

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Waterford City and County

Planning Register Reference Number: 14/600109

An Bord Pleanála Reference Number: PL 93.244006

APPEAL by Michael and Giancarla Alen-Buckley care of Reid Associates of 2 Connaught Place, Crofton Road, Dún Laoghaire, County Dublin and by Ecopower Developments Limited of Sion Road, Kilkenny and by others against the decision made on the 23rd day of September, 2014 by Waterford City and County Council to refuse permission for the proposed development.

PROPOSED DEVELOPMENT: Construction of 12 number wind turbines, overall height of up to 126.6 metres, one number meteorological mast up to 80 metres in height with wind measuring equipment attached, access roads, electrical substation compound, equipment and control building and ancillary site works, all at Knocknaglogh Lower/Barranastook Upper/Knocknamona/Woodhouse or Tinakilly/Monageela/Killatoor, Dungarvan, County Waterford.

Significant information submitted to An Bord Pleanála on the 19th day of February, 2016, included a revised Environmental Impact Statement and a revised Appropriate Assessment screening and a revised Natura Impact Statement documentation which addresses:

- The direct and indirect environmental impacts associated with haul routes involving road widening and new temporary roads through third party lands (including an intervention in the townland of Corronahyla at an existing acute junction between the L2024 and the L8077).

- The impact of the proposed development in terms of shadow flicker using a ‘minutes per day’ methodology.
- Details of the proposed connection route to transport power from the proposed windfarm to the existing Dungarvan 110kV substation on the Dungarvan/Cappoquin Road (N72).

DECISION

GRANT permission for the above proposed development in accordance with the plans and particulars lodged with the said council, 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

Having regard to –

- (a) European and national policies to increase the proportion of energy that is generated from alternative, indigenous and renewable energy sources including wind and the minimisation of emissions of greenhouse gases as set out in the Renewable Energy Directive 2009/28/EC and the National Renewable Energy Action Plan,
- (b) 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,

- (c) the policies set out in the Regional Planning Guidelines for the South-East Region 2010–2020,
- (d) the policies of the planning authority as set out in the Waterford County Development Plan 2011-2017,
- (e) the provisions of the Renewable Energy Strategy for Waterford City and Council 2016-2030,
- (f) the location of the wind farm site in an area identified in the Waterford County Council Development Plan as a ‘Strategic Area’ where it is the policy of the planning authority to facilitate the development of appropriate wind energy proposals,
- (g) the distances from the proposed development to dwellings or other sensitive receptors,
- (h) the nature and scale of the proposed development and the contents of the Environmental Impact Statement, Natura Impact Statement and further information submitted by the applicant, including information submitted in relation to the grid connection and haul route,
- (i) the range of mitigation measures set out in the documentation received, including the Environmental Impact Statement, the Natura Impact Statement and further submissions from the applicant to the Board in the course of the appeal,
- (j) the separation distance from the site of the proposed development to sites designated as part of the Natura 2000 network and the nature of the connections between them,
- (k) the topography and character of the landscape of the area and the character of the landscape through which the indicated grid connection would be provided,
- (l) the planning history of the site and the pattern of existing and permitted development in the area,
- (m) the submissions made in the course of the planning application and the appeal, and

- (n) the initial report of the planning inspector (the 10th day of April, 2015) and addendum report of the inspector (the 20th day of September, 2016) following receipt of further information by An Bord Pleanála (the 19th day of August 2015),

the Board was satisfied that the information before it was adequate to undertake an Appropriate Assessment and an Environmental Impact Assessment in respect of the proposed development.

Appropriate Assessment Screening

In conducting a screening exercise for Appropriate Assessment, the Board considered the nature, scale and location of the proposed development, the Appropriate Assessment screening information contained within the submitted Natura Impact Assessment, the documentation submitted in support of the application and appeal, the submissions on file and the assessment of the Planning Inspector in relation to the potential for impacts on European sites. In completing the screening exercise, the Board adopted the Planning Inspector's reports and concurred with his analysis and conclusions and concluded that, by itself and in combination with other plans or projects in the area, the proposed development would not be likely to have significant effects on European sites including the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code 002170), Dungarvan Harbour Special Protection Area (Site Code 004032), Blackwater Estuary Special Protection Area (Site Code 004028), Helvick Head Special Area of Conservation (Site Code 000665), Glendine Wood Special Area of Conservation (Site Code 002324), Helvick Head to Ballyquin Special Protection Area (Site Code 004192), Ardmore Head Special Area of Conservation (Site Code 002123), Blackwater Callows Special Protection Area (Site Code 004094), Comeragh Mountains Special Area of Conservation (Site Code 001952), Mid-Waterford Coast Special Protection Area (Site Code 004193), Ballymacoda Bay Special Protection Area (Site Code 004023) in view of their conservation objectives and the Board also had regard to Dungarvan RAMSAR site (Site Code 71E031) and Blackwater River and Estuary RAMSAR site (Site Code 71E028). The need for further Stage II Assessment, therefore, does not arise.

Environmental Impact Assessment

The Board undertook an Environmental Impact Assessment of the proposed development, taking into consideration

- the nature, scale and location of the proposed development,
- the Environmental Impact Statement and the documentation submitted in support of the application and appeal,
- the submissions made on file, including those from the Department of Arts, Heritage and the Gaeltacht,
- the planning history of development in the vicinity, and
- the report and addendum report of the Planning Inspector.

It is considered that the Environmental Impact Statement together with the documentation on file identifies and adequately describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board completed an Environmental Impact Assessment in relation to the proposed development. The Board concluded that, subject to the omission of Turbine numbers 5,9,11 and 12, the effects on the environment would be acceptable by itself and cumulatively with other development in the vicinity, including other wind farms and the proposed grid connection route, subject to the implementation of the mitigation measures proposed and to compliance with the conditions as set out below. In undertaking this assessment, the Board adopted the assessment and conclusions of the Planning Inspector.

Conclusions on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development

- would accord with national and regional wind energy policies and guidelines,
- would be in accordance with the provisions of the Waterford County Development Plan 2011-2017, including the policies set out therein in relation to wind energy and the protection of landscapes and scenic routes,
- would not be unduly visually dominant and would be acceptable within this landscape,
- would not seriously injure the amenities of the area or of residential property in the vicinity,
- would not give rise to a risk of pollution,
- would not detract from archaeological features or from architectural heritage,
- would be acceptable in terms of traffic safety and convenience, and
- would not be prejudicial to public health.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further information, plans and particulars submitted by way of the first party appeal, received by An Bord Pleanála on the 20th day of October 2014, and by the further plans and particulars received by An Bord Pleanála on the 19th day of August 2015, except as may otherwise be required in order to comply with the following conditions. In particular, the mitigation measures identified in the Environmental Impact Statement and the further information shall be implemented in full by the developer. Where the conditions below 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. Turbines numbers 5, 9, 11 and 12 shall be omitted. This permission is for eight turbines only.

Reason: In order to prevent injury to the residential amenities of dwellings in the vicinity of these turbines from excessive noise and/or shadow flicker.

3. 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 and extent of the proposed development, the Board considered that 10 years was reasonable given the nature and complexity of the development concerned.

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

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

5. (a) The permitted turbines shall have a maximum tip height of 126 metres. Details of the turbine design and height shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The wind turbines, including tower and blades, 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.
- (e) The access tracks within the site shall be surfaced in gravel or hard-core, either from the borrow pits on site or imported to the site from nearby quarries, and shall not be hard topped with tarmacadam or concrete.
- (f) Roads, hard-standing areas and other hard-surfaced areas shall be completed to the written satisfaction of the planning authority within three months of the date of commissioning of the windfarm.
- (g) Soil, rock and other materials excavated during construction shall not be left stockpiled on site following completion of works. Excavated areas, including the borrow pits and areas of peat placement, shall be appropriately restored within three months of the date of commissioning of the wind farm, to details to be submitted to, and agreed in writing with, the planning authority.

Reason: In the interests of visual amenity, traffic safety and orderly development.

6. 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 the commissioning of the turbines, the developer shall inform the planning authority and the Irish Aviation Authority of the co-ordinates of the as-constructed tip heights and co-ordinates of the turbines.

Reason: In the interest of air traffic safety.

7. Wind turbine noise arising from the proposed development, by itself or in combination with any other 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, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation 1996 "Acoustics – Description, measurement and assessment of environmental noise". 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 existing or permitted dwellings or 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. The developer shall outline proposed measures to address any recorded non-compliances, including control of turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

9. Prior to commencement of development, the developer shall agree with the planning authority a protocol for assessing any impact on radio or television or other telecommunications reception in the area. In the event of interference occurring, the developer shall remedy such interference according to a methodology to be agreed in writing with the planning authority, following consultation with other relevant authorities.

Reason: In the interest of residential amenity and orderly development, and to prevent any interference with such services.

10. (a) Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority:
- (i) a Transport Management Plan, including details of the road network/haulage routes, the vehicle types to be used to transport materials on and off-site, and a schedule of control measures for exceptionally wide and heavy delivery loads,
 - (ii) a condition survey of the roads and bridges along the haul routes and grid connection route to be carried out at the developer's expense by a suitably qualified person both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority prior to commencement of development,
 - (iii) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority/authorities,
 - (iv) detailed arrangements for temporary traffic arrangements/controls on roads, and
 - (v) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.
- (b) All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of the use of each road as a haul route or grid connection route for the proposed development.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: To protect the public road network and to clarify the extent of the permission in the interest of traffic safety and orderly development.

11. Prior to commencement of development, a detailed reinstatement programme providing for the removal of all turbines and ancillary structures (but not turbine bases, access roads/tracks, cabling or the sub-station) shall be submitted to, and agreed in writing with, the planning authority. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the masts and turbines concerned shall be dismantled and removed from the site. The site shall be reinstated in accordance with the agreed programme and all decommissioned structures shall be removed within three months of decommissioning.

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

12. 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 or along the grid connection route. 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 or along the grid connection route.

13. All clear-felling of forestry associated with the development shall be undertaken in accordance with the appropriate Forest Service Guidelines. All necessary licences shall be obtained from the forest service for any felling operations on site.

Reason: In the interest of orderly development and to protect the amenities of the area.

14. The construction of the development shall be managed in accordance with a Construction Environmental 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:-

- (a) location of the site and materials compound including areas identified for the storage of construction waste,
- (b) location of area for construction site offices and staff facilities,
- (c) measures providing for access for construction vehicles to the site, including details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include, in particular, proposals to facilitate and manage the delivery of over-sized loads,
- (d) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (e) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works or the laying of the grid connection,
- (f) details of appropriate mitigation measures for construction-stage noise, dust and vibration, and monitoring of such levels,

- (g) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater,
- (h) appropriate provision for re-fuelling of vehicles,
- (i) off-site disposal of construction waste and construction-stage details of how it is proposed to manage excavated soil/peat,
- (j) means to ensure that surface water run-off is controlled in accordance with the mitigation measures proposed in the submitted documents, and
- (k) details of the intended hours of construction.

Prior to commencement of construction, proposals for the environmental monitoring of construction works on site by an ecologist and by an environmental scientist or equivalent professional, including the monitoring of the implementation of construction-stage mitigation measures, and illustrating compliance with the requirements set out above, shall be submitted to, and agreed in writing with, the planning authority, together with associated reporting requirements.

Reason: In the interest of protection of the environment and of the amenities of the area.

15. 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 or by works carried out in relation to the laying of the grid connection, 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.

16. 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

17. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of works to the public road in the vicinity of the site which are required to facilitate the proposed development and which are undertaken by the local authority. The amount of the contribution 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 for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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

Dated this day of 2016.