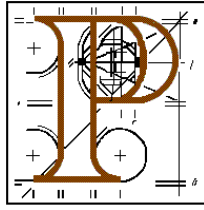


# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

**Kerry County**

**Planning Register Reference Number: 15/341**

An Bord Pleanála Reference Number: PL 08.245921

**APPEAL** by Board of Management of Killahan National School and concerned residents care of Gerard Doyle of Killahan, Abbeydorney, County Kerry against the decision made on the 26<sup>th</sup> day of November, 2015 by Kerry County Council to grant subject to conditions a permission to Coillte Teoranta care of Jennings O'Donovan and Partners Limited of Finisklin Business Park, Sligo.

**PROPOSED DEVELOPMENT:** Erection of a single electricity generating wind turbine with a hub height of up to 65 metres and a rotor diameter of up to 55 metres giving an overall tip height of up to 92.5 metres with associated hardstand area, control building, upgrade existing forestry access track and site works, all at Aghamore North Townland, Causeway, County Kerry.

## **DECISION**

**REFUSE permission for the above proposed development based on the reasons and considerations set out below.**

## **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## REASONS AND CONSIDERATIONS

Having regard to –

- (a) the 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 Guidelines for Planning Authorities on Wind Energy Development issued by the Department of the Environment, Heritage and Local Government in 2006,
- (c) the provisions of the Renewable Energy Strategy for County Kerry, 2012
- (d) the provisions of the Kerry County Development Plan 2015-2021, including objectives EP-11 and EP-12 and the designation of the area as one where wind energy development is open to consideration,
- (e) the character of the landscape of the area,
- (f) the distance to dwellings and other sensitive receptors from the proposed development,
- (g) 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,
- (h) the Environmental Impact Statement and further information submitted by the applicant, and
- (i) the submissions made in the course of the planning application, and
- (j) the report of the planning inspector,

It is considered that the proposed development, subject to compliance with the conditions set out below, would comply with national energy policy and with national and local planning policy in relation to wind energy development and the protection of landscapes and scenic routes. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **Appropriate Assessment**

The Board noted the Appropriate Assessment Screening Report submitted with the application and the Appropriate Assessment Screening Report carried out by the Planning Authority and the Appropriate Assessment Screening determination carried out by the Inspector. The Board concurred with the Inspector's determination, and adopted her conclusions and recommendations in this regard. The Board was, therefore, satisfied, having regard to the nature, location and scale of the subject development, and in the light of the mitigation measures set out in the applicant's Environmental Report, which would constitute normal construction practice, that the construction of the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on the Lower River Shannon Special Area of Conservation (site code 002165), or on any other European sites, in view of their conservation objectives.

## **Environmental Considerations**

The Board considered that the Environmental Report submitted with the application, supported by the further information submitted to the planning authority, the Grid Connection Report incorporating the grid connection proposed, the reports and conclusions of the Inspector with regard to this file and other submissions on file, were adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development. The Board 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 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. The Board agreed with the Inspector that the proposed development would not be likely to have significant effects on the environment.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the above mentioned policies and did not consider that the proposed development represented a material contravention of the Development Plan given the conflicting objectives of the Development Plan and the adopted Renewable Energy Strategy 2012

## 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 30<sup>th</sup> day of October 2015, except as may otherwise be required in order to comply with the following conditions. In particular the mitigation measures identified in the environmental report and grid connection report and the further information shall be implemented in full by the developer. 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 appropriate period during which the development hereby permitted may be carried out shall be ten years from the date of this order.

**Reason:** Having regard to the nature and extent of the proposed development and the planning history of the site, the Board considered that ten years was reasonable given the nature and complexity of the development concerned.

3. The permitted windfarm shall operate for no more than 25 years from the date on which electricity is first exported from it or from date of the expiry of the appropriate period, whichever is the sooner.

**Reason:** To clarify the nature of authorised development in accordance with the details submitted with the application.

4. Noise levels emanating from the authorised development following commissioning, when measured externally at noise-sensitive locations, shall not exceed the greater of 45 dB(A)L90, 10 min or 5 dB(A) above background levels between the hours of 0700 and 2300, or 43 dB(A)L90, 10 min between 2300 and 0700. All noise measurements shall be carried out in accordance with ISO Recommendation R1996:2007: Acoustics – Description and Measurement of Environmental Noise.

The noise mitigation measures described in the environmental report shall be implemented in full. Prior to the commencement of development, the developer shall agree a noise compliance monitoring programme for the operational wind farm with the planning authority. The operator shall maintain the programme and make it available for inspection by the planning authority.

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

5. 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. The measures to mitigate the impact of shadow flicker described in the environmental report shall be implemented to ensure that any turbines which might cause an exceedance of this limit are stilled. Prior to the commencement of the export of electricity from the proposed windfarm, the developer shall submit certification from a suitably qualified person who was not previously engaged in the construction of the windfarm that the equipment necessary to implement those measures has been properly installed and is functional

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

6. Prior the commencement of the operation of the authorized windfarm, the developer shall inform the planning authority of the name and address of the person who shall occupy the site as its operator and who shall be responsible for the subsequent decommissioning of the windfarm and compliance with the various other conditions attached. The operator shall inform the planning authority if there is any change in these details and provide the name and address of any new operator at least 3 months before the latter person assumes responsibility for the windfarm. There shall only be a single operator of the entire authorised windfarm at any one time.

**Reason:** To facilitate the enforcement of the various conditions of this permission that pertain to the operation and decommissioning of the authorised development.

- 7 The site shall be landscaped and the visual impacts screened in accordance with a comprehensive scheme of landscaping, details of which 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 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.

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 the satisfactory reinstatement of the site and to prevent an accumulation of obsolete functional structures in the interest of orderly development.

9. The construction of the proposed development shall be carried out in accordance with a Construction and Environment Management Plan prepared having regard to CIRIA Guideline C848 which shall set out a construction method statement and timetable for all works and measures that are integral to the proposed development. The plan shall be submitted and agreed in writing with the planning authority prior to the commencement of development.

The Construction and Environment Management Plan shall include a comprehensive construction-stage drainage report and management plan to include the following -

- (a) details of the proposed water monitoring protocol and drainage inspection regime,
- (b) full details of measures for the control of drainage during and after construction (including tree-felling prior to construction), including the use of settlement ponds, swales and silt traps, and measures for the control of run-off from temporary spoil storage areas,
- (c) details of the nature of all materials used in constructing access tracks to the turbines,
- (d) full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction, and
- (e) details of all aspects of the management of excess spoil, such that slope stability measures and prevention of water pollution are fully implemented. Soil, rock, peat and sand/gravel excavated during construction shall not be left stockpiled on site following completion of works.

**Reason:** In the interest of environmental protection and orderly development.

10. Prior to the commencement of development, the following details shall be submitted to, and agreed in writing with, the planning authority –
- (a) a Transport Management Plan, including details of the road network/haulage routes and the vehicle types to be used to transport materials and parts on and off site,
  - (b) a condition survey of the roads and bridges along the haul routes to be carried out at the developer's expense by a qualified engineer both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes and, in particular, regional and local roads to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority prior to commencement of development,
  - (c) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority,

- (d) detailed arrangements for temporary traffic arrangements/controls on roads, and
- (e) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.

All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

**Reason:** To protect the public road network and to clarify the extent of the permission in the interest of traffic safety and orderly development.

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

**Reason:** In the interest of road traffic safety and the proper planning and sustainable development of the area.

12. The construction of the development shall not give rise to emissions of dust that exceed 350mg/m<sup>2</sup>/day, or emissions of noise that result in recorded levels at the facades of houses above 65 dB(A) LAeq, 1 hour. The hours of work shall normally be restricted to between 0700 and 1900 hours Monday to Saturday and not at all on Sundays or public holidays, unless the prior written agreement of the planning authority has been obtained. Prior to the commencement of development, the developer shall agree, in writing, with the planning authority a plan to control such emissions for the duration of the construction works. The plan shall include details of the method and locations for dust monitoring, measures to be implemented to reduce emissions and actions to be taken in the event of complaints.

**Reason:** In the interest of environmental protection and orderly development.



13. 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 prepare a report on the results of such monitoring to be submitted to the planning authority and to the Department of Arts, Heritage and the Gaeltacht,
  - (c) provide arrangements, acceptable to the planning authority, for the recording and removal of any archaeological material which the authority considers appropriate to remove. In particular, archaeological excavation shall be carried out at Areas of Archaeological Potential identified in the environmental report submitted,

A comprehensive report on the completed archaeological excavation shall be prepared and submitted to the planning authority and to the National Monuments Service within a period of six months or within such extended period as may be agreed with the planning authority.

**Reason:** In order to conserve the archaeological heritage of the site, it is considered reasonable that the developer should facilitate the preservation and protection or the preservation by record of any archaeological features or materials which may exist within it.

14. Cables within the site shall be laid underground. The wind turbines shall be geared to ensure that the blades rotate in the same direction. The colour and finishes of the turbines shall comply with the requirements of the planning authority.

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

15. Prior to commencement of development, details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority. Subsequently, the developer shall inform the planning authority and the Irish Aviation Authority of the coordinates of the 'as constructed' turbines and the highest point of the turbines.

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

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

**Reason:** In the interest of orderly planning and residential amenity.

17. 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            2016.**