

An  
Bord  
Pleanála

## Board Direction BD-014915-23 ABP-310312-21

The submissions on this file and the Inspector's report were considered at Board meetings held on 10/01/2023, 13/04/2023 and 19/12/2023.

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:

#### European legislation, including of particular relevance:

- Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
- EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy

#### National and regional planning and related policy, including:

- National policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouse gases,
- The Climate Action Plan 2023,

- the provisions of the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,

**Regional and local level policy, including the:**

- Regional Spatial Economic Strategy for the Eastern and Midland Region

**The local planning policy including:**

- Laois County Development Plan 2021-2027,
- other relevant guidance documents
- the nature, scale and design of the proposed development as set out in the planning application and the pattern of development in the vicinity,
- the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites
- the submissions and appeals made to An Bord Pleanála in connection with regard to the planning application, and
- the report and recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

**Appropriate Assessment:**

The Board agreed with and adopted the screening assessment and conclusion carried out in the inspector's report that the River Barrow and River Nore SAC is the European sites for which there is a likelihood of significant effects.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the River Barrow and River Nore SAC, 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 assessment, the Board considered, in particular, the

- i. Likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects, specifically upon the River Barrow and River Nore SAC,
- ii. Mitigation measures which are included as part of the current proposal,
- iii. Conservation Objective for this European Site, and
- iv. Views of prescribed bodies in this regard.

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 integrity of the aforementioned European Site, 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 Site, in view of the site's conservation objectives.

### **Reasoned Conclusion for EIA**

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Negative impacts on **human health and population** arising from construction include noise, traffic and dust disturbance to residents of neighbouring dwellings. All of these impacts are low to moderate. Adequate mitigation measures are proposed to ensure that these impacts are not significant and include adequate mitigation for operational noise.



- Benefits/positive impacts on the **Air and Climate**, the proposed development will have a significant positive effect on human health and population due to the displacement of CO<sub>2</sub> from the atmosphere arising from fossil fuel energy production.
- Negative impacts on **Water** could arise as a result of accidental spillages of chemicals, hydrocarbons or other contaminants entering the drainage system and discharging to the river thereafter during the construction and operational phases. These impacts will be mitigated by measures outlined within the application and can therefore be ruled out.
- Negative **Noise and Dust** impacts arise during the construction phase from construction activities. These impacts will be mitigated through adherence to best practice construction measures. Noise disturbance from the operation of turbines is not likely to arise given the separation distances between turbines and residential properties. Impacts arising from noise and dust disturbance during both the construction and operational stage can therefore be ruled out.
- Negative **traffic** impacts arise during the construction phase of the development, these impacts will be mitigated through the implementation of a traffic management plan and a construction management plan. Impacts arising from traffic can therefore be ruled out.

Having regard to the above, the Board is satisfied that the proposed development would not have any unacceptable direct or indirect effects on the environment. The Board is satisfied that the reasoned conclusion is up to date at the time of making the decision.

### **Proper Planning and Sustainable Development**

It is considered that the proposed development would accord with the relevant provisions of European, national, regional and local planning policy, would be acceptable in respect of its likely effects on the environment and would constitute an appropriate form and scale of use at this location. 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 and by the further plans and particulars received by An Bord Pleanála on 31<sup>st</sup> January 2023, 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 is constructed shall be 10 years from the date of this order.

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

3. This permission shall be for a period of 30 years from the date of the first commissioning of the wind farm.

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

4. The developer shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report and associated documentation are implemented in full, save as may be required by conditions set out below.

**Reason:** In the interest of protection of the environment.

5. The developer shall retain the services of a suitably qualified and experienced bat specialist to undertake appropriate monthly bat surveys within the relevant period for this site for a minimum period of 3 years. Details of the surveys to be undertaken



and associated reporting requirements shall be developed following consultation with, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for three years, with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Housing, Local Government and Heritage. In the event that significant barotrauma levels recorded the effected turbines shall be ceased from operation until adequate mitigation measures are agreed with the Local Authority and fully implemented.

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

6. In the event that invasive plant species are found prior to or during works at the appeal site, the applicant shall submit an Invasive Management Species Action Plan for the written approval of the planning authority which shall include full details of the eradication of the such invasive species from the appeal site prior to construction on the site or if discovered during construction as soon as is practicably possible.

**Reason:** In the interest of nature conservation and mitigating ecological damage associated with the development.

7. Trees to be felled and buildings to be demolished shall be examined prior to felling and demolition to determine the presence of bat roosts. Any works shall be in accordance with the TII Guidelines for the Treatment of Bats during the construction of National Road Schemes.

**Reason:** In the interest of wildlife protection.

8. (a) No additional artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.  
b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road. Their location within the compound shall be agreed with the Planning Authority prior to commencement of work on site.

(c ) All lighting shall be operated in such a manner as to prevent light overspill to areas outside of the compound.

(d) Prior to the commencement of development the applicant shall submit a detailed lighting plan for the written agreement of the planning authority. The plan shall include the type, duration, colour of light and direction of all external lighting to be installed within the external areas of the development site.

**Reason:** In the interests of clarity, and of visual and residential amenity and protection of local biodiversity.

9. The developer shall comply with the following aviation requirements:

Notify the Irish Aviation Authority of their intention to commence crane activities with a minimum of 30 days prior notification of their erection.

Consult with the Irish Aviation Authority and the Dublin Airport Authority and develop mitigation measures for bird hazards. Details to be submitted to the planning authority for written agreement.

**Reason:** In the interest of orderly development.

10. 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 standardised 10m height above ground level wind speeds of 7m/s or greater
- ii. 40 dB(A)  $L_{90,10min}$  at all other standardised 10m height above ground level wind speeds

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

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.

11. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a Shadow flicker compliance monitoring programme for the subject development, including any mitigation measures such as the use of appropriate equipment and software to suitably control shadow flicker at nearby dwellings, including control of turbine rotation, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority. 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.

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

12. Prior to the commencement of development, the applicant shall submit to and agree in writing with the planning authority, details of an obstacle warning light scheme which can be visible to night vision equipment.

**Reason:** in the interest of aviation safety.

13. The construction of the development shall be managed in accordance with a Construction Environment Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interests of public safety and residential amenity.



14. Water supply, wastewater treatment and surface water attenuation and disposal shall comply with the requirements of the planning authority for such works and services.

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

15. The following design requirements shall be complied with:

(a) The wind turbines including masts and blades, and the wind monitoring mast, shall be finished externally in a light grey colour.

(b) Cables within the site shall be laid underground.

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

(d) No advertising material shall be placed on or otherwise be affixed to any structure on the site without a prior grant of planning permission.

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

16. The delivery of large-scale turbine components for the construction of the windfarm shall be managed in accordance with a Traffic Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of the road network to be used by construction traffic, 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 delivery of oversized loads.

**Reason:** In the interests of public safety and residential amenity.

17. On full or partial decommissioning of the turbines or if the turbines cease operation for a period of more than one year, the mast and the turbine concerned shall be removed and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation, within three months of decommissioning.

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

18. In the event that the proposed development 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 prior to commissioning of the turbines and following consultation with the relevant authorities.

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

19. The developer shall ensure that all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

20. All new surface water outfalls shall be constructed in a manner which protects riparian habitat and does not result in excessive erosion of such habitat.

**Reason:** In the interest of habitat protection.

21. The developer shall retain the services of a suitably qualified and experienced Ecologist to undertake pre-construction surveys at the various project elements, including any river crossings, immediately prior to commencing work in order to check for the presence of protected species and bird species in the vicinity.

**Reason:** In the interest of protecting ecology and wildlife in the area.

22. 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.

23. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate annual bird surveys of this site. Details of the surveys to be undertaken and associated reporting requirements shall be developed following consultation with, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for five years, with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Housing, Local Government and Heritage.

**Reason:** To ensure appropriate monitoring of the impact of the development on the avifauna of the area.

24. 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 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 or, in default of agreement, shall be referred to An Bord Pleanála for determination.

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

25. 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.

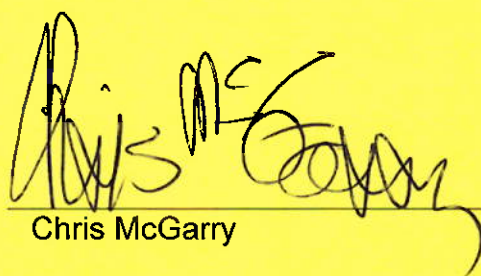
**Reason:** In the interest of orderly development and visual amenity and to ensure satisfactory reinstatement of the site.

26. 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, as amended. 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, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to this permission

**Note:** The Board noted the commentary of the Inspector that the current statutory development plan is the Laois County Development Plan 2021-2027, which came into effect in March 2022. The original application was assessed under the Laois County Development Plan 2017-2023. In this regard the Board also noted the affirmation of the Inspector that there has not been any significant change in the development plan policy position in relation to Wind Energy as outlined within the Wind Energy Strategy of the 2017 County Development Plan and that contained within Appendix 5 of the current development plan and that the proposed development is therefore subject to the same policies and objectives as that of the original application to the Council. The proposed development site is located within an area whereby wind energy is 'open for consideration' as identified within the Wind Energy map of the Laois County Development Plan. The Board also noted that the sole reason for refusal of the planning authority was related to a specific issue of alleged deficiency in certain ecological information and was not related to any issue of policy.

**Board Member**



Chris McGarry

**Date:** 20/12/2023

