

**An
Bord
Pleanála**

**Board Direction
BD-014607-23
ABP-307939-20**

The submissions on this file and the Inspector's report were considered at Board meetings held on 9/11/2023 and 16/11/2023.

The Board decided to grant permission generally in accordance with the Inspector's recommendation, for the following reasons and considerations, and subject to the following conditions.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard to the following:

- (a) Section 177K(2) of the Planning and Development Act, 2000 as amended,
- (b) the National Planning Framework - Ireland 2040,
- (c) the Climate Action Plan, 2023,
- (d) Section 15 of the Climate Action and Low Carbon Development (Amendment), Act 2021,
- (e) the Environmental Impact Assessment Directive (EIA Directive) means Directive 2014/52/EU, as amended, on 16.04.2014 April 2014, on the assessment of the effects of certain public and private projects on the environment,
- (f) the EU Habitats Directive (92/43/EEC),
- (g) the European Union (Birds and Natural Habitats) Regulations 2011-2015,
- (h) The likely consequences for the environment and the proper planning and sustainable development of the area where the development is located and the likely significant effects of the development on European Sites,

- (i) the conservation objectives, qualifying interests and special conservation interests for the Mullaghanish to Musheramore Mountains SPA (site code: 004162), the Geragh SAC (site code: 000106) and the Gearagh SPA (site code:004109),
- (j) The Regional Spatial & Economic Strategy for the Southern Region, 2020,
- (k) the “Wind Energy Development Guidelines - Guidelines for Planning Authorities”, issued by the Department of the Environment, Heritage and Local Government in 2006,
- (l) the policies and objectives of the Cork County Development Plan, 2022-2028,
- (m) the Draft Revised Wind Energy Development Guidelines 2019 issued by the Department of Housing, Planning and Local Government,
- (n) the submissions made in connection with the Substitute Consent application,
- (o) the nature and extent of the proposed works as set out in the application,
- (p) the distance to dwellings or other sensitive receptors,
- (q) the impact on residential amenity arising from noise, and
- (r) the report and recommendation of the person appointed by the Board to make a report and recommendation on the matter, including the report from the Board’s ecologist.

Remedial Environmental Impact Assessment (REIAR)

In compliance with Section 172 of the Planning and Development Act, 2000, as amended, The Board completed a Remedial environmental impact assessment of the development, taking into account:

- (a) the nature, location, scale and extent of the development,
- (b) the Remedial Environmental Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions from the applicant, the planning authority, the observers and prescribed bodies in the course of the application,

(d) and the Inspector's report, which includes a report from the Board's ecologist.

The Board considered that the Remedial Environmental Impact Assessment Report (REIAR), supported by the information submitted by the applicant, identifies and describes adequately the direct, indirect, and cumulative effects of the development on the environment. The Board is satisfied that the information contained in the REIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the REIAR and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation (including environmental conditions) which are incorporated into the Board's decision.

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

During Construction:

The Board considered:

- Risk of pollution of surface waters
- Risk of peat instability and peat erosion
- Risk to biodiversity indirectly from pollution of surface waters from suspended solids.

These were and continue to be mitigated by the implementation of measures set out in the REIAR which include specific provisions relating to construction environmental management mitigation measures.

- Positive impacts on population and human health on the local economy from increased spending and jobs during the construction period and from community benefit payments.

Any adverse impacts on population and human health were and continue to be mitigated by the measures to reduce impacts from material assets, air & climate, noise & vibration to acceptable levels.

During Operation:

The Board considered:

- Risk of pollution of surface waters during peat reinstatement and indirect risk to biodiversity
- Risk to protected species
- Noise
- Shadow flicker
- Landscape and visual effects from the turbines

These are to be mitigated by the implementation of measures set out in the REIAR which include specific provisions relating to a peat management plan, operational environmental management mitigation measures, including for the White Tailed Eagle and bats as submitted during the application process. Landscape impacts have been mitigated by the design and siting of the turbines. Noise impacts can be mitigated by condition.

- Positive environmental impacts would arise during the operational phase from the generation of renewable energy for 19,272 households and consequential reduction in Green House Gas emissions and continuation of the community benefit scheme over the lifetime of the development.
- Potential for adverse effects on **Biodiversity and Ornithology** arising from the development and cumulatively with other projects, plans and activities in

the area with respect to peat habitat, terrestrial invertebrates, aquatic habitats and species, and salmonids, and other fish related to water quality. Collision risks are considered low. These potential adverse effects can be mitigated and monitored.

- Potential for adverse impacts on **Population** arising from noise. These potential adverse effects can be mitigated and monitored.

There will be permanent loss of 9.5 hectares due to the construction footprint. This will be offset through peatland habitat reinstatement and enhancement plan of 4.13 hectares and the replacement planting of 12.32 hectares of coniferous forestry.

- Potential for adverse impacts to **Land and Soils** from slope failure risk, excavations, rock blasting, storage and disposal of excavated materials and drainage. Mitigation by design has taken place to avoid areas of deep peat.
- Potential impacts on **Water**, which left unmitigated, could have an effect on receiving watercourses, particularly the risk of sedimentation of sensitive catchments. These potential impacts have been mitigated by siltation and erosion controls, temporary settlement ponds, buffer zones to rivers/ streams, avoidance of deep peat/ steep slopes, surface water monitoring and forestry clearing in accordance with guidelines, and which will continue to be mitigated for during peat reinstatement.
- Potential impacts on **Landscape character and visual amenity** from the proposed turbines focused mainly at the site and its immediate surrounds. From the north, a number of residences are likely to experience open views of the turbines. More sensitive viewpoints will not experience significant effects. Visually, the turbines coalesce with existing turbines.

During Decommissioning:

The Board considered:

- Risk of pollution of surface waters
- Construction traffic movements
- Noise.

These would be mitigated by the implementation of measures set out in the REIAR which include specific provisions for decommissioning, including a traffic management plan.

The Board completed a Remedial environmental impact assessment in relation to the construction, operation and development of the windfarm project and concluded that any impacts on the environment that occurred during the construction phase were temporary and short to medium term in duration following the implementation of Remedial mitigation measures. Subject to the continued implementation of the mitigation measures as set out in the Remedial EIAR, and subject to compliance with the conditions set out below, the effects of the windfarm project on the environment, by itself and in combination with other plans and projects in the vicinity, were, and would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector and Ecologist.

Appropriate Assessment:

The Board agreed with and adopted the screening assessment and conclusion carried out in the Inspector's and Ecologist's report that the Mullaghanish to Musheramore Mountains SPA (site code: 004162), the Gearagh SAC (site code: 000106) and the Gearagh SPA (site code: 004109), are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

The Board considered the Remedial Natura Impact Statement (RNIS) and associated documentation submitted with the application for approval, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's and Ecologist's assessments. The Board completed an appropriate

assessment of the implications of the proposed development for the affected European Sites, namely the Mullaghanish to Musheramore Mountains SPA (site code: 004162), the Gearagh SAC (site code: 000106) and the Gearagh SPA (site code: 004109), in view of the site's conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector and Ecologist's report in respect of the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the site's conservation objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the site's conservation objectives.

Proper Planning and Sustainable Development/Likely effects on the environment:

It is considered that subject to compliance with the conditions set out below the windfarm project would accord with European, national, regional, and local planning and related policy. Following mitigation measures, the effects on the environment or the community in the vicinity from the development would come within acceptable standards, would not give rise to a risk of pollution, would not be detrimental to the visual or landscape amenities of the area, would not adversely impact on the cultural, archaeological, and built heritage of the area and would be acceptable in terms of pedestrian and traffic safety.

Following the implementation of mitigation measures, the development did not have a long-term impact on ecology and biodiversity. The windfarm project was, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be retained, operated, and decommissioned in accordance with the plans and particulars lodged with the application, and as received by the Board on 19.02.2021, 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 and the development shall be retained and completed in accordance with the agreed particulars.

Reason: In the interest of clarity and to ensure the protection of the environment and European sites.

2. This permission shall be for a period of 25 years from the date of the first commissioning of the wind farm project.

Reason: To provide an appropriate time frame for the operation of the development.

3. The mitigation and monitoring measures outlined in the plans and particulars relating to the operation of the development, including those set out in Chapter 16 of the REIAR and Appendix 2 to 8 of the RNIS, shall be implemented in full or as may be required in order to comply with the following conditions. Within 3 months of the date of this order, details of a time schedule for implementation of mitigation measures and associated monitoring shall be submitted to the planning authority for their written agreement.

Reason: In the interest of protecting the environment, the protection of European Sites and in the interest of public health.

4. All operations on site shall be carried out so as there is no discharge of polluting matter to waters.

Reason: To protect water quality.

5. A water quality monitoring programme shall be put in place downstream of the areas where reinstatement of peatland is to take place. This programme shall be submitted to and agreed in writing with the planning authority, prior to commencement of the peat restoration works.

Reason: To protect water quality.

6. The developer shall ensure that all peat related mitigation measures are monitored throughout the entire life cycle of the project and are implemented in full for the decommissioning works.

Reason: In the interest of protection of the environment.

7. A revised OEMP shall be submitted to the planning authority for written agreement within 3 months of the date of this order. The ongoing water quality monitoring programme shall be detailed in this OEMP. This will include for monthly monitoring in the first three years of operation and quarterly thereafter. The results shall be made available to the planning authority on an annual basis and on request.

Reason: To protect water quality.

8. The relative rated noise levels (LA rated 10 min.) resulting from wind energy development and taking into account the cumulative impact of noise levels resulting from other existing and approved developments, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

- i. Background noise levels by more than 5 dB(A) $L_{90\ 10min}$, or 40 dB(A), $L_{90\ 10min}$ at standardised 10m height above ground level at windspeeds of 8m/sec or greater,

- ii. 40 dB(A) L90 10min at all other standardised 10 m height above ground level wind speeds.

Reason: In the interest of residential amenity.

9.

- (a) A noise compliance monitoring programme shall be submitted for agreement with the planning authority within 3 months of the date of this order. All results shall be submitted to the planning authority within 1 month of the completion of any survey. The developer shall carry out any additional noise mitigation measures as may be required by the planning authority.
- (b) A designated employee shall interface with the planning authority or member of the public in relation to complaints or queries in relation to noise. Contact details shall be provided to the planning authority within one month of the date of this order.

Reason: In the interest of residential amenity and to monitor the compliance of the development in respect of noise of the wind energy development on the amenity of noise sensitive locations in the vicinity of the site.

10. There will be no shadow flicker at any existing nearby dwelling or other relevant existing affected sensitive property and the necessary measures outlined in the EIAR submitted with the application, such as turbine shut down during the associated time periods, should be taken by the wind energy developer or operator to eliminate the shadow flicker.

Reason: In the interest of residential amenity

11. The developer shall retain the services of a suitably qualified and experienced Civil Engineer and Ecologist for the duration of the decommissioning works in order to prevent damage to the integrity or stability of the peatland environment.

Reason: In the interest of protecting the environment.

12.

- a) Annual and adaptive monitoring for use of Lough Allua and the wind farm area by white-tailed sea eagles will be undertaken by a competent qualified ornithologist for the first 5 years and thereafter, every 5 years for the operational life of the windfarm, unless otherwise required arising from the adaptive monitoring programme. This monitoring will be undertaken over a sufficient observation period, and at suitable vantage points, which allow detection of roosting or overflying eagles, based on best practice and appropriate times of the year or on the basis of reliable reports of roosting eagles in the vicinity of the site. Monitoring will be carried out in conjunction with other wind farms in the vicinity of the Cork and Kerry border. The results of monitoring will be reported to regional staff of the National Parks and Wildlife Service.
- b) The precautionary management plan for eagle protection submitted on 19.02.2023, shall be implemented, including carcass removal of any fallen animals.

Reason: To protect the white-tailed sea eagle.

- 13. The developer shall monitor usage by birds and bats of the wind farm site and document bird and bat casualties through an annual monitoring programme, which shall be submitted by the developer and agreed in writing with, the planning authority prior to commencement of development. This programme shall be developed in consultation with the National Parks and Wildlife Service and shall cover the entire period of the operation of the wind farm.

Reason: To ensure appropriate monitoring of the impact of the development on the birds and bats of the area.

- 14. In the event that the windfarm causes interference with telecommunications signals, effective measures shall be introduced to minimise interference with telecommunications signals in the area. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing with the planning authority within 6 months of the date of this Order, following consultations with the relevant authorities.

Reason: In the interest of protecting telecommunications signals and of residential amenity.

15. All signage relating to the site shall be in Irish and English.

Reason: The location of the site within the Gaeltacht area.

16. The developer shall confirm to the planning authority's satisfaction that the cable route crossings at the bridges CH2 and CH8 (as identified in the Remedial EIAR) have not interfered with the heritage value and structural stability of the bridge, within 3 months of the date of this order.

Reason: To preserve the integrity of the bridges.

17. Prior to commencement of decommissioning works, a transport management plan for the shall be submitted to, and agreed in writing with, the planning authority. The traffic management plan shall incorporate details of the road network to be used, including over-sized loads, and detailed arrangements for the protection of bridges, culverts, or other structures to be traversed, as may be required. The plan should also contain details of how the developer intends to engage with and notify the local community in advance of the removal of oversized loads. All works to the public road network shall be at the developer's expense.

Reason: In the interest of traffic safety

18. 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 wind monitoring masts, the turbines concerned and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation, all to be complete to the written satisfaction of the planning authority within 24 months of decommissioning or cessation of operation.

Reason: To ensure satisfactory reinstatement of the site upon full or partial cessation of the project.

19. Standard financial contribution (for repair of public roads after decommissioning).

20. Standard bond condition (to ensure satisfactory reinstatement of the site after decommissioning).
21. The Community Benefit scheme, as set out in Chapter 4 of the REIAR, shall be adhered to for the life of the development. The benefit shall be index-linked to the index scheme as set out in the planning authority's Section 48 Development Contribution Scheme.
- Reason:** To ensure that the community living in proximity to the wind farm, benefits from its operation

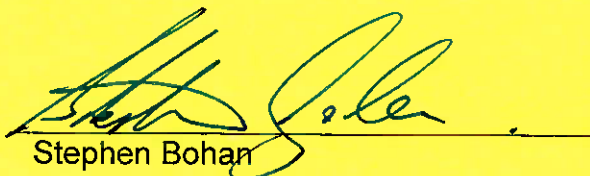
[Notes:

- (i) Having regard to the Directive on the Promotion of the Use of Energy from Renewable Sources (Directive EU 2018/2001) (REDIII) as highlighted by the Inspector, the Board noted that Ireland has yet to transpose this amended directive. Notwithstanding, the Board considered that there was significant support at national policy level for the proposal, including the Climate Action and Low Carbon (Amendment) Act, 2021, the Climate Action Plan 2023 and the National Planning Framework 2018-2040 (NPF).
- (ii) In not agreeing with the Inspector to include recommended Condition no. 9 the Board considered that this recommended condition was unwarranted and unnecessary as the monitoring and mitigation for noise was effectively captured in recommended Condition nos. 8 and 10. The Board considered the information provided with the submission was sufficient for the Board to reach a reasoned conclusion and noted that there was no clear rational provided in the Inspectors report for the inclusion of this recommended Condition no. 9.
- (iii) The Board noted the Inspectors comments on the National Renewable Energy Action Plan (NREAP). However, the NREAP has been surpassed and the Board had regard to all of the current relevant policy including the Climate Action Plan, 2023, Section 15 of the Climate Action and Low Carbon

Development (Amendment), Act 2021 and the current Cork County Development Plan, 2022-2028.

- (iv) The Board noted that many of the issues raised were aligned to the use of the windfarm and were therefore satisfied that full public participation had been allowed in this regard]

Board Member


Stephen Bohan

Date: 17/11/2023