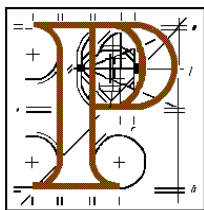


# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

## Clare County

**Planning Register Reference Number: P13/681**

An Bord Pleanála Reference Number: PL 03.244095

**APPEAL** by ESB Wind Development Limited of Stephen Court, 18-21 Saint Stephen's Green, Dublin against the decision made on the 13<sup>th</sup> day of October, 2014 by Clare County Council to refuse permission.

**PROPOSED DEVELOPMENT:** Ten year planning permission for an extension to Boolynagleragh Wind Farm at Boolynagleragh, Boolybrien, Knockatunna and Rathcrony, County Clare. The development will consist of a wind energy project comprising seven wind turbines, access tracks, anemometer masts, borrow pits and all associated site works, above and below ground. Each wind turbine will have an overall maximum dimension of 126 metres, comprising a tower 75-80 metres high, with a diameter of about four metres at the base, to which three blades of 45-51 metres length will be attached. An Environmental Impact Statement and Natura Impact statement is submitted with the planning application. (As amended by the further public notice received by the planning authority on the 25<sup>th</sup> day of August, 2014 and as amended by the revised public notice received by An Bord Pleanála on the 25<sup>th</sup> day of November, 2015 which includes a revised Environmental Impact Statement and a revised Natura Impact Statement).

## 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 making its decision, the Board had regard to:

- (a) the national targets for renewable energy contribution of 40% gross electricity consumption by 2020,
- (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 of the planning authority as set out in the Clare County Development Plan (2011-2017), as varied, which place the bulk of the site in a strategic area for wind development,
- (d) the proximity and availability of a grid connection to serve the proposed development,
- (e) the planning history of the site wherein permission was granted by An Bord Pleanála on appeal for a nine turbine wind farm and associated works (PL03.236376),
- (f) the distance to dwellings or other sensitive receptors from the proposed development,
- (g) the good transport access,
- (h) the submissions made in connection with the planning application and the appeal, and
- (i) the reports of the Inspector.

### *Appropriate Assessment*

The Board carried out a screening exercise in relation to potential impacts on nearby European sites, specifically the Lower River Shannon Special Area of Conservation (Site Code 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code 004077) and the Newhall and Edenvale Complex Special Area of Conservation (Site Code 002091) and having regard to the nature and scale of the proposed development, the nature of the receiving environment, the screening report and Natura impact statement, (as revised to include the grid connection), submitted, the submissions on file and the reports of the Inspector which the Board has adopted in relation to Appropriate Assessment, the Board concluded that, on the basis of the information available, the proposed development would not be likely to have a significant effect on any European site, either individually or in combination with other plans or projects in view of the site's conservation objectives

The Board noted the content of the Natura impact statement submitted and the proposed mitigation measures contained therein. The Board agreed with the Inspector that a Stage 2 Appropriate Assessment was not required in this instance given the very substantial separation distances between the subject site and the nearest European sites, subject to the implementation of equivalent best practice methodologies during the construction phase.

### *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 revised Environmental Impact Assessment incorporating the grid connection proposed, the reports, assessment and conclusions of the Inspector with regard to this file and other submission 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 her assessment of the likely significant effects of the proposed development, and generally agreed with her conclusions on the acceptability of the mitigation measures proposed and residual effects. The Board generally adopted the report of the Inspector. The Board concluded that, subject to the implementation of the mitigation measures proposed, the proposed development would be acceptable and would accord with the proper planning and sustainable development of the area.

## *Conclusion*

It is considered that, subject to compliance with the conditions set out below, the proposed development would not have an unacceptable impact on the ecology and landscape of the area, would not seriously injure the visual or residential amenities of the area or of property in the vicinity 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.

## **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 on the 18<sup>th</sup> day of August, 2014, and the further particulars received by An Bord Pleanála on the 7<sup>th</sup> day of October 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:** Having regard to the nature of the proposed development, the Board considers it appropriate to specify a period in excess of five years.

3. This permission shall be for a period of 25 years from the date of commissioning of the wind farm.

**Reason:** To enable a review of the operation of the development in the light of the circumstances then prevailing.

4. The developer shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Statement, as revised, and associated documentation, are implemented in full, except as may otherwise be required by the attached conditions.

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

5. (i) Prior to commencement of development, a detailed Environmental Management Plan for the construction stage shall be submitted, generally in accordance with the proposals set out in the Environmental Impact Statement, as revised, and the submissions made in accordance with the planning application and the appeal, for the written agreement of the planning authority.
- (ii) The Environmental Management Plan shall incorporate the following:
  - (a) a detailed construction programme,
  - (b) a detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, construction hours and the management of construction waste,
  - (c) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period,
  - (d) an emergency response plan, and
  - (e) proposals in relation to public information and communication.
- (iii) The Environmental Management Plan shall be subject to on-going independent audit (all costs of which shall be borne by the developer) in accordance with the requirements of the planning authority.

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

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

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

7.
  - (i) In all other areas noise levels emanating from the proposed development following commissioning, by itself or in combination with other existing or permitted wind energy development in the vicinity, when measured externally at third party noise-sensitive locations, shall not exceed the greater of 43dB(A)  $L_{90, 10 \text{ min}}$  or 5 dB(A) above background levels.
  - (ii) All noise measurements shall be made in accordance with I.S.O. Recommendations R1996/1 and 2 "Acoustics – Description and Measurement of Environmental Noise".
  - (iii) Prior to commencement of development, the developer shall arrange for a noise compliance monitoring programme for the operational wind farm. Details on the nature and extent of the monitoring programme, including additional monitoring of baseline conditions or any mitigation measures such as the de-rating of particular turbines, shall be submitted to, and agreed in writing with, the planning authority.

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

8.
  - (i) 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.

- (ii) 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. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with, the planning authority.
- (iii) Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, a shadow flicker compliance monitoring programme for the operational wind farm.

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

- 9.
- (i) The wind turbines, including masts and blades shall be finished externally in a colour to be agreed in writing with the planning authority prior to the commencement of development.
  - (ii) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
  - (iii) On-site cables shall be laid underground.
  - (iv) Soil, rock and other materials excavated during construction shall not be left stockpiled on site following completion of works. Excavated areas including the borrow pit or areas of peat placement shall be appropriately restored within three months of the date of commissioning of the wind farm.
  - (v) Following completion of construction, all turbine hardstanding areas shall be reduced in scale to facilitate works necessary during the operational period.
  - (vi) The surrounding hardstanding areas shall be reinstated to a condition similar to that prior to the commencement of works associated with the development.

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

10. Prior to the commencement of development, the developer shall agree 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 and prior to commission of the turbines.

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

11. Aeronautical requirements shall be agreed in writing with the planning authority prior to commencement of development. Subsequently, the developer shall inform the planning authority and the Irish Aviation Authority of the co-ordinates of the 'as constructed' positions of the turbines and the highest point of the turbines to the top of the blade spin.

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

12. The developer shall facilitate the 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,
  - (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works,
  - (c) submit to and agree in writing with the planning authority revised proposals for the design of the works, which shall ensure that the development will not cause avoidable disturbance to archaeological material and will limit any unavoidable disturbance, and
  - (d) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

**Reason:** In order to conserve archaeological heritage.



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 bridges, culverts or other structures to be traversed, as may be required.

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

14. 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 masts and the turbines concerned shall be removed and all decommissioned structures shall be removed within three months of decommissioning.

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

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, 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 to secure the satisfactory reinstatement of the site upon cessation of use of the windfarm coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the site. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of such agreement, shall be determined by An Bord Pleanála.

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

17. 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.**