

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Donegal County

Planning Register Reference Number: 13/51404

An Bord Pleanála Reference Number: PL 05E.245588

APPEAL by ProVENTO Ireland Public Limited Company care of Canavan Associates Limited of 23 Prince's Street, Derry, Northern Ireland against the decision made on the 10th day of September, 2015 by Donegal County Council to refuse permission.

PROPOSED DEVELOPMENT: Construction and operation of four number wind turbines with maximum blade diameter of 93 metres and a maximum blade tip height of 126.5 metres, external wind turbine transformers, communications antennae, an electrical control building, turbine hardstands, a temporary contractor's compound, new access tracks and the upgrade of existing tracks, a new site entrance, drainage works including drainage channels and silt traps along the access track, underground electrical cables, a permanent meteorological mast 80 metres in height, and all ancillary development and associated site development works at Crilly Townland, Tullylinn, Pettigoe, County Donegal. The proposed development includes an access off Seegronan Road, Killeter, Castlederg, County Tyrone, Northern Ireland and proposed temporary road widening and improvement works on sections of the transport route in Northern Ireland along Seegronan Road and Crilly's Hill Road within Meenamullan, Seegronan, Crilly's Hill and Killeter Townlands, Killeter, Castlederg, County Tyrone, Northern Ireland. Planning permission of 10-years duration is sought, at Crilly Townland, Tullylinn, Pettigoe, County Donegal, as amended by the further public notice received by the planning authority on the 13th day of January, 2014.

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) transboundary considerations and consultations, as well as other consultations carried out during the course of the application and appeal
- (d) the provisions as set out in the current Donegal County Development Plan, including those regarding wind energy development as set out in Section 7.2.3 of that Development Plan,
- (e) the character of the landscape in the surrounding area and the topography surrounding the site,
- (f) the pattern of development in the area including existing and permitted wind energy developments,
- (g) the distance to dwellings or other sensitive receptors from the proposed development,

- (h) 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,
- (i) 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 together with mitigation measures outlined therein,
- (j) the proximity and availability of a grid connection to serve the proposed development and
- (k) the report of the Inspector.

Appropriate Assessment

The Board considered the Natura impact statement submitted with the planning application, the documentation submitted at appeal stage, the submissions on file and the Inspector's report and completed a screening for 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 (which included sites in Northern Ireland). The Board concurred with the Inspector's view (paragraph 13.4.22) that significant impact on the qualifying interests associated with the Lough Nageage Special Area of Conservation (Site Code 002135) and the River Foyle and Tributaries Special Area of Conservation (Site Code UK0030320) cannot be ruled out at screening stage.

In completing the Appropriate Assessment, the Board accepted and adopted the Inspector's Appropriate Assessment (paragraph 13.4.28) of his report 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 Environmental report 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 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 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 seriously injure the visual amenities or adversely affect the landscape character of the area, would not seriously injure the residential amenities of the area, would not be likely to have a significant detrimental effect on ecology or protected species would be acceptable in terms of traffic safety and convenience. The Board further concluded that, subject to implementation of the mitigation measures proposed, the effects on the environment of the proposed development would be acceptable. 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 and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 25th day of June, 2014 and as amended by the further plans and particulars received by An Bord Pleanála on the 7th day of October, 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 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. Monitoring of the construction phase shall be carried out by a suitably qualified professional to ensure implementation of all mitigation measures contained in the submitted Environmental Impact Statement, additional information and Stage 2 Appropriate Assessment. The precise nature of the monitoring shall be agreed with the planning authority in writing. Within three months of the completion of construction, a report containing the results of monitoring shall be submitted to the planning authority and National Parks and Wildlife Services, and a copy shall be placed on the public file.

Reason: In the interest of protecting the ecology of the area.

4. 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.

5. 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.

6. 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. Surveys shall also identify breeding birds or nesting sites prior to commencement of development to judge if construction or decommissioning activities are likely to disturb breeding attempts. 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.

7. Prior to the commencement of development, the developer shall submit to, and agree in writing with, the planning authority management structures for administering a Community Benefit Fund which shall be in accordance with the documentation submitted in the Environmental Impact Statement

Reason: To safeguard the amenities of the area.

8. A traffic/roads management plan for the construction phase of the development shall be agreed with the planning authority prior to the development commencing on site. Details shall include proposals for the reinstatement of the public road network and associated property upon completion of the development and in the event of damage occurring during the construction phase. All such damage shall be made good to the satisfaction of the planning authority.

Reason: To ensure a proper standard of development and to safeguard the amenities of the area.

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. 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.

11. 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.

12.
 - (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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

19. 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.