

# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

**Kerry County**

**Planning Register Reference Number: 14/571**

An Bord Pleanála Reference Number: PL 08.245464

**APPEAL** by An Taisce of The Tailors' Hall, Back Lane, Dublin against the decision made on the 13th day of August, 2015 by Kerry County Council to grant subject to conditions a permission to March Winds Limited care of Malachy Walsh and Partners of Reen Point, Blennerville, Tralee, County Kerry in accordance with plans and particulars lodged with the said Council.

**PROPOSED DEVELOPMENT:** Three number wind turbines (with a maximum height of up to 125 metres), provision of two number new site entrances, the provision of new and upgraded internal site service roads, underground cabling and all associated infrastructure. A ten year planning permission is being sought to construct the development; all in the townland of Beennaspuck, Kilmorna, Listowel, County Kerry as amended by the revised public notice received by the planning authority on the 19<sup>th</sup> day of June, 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

In making its decision the Board had regard, inter alia, 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 Wind Energy Development Guidelines for Planning Authorities 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 Kerry County Development Plan 2015-2021 and the location of the proposed development in an area zoned as a “Strategic Site Search Area” for the consideration of wind energy developments under the County Kerry Renewable Energy Strategy 2012,
- (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 and Environmental Impact Statement Addendum submitted by the applicant,
- (h) the Natura impact statement and revised Natura impact statement submitted by the applicant,
- (i) the further information submitted by the applicant to the Board on the 28<sup>th</sup> day of October, 2016,
- (j) the submissions made in the course of the planning application and appeal, and
- (k) the Inspector’s report dated the 22<sup>nd</sup> day of February, 2016 and addendum report dated the 8<sup>th</sup> day of February, 2017.

### *Appropriate Assessment*

Having regard to the nature, scale and extent of the proposed development, the Natura impact statement submitted with the application, the revised Natura impact statement submitted to An Bord Pleanála on the 28<sup>th</sup> day of October, 2016 and the mitigation measures contained therein, the submissions on file and the Inspector's assessment, the Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment and completed an appropriate assessment of the impacts of the proposed development on nearby Natura 2000 sites, specifically the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code 004161). In completing the appropriate assessment the Board accepted and adopted the conclusions of the Planning Inspector in respect of the potential effects of the proposed development on the aforementioned Natura site, having regard to the site's conservation objectives.

The Board was satisfied that, subject to the implementation of the identified mitigation measures and on the basis of the information available, the proposed development, either individually or in combination with other plans or projects, would not adversely affect the integrity of any Natura site, in view of the conservation objectives of those sites.

### *Environmental Impact Assessment*

The Board considered that the Environmental Impact Statement submitted with the application, the Addendum Environmental Impact Statement submitted to An Board Pleanála on the 28<sup>th</sup> day of October, 2016 supported by the further information submitted to the planning authority, the report, assessment and conclusions of the Inspector with regard to this file and other submissions 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 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 and concluded that, subject to the implementation of the mitigation measures proposed, the effects of the proposed development on the environment would be acceptable.

## *Conclusions*

It is considered that, subject to compliance with the conditions set out below, the proposed development would accord 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 visual amenities or landscape character of the area, would be acceptable in terms of traffic safety and convenience, would not create an unacceptable risk of environmental pollution or have an adverse effect on the ecology of the area, and would not otherwise 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 19<sup>th</sup> day of June 2015 and by the further plans and particulars received by An Bord Pleanála on the 28<sup>th</sup> day of October, 2016, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

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

2. The mitigation measures identified in the Environmental Impact Statement and addendum to the Environmental Impact Statement and Natura impact statement and revised Natura impact statement shall be implemented in full by the developer. Where the conditions set out 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 developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate surveys of this site for the Hen Harrier. Details of the surveys to be undertaken shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To monitor the impact of the development on the local population of the Hen Harrier.

4. The developer shall review usage by birds of the wind farm site and document bird casualties through an annual monitoring programme, which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This programme shall be developed in consultation with the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, and shall cover the entire period of the operation of the wind farm.

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

5. A protocol for annual reports on the impact of the windfarm on wild birds in the vicinity with particular reference to the Hen Harrier shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for as long as the windfarm is operational.

**Reason:** To allow full monitoring of the ecological impact of the proposed development with particular reference to species scheduled under the Wildlife Act and the EU Habitats and Birds Directives.

6. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

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

7. 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, the Environmental Impact Statement Addendum and the submissions made in connection with the planning application and with the appeal shall be submitted to the planning authority for agreement. 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 Site Drainage Management Plan, in accordance with the proposals set out 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, shall 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,
  - (d) a programme for the ongoing monitoring of water quality during the construction period,
  - (e) 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
  - (f) 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) which shall be carried out to the written satisfaction planning authority.

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

8. Details of the road network to be used by construction traffic and by the long-term maintenance traffic shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Pre and post construction surveys on all haulage routes leading to the development shall be undertaken by the developer in conjunction with the planning authority so as to ensure the structural integrity of the road network leading to the site.

**Reason:** In the interest of traffic safety and to protect public property.

9. A traffic management plan shall be prepared by the developer, and submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

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

10. 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 to a member of staff of the planning authority at the site.

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

11. (1) Road widening/strengthening works shall be carried out by the planning authority on the L-10071 local road at the developer's expense.  
  
(2) Improvement works to the junction of the R523 regional road with the L-10071 local road shall be carried out by the planning authority at the developer's expense.

- (3) The developer shall make all necessary arrangements with the affected landowners for any junction or road widening works.

The cost of the works shall be agreed with the relevant planning authority and the required monies shall be lodged with the planning authority prior to any works commencing.

**Reason:** In the interests of traffic safety and to protect public property.

12. 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.

13. The wind turbines including masts and blades, and the anemometer mast, shall be finished externally in a colour to be agreed in writing with the planning authority prior to commencement of development.

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

14. Noise mitigation measures outlined in the Environmental Impact Statement 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:

- (i) 5 dB(A) above background noise levels, or
- (ii) 43 dB(A) L90,10min

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.

- 15. (1) 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.
- (2) 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. (1) Cables within the site shall be laid underground.
- (2) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
- (3) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.
- (4) The developer shall be liable for the cost of full road restoration along any public roads where the cabling/ducting will be installed.

**Reason:** In the interest of visual amenity and traffic safety.

17. Facilities shall be installed to minimise interference with radio or television reception in the area. Details of the facilities to be installed shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines.

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

18. 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.

19. Surface water drainage arrangements for the proposed development shall comply with the requirements of the planning authority.

**Reason:** In the interest of public health.

20. Silt traps shall be provided on all surface water drainage channels. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To prevent water pollution.

21. Landscaping of the site shall be carried out in accordance with a landscaping scheme, details of which shall be submitted to and agreed in writing with, planning authority prior to commencement of development.

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

22. Soil, rock and sand excavated during construction shall not be left stockpiled on site following completion of works. Details of 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 the visual amenities of the area.

23. 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.

24. 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 completion of road works 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 completion of road works.

25. 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.

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**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2017.**