

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Offaly County

Planning Register Reference Number: 14/188

An Bord Pleanála Reference Number: PL 19.244053

APPEAL by Edward J. Bulfin of Derrinlough House, Birr, County Offaly and by others against the decision made on the 7th day of October, 2014 by Offaly County Council to grant subject to conditions a permission to Galetech Energy Developments Cloghan Limited care of IWCM Limited of Clondargan, Stradone, County Cavan in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Development consisting of a 10 year permission for the erection of nine number wind turbines each with a hub height of up to 100 metres, a typical rotor diameter of 103 metres (overall maximum tip height of up to 150 metres) and all associated site development works including one number temporary site compound area (697 square metres), turbine foundations, crane hardstandings, access tracks, underground cabling, upgrades to existing site entrance off the N62, the construction of a 38 kV switch room and control facility (94 square metres) with associated equipment and compound area enclosed by a 2.4-metre high palisade fence, all on lands at Stonestown, Kilcamin, Crancreagh and Derrinlough, Cloghan, County Offaly. The Board received significant further information on the 11th day of November, 2015 from the applicant's agent.

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:

- (a) national policy in relation to the development of sustainable energy sources,
- (b) the Wind Energy Development Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government (2006),
- (c) the Mid West Regional Planning Guidelines 2010 – 2022,
- (d) the policies of the planning authority, as set out in the Offaly County Development Plan 2014 – 2020, including Policy EP-03 in relation to wind energy, and the Wind Energy Strategy for County Offaly - Methodology Statement 2014,
- (e) the location of the site within an area designated in the County Development Plan as a “Wind Energy Development Area”,

- (f) the location of the site outside of areas designated for environmental conservation,
- (g) the pattern of development in the vicinity, including the acceptable separation distances to dwellings and other sensitive receptors,
- (h) the topography and character of the landscape in this area, in part on cutaway bog,
- (i) the planning history of the site under An Bord Pleanála appeal reference number PL19.242354 (planning authority register reference 12/293), and in the vicinity, including An Bord Pleanála appeal reference number PL19.244903 at Clondallow (planning authority register reference 15/44), planning authority register reference 14/95 at Leabeg, and An Bord Pleanála reference number 19.PA0015 at Lumcloon,
- (j) the nature and scale of the proposed development, and the range of mitigation measures set out in the documentation received, including the further information submitted to An Bord Pleanála on the 11th day of November, 2015,
- (k) the submissions made in connection with the planning application and the appeal, including the submissions made by the Department of Arts, Heritage and the Gaeltacht, and
- (l) the reports of the Inspector, including the examination, analysis and evaluation undertaken in respect of appropriate assessment and environmental impact assessment.

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, the documentation submitted in support of the application and appeal, including the further information submitted to An Bord Pleanála, the submissions on file, the planning history of wind farm development and energy infrastructure in the vicinity, and the assessments of the Inspector in relation to the potential for impacts on European Sites. In completing the screening exercise, the Board concurred with the analysis and conclusions of the Inspector, and concluded that, by itself and in combination with other development in the area, the proposed development would not be likely to have significant effects on European Sites in view of their conservation objectives, with the exception of:

- the River Shannon Callows Special Area of Conservation (Site Code 000216),
- Middle Shannon Callows Special Protection Area (Site Code 004096),
- All Saints Bog Special Protection Area (Site Code 004103),
- Dovegrove Callows Special Protection Area (Site Code 004137),
- River Little Brosna Callows Special Protection Area (Site Code 004086),
- River Suck Callows Special Protection Area (Site Code 004097), and
- Mongan Bog Special Protection Area (Site Code 004017),

in relation to which a Stage Two analysis is required.

Appropriate Assessment

Having regard to the nature, scale and location of the proposed development, the Natura impact statement and the documentation submitted in support of the application and appeal, including the further information submitted to An Bord Pleanála, 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 reports of the Inspector, the Board undertook an Appropriate Assessment in relation to the potential effects of the proposed development on the River Shannon Callows Special Area of Conservation, Middle Shannon Callows Special Protection Area, All Saints Bog Special Protection Area, Dovegrove Callows Special Protection Area, River Little Brosna Callows Special Protection Area, River Suck Callows Special Protection Area and Mongan Bog Special Protection Area. The Board accepted the examination, analysis and evaluation set out in the Inspector's reports, and concurred with her conclusions. The Board, therefore, concluded that, by itself or in combination with other development in the vicinity, including other wind farms and the proposed alternative grid connections, the proposed development would not adversely affect the integrity of these European Sites in view of their conservation objectives.

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 further information submitted to An Bord Pleanála, 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 reports of the Inspector. It is considered that the environmental impact statement, together with the documentation on file, identifies and describes adequately 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 the effects on the environment of the proposed development would be acceptable, by itself and cumulatively with other development in the vicinity, including other wind farms and the proposed grid connection alternatives, subject to the implementation of the mitigation measures proposed and to compliance with the conditions set out below. In undertaking this assessment, the Board adopted the reports of the Inspector as a whole, with the exception of the analysis of visual impact and wind take.

In deciding not to accept the Inspector's recommendation in relation to visual impact, the Board was satisfied that the revised layout, height and design, including a reduction in the number of turbines proposed, adequately addressed its previous concerns, as expressed in its decision under PL19.242354 (planning authority register reference 12/293), including an increased separation distance provided to Cloghan village. The Board accepted that the proposed development would be prominent from some locations; however, it was considered that the revised layout is more coherent in local views, where visual impact is more pronounced due to proximity, including views DR3, AV1, CP1, MR1 and LC1; visibility is also reduced at other locations. It is considered that the resulting visual impact is acceptable, including views from scenic/amenity routes, protected views and the Lough Boora Parklands Area of High Amenity, by itself and in cumulation with other existing and permitted wind energy development in the vicinity. In coming to this view, the Board also had regard to the wind energy policy objectives for the area as set out in the Development Plan. The Board concurred with the planning authority on this matter. The Board was satisfied that the photomontages are sufficiently representative of views in the area, and did not share the Inspector's concerns that further assessment would be required in relation to private dwellings or Clonmacnoise. It is noted that the Board had not previously expressed any concerns on this matter. Having regard to the Zone of Theoretical Visibility mapping, the Board was satisfied that the proposed development would not be readily visible from within the Clonmacnoise primary Heritage Zone, and that, otherwise, views of the proposed wind farm from within the Clonmacnoise Area of High Amenity, to the south of the R444 regional road, would not be dominant at a distance of approximately 15 kilometres, and the Board did not consider that a refusal of permission would be merited for this reason.

In relation to the Inspector's second recommended reason for refusal, the Board noted the designation of neighbouring lands as also being suitable for wind energy development. The Board considered that any potential for effects on possible future neighbouring proposals would not be likely to be so material in planning terms as would merit refusal of permission for all or part of this proposed development, particularly in the context of the very substantial scale of the neighbouring lands. It was considered that the map submitted by Bord na Móna to the planning authority and on appeal illustrated no evidence of serious injury to a future project. The Board was satisfied that material effects on the development potential of those lands in practical terms were not demonstrated. It was considered that a refusal of permission for the proposed development, in such circumstances, would not be a reasonable or proportionate response in view of national wind energy policy and the wind energy policies set out in the County Development Plan. The Board did not consider that a refusal of permission, in whole or in part, could be viewed as being in better accordance with those policies in this case. The Board concurred with the analysis and conclusion of the planning authority in this matter.

The first report of the Inspector had recommended a further reason for refusal in relation to the proposed grid connection. The Board considered the additional information received from the applicant in relation to the two alternative proposals for the grid connection, and the submissions made on file following public consultation on this matter. The Board concurred with the analysis and conclusions set out in the Inspector's second report, and was satisfied that no significant environmental impacts would arise in relation to the grid connection itself, or in relation to the proposed development in cumulation or indirectly as a result of the grid connection.

Conclusions on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below and with the mitigation measures set out on file, the proposed development would accord with the national and regional wind energy policies and guidelines, would be in accordance with the provisions of the Offaly County Development Plan 2014 – 2020, including the policies in relation to wind energy, 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 result in risk of pollution, would not exacerbate risk of flooding in the area, would not seriously injure the amenity or ecological value of the Lough Boora Parklands Area of High Amenity or of the Drinagh wetlands, 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 plans and particulars received by An Bord Pleanála on the 11th 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. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this order.

Reason: In the interest of clarity.

3. This permission shall be for a period of 25 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. (a) All mitigation measures set out in the environmental impact statement, Natura impact statement and supporting documentation, including the further information submitted to An Bord Pleanála on the 11th day of November, 2015, shall be implemented in full, except as may otherwise be required in order to comply with the conditions set out below.
- (b) The construction of the proposed development shall be supervised by suitably qualified and experienced environmental personnel, to ensure that all environmental mitigation and monitoring measures are implemented in full and to a satisfactory standard. The environmental supervisor shall report in writing to the planning authority in accordance with an agreed schedule.

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

5. (a) Prior to the coming into operation of the proposed development, the avian radar monitoring system shall be installed and operating to the written satisfaction of the planning authority for a period of one year. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority detailed procedures for the proposed operational regime, including the radar monitoring system and SCADA controls for turbine shut-down procedures, and monitoring of system effectiveness, following consultation with the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

- (b) Prior to commencement of development, a monitoring and reporting programme for the lifetime of the proposed wind farm shall be submitted to, and agreed in writing with, the planning authority. The reports shall address the operational effectiveness of the radar monitoring system and its integration with the wind farm SCADA control system and turbine shut-down arrangements. Copies of the reports shall be submitted to the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs.

Reason: To ensure that the avian radar monitoring and SCADA control systems have been effectively commissioned for use at this site.

6. Prior to commencement of development, implementation-stage details of a pre-construction and post-construction monitoring and reporting programme for birds shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, following consultation with the National Parks and Wildlife Service. The surveys shall be undertaken by a suitably qualified and experienced bird specialist. Surveys shall be completed annually for a period of five years following commissioning of the wind farm, and copies of the reports to the planning authority shall also be submitted to the National Parks and Wildlife Service.

Reason: To ensure appropriate monitoring of usage of the area by birds.

7. The proposed habitat and species management plan shall be submitted to, and agreed in writing with, the planning authority, following consultation with the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. This plan shall incorporate appropriate enhancement measures for Grey Partridge as set out in the environmental impact statement. These measures shall not be such as to attract bird species sensitive to bird strike.

Reason: In the interest of protection of bird species.

8. 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.

Reason: In the interest of visual amenity.

9. Details of the materials, colours and textures of all the external finishes to the proposed substation building shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of the visual amenities of the area.

10. (a) Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.
- (b) Works in the vicinity of streams shall comply with the "Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites", issued by the Eastern Regional Fisheries Board.
- (c) Prior to the commencement of construction, construction-stage details of proposals for the management of surface water shall be submitted to, and agreed in writing with, the planning authority. The plan shall set out the detailed measures to be undertaken to protect water quality during construction.

Reason: To protect water quality.

11. Wind turbine noise arising from the proposed development shall not exceed the greater of:
- 5 dB(A) above background noise levels or
 - 43 dB(A)

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 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.

12. (a) Shadow flicker arising from the proposed development shall not exceed 30 hours per year or 30 minutes per day at dwellings or other sensitive receptors.
- (b) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above 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 the amenity of dwellings in the vicinity.

13. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise interference. Details of these measures shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines.

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

14. 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.

15. 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.

16. The construction of the development shall be managed in accordance with a detailed construction 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) detailed plans of all temporary facilities,
 - (b) 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,
 - (c) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road during the course of site development works,
 - (d) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, including provision of a wheel wash near the entrance to the public road,
 - (e) details of appropriate mitigation measures for construction-stage noise, dust and vibration, and monitoring of such levels,
 - (f) containment of all construction-related fuel and oil within constructed bunds to ensure that fuel spillages are fully contained; such bunds shall be roofed to exclude rainwater,
 - (g) appropriate provision for the re-fuelling of vehicles within designated impermeable bunded areas, which shall be drained through an oil interceptor,

 - (h) provisions of an appropriately-sized facility for concrete washings,

- (i) measures to prevent any spread of invasive species to or from the site,
- (j) off-site disposal of construction waste and construction-stage details of how it is proposed to manage excavated soil,
- (k) means to ensure that deleterious levels of silt do not enter watercourses or drains connecting to them, and
- (l) details of the intended hours of construction.

A record of daily checks that the works are being undertaken in accordance with the construction management plan shall be available on site for inspection by the planning authority. Prior to the commencement of construction, proposals for the environmental monitoring of construction works on site by a construction/environmental professional, including the monitoring of the implementation of construction-stage mitigation measures, and illustrating compliance with those measures, 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.

17. (a) Roads, hardstanding 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 wind farm.
- (b) Soil, rock or sand excavated during construction shall not be left stockpiled on site following completion of works. Details of the treatment of stockpiled materials shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

18. On full or partial decommissioning of the wind farm, or if the wind farm ceases operation for a period of more than one year, the wind monitoring mast, the turbines concerned and all decommissioned structures shall be removed. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

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

19. 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 local authority to apply such security or part thereof to secure 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 the satisfactory reinstatement of the site.

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 planning authority, to secure the satisfactory reinstatement of the public road coupled with an agreement empowering the local authority to apply such security or part thereof to secure 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.

21. 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 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.

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

Dated this day of 2016.