply with the relevant thresholds for consideration.

The project was progressed under Section 34 of the Planning and Development Act 2000 (as amended) and in light of the project crossing the Kilkenny and Laois planning authority areas, two separate applications which were both appealed to the Board under PL.10.248392 and PL11.248518 respectively were made by the applicant. The Board considered the two cases concurrently.

Note 2:

In deciding that a grant of permission for the proposed development which comprises access tracks, underground cabling and drainage works, would not be a material contravention of the wind energy policies of the Kilkenny County Development Plan 2014-2020, the board was cognisant that the rationale for restricting wind energy developments to 'preferred areas' as set out in Kilkenny's Wind Energy Strategy set out in Appendix J of the Development Plan was in order to minimise visual impacts of such large developments. In making its decision, the Board noted that no structures or turbines are proposed within the Kilkenny planning authority area which would give rise to visual impacts. The Board considered the proposed development on its merits taking into account the acceptability of the cumulative visual impact of the overall proposed development in both Kilkenny and

Laois and considered that the proposed development was compliant with national plans, policies and strategies on energy.

Please issue a copy of the Direction with the Order.

Board Member

Maria FitzGerald

Date:

27th August 2019