



An  
Bord  
Pleanála

**Board Direction**  
**PL11.248518**

---

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

At the meeting of the 25<sup>th</sup> 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 ought to be the subject of pre-application discussions with An Bord Pleanála.

At a further meeting dated 16<sup>th</sup> 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. The Board advised the applicant to enter into pre-application consultations with the Board to determine whether the substation element of the proposed development 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 sub-station 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 14<sup>th</sup> August 2019, the Board noted that the proposed development is part of a larger development which also extends onto lands in the townland of

Crutt, Co. Kilkenny. The Board considered the file for the elements of the project that are within the Kilkenny planning authority area under file reference PL.10.248392 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 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.11.248518 and PL.10.248392.

At the meeting of the 14<sup>th</sup> August 2019, the Board decided that it was appropriate to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions (including condition 4 which requires that the 110kV substation at Knockardugar, Co. Laois is not authorised by this permission).

### **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 Laois County Development Plan 2017, 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 (PL11.248518). 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.11.248518 and PL.10.248392.

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.11.248518 and PL.10.248392, taking into account:

- (a) the nature, scale and location of the proposed development at Knockardugar, Boleybawn, Garrintaggart, Ironmills (Kilrush) and Graiguenahown, Co. Laois
- (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:

- Landscapes and Visual Impacts have been mitigated to the extent possible by reason of appropriate siting, scale and design of the windfarm in accordance with published guidelines,
- Biodiversity impacts on bats which will be mitigated by detailed protection measures including the provision of a bat buffer zone setback of 62.5m between the rotors of the planned turbine and the nearest vegetation and replacement setback linear hedgerows where this is not feasible, and the installation of bat boxes,
- 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 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 19<sup>th</sup> November 2018 and 28<sup>th</sup> 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 The proposed the 110kV substation at Knockardugar, Co. Laois is not authorised by this permission.

**Reason:** The provision of the proposed substation at Knockardugar would represent strategic infrastructure development under the provisions of the Planning and Development Act, 2000, as amended, and accordingly is subject to a separate planning application process.

- 5 This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

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

- 6 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.

- 7 Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. Bat buffer zone setback of 62.5m shall be provided and replacement setback linear hedgerows shall be provided where not feasible.

**Reason:** To ensure the protection of the natural heritage within the site.

- 8 The developer shall provide for mitigation measures including a temporary berm adjacent to the proposed junction upgrade works. R430/L7800 adjacent to the flood meadows of the Owenbeg River. Details shall be submitted to the Planning Authority for written agreement prior to the commencement of development.

**Reason:** In the interest of nature conservation.

- 9 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.

10 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.

11 Disposal of foul effluent on site is not permitted, unless otherwise authorised by a prior grant of planning permission.

**Reason:** In the interest of public health.

12 (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.

13 (a) A condition survey of the proposed construction haul routes, including provision for bridges, culverts or other structures, shall be carried out by a suitably qualified engineer both before and after construction of the proposed development. The extent and scope of the survey shall be submitted to, and agreed in writing with the planning authority, prior to commencement of development. In the event of damage occurring to the public road network or associated infrastructure as a result of the construction of the proposed development, such damage shall be made good in accordance with the requirements of and to the satisfaction of the planning authority.

(b) Any such works shall be undertaken in accordance with the "Guidelines for the Treatment of Otters prior to the Construction of National Road Schemes" issued by the National Roads Authority (2006).

**Reason:** To ensure successful reinstatement of the public road network in the area.

14 A protocol for annual reports on the impact of the windfarm on wildbirds in the vicinity shall be submitted by the developer to and agreed in writing with the planning authority prior to the commencement of development. These reports shall be submitted on an agreed date annually for as long as the windfarm is operational.

**Reason:** To allow full monitoring of the ecological impact of the proposed development.

15 The wind turbines including masts and blades shall be finished externally in a light grey colour to be agreed in writing with the planning authority prior to commencement of development. Precise specifications of the turbines shall be provided to the planning authority prior to delivery.

**Reason:** in the interests of visual amenity.

16 (a) Cables within the site shall be laid underground.

(b) The wind turbines shall be geared to ensure that the blades rotate in the same direction.

(c) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.

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

17 Facilities shall be installed to minimise interference with radio or television reception in the area. Details of the facilities to be installed, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to the commissioning of the turbines and following consultation with the relevant authorities.

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

18 Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Subsequently the developer shall inform the planning authority and the Irish

Aviation Authority of the co-ordinates of the as constructed positions of the turbines and the highest point of the turbines to the top of the blade spin.

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

19 The operation of the proposed development, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

(a) Between the hours of 7am and 11pm:

i. the greater of 5 dB(A)  $L_{90,10min}$  above background noise levels, or 45 dB(A)  $L_{90,10min}$ , at wind speeds of 7 metres per second or greater

ii. 40 dB(A)  $L_{90,10min}$  at all other wind speeds

(b) 43 dB(A)  $L_{90,10min}$  at all other times

where wind speeds are measured at 10 metres above ground level.

Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a noise compliance monitoring programme for the subject development, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with Respect to Community Response," as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the wind farm.

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

20 (a) Shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.

(b) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

(c) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with, the planning authority. The developer shall outline proposed measures to address any recorded non-compliances, including control of turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

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

21 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.

22 On full or partial decommissioning of the wind farm or if the wind farm ceases operation for a period of more than one year, the masts and the turbines concerned including foundations shall be removed and all decommissioned structures shall be removed within three months of decommissioning.

**Reason:** to ensure satisfactory reinstatement of the site upon cessation of the project.

23 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 satisfactory reinstatement of the site.

24 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 Laois and Kilkenny planning authority areas, two separate applications which were both appealed to the Board under PL11.248518 and PL.10.248392 respectively were made by the applicant. The Board considered the two cases concurrently.

**Note 2:**

The Board noted that the application was accompanied by a letter of consent, from the landowner in respect of the property forming part of the appeal site adjacent to the junction of R430 and L7800 and was therefore in accordance with the requirements of Article 22(s)(g) of the Planning and Development Act (as amended). However, in light of the fact that the evidence on file with regard to the consent of the landowner was contradictory and inconclusive, the Board notes that Section 34(13) of the Planning and Development Act 2000, as amended states that a person shall not be entitled solely by reason of a permission to carry out any development.

**Note 3:**

In deciding that the grant of permission for the proposed windfarm development would not be a material contravention to the Laois County Development Plan 2017-2023, particularly its Wind Energy Strategy set out in Appendix 5 and its Development Control Standards for Wind Farms as set out in Chapter 6, the Board considered that granting the development complied with Section 37 2(b)(iii) of the Planning and Development Act 2000 (as amended) which provides that permission for the proposed development should be granted having regard to regional and



national guidelines and policies. The Board 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**

**Date:**

\_\_\_\_\_  
Maria FitzGerald

27<sup>th</sup> August 2019