

An  
Bord  
Pleanála

**Board Direction**  
**BD-014581-23**  
**ABP-315365-22**

The submissions on this file and the Inspector's report were considered at a Board meeting held on 14/11/2023.

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:

#### **National planning, related policy and guidance, including:**

- Project Ireland 2040 National Planning Framework,
- National policy including the Climate Action Plan 2023, with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouse gases,
- 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, and the Draft Wind Energy Guidelines published by the Department of Housing Local Government and Heritage in December 2019.

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

- The Regional Spatial Economic Strategy for the Southern Region 2020,

- The policies of the Planning Authority as set out in the Carlow County Development Plan 2022-2028 including the Wind Energy Strategy for County Carlow and Carlow County Renewal Energy Strategy,
- The policies of the Planning Authority as set out in the Kilkenny County Development Plan 2021-2027

**other matters**, including:

- The character of the landscape in the area and of the general vicinity,
- The distance to dwellings and other sensitive receptors from the proposed development,
- 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 documentation submitted with the planning application, including the Natura Impact Statement and the Environmental Impact Assessment Report and the further information furnished to the Board,
- the submissions made to An Bord Pleanála in connection with the planning application and the submissions made to the further information response,
- the report and recommendation of the Planning Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

**Appropriate Assessment:**

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment screening exercise and an appropriate assessment in relation to the

potential effects of the proposed development on the following designated European Sites:

- River Barrow and River Nore SAC (Site Code: 002162)
- River Nore SPA (Site Code: 004233)

The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the AA, 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.

The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

In completing the appropriate assessment, the Board adopted the report of the Inspector and concluded that, by itself or in-combination with other plans and projects in the vicinity, the proposed development would not be likely to have an adverse effect on any European site in view of the sites' conservation objectives and there is no reasonable significant doubt as to the absence of such effects.

#### **Environmental Impact Assessment:**

The Board completed an environmental impact assessment of the proposed development taking account of:

- (a) the nature, scale, location and extent of the proposed development on the site,



- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,
- (c) the submissions received the prescribed bodies and observers, and
- (d) the Inspector's report.

The Board considered that the environmental impact assessment report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and 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 assessment report and associated documentation submitted by the applicant and submissions made in the course of the application.

#### **Reasoned Conclusion on the Significant Effects:**

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

- Positive environmental impacts would arise during the operational phase from the generation of renewable energy.
- The impacts on residential amenity during the construction and operational phases would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and associated Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and management of dust, noise, water quality, traffic movement, noise monitoring and turbine pre-programming, as well as a mitigation strategy to control the level of daily shadow flicker experienced at affected dwellings.
- The impacts on biodiversity during the construction phase include disturbance to birds and bats with potential for collision risk during the operational phase. Changes to water quality potentially impact aquatic habitats and species due to run-off and sedimentation of watercourses. Impacts will be mitigated by the implementation of the measures set out in the Environmental Impact

Assessment Report (EIAR) and associated Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and management of water quality, avoidance of wetland areas and habitat management measures, pre-construction mammal surveys, bat protection measures and the appointment of an Ecological Clerk of Works as well as post construction monitoring.

- Roads and traffic impacts associated with the construction phase will be mitigated through agreement with TII for works on the national road network and the preparation of a Construction Traffic Management Plan which will be agreed with the local authorities prior to the commencement of development.
- The risk of pollution of ground and surface waters during the construction phase which would be mitigated by the implementation of measures set out in the Environmental Impact Assessment Report (EIAR) and associated Construction and Environment Management Plan (CEMP) which include specific provisions relating to groundwater, surface water and drainage.
- Visual and landscape impacts would arise during the operational phase of the development due to the presence of the turbines and associated infrastructure into the upland area. The site is located within an area which has been identified as having a moderate capacity to absorb a development of this nature and scale in landscape and visual terms. The location of the site and the existing topography and landscape features provide a level of assimilation of the development into the landscape.
- The impact on cultural heritage would be mitigated by an architectural impact assessment for the works to Black Bridge, Protected Structure and Crettyard Bridge, both of which are included in the NIAH, and archaeological monitoring with provision made for resolution of any archaeological features or deposits that may be identified.

The Board completed an environmental impact assessment in relation to the proposed amendments to the permitted development and concluded that, subject to the implementation of the mitigation measures proposed, and subject to compliance with the conditions set out below, the effects of the proposed amendments to the permitted development on the environment, by itself and in combination with other



plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

The Board is satisfied that this reasoned conclusion is up to date at the time of taking the decision.

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

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the National Planning Framework, the Regional Spatial and Economic Strategy for the Southern Region, 2020, in relation to wind energy, would be in accordance with the totality of the relevant provisions of the Carlow County Development Plan 2022 – 2028 and the Kilkenny County Development Plan 2021-2027 and the Kilkenny County Development Plan 2014-2020, as they apply to the subject site, and other related policies and guidelines, would not have an unacceptable impact on the biodiversity of the area, would not seriously injure the visual amenities of the area including property in the vicinity, would not adversely affect the archaeological or natural heritage of the area and would be acceptable in terms of pedestrian and traffic safety.

Specifically, Appendix 2b (VI) 'Renewable Energy Strategy' of the Carlow County Development Plan 2022-2028 refers. In this regard it is noted that while the portion of the subject site within the jurisdiction of Carlow County is located within the uplands landscape type and that objective WEP4 states that wind farm development will not normally be permissible in this landscape type, the Board considered the totality of the overarching provisions of the Carlow Development Plan. In particular it is noted that the Killeshin Hills landscape character area (within which the Carlow portion of the subject site is located) is determined as having moderate capacity to absorb wind farming. Furthermore, the development plan states, '*in the Killeshin landscape character area, close to border with County Kilkenny the wind speeds are favourable and there are no environmental designations that preclude wind farm construction. However the constraints mapping suggests that it may be difficult to meet separation distances between wind turbines and dwellings.*' The plans and

particulars submitted with the application confirm that separation distances between the proposed wind farm elements and dwellings are sufficient and in accordance with proper planning and sustainable development principles in this regard. In this context the Board was satisfied that the proposed development can be considered acceptable and generally in compliance with the overall policies and objectives of the current Carlow County Development Plan as they relate to the wind farm development, including those set out at Chapter 7 and the Renewable Energy Strategy of the Development Plan, such that there is an allowance for the proposed development, within the meaning of objective WEP4 and all associated development plan policies and objectives. The subject site also falls in part within the jurisdiction of Kilkenny County and from the information on the file, the Board is satisfied that the proposed development is in accordance with the relevant provisions of the Kilkenny Development Plan, which remain in place at this time, as provided for in Section 31(6)(b) of the Planning and Development Act 2000, as amended (noting Figure 10.2 Wind Energy Strategy of the Kilkenny County 2014-2020 development plan,).

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, including further information received by the Board on the 18<sup>th</sup> of August 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. 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.

3. 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.

4. This permission shall be for a period of 35 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.

5. The following design requirements shall be complied with:

(a) The wind turbines shall be constructed to the following fixed dimensions:

- Tip height of 185 metres,
- Hub height of 104 metres,
- Rotor diameter of 162 metres.

(b) The wind turbines including masts and blades shall be finished externally in a colour to be agreed with the planning authority prior to the commencement of development.

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

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

(e) 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.



6. The developer shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report, the Natura Impact Statement and associated documentation are implemented in full, by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the following conditions. Prior to the commencement of development, the developer shall submit to, and agree in writing with, each planning authority, a schedule of these mitigation measures and monitoring commitments, and details of a time schedule for implementation of the mitigation measures and associated monitoring.

**Reason:** In the interests of clarity and protection of the environment during the construction and operational phases of the proposed development

7. The developer shall ensure that all soil and water quality related mitigation measures are implemented in full and monitored throughout the life cycle of the construction works and monitored throughout the operational phase, and that rock extraction within the on-site borrow pits does not extend below winter water table levels.

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

8. 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 5m/s or greater (prior to Order issuing check if 5m/s or 7m/s)**
    - 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 10m 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.

9. The following shadow flicker requirements shall be complied with:
  - (a) Cumulative shadow flicker arising from the proposed development shall not exceed 30 minutes in any day or 30 hours in any year at any dwelling.
  - (b) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings.
  - (c) Prior to commencement of construction, a wind farm shadow flicker monitoring programme shall be prepared by a consultant with experience of similar monitoring work, in accordance with details to be submitted to the planning authority for written agreement. Details of monitoring programme shall include the proposed monitoring equipment and methodology to be used, and the reporting schedule.

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

10. Interpretive panels shall be provided in the Recreational Area to offer information on the natural history and cultural heritage of the area, and renewable energy and climate change. The panels shall require visitors keep their dogs on a lease in the Recreational Area and along the walking trails.

**Reason:** To enhance the amenities of the area and to protect wildlife.

11. Mitigation measures detailed to prevent interference with telecommunications or broadcast signals, shall be implemented to minimise interference with said

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 and / or providers. All measures known to be required in the first instance shall be completed prior to the erection of the turbines at the site.

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

12. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to commissioning of the turbines, the developer shall inform the planning authority and the Irish Aviation Authority of the as constructed tip heights and co-ordinates of the turbines and wind monitoring masts.

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

13. Prior to commencement of development, a transport management plan for the construction stage 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 by construction traffic, including over-sized loads, and detailed arrangements for the protection of roads, 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. Any works, including reinstatement works, to existing junctions on the national road network shall comply with Transport Infrastructure Ireland (TII) standards as outlined in TII Publications and shall be subject to Road Safety Audit as appropriate.

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



14. A suitably qualified Project Ecological Clerk-of-Works and Licenced Ecologist shall be retained by the developer 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 in the vicinity (incl. badgers, otters, nesting birds, bats & common lizard). The mitigation measures contained in Annex 1.10 of Volume II of the submitted EIAR shall be implemented in their entirety. The ecologist shall be present during site construction works. Upon completion of works, an ecological report of the site works shall be prepared by the appointed ecologist to be kept on file as part of the public record. Where necessary, the project ecologist shall have 'Cease Works' powers.

**Reason:** In the interest of nature conservation and the protection of ecology and wildlife in the area.

15. The developer shall prepare an Invasive Species Management Plan for the written agreement of the planning authority and 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.

16. All works shall be carried out to Black Bridge, Protected Structure or Crettyard Bridge shall be carried out under the supervision of a qualified professional with specialised conservation expertise and in accordance with best conservation practice as detailed in "Architectural Heritage Protection: Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in 2011. An Architectural Impact Assessment shall be submitted for the written agreement of the Planning Authority prior to the commencement of any works.

**Reason:** To ensure that the character and integrity of the protected structure and NIAH listed structures is maintained and protected from unnecessary damage and loss of fabric.

17. The developer shall facilitate the archaeological appraisal of the site, including the replacement lands, and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

- (i) notify the relevant 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, and
- (ii) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development works. The assessment shall address the following issues:
  - (a) the nature and location of archaeological material on the site, and
  - (b) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the Planning Authority and, arising from this assessment, the developer shall agree in writing with the Planning Authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works. 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 area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

18. Prior to the commencement of development, the community gain proposals shall be submitted to and agreed in writing with the Planning Authority.

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



19. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the turbines concerned and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to the written satisfaction of the relevant Planning Authority within three months of decommissioning or cessation of operation.

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

20. 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 relevant 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 relevant 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 relevant Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory reinstatement of the delivery route.

21. Prior to commencement of development, the developer shall lodge with the relevant Planning Authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the relevant Planning Authority, to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the relevant 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 relevant Planning Authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.



**Reason:** To ensure the satisfactory reinstatement of the site.

22. The developer shall pay to both Carlow and Kilkenny County Councils a pro rata financial contribution in respect of public infrastructure and facilities benefiting development in the area of both Planning Authorities that is provided or intended to be provided by or on behalf of each authority in accordance with the terms of the Development Contribution Schemes 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 each Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Schemes at the time of payment. Details of the application of the terms of the Schemes shall be agreed between each 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 Schemes.

**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 the permission.

### **Costs**

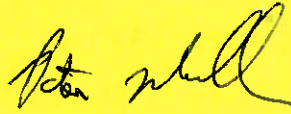
The Board also considered the matter of the Board's costs incurred by the Board in respect of this file and the associated earlier pre-application consultation file.

The Board decided the following:

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amount due to be refunded to the applicant is € 52,320.

**Note:** Include a breakdown of the Board's costs in or with the Board Order.

**Board Member**



**Date:** 15/11/2023

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Peter Mullan