

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Clare County

Planning Register Reference Number: P14/551

An Bord Pleanála Reference Number: PL 03.245189

APPEAL by-Mid Clare Renewable Energy Limited care of McCarthy Keville O'Sullivan Limited of Block 1, G.S.F.C., Moneenageisha Road, Galway against the decision made on the 25th day of June, 2015 by Clare County Council to refuse permission.

PROPOSED DEVELOPMENT: A ten year planning permission to construct a wind farm and all associated infrastructure in the townland of Cahermurphy, Kilmihil, County Clare comprising provision of a total of four number wind turbines, with a maximum overall blade tip height of up to 131 metres, upgrading of existing and provision of new internal access roads, provision of a wind anemometry mast (height up to 90 metres), borrow pit, an electricity sub-station with control rooms and associated equipment, underground electricity sub-station with control rooms and associated equipment, underground electricity connection cabling, temporary construction compound and all ancillary site works and includes the upgrade of site access junctions. The current proposed development is intended to replace the wind farm development previously permitted at this location under planning register reference number 03/2071 as extended by planning register reference number 09/267 and planning register reference number 13/507 which is valid until 2019. The planning application is accompanied by an Environmental Impact Statement (EIS) and Natura Impact Statement (NIS).

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) national policy with regard 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 in June, 2006,
- (c) the provisions as set out in the current Clare County Development Plan, including those regarding renewable energy development, in particular the Renewable Energy Strategy 2014-2020 and the Wind Energy Strategy,
- (d) the planning history on the site including permission An Bord Pleanála appeal reference PL03.205692 as extended by planning register reference numbers P09/267 and 13/507 and which remains valid until July 2019,
- (e) the nature and extent of the proposed development which comprises four wind turbines in place of six previously permitted wind turbines and where each of the four wind turbines are within an area identified as a Strategic Area for wind energy in the Clare Renewable Energy Strategy,
- (f) the character of the landscape in the area and the topography surrounding the site,
- (g) the pattern of development in the area,
- (h) the distance to dwellings or other sensitive receptors from the proposed development,

- (i) the documentation and submissions made in connection with the planning application and the appeal, including the Environmental Impact Statement submitted with the planning application (including mitigation measures therein), the further supplementary information submitted by the applicant in the course of the planning application and the appeal,
- (j) the Natura Impact Statement and the further information submitted in relation to ecology by the applicant in the course of the planning application and appeal,
- (k) the proximity and availability of a grid connection to serve the proposed development, and
- (l) the report of the Inspector.

Appropriate Assessment Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site.

The Board had regard to the Natura Impact Statement submitted with the planning application, the further supplemental and additional information received in relation to the Natura Impact Statement, the documentation submitted at appeal stage, the submissions on file and the Inspector's report and completed a screening for an Appropriate Assessment.

The Board accepted and adopted the Inspector's screening assessment in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' conservation objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on European Sites: the Carrowmore Dunes Special Area of Conservation (Site Code 002250), the Lower River Shannon Special Area of Conservation (Site Code 002165), the River Shannon and River Fergus Estuaries Special Protection Area (Site Code 004077), the Tullaher Lough and Bog Special Area of Conservation (Site Code 002343), the Pouladatig Cave Special Area of Conservation (Site Code 000037), and the Knockanira House Special Area of Conservation (Site Code 002318) in view of the sites' conservation objectives.

The Board further agreed with the Inspector's screening assessment that the Carrowmore Point to Spanish Point and Islands Special Area of Conservation (Site Code 001021), the Mid-Clare Coast Special Protection Area (Site Code 004182), are the European sites for which there is a likelihood of significant effects.

Appropriate Assessment

The Board considered the Natura Impact Statement submitted with the planning application, the further supplemental and additional information received in relation to the Natura Impact Statement, the documentation submitted at appeal stage, the submissions on file and the Inspector's report and completed a screening for an Appropriate Assessment of the implications of the proposed development for European Sites where there is a likelihood of significant effects. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered, in particular, the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the mitigation measures included as part of the proposed development and the conservation objectives for these European Sites. The Board concurred with the Inspector's view (paragraphs 9.10.3-9.10.6 of Inspector's report) that, on the basis of the detailed mitigation measures proposed, significant impact on the qualifying interests associated with the Carrowmore Point to Spanish Point and Islands Special Area of Conservation (Site Code 001021) and the Mid-Clare Coast Special Protection Area (Site Code 004182) are not likely to be significant.

In completing the Appropriate Assessment, the Board accepted and adopted the Inspector's Appropriate Assessment in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European sites in view of the sites' conservation objectives.

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 effects on the environment of the proposed development would be acceptable.

Conclusion on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would not adversely affect the landscape, would not seriously injure the visual or residential amenities of the area 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 to the planning authority on the 24th day of April 2015, and as amended by the further information submitted to An Bord Pleanála on the 22nd day of July 2015, including the detailed mitigation measures set out in the Environmental Impact Statement and Natura impact statement, 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 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 development, the Board considers it appropriate to specify a period of validity of this permission 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 the planning authority to review its operation in the light of the circumstances then prevailing.

4. All environmental mitigation measures set out in the Environmental Impact Statement, the Natura Impact Statement, and associated documentation submitted by the applicant to the planning authority and An Bord Pleanála, shall be implemented in full, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of protection of the environment.

5. 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) regarding 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.

6. Prior to the commencement of works on site, details of a construction surface water management plan shall be submitted to the planning authority for written agreement and shall set out the detailed measures to be undertaken to protect water quality during tree harvesting, construction and operation phase and a schedule for water quality monitoring. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site clerk of works who will report on compliance with the relevant mitigation measures. The clerk of works shall be empowered to halt works where he/she considers that continuation of the works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or of damage to a river, these reports will be made available to the relevant statutory authorities and on site works will cease until authorised to continue by the planning authority.

Reason: To prevent water pollution.

7.
 - (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.

8. A condition survey of the proposed construction haul routes, including provision for bridges, culverts or other structures, shall be carried out by a suitably qualified engineer both before and after construction of the proposed development. The extent and scope of the survey shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. In the event of damage occurring to the public road network or associated infrastructure as a result of the construction of the proposed development, such damage shall be made good in accordance with the requirements of and to the satisfaction of the planning authority.

Reason: To ensure successful reinstatement of the public road network in the area.

9. A protocol for annual post construction surveys on birds in the vicinity, with particular reference to hen harrier, shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development. These reports shall be submitted on an agreed date annually for a period of five years from first commissioning.

Reason: To allow full monitoring of the ecological impact of the proposed development.

10. 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 commencement of development. Precise specifications of the turbines shall be provided to the planning authority prior to delivery.

Reason: In the interests of visual amenity.

11. (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.

12. Facilities shall be installed to minimise interference with radio or television reception in the area. Details of the facilities to be installed, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to the commissioning of the turbines and following consultation with the relevant authorities.

Reason: In the interest of residential amenity.

13. 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 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.

14. 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 R 1996 "Assessment of Noise with Respect to Community Response," as amended by ISO Recommendations R1996-1. 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.

15. (a) Shadow flicker arising from the proposed development 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.

16. Prior to commencement of development, the developer shall submit and agree in writing with the planning authority a detailed Construction Management Plan, including a monitoring regime. The Plan shall make provision for inclusion of all relevant mitigation proposed in the Environmental Impact Statement and Natura Impact Statement and shall in any event ensure that its scope extends to the following parameters:
- (a) surface water management during construction to control runoff from the site onto the public roads, unnatural flooding and/or the occurrence of any deleterious matter in the rivers and the tributaries and watercourses of their catchments or other waters within and adjoining the site including groundwater in accordance with best practice,
 - (b) detail of treatment of stockpiled material arising from excavation during construction, management of peat storage and disposal,
 - (b) dust minimisation including dust potentially generated from vehicles, measures to include appropriately located wheel wash facilities and appropriate good practice in the covering of laden and unladen vehicles,
 - (d) management of public roads in the vicinity so that they are kept free of soil, clay, gravel, mud or other debris and general site management to the satisfaction of the planning authorities,
 - (e) provision of detailed plans for all temporary facilities,
 - (f) preparation of a formal Project Construction and Demolition Waste Management Plan, and
 - (g) control of adverse noise and disturbance by reference to construction working hours, noise limits and traffic management arrangements.

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 relevant planning authorities. The developer shall satisfy the requirements of the planning authority in relation to measures to be proposed to prevent pollution run-off into water courses. The development shall thereafter be implemented in accordance with the agreed details.

Reason: In the interest of amenities, public health and safety, and to protect the adjoining surface watercourses and areas subject to environmental designations.

17. 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.

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 satisfactory reinstatement of the public roadway, coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer, or in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: In the interest of 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.