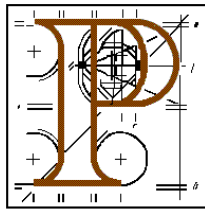


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Cork County

Planning Register Reference Number: 14/05602

An Bord Pleanála Reference Number: PL 04.245196

APPEAL by Michelle Duggan and others of Glouminane, Lombardstown, Mallow, County Cork, by Bweeng Turbine Objection Committee care of Noonan Linehan Carroll Coffey Solicitors of 54 North Main Street, Cork and by Esk Windfarm Limited care of McCarthy Keville O'Sullivan Limited of Block 1, G.F.S.C., Moneenageisha Road, Galway against the decision made on the 30th day of June, 2015 by Cork County Council to grant subject to conditions a permission to the said Esk Windfarm Limited in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Proposed wind farm comprising the provision of a total of 14 number wind turbines, with a maximum overall blade tip height of up to 136.5 metres, upgrading of existing and provision of new internal access roads, provision of a wind anemometry mast (height up to 90 metres), four number borrow pits, an electricity sub-station with control room and associated equipment, underground electricity connection cabling, three number temporary construction compounds 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 11/5276 in the townlands of Derrygowna, Esk North, Esk South, Garrane, Glandine, Glannaharee East, Glannaharee West, Glanminnane, Knockavaddra and Monanveel, County Cork. The planning application is accompanied by an Environmental Impact Statement (EIS) and Natura Impact Statement (NIS), as amended by the revised public notice received by the planning authority on the 8th day of May, 2015 as follows: the number of wind turbines proposed under the current application from 14 number turbines to 6 number turbines, with a maximum overall blade tip height of up to 136.5 metres, upgrading of

existing and provision of new internal access roads, provision of a wind anemometry mast (height up to 90 metres), two number borrow pits, one number temporary construction compound, underground electricity connection cabling and all ancillary site works and includes the upgrade of site access junctions.

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 alternative and indigenous energy sources and the minimisation of emissions of greenhouses gases,
- (b) the provisions of the “Wind Energy Development Guidelines – Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government (2006),
- (c) the policies set out in the Regional Planning Guidelines for the South-West Region 2010-2020,
- (d) the policies of the planning authority as set out in the Cork County Development Plan 2009-2014,
- (e) the location of the site in an area which is identified in the Cork County Development Plan 2014 as an area ‘Open to Consideration’ where it is the policy of the planning authority to facilitate the development of appropriate wind energy proposals,

- (f) the character of the landscape in the area and the absence of any ecological designation on or in the immediate environs of the site,
- (g) the pattern of existing development in the area, including other windfarms,
- (h) the distance from the proposed development to dwellings or other sensitive receptors,
- (i) the range of mitigation measures set out in the documentation received, including the Environmental Impact Statement, Natura impact statement, Addendum to the Environmental Impact Statement, revised Environmental Impact Statement and Further Information,
- (j) the planning history of the site and surrounds,
- (k) the submissions made in connection with the planning application and the appeal, and
- (l) the report of the Inspector.

Appropriate Assessment

The Board agreed with the screening assessment carried out and conclusion reached in the Inspector's report that the European sites for which there is a likelihood of significant effects are the Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code 002170) and the Mullaghanish to Musheramore Mountains Special Protection Area (Site Code 004162).

The Board considered the Natura impact statement and the revised Natura impact statement and all other relevant submissions (the 16th day of April, 2015 and the 19th day of June, 2015) and carried out an Appropriate Assessment of the implications of the proposed development for these European Sites in view of the sites' conservation objectives. 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:

- (i) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically other wind farm developments in the area;
- (ii) mitigation measures which are included as part of the current proposal;
- (iii) conservation objectives for the European Sites set out above; and
- (iv) view of the Department of Arts, Heritage and the Gaeltacht.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the site's conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of the European sites in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board considered the Environmental Impact Statement submitted with the application, supported by the further information submitted to the planning authority, including the Addendum to the Environmental Impact Statement which included, inter alia, details of the proposed connection to the grid, the report, assessment and conclusions of the Inspector with regard to this file and other submissions on file. The Board noted the Hen Harrier foraging habitat mitigation plan proposed as part of the Response to Further Information Request. The Board considered that this information was adequate in identifying and describing the direct and indirect effects of the proposed development. The Board completed an Environmental Impact Assessment, and agreed with the Inspector in his assessment of the likely significant effects of the proposed development, and generally agreed with his 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 not have a significant effect on the environment.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities or landscape character of the area, would not seriously injure the amenities of the area or of property in the vicinity, would be acceptable in terms of traffic safety and convenience, would not give rise to an unacceptable risk of environmental pollution or have an adverse impact on the ecology of the area and would not, therefore, be contrary to 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 16th day of April, 2015 and the 19th day of June, 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. (a) All mitigation measures set out in the Environmental Impact Statement (EIS) and Natura impact statement (NIS) (as revised), submitted as part of this planning application on the 23rd day of July, 2014 and as amended on the 16th day of April 2015 shall be implemented in full (except as may be required by terms of conditions herein).
- (b) Prior to the commencement of development, the developer shall submit a schedule of mitigation measures identified in the Environmental Impact Statement and Natura impact statement (including amendments) to the planning authority for its written agreement.

Reason: To safeguard the amenities of the area and in the interest of orderly 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 proposed development, the Board considered it reasonable and appropriate to specify a period of validity of the permission in excess of five years.

4. The permission shall be for a period of 25 years from the date of the commissioning of the wind turbines. The wind turbines and related ancillary structures shall then be decommissioned and removed 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 operations in the light of the circumstances then prevailing.

5. Turbines T10 and T13 shall be omitted from the proposed development.

Reason: In view of the proximity of the Mullaghanish to Musheramore Mountains Special Protection Area (Site Code 004162) where the Hen Harrier is identified as the Special Conservation Interest, the relatively high level of foraging activity by this species on the subject lands as recorded in the submitted documents and its recorded failed attempt to breed in the general vicinity of these two turbines it is considered necessary to omit T10 and T13 from the present proposed development to safeguard potential nesting areas for the Hen Harrier from unnecessary or undue disturbance pending the closure of the conifer plantation canopy.

6. At all bridge crossings on the grid connection cable route the cable shall be buried within the bridge deck, or affixed to the bridge structure. Details to ensure protection of architectural heritage shall be submitted to, and be agreed in writing with, the planning authority in advance of construction.

Reason: In the interest of clarity, to protect the surface water drainage network and architectural heritage in the area.

7. Prior to construction works being carried out between mid-March and mid-August, a survey for breeding Hen Harriers shall be carried out by a competent, experienced ornithologist. The survey will cover the area within a boundary of 500 metres of the works to be carried out during the above period. It will be the responsibility of the ornithologist, based on his or her experience and/or professional opinion, to ensure that the survey methodology is sufficient to ensure that a hen harrier breeding site will not be overlooked. Taking into account the results of this survey, no construction works shall be carried out during the above period within 500 metres of a pre-nesting breeding site and/or nest.

Reason: To avoid disturbance to breeding Hen Harrier, a species listed in Annex I of the EU Birds Directive.

8. Prior to the commencement of development, the developer shall submit a programme for post construction monitoring of this site, and the mitigation foraging habitat sites for Hen Harrier, which shall be agreed in writing with the planning authority. This plan shall be prepared in accordance with Scottish Natural Heritage Guidelines, and shall provide for comparative monitoring at a baseline site, and for carcass searches. This plan shall be prepared by a suitably qualified/experienced ornithologist and shall provide monitoring by a suitably qualified/experienced ornithologist.

Reason: To assess success of Hen Harrier mitigation measures to be implemented on site.

9. Prior to any development commencing, an agreement shall be entered into committing to the management of the habitat mitigation areas identified on the submitted Hen Harrier Foraging Mitigation areas Map number Figure 5.2.2 habitat map (received by the planning authority on the 16th day of April, 2015) for the operational period of the wind farm. Before the development herein permitted commences, or, at the discretion of the planning authority, within such further period or periods of time as it may nominate in writing provision to this effect shall be embodied in an agreement between the landowner and the planning authority pursuant to section 47 of the Planning and Development Act, 2000.

Reason: In order to ensure satisfactory habitat for, and management of, the Annex 1 listed species Hen Harrier.

10. (a) A buffer zone of 10 metres shall be established around the newly identified limekiln in advance of construction by a suitably qualified archaeologist. The buffer zone shall be cleared of vegetation and delimited using appropriate temporary boundary fencing and signage. No construction works, stockpiling of topsoil, or any development, or landscaping and/or planting shall take place within the designated buffer zone. Subsequent to the completion of the development, the buffer zone shall remain around the Archaeological Monument. Planting within this buffer zone shall be limited to shallow-rooted plants and/or grass.
- (b) A buffer zone of 30 metres shall be established to Stone Row CO041-114 in advance of construction by a suitably qualified archaeologist. The trees within the buffer zone shall be sawn down and removed. The buffer zone shall be delimited using appropriate temporary boundary fencing and signage. No construction works, stockpiling of topsoil or any development, or landscaping and/or planting shall take place within the designated buffer zone. Subsequent to the completion of the development, the buffer zone shall remain around the Archaeological Monument. Planting within this buffer zone shall be limited to shallow-rooted plants and/or grass.

Reason: To preserve items of archaeological importance.

11. 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.

- 12. All clear felling of forestry associated with the development shall be undertaken in accordance with the appropriate Forest Service Guidelines. All necessary licences shall be obtained from the forest service for any felling operations on site.

Reason: In the interest of orderly development and to protect the amenities of the area.

- 13. 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 including areas identified for the storage of construction waste,
- (b) location of area for construction site offices and staff facilities,
- (c) 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,
- (d) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,

- (e) 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,
- (f) details of appropriate mitigation measures for construction-stage noise, dust and vibration, and monitoring of such levels,
- (g) 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,
- (h) appropriate provision for re-fuelling of vehicles,
- (i) off-site disposal of construction waste and construction-stage details of how it is proposed to manage excavated soil,
- (j) means to ensure that surface water run-off is controlled in accordance with the mitigation measures proposed in the submitted documents, and
- (k) details of the intended hours of construction.

Prior to the commencement of construction, proposals for the environmental monitoring of construction works on site by an ecologist and by an environmental scientist or equivalent professional, including the monitoring of the implementation of construction-stage mitigation measures, and illustrating compliance with the requirements set out above, 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.

14. Prior to the commencement of development, a detailed reinstatement programme providing for the removal of all turbines and ancillary structures shall be submitted to the planning authority for written agreement. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the masts and turbines concerned, shall be dismantled and removed from the site. The site shall be reinstated in accordance with the said programme and all decommissioned structures shall be removed within three months of decommissioning.

Reason: To ensure the satisfactory completion of the project.

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 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.

Reason: In the interest of air traffic safety.

16. Wind turbine noise arising from the proposed development, by itself or in combination with any other permitted wind energy development in the vicinity, shall not exceed the greater of:
- (a) 5 dB(A) above background noise levels or,
 - (b) 43 dB(A) $L_{90,10min}$

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 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.

17. (a) The wind turbines, including tower and blades, 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 without a prior grant of planning permission.

Reason: In the interest of visual amenity.

18. As far as is practicable all deliveries to/from the site including all construction traffic shall be restricted to National and Regional routes and to specific sections of local roads as identified in the submission as the Eastern and Western Routes. In particular construction/delivery/service traffic will not be permitted on the L-5341 and L-5355 (except for staff cars and light vans), L-1126, L-1125, L-1210 east of Ballyboneill, L-5257, L-5256 south of the Western entrance to the site, L-52561, L-5255, L-5346 north of the Eastern entrance, L-5345, L-1211 south of junction with L-5346, and generally on any other local roads.

Reason: In the interest of traffic safety.

19. (a) Before development commences, full details of a Traffic Management Plan (TMP) shall be submitted to, and agreed in writing with, the planning authority. The Traffic Management Plan shall be prepared by the developer in consultation with An Garda Síochána and where appropriate in liaison with local residents and businesses. The Traffic Management Plan shall take cognisance of updated route assessments undertaken in the knowledge of the make and model of turbine being installed and shall also take account of departure routes and manoeuvres for delivery and transport vehicles.
- (b) The Traffic Management Plan shall be reviewed/updated as required by the planning authority during the construction phase of the development and temporary or localised traffic management plans shall be prepared and implemented as required by the Area Engineer.

Reason: In the interest of orderly development and road safety.

20. Prior to commencement of works on site, the developer shall submit at his own cost a bridge survey/report to the satisfaction of the planning authority, prepared by a chartered engineer, of structures on the proposed access routes incorporating an assessment of the current structural condition and geometry and adequacy or otherwise of each structure to cope with the proposed loading and traffic associated with this development. The report shall outline any proposed consequent remedial actions to facilitate the development. Any such works may be subject to licence, permit, or separate planning permission.

Reason: In the interest of preserving the standard of surrounding public roads.

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

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

22. (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) Within 12 months of commissioning of the proposed wind farm, a report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority and submitted to the planning authority for its written approval. The report shall indicate the level of compliance achieved with the above requirements. The developer shall outline proposed measures to address any recorded non-compliances, including control of turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

23. (a) 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 that 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.

- (b) 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: In the interest of traffic safety and the proper planning and sustainable development of the area, and to ensure satisfactory reinstatement of the site.

24. 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 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.