

# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

## Tipperary County

**Planning Register Reference Number: 14/10**

An Bord Pleanála Reference Number: PL 92.243611

**APPEAL** by ABO Wind Ireland Limited care of Jennifer McQuaid of Unit 4, Aspen Court, Cornelscourt, Dublin against the decision made on the 2<sup>nd</sup> day of July, 2014 by Tipperary County Council to refuse permission in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** A ten year permission for development which comprises a wind energy project of two wind turbines (each with a maximum tip height of 126 metres), construction of new internal access roads, upgrading of existing internal roads, underground cables and associated works at Knockduff and Inchvara, Milestone, County Tipperary. A further public notice was published by the Board on the 11<sup>th</sup> day of November, 2015 referring to significant further information received by it including a revised Environmental Impact Statement and additional Appropriate Assessment documentation which addressed (1) the provision of circa two kilometres long 20 kV underground cable connection from the Inchvara site to the proposed 38 kV Milestone substation, and (2) the connection from the proposed Milestone substation to the national electricity grid at Cauteen substation at Seskin, County Tipperary via a circa 22.3 kilometres long 38 kV underground cable.

## DECISION

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **REASONS AND CONSIDERATIONS**

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

- national policy with regard to the development of sustainable energy sources,
- the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- the provisions of the South Tipperary County Development Plan 2009-2015, as varied and extended, including the site's location within a preferred area for wind energy development,
- the pattern of existing development and land uses within the vicinity of the site,
- the nature of the proposed development and the current established uses on the site,
- the submissions made in connection with the planning application and the appeal, including the Environmental Impact Statement, Natura Impact Statement, the applicant's response to the Board's section 132 request including the Addendum to the Environmental Impact Statement incorporating the grid connection proposed (received by the Board on the 7<sup>th</sup> day of September, 2015), and the revised public notice,
- the Assistant Director of Planning's memo dated October 28<sup>th</sup>, 2014, and
- the Inspector's report dated October 24<sup>th</sup>, 2014 and the addendum report dated April 8<sup>th</sup>, 2016.

## **Appropriate Assessment Screening**

The Board noted that the proposed development is not directly connected with or necessary for the management of a European Site.

The Board had regard to:

- the Natura Impact Statement submitted with the planning application,
- the further supplemental and additional information received in relation to the Natura Impact Statement,
- the Appropriate Assessment Screening of the Project carried out by the planning authority,
- the documentation submitted at appeal stage,
- the submissions on file,
- the applicant's response to the Section 132 request,
- the Inspector's report in respect of Appropriate Assessment (Section 10.5 of planning report dated October 24<sup>th</sup>, 2014), and
- the Inspector's addendum report in respect of the grid connection (April 8<sup>th</sup>, 2016),

The Board also considered the report of the Senior Planning Inspector on appeal reference number PL 92.245544 dated February 4<sup>th</sup>, 2016. The Board completed a screening for Appropriate Assessment.

Having considered all documentation on file, the Board concurred with the planning authority's screening assessment conclusion in respect of the proposed development that the Lower River Suir Special Area of Conservation (Site Code 002137), the Lower River Shannon Special Area of Conservation (Site Code 002165) and the Slievefelim to Silvermines Mountains Special Protection Area (Site Code 004165) are the European sites for which there is a likelihood of significant effects.

In the matter of the cumulative effects arising from the envisaged grid connection, the Board had regard to the Inspector's Environmental Impact Assessment/Appropriate Assessment (Addendum) Report in respect of the grid connection and the parallel Appropriate Assessment screening report in relation to the same grid connection undertaken by the Senior Planning Inspector on appeal reference number PL 92.245544. The Board concurred with the analysis and conclusions set out in the 'Identification and Assessment of Potential Impacts' contained in the 'Inchivara Wind Farm: Proposed Cable Route – Appropriate Assessment Screening' document, submitted by the applicant in response to the Board's Section 132 request. In the matter of the Potential Impacts on Lower River Suir Special Area of Conservation (Site Code 002137), the Board concurred with the statements in the latter document that "on the basis that no in-stream works will be involved at any of the locations in the vicinity of the Special Area of Conservation, and with best practice techniques to protect the receiving waters from potential impacts during the construction phase (as described in the Cable Route Construction Methodology, Appendix C) being strictly adhered to, it is concluded that the project would not have any significant impacts on the qualifying interests, and hence the conservation objectives of the Lower River Suir Special Area of Conservation (Site Code 002137)". The Board concurred with the Senior Planning Inspector's analysis and conclusion in respect of the grid connection under appeal reference number PL 92.245544. In conclusion, in respect of the matter of the cumulative effects arising from the envisaged grid the Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lower River Suir Special Area of Conservation (Site Code 002137). A Stage 2 Appropriate Assessment is required therefore in relation to the turbines only.

### **Appropriate Assessment (Stage II in relation to the proposed wind turbines)**

The Board considered the Natura Impact Statement, and Environmental Impact Statement, submitted with the planning application, the further supplemental and additional information received in relation to the Natura Impact Statement, the planning authority's analysis in respect of Appropriate Assessment, the documentation submitted at appeal stage, the response to the Section 132 request, the Inspector's report (October 24<sup>th</sup>, 2014) and the Inspector's addendum report (April 8<sup>th</sup>, 2016) in respect of the grid connection and carried out an Appropriate Assessment of the implications of the proposed development for European Sites where there is a likelihood of significant effects. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

## **Lower River Suir Special Area of Conservation (Site Code 002137), the Lower River Shannon Special Area of Conservation (Site Code 002165)**

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, the mitigation measures included as part of the proposed development and the Conservation Objectives for these European Sites. The Board concurred with the Inspector (page 21/22 of his initial planning report dated October 24<sup>th</sup>, 2014) that the appeal site has hydrological connections to the Lower River Suir Special Area of Conservation (Site Code 002137) and the Lower River Shannon Special Area of Conservation (Site Code 002165) and concurred with the Inspector's conclusion in respect of the latter European sites that the mitigation measures for operational, construction and decommission phases are reasonable. Having regard to the distances of the proposed development to the European sites, the mitigation measures proposed in respect of the proposed development and the Inspector's report, the Board concluded that the proposed development would not adversely affect the integrity of European sites in view of these sites' Conservation Objectives.

## **Slievefelim to Silvermines Mountains Special Protection Area (Site Code 004165)**

In relation to the Slievefelim to Silvermines Mountains Special Protection Area (Site Code 004165), the Board concurred with the planning authority's approach at further information stage in respect of turbine 1 and further concurred that any potential adverse effects on the Hen Harrier would be best mitigated by avoidance by means of the omission of turbine 1 and the associated access roadway. The Board were also of the view that the omission of turbine 1 would serve to address the main concerns expressed by the Board's Inspector.

With regard to turbine 2 and its associated access road, the Board was satisfied that the habitat within 250 metres of the turbine and access road does not include any Wet grassland (GS4) Habitat, and that the construction and operation of turbine 2 would result in no loss of foraging habitat. The Board also noted and accepted that the findings in the applicants surveys that no hen harriers were noted foraging or flying over the development boundary area. As no foraging habitat will be lost, the Board did not consider that any need arose to provide alternative foraging habitat as identified at further information and appeal stages. The Board considered that no concerns therefore arise in relation to compensatory habitat procedures.

In overall conclusion, the Board was satisfied that, subject to the omission of Turbine 1 and the associated access roadway serving turbine 1 and the implementation of all mitigation measures (omitting the proposed alternative habitat provision), the proposed development would not adversely affect the integrity of European sites in view of the site's Conservation Objectives.

## **Environmental Impact Statement**

The Board considered that the Environmental Impact Statement submitted with the application, supported by the further information submitted to the planning authority, the Addendum to Environmental Impact Statement incorporating the grid connection proposed (received by the Board on September 7<sup>th</sup>, 2015), the reports, assessment and conclusions of the Inspector with regard to this file and other submissions on file, was adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development. The Board completed an Environmental Impact Assessment, and agreed with the Inspector in his assessment of the likely significant effects of the proposed development, and generally agreed with his conclusions on the acceptability of the mitigation measures proposed. The Board generally adopted the report of the Inspector save in respect of fauna.

Based on the documentation provided by the applicant, the Board was satisfied that impacts on bats, peregrine falcon and curlew at construction and commissioning stage would not be significant. The Board considered that the Inspector's concerns regarding potential loss of hen harrier breeding habitat would be adequately addressed by the omission of Turbine 1 and the associated access road. The Board concluded that, subject to the implementation of the mitigation measures proposed, the effects on the environment of the proposed development would be acceptable.

## **Conclusion on 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 national policies in support of renewable energy and with the provisions of the South Tipperary County Development Plan 2009-2015, as varied and extended, would not adversely affect the landscape, would not seriously injure the visual or residential amenities of the area 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.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board considered that the Inspector's principal concern could be overcome by the omission of turbine number 1 and the associated access roadway by planning condition. Further detail in this regard is provided in the foregoing paragraphs on Environmental Impact Assessment and Appropriate Assessment.

### **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 9<sup>th</sup> day of May, 2014 and by the further plans and particulars received by An Bord Pleanála on the 7<sup>th</sup> day of September, 2015 and the further public notice published by An Bord Pleanála on the 11<sup>th</sup> day of November, 2015, 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. (a) Planning permission is granted for turbine 2 and the associated access roadway serving turbine 2 only.

- (b) No permission is granted for turbine 1 and its associated access roadway.

Prior to commencement of development, a revised set of drawings showing the development modified by this condition shall be submitted to and agreed in writing with the planning authority.

**Reason:** To mitigate potential adverse effects on the Hen Harrier by means of avoidance.

- 3. All environmental mitigation measures set out in the Environmental Impact Statement and Natura Impact Statement submitted to the planning authority on the 10<sup>th</sup> day of January, 2014 (save for the provision of the alternative foraging habitat) 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.

- 4. 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.

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

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

- 6.
  - (a) The wind turbine including mast and blades shall be finished externally in a light grey colour.
  - (b) Cables within the site shall be laid underground.
  - (c) 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.

7. Wind turbine noise arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed the greater of:-

- (a) 5 dB(A) above background noise levels, or
- (b) 43 dB(A)  $L_{90,10min}$

when measured externally at dwellings or other sensitive receptors.

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. 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.

8. (a) The proposed development shall be fitted with appropriate equipment and software to suitably control shadow flicker at nearby dwellings, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (b) 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 dwellings that are existing or permitted or at other sensitive receptors.
- (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.

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

9. 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 following consultation with the relevant authorities.

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

10. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, following consultation with the Irish Aviation Authority. Prior to commissioning of the turbine, the developer shall inform the planning authority and the Irish Aviation Authority of the as-constructed tip height and co-ordinates of the turbine.

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

11. The developer shall facilitate the archaeological appraisal of the site 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:
- (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, and
  - (b) 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:

- (i) the nature and location of archaeological material on the site, and
- (ii) 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.

12. On full or partial decommissioning of the wind turbine, or if the wind farm turbine ceases operation for a period of more than one year, the turbine and equipment shall be removed, and foundations removed or covered with soil to facilitate re-vegetation, all to be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

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

13. 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 that 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.

14. 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.

15. 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 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 An Bord Pleanála 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 the permission.

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2016.**