

# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

**Donegal County**

**Planning Register Reference Number: 14/51305**

An Bord Pleanála Reference Number: PL 05E.244417

**APPEAL** by Clogheravaddy Wind Farm Limited care of Tom Phillips and Associates of 2-3 Roger's Lane, Lower Baggot Street, Dublin against the decision made on the 8<sup>th</sup> day of January, 2015 by Donegal County Council to refuse permission in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** A ten year permission for development at site in the townlands of Clogheravaddy, Meenagranoge and Meenacahan, County Donegal. The proposed development will consist of a wind energy project comprising up to seven wind turbines, construction of new internal access tracks, upgrading existing access tracks, a new site entrance (on the L5795 local road), underground cabling, electrical substation, temporary construction compound and associated works. Each wind turbine will have an overall maximum height of 126.5 metres comprising a tower 65-80 metres high, to which three blades of 45-56 metres length will be attached. An environmental Impact Statement and Natura Impact Statement accompany this application.

## **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) European and national policies to increase the proportion of energy that is generated from renewable sources, including wind, set out in the Renewable Energy Directive 2009/28/EC and the National Renewable Energy Action Plan which sets a target that 40% of the electricity generated in Ireland would be from renewable sources by 2020,
- (b) the Guidelines for Planning Authorities on Wind Energy Development issued by the Department of the Environment, Heritage and Local Government in June, 2006 and the limits set therein for noise and shadow flicker,
- (c) the provisions of the Donegal County Development Plan 2012-2018 and the location of the proposed development in an area zoned “open for consideration”, as outlined in Policy E-P-11 where “it is the policy of the Council to facilitate the development of appropriate wind energy proposals in the “Area Open to Consideration” as identified on the Wind Energy Map No. 9”,
- (d) the character of the landscape and the topography surrounding the site,
- (e) the distance to dwellings and other sensitive receptors from the proposed development,
- (f) the separation of the site of the proposed development from sites designated as part of the Natura 2000 network and the nature of the connections between them,
- (g) the Environmental Impact Statement together with the addendum to the Environmental Impact Statement submitted by the applicant,

- (h) the Natura impact statement together with the addendum to the Natura impact statement submitted by the applicant,
- (i) the further information submitted by the applicant on the 9<sup>th</sup> day of November 2015,
- (j) the submissions made in the course of the planning application and the appeal, and
- (k) the Inspector's report dated 9<sup>th</sup> June 2015 and addendum report dated 14<sup>th</sup> December 2015,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the National and County policies in respect of wind energy, would not have significant effects on the community in the vicinity, would not give rise to pollution, would not result in detrimental visual or landscape impacts, would not seriously injure the amenities of the area or of property in the vicinity of the site, would not seriously injure the cultural or archaeological heritage of the area, 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.

The Board considered all of the documentation on file including the submission from the applicant received by the Board on the 9<sup>th</sup> and 10<sup>th</sup> days of November, 2015, in response to the section 132 notice issued by the Board on the 16<sup>th</sup> day of October, 2015. Having considered this documentation including the Environmental Impact Statement and the addendum to the Environmental Impact Statement received by the Board on the 3<sup>rd</sup> day of February, 2015, the Natura impact statement and the addendum to the Natura impact statement received by the Board on the 3<sup>rd</sup> day of February, 2015, the Board completed an Environmental Impact Assessment and Appropriate Assessment as documented below. The Board considered that the concerns that had been expressed by the Inspector in her report of 9<sup>th</sup> June 2015 in respect of the disturbance, barrier effects to movement and collision risk arising from the construction and operation of the wind farm on birds of Special Conservation Interest known to traverse the site, notably the Red Grouse, Greenland White Fronted Goose, Golden Plover and Whooper Swan had been satisfactorily addressed by the applicant.

## **Appropriate Assessment**

The Board considered that the information before it, including the Natura impact statement and addendum to the Natura impact statement was adequate to allow for the carrying out of an Appropriate Assessment. The Board also noted and concurred with the applicant's decision to limit the Appropriate Assessment to a 10 kilometre radius and considered this to be acceptable, having regard to the conservation objectives of the five sites within the 10-15 kilometres radius, the source pathway receptor model, and the views of the National Parks and Wildlife Services relating to these sites and notwithstanding the concerns of the Inspector. The Board completed an Appropriate Assessment in respect of the eight sites listed below.

### **Screening:**

In carrying out this assessment, the Board considered the nature of the proposed development, the mitigation measures proposed as part of the development, the characteristics and conservation objectives for the eight Natura 2000 sites located within 10 kilometres of the proposed development, namely

- Lough Nillan Bog Special Protection Area (Site Code 004110),
- Lough Nillan Bog (Carrickatlieve) Special Area of Conservation (Site Code 000165),
- Meenaguse/Ardane Bog Special Area of Conservation (Site Code 000172),
- Meenaguse Scragh Special Area of Conservation (Site Code 001880),
- West of Ardara/Maas Road Special Area of Conservation (Site Code 000197),
- Donegal Bay (Murvagh) Special Area of Conservation (Site Code 000133),
- Donegal Special Protection Area (Site Code 004151), and
- Slieve Tooley/Tormore Island/Loughros Beg Bay Special Area of Conservation (Site Code 000190).

Taking into account the nature and scale of the development description including the construction management procedures to be employed and on the basis of the information available including the Inspector's report, the Board concluded that the proposed development, either individually or in combination with other plans and projects, would not be likely to have a significant effect on any of the above listed European sites in view of the sites conservation objectives, with the exception of the Lough Nillan Bog Special Protection Area (Site Code 004110).

The Natura impact statement accompanying the application and the addendum to the Natura impact statement concluded that it was not possible to rule out potentially significant impacts (either alone or in combination with other plans or projects) as a result of the proposed development with respect to Lough Nillan Bog Special Protection Area (Site Code 004110). It was, therefore, deemed appropriate to move directly to a Stage II Assessment with regard to that site.

### **Stage II Assessment (Lough Nillan Bog Special Protection Area)**

Having regard to the relevant information on file, the Board considered the Inspector's report, conclusions and recommendation during its deliberations at a Board meeting held on the 15<sup>th</sup> of July, 2015. The Board agreed with the Inspector's conclusions including the concerns expressed in relation to potential impacts on bird species in respect of which the Lough Nillan Bog Special Protection Area (Site Code 004110) have been designated including, in particular, the Red Grouse, Greenland White Fronted Goose, Golden Plover and the Whooper Swan. The Board decided to issue a section 132 notice asking the applicant to respond to this issue prior to completing the Appropriate Assessment.

A response to the section 132 notice issued by the Board on the 16<sup>th</sup> day of October, 2015 was received on the 9<sup>th</sup> and 10<sup>th</sup> days of November, 2015. This response was circulated to the planning authority and the observer on the 19<sup>th</sup> day of November, 2015. A response and comments was received from the observer Joseph Brennan.

The Board examined the further information received from the applicant including the additional Bird Survey data together with the comments from other parties and observer and sent the file back to the Inspector for further evaluation and analysis of the potential impact of the proposed development on protected bird species including, in particular, the Red Grouse, Greenland White Fronted Goose, Golden Plover and the Whooper Swan. Following receipt of an addendum Inspectors report dated the 14<sup>th</sup> of December, 2015 which evaluated the issue, the Board was satisfied to adopt the conclusion of

the Inspector that the information contained within the further information submission was comprehensive, thorough and robust and had employed the best available scientific expertise in relation to research, the collection of survey data and the analysis of same.

The Inspectors addendum report concluded that the applicant has submitted the results of additional bird surveys carried out at the site such that the available bird survey data is adequate in extent, duration and quality to enable a full assessment of potential ornithological impacts. Having regard to the total available information, the Inspector concluded that, subject to the implementation of satisfactory mitigation measures, the proposed development would not adversely impact on the bird species named in the section 132 request, that is, Red Grouse, Golden Plover, Whooper Swan and Greenland White-fronted Goose. The Inspector was, furthermore, satisfied that the development would not adversely affect the integrity of the Lough Nillan Bog Special Protection Area (Site Code 004110), with regard to the site's conservation objectives.

In conclusion, the Board was satisfied that it could conclude beyond reasonable scientific doubt that the proposed development including grid connection, either individually or in combination with other plans and projects, would not adversely affect the integrity of the European site Lough Nillan Bog Special Protection Area (Site Code 004110) in view of that site's conservation objectives, during either the construction or operation phase of the wind farm development.

#### Environmental Impact Assessment

The Board considered the Environmental Impact Statement and addendum to the Environmental Impact Statement submitted with the application, the submissions on file and the Inspector's assessments of the environmental impacts during its deliberations at a Board meeting held on the 15<sup>th</sup> day of July, 2015.

A response to the section 132 notice issued by the Board on the 16<sup>th</sup> day of October, 2015 was received on the 9<sup>th</sup> and 10<sup>th</sup> days of November, 2015. This response was circulated to the parties. Response and comments were received from Joseph Brennan.

The Board considered the further information received from the applicant including the addendum to the Environmental Impact Statement together with the comments from the observer.

The Board considered the Environmental Impact Statement and addendum to the Environmental Statement submitted with the application and the appeal, and other submissions on file, and considered that this information was adequate in identifying and describing the direct effects, indirect effects and cumulative effects in combination with other projects of the proposed development, including grid connection.

The Board generally adopted the Inspector's report dated 9<sup>th</sup> June, 2015 and noted the Inspector's concerns in relation to adverse impacts on the Red Grouse, Golden Plover, Whooper Swan and Greenland White-fronted Goose species. The Board sought via section 132 of the Planning and Development Act 2000, dated 16<sup>th</sup> October, 2015 further information from the applicant in respect to this matter. The applicant responded to the said section 132 notice on the 9<sup>th</sup> and 10<sup>th</sup> days of November, 2015. The Inspector produced an addendum report dated 14<sup>th</sup> December, 2015 which included a report on the section 132 notice and recommended that permission be granted for the proposed development. The Board adopted the addendum report of the Inspector in relation to Environmental Impact Assessment and Appropriate Assessment.

The Board completed an Environmental Impact Assessment and concluded that the proposed development, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out below, would not have significant effects on the environment.

### **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 appeal documentation submitted on the 3<sup>rd</sup> day of February, 2015 and as amended in the further information submitted to An Bord Pleanála on the 9<sup>th</sup> and 10<sup>th</sup> days of November 2015, except as may otherwise be required in order to comply with the following conditions.

**Reason:** In the interest of clarity.

2. The mitigation measures identified in the Environmental Impact Statement and addendum to the Environmental Impact Statement and Natura impact statement and addendum to the Natura impact statement 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.

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 of the development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

4. The date of commissioning of the wind farm shall be notified to, and established in writing with, the planning authority before any commercial use of the development is brought about. This permission shall be for a period of 25 years from the said date of commissioning of the wind farm. The wind turbines and related ancillary structures shall then be removed at the end of this period of 25 years unless, prior to the end of the period, planning permission shall have been granted for their retention for a further period.

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

5. Prior to commencement of development, a detailed Environmental Management Plan for the construction stage shall be submitted, generally in accordance with the Environmental Impact Statement and the submissions made in accordance with the planning application and with the appeal, for the written agreement of the planning authority. The Environmental Management plan shall include the following:

- (a) a detailed construction programme,
- (b) detailed method statements for construction, including a method statement for the excavation of rock. Blasting is not permitted without a prior grant of planning permission,



- (c) a detailed peat management and restoration plan, in accordance with the submissions made in the Environmental Impact Statement, to be prepared by a suitably qualified geotechnical engineer or equivalent professional, with experience of geotechnical management to the satisfaction of the planning authority. This plan shall also provide for appropriate geotechnical supervision of all excavation works and all rock/peat placement works,
- (d) a Site Drainage Management Plan, in accordance with the submissions made in the Environmental Impact Statement, incorporating a detailed silt management plan and pollution prevention plan, and including appropriately-sized silt traps and/or settlement ponds as required, to be prepared by a suitably qualified drainage engineer or equivalent professional, with experience of drainage design in upland peat environments to the satisfaction of the planning authority,
- (e) a programme for the ongoing monitoring of water quality during the construction period,
- (f) a Construction Waste Management Plan, prepared in accordance with the “Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects”, published by the Department of the Environment, Heritage and Local Government in July, 2006. The plan shall include details of waste to be generated during site clearance and construction phases, and details of the methods and locations to be employed for the prevention, minimisation, recovery and disposal of this material, and
- (g) an Emergency Response Plan.

The Environmental, Health and Safety Management Plan shall be subject to ongoing independent audit (all costs of which shall be borne by the developer) to the written approval of the planning authority.

**Reason:** In the interest of the protection of the environment and sustainable waste management.

6. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, a plan for the decommissioning of the authorised windfarm and the reinstatement of the site which shall provide for the removal of the turbines, towers, meteorological monitoring masts and all plant and equipment and the reinstatement of the turbine bases and hard standing areas, as well as a time frame for the completion of such works which shall not be greater than 12 months from the cessation of the operation of the windfarm.

**Reason:** To ensure the satisfactory reinstatement of the site and to prevent an accumulation of obsolete functional structures in the interests of orderly development.

7. Monitoring of the construction phase shall be carried out by a suitably qualified person to ensure that all environmental mitigation measures contained in the documentation which accompanied the planning application are fully implemented. A designated member of the company's staff shall liaise with the planning authority or member of the public in the event of complaints or queries in relation to environmental emissions. Details of the name and contact details and the relationship to the operator of this person shall be available at all times to the planning authority on request in writing or by a member staff of the planning authority at the site.

**Reason:** To safeguard the amenities of the area.

8. Noise mitigation measures outlined in the Environmental Impact Statement and in the further information submitted to An Bord Pleanála shall be carried out in full. The following shall be complied with:

- (a) 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:

5 dB(A) above background noise levels or

43 dB(A)  $L_{90,10min}$

when measured externally at dwellings or other sensitive receptors.

- (b) Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a noise compliance monitoring programme for the subject development, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 “Assessment of Noise with Respect to Community Response,” as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the wind farm.

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

- 9. (a) 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.
- (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 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.

- 10. Prior to the commencement of development, the following details shall be submitted to, and agreed in writing with, the planning authority:-
  - (a) a Transport Management Plan, including details of the road network/haulage routes and the vehicle types to be used to transport materials and parts on and off site,
  - (b) a condition survey of the roads and bridges along the haul routes to be carried out at the developer's expense by a qualified engineer both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes and, in particular, regional and local roads in 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,

- (c) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority,
- (d) detailed arrangements for temporary traffic arrangements/controls on roads, and
- (e) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.

The Transport Management Plan shall include drawings at a scale of no less than 1:500 of all works that are required to facilitate the construction of the proposed development.

All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

**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. During construction stage, the developer shall employ a suitably qualified and experienced geotechnical engineer to monitor the stability of all existing slopes adjacent to the works and all temporary slopes created by the works. Should any land slippage occur during the course of the works the developer shall immediately inform the planning authority and provide details on how further slippage shall be prevented and necessary measures to remediate the site.

**Reason:** In the interest of environmental protection and orderly development.

12. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist in the vicinity of Eanybeg Bridge. 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, and
  - (c) 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 the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

13. Cables within the site shall be laid underground. The wind turbines shall be geared to ensure that the blades rotate in the same direction.

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

14. In the event that the proposed development causes interference with telecommunications signals in the area, effective measures shall be implemented to minimise such interference. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines, and following consultation with the relevant authorities.

**Reason:** In the interest of orderly planning and residential amenity.

15. 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 and wind monitoring mast.

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

16. Prior to the 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 in accordance with the details agreed under this condition. The developer shall also enter into an agreement empowering the planning authority to apply such security or part thereof to secure the necessary reinstatement of the site at the end of the period during which the operation windfarm is authorised or before that time if the operation of the windfarm has ceased for at least 12 months and the planning authority does not consider it reasonably likely to resume. 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 and to prevent the accumulation of obsolete functional structures in the interests of orderly development

17. Prior to the 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 art 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.

18. 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.**