

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Donegal County

Planning Register Reference Number: 14/51400

An Bord Pleanála Reference Number: PL 05E.245108

APPEAL by Derrykillew community Wind Farm Limited care of Jennings O'Donovan and Partners Limited of Finisklin Business Park, Sligo against the decision made on the 10th day of June, 2015 by Donegal County Council to refuse permission in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Ten year planning permission for development of a five (5) wind turbine wind farm in the townland of Derykillew approximately 7 kilometres east of Ballyshannon, County Donegal. The development will comprise of up to five (5) electricity generating wind turbines with an overall height of the turbines not exceeding 150 metres. The development will also comprise of hardstandings, an electoral compound and substation building with grid system services equipment, associated site roads and site works, as amended by the further public notice received by An Bord Pleanála on the 27th day of August, 2015.

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

Having regard to:

- (a) national policy relating to the development of sustainable energy resources,
- (b) the provisions of the “Wind Energy Development 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 Donegal County Development Plan 2012-2018, as varied, including the location of the site within an area designated in the Development Plan as ‘open for consideration’ for wind farm developments,
- (d) the scale and community based nature of the proposed development,
- (e) the general character of the site and the landscape features and general topography of the surrounding area,
- (f) the separation distance of the proposed turbines from any inhabited dwellings,
- (g) modifications to the height of the proposed turbines as proposed at appeal stage,
- (h) the range of mitigation measures set out in the documentation received including the Environmental Impact Statement received by the planning authority on the 2nd day of December, 2014 and the revised Environmental Impact Statement received by An Bord Pleanála on the 7th day of July, 2015,
- (i) transboundary considerations and consultations relating to the site and to the proposed development, and

(j) the submissions on file and the report of the Inspector,

it is considered that the proposed development, subject to compliance with the conditions set out below, would be in accordance with the National and County policies in respect of wind energy, would not give rise to pollution, would not result in unacceptable impacts on the visual amenity of the general area, would not seriously injure the amenities of the area or of property in the vicinity of the site, 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.

Appropriate Assessment

The screening report for Appropriate Assessment that accompanied the application to the planning authority screened out the need for Stage 2 Appropriate Assessment in relation to any European site. The Inspector accepted this screening. The Board agreed in full with and adopted the conclusions of the Planning Inspector in respect of screening for Appropriate Assessment. In this regard, the Board concurred with the conclusion that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on any European site in view of the site's conservation objectives.

Environmental Impact Assessment

The Board considered the Environmental Impact Statement submitted with the application to the planning authority, the revised Environmental Impact Statement received by An Bord Pleanála on the 7th day of July, 2015, the submissions on file and the Inspector's assessment of the environmental impacts.

The Board considered that the Environmental Impact Statement and revised Environmental Impact Statement that accompanied the appeal to An Bord Pleanála, together with other documentation and submissions on file, was adequate in describing the direct effects, indirect effects and cumulative effects in combination with other projects of the proposed development, including grid connection.

The Board noted and adopted the Inspector's report and conclusions in respect of Environmental Impact 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 be acceptable having regard to the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars received by the planning authority on the 8th and 9th days of January, 2015 and further plans and particulars received by An Bord Pleanála on the 17th 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. All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Statement accompanying the application to the planning authority and in the revised Environmental Impact Statement received by An Bord Pleanála on the 7th day of July, 2015 and other particulars submitted with the application to the planning authority and to An Bord Pleanála shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.

REASON: In the interest of clarity and the protection of the environment during the construction and operation phases of the development.

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 considers it appropriate to specify a period of validity of this permission in excess of five years.

4. This permission is for a period of 25 years from the date of commissioning of the wind farm. The wind turbines and related ancillary structures and temporary roadway shall then be removed and the site appropriately reinstated, prior to the end of this period, unless planning permission shall have been granted for their retention for a further specified period. Details of the reinstatement plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

REASON: To enable the impact of the development to be reassessed, having regard to the changes in technology and design during this period.

5. The proposed turbines shall be in accordance with the turbine height and specifications as set out in the documentation accompanying the appeal received by An Bord Pleanála on the 7th day of July, 2015. In this regard, the maximum height of the proposed turbines shall not exceed 136 metres.

REASON: In the interests of clarity.

6. Details of the curtailment of Turbine number 4 for a period between sunset and sunrise during the months of June to October inclusive during the first three years of operation of the proposed wind farm, as proposed by the developer in order to reduce the potential impacts on protected bat species, shall be submitted to, and agreed in writing with, the planning authority prior to the commissioning and operation of this turbine.

REASON: In order to mitigate against potential impacts on protected bat species in accordance with the information contained in the Environmental Impact Statement received by the planning authority on the 2nd day of December, 2014 and the revised Environmental Impact Statement received by An Bord Pleanála on the 7th day of July, 2015.

7. Post construction usage of the wind farm site by birds and bats shall be monitored for a period of five years which shall be carried out by a suitably qualified and competent ecologist. Full details of the methodology of monitoring and data collection and reporting arrangements shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

REASON: To ensure appropriate monitoring of the impact of the development on the fauna of the area.

8. (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 indicated in the revised Environmental Impact Statement (Appendix B) received by An Bord Pleanála on the 7th day of July, 2015, the vehicle types to be used to transport materials on and off site, and a schedule of control measures for exceptional wide and heavy delivery loads.
 - (ii) A condition survey of the roads and bridges along the haul routes 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/authorities 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.
 - (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 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.

- 9. (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:

- (i) 5 dB(A) above background noise levels or

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

when measured externally at dwellings or other sensitive receptors.

- (b) Prior to the commencement of development, the developer shall submit to, and agree in writing with, the planning authority a noise 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 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.

- 10. (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.

11. The construction of the development shall be managed in accordance with a 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) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) location of areas for construction site offices and staff facilities;
- (c) details of site security fencing and hoardings;
- (d) details of on-site car parking facilities for site workers during the course of construction;
- (e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;
- (f) measures to obviate queuing of construction traffic on the adjoining road network;
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (h) 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;
- (i) provision of construction hours, including deliveries of materials to the site;

- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (k) 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; and
- (l) off-site disposal of construction/demolition waste.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

Reason: In the interest of amenities and safety.

12. The wind turbines including masts and blades, and the anemometer mast, shall be finished externally in a light grey colour.

Reason: In the interest of visual amenity.

13. (a) Cables within the site shall be laid underground.
- (b) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
- (c) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.

Reason: In the interest of visual amenity and for clarification purposes

14. 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 commissioning the turbines.

Reason: In the interest of residential amenity.

15. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Subsequently, the developer shall inform the planning authority of the coordinates 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.

16. 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.

17. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that 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, 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.

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 site and to secure the preservation and protection of any remains that may exist within the site.

18. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure satisfactory reinstatement of the site.

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 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 road safety and the proper planning and sustainable development of the area.

20. 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.