

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

Kerry County

Planning Register Reference Number: 15/1044

An Bord Pleanála Reference Number: PL 08.246205

APPEAL by Deirdre Cremins of Meetinny, Rockchapel, County Cork against the decision made on the 27th day of January, 2016 by Kerry County Council to grant subject to conditions a permission to Peter O'Brien care of Wind Prospect Ireland Limited of The Hyde Building, The Park, Carrickmines, Dublin in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Construction of an underground grid connection and a short section of access track for the Cloghaneleskirt wind farm. This application is intended to amend a short section of the route of the underground grid connection granted permission under planning register reference number 2015/318, all at site in the townlands of Glantaunyalkeen and Cloghboola, County Kerry.

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

The Board had regard to:

- (a) the 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 2006,
- (c) the policies of the planning authority, as set out in the Kerry County Development Plan 2015-2021,
- (d) the general topography and landscape features of the site and the general area,
- (e) the nature and limited scale of the proposed development,
- (f) the planning history of the site, and
- (g) the submissions made in connection with the planning application and the appeal.

Appropriate Assessment Screening

In conducting a screening exercise for Appropriate Assessment, the Board considered the nature, scale and location of the proposed development, the Appropriate Assessment screening information, the documentation submitted in support of the application and appeal, the planning history of wind farm energy infrastructure in the vicinity of the site and the assessments of the Planning Inspector in relation to the potential for impacts on European Sites. In completing the screening exercise the Board concurred with the analysis and conclusions of the Planning Inspector and concluded that, by itself or in combination with other development in the area, likely significant adverse effects on European Sites (the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code 004161) and the Lower River Shannon Special Area of Conservation (Site Code 002165)) could not be ruled out in view of the site's conservation objectives and in relation to which sites a Stage Two analysis is required.

Appropriate Assessment

The Board completed an Appropriate Assessment in relation to potential impacts on Natura 2000 Sites having regard to the information submitted with the planning application and to the Natura Impact Statement submitted including mitigation measures proposed and to the Planning Inspector's Report and Supplementary Report and the submissions on file. The Board concluded that, on the basis of the information available that the proposed development, either individually or in combination with other plans or projects, would not adversely affect the integrity of the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code 004161) and the Lower River Shannon Special Area of Conservation (Site Code 002165) in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board noted that the planning authority had assessed the proposed development in relation to Environmental Impact Assessment and concluded that an Environmental Impact Statement was not required. The Board noted and adopted the Inspector's assessment which also concluded that an Environmental Impact Statement was not required, as the development proposed is not of a class specified in Schedule 5 of the Planning and Development Regulations, 2001, as amended. Having regard to criteria for determining whether a development would or would not be likely to have significant effects on the environment (Schedule 7 of the Regulations refers), the Board concurred with the Planning Inspector that the proposed development would not be likely to have significant effects on the environment.

Conclusions on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development, which involves limited physical intervention in the environment, would be in accordance with national and regional wind energy policies and guidelines, would be in accordance with the provisions of the Kerry County Development Plan 2015 – 2021, including policies in relation to wind energy, would not be visually dominant and would be acceptable within the receiving landscape, would not seriously injure the amenities of the area, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would 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, 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 Natura impact statement, and other particulars submitted with the planning application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

3. The construction of the development shall be managed in accordance with a comprehensive Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include:
 - (a) the appointment of a suitably qualified person to act as Environmental Manager for the project on a full time basis. This person shall be responsible for ensuring that all environmental control measures, shall be fully implemented and maintained,
 - (b) proposals for the protection of watercourses in the vicinity according to criteria to be set out in consultation with Fisheries Ireland,
 - (c) full details of all measures for the control of drainage during and after construction, including the use of settlement ponds and silt traps,
 - (d) full details for the control of run-off from temporary spoil storage areas,
 - (e) details of the nature of all materials used in constructing all temporary and permanent access tracks, and
 - (f) full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction.

For the avoidance of doubt, this management plan shall include all mitigation and management proposals contained in the Natura impact statement submitted to the planning authority and An Bord Pleanála.

Reason: In the interest of protecting watercourses and natural habitats and the prevention of environmental pollution.

4. Prior to any 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 shall cover the area within a boundary of 500 metres of the works to be carried out during the above period. It shall be the responsibility of the ornithologist, based on their experience and/or professional opinion, to ensure that the survey methodology (location of vantage points, length and timing of observations) 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 of a hen harrier, except with the written agreement of the National Parks and Wildlife Service.

Reason: To avoid significant disturbance to protected species.

5. Mitigation measures recommended in the Natura impact statement for the protection of water quality shall be implemented in full and in accordance with best practice guidelines (Construction Industry Research and Information Association guidelines). Wherever possible, clean water shall be drained separately from water affected by construction works. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site-clerk-of-works who shall report on compliance with the relevant mitigation measures. The clerk-of-works shall be empowered to halt works where it is considered that the continuation of works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or damage to a river candidate Special Area of Conservation, these reports shall be made available to the planning authority and on-site works shall cease until authorised to continue by the planning authority.

Reason: To avoid deterioration of habitat in the Lower River Shannon Special Area of Conservation (Site Code 002165).

6. Any excess peat excavated to create the access road and other infrastructure shall, where feasible without creating a significant risk of slippage, be formed into linear banks, but not side cast over existing heath, bog or rough grass within hen harrier foraging habitat. These linear banks shall be revegetated and/or replanted in such a manner and time to avoid excessive siltation of the drainage from the site and to provide areas of low scrub and heather cover in the medium term.

Reason: To avoid deterioration of habitat within the Special Protection Area.

7. 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.

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

Dated this day of 2017.