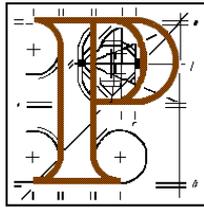


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

Cork County

Planning Register Reference Number: 15/00730

An Bord Pleanála Reference Number: PL 04.246353

APPEAL by Karin Kempf of Carrigdangan, Kilmichael, Macroom, County Cork and by Keel Energy Limited care of McCarthy Keville O'Sullivan Limited of Block 1, GFSC, Moneenageisha Road, Galway and by others against the decision made on the 22nd day of February, 2016 by Cork County Council to refuse permission to the said Keel Energy Limited in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: A ten year planning permission for development consisting of the construction of a wind farm of up to five number wind turbines, with a maximum ground to blade tip height of up to 140 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, underground electricity cabling, underground grid connection electrical cabling including all associated infrastructure, junction accommodation works for the proposed delivery route, one number electricity sub-station with control building and associated equipment, one number construction compound, upgrading of the existing site access junction, permanent signage and all ancillary site works, all in the townlands of Gurteen, Clogher, Derryleigh, Gortatanavally, Carrigdangan, Inchincurka, Johnstown, Haremont, Gorteenadrolane, Teeranassig, Clonmoyle, Dromleigh, Coolaclevane, Carrigboy, Cooldorragha, Deshure, Teerelton, Lisnacuddy, Reanacaheragh, Barnadivane, Barnadivane (Kneeves), and Garranereagh, County Cork.

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

Having regard to-

- (a) national policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions of greenhouse gases,
- (b) the provisions of the “Wind Energy Development Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in 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 2014, including the Cork County Council Wind Energy Strategy contained therein,
- (e) the location of the wind farm site in an area which is identified in the development plan 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 wind farm site, and the character of the landscape through which the proposed grid connection would be provided,
- (g) the characteristics of the site and of the general vicinity,
- (h) the pattern of existing and permitted development in the area, including other wind farms,
- (i) the distances from the proposed development to dwellings or other sensitive receptors,
- (j) the nature and scale of the proposed development and the range of mitigation measures set out in the documentation received, including the Environmental Impact Statement, the Natura Impact Statement and further submissions from the applicant to the Board,
- (k) the topography and character of the landscape in the area,
- (l) the planning history of the site and its surrounds,
- (m) the submissions and observations made in connection with the planning application and the appeal, including submissions in relation to the environmental and Natura impacts of the proposed development, and
- (n) the report of the Planning Inspector, including the examination, analysis and evaluation undertaken in respect of Appropriate Assessment and Environmental Impact Assessment.

The Board was satisfied that the information before it was adequate to undertake an Appropriate Assessment and an Environmental Impact Assessment in respect of the proposed development.

Appropriate Assessment Screening

In conducting the screening exercise for Appropriate Assessment, the Board considered the nature, scale and location of the proposed development, the Appropriate Assessment screening information contained within the submitted Natura Impact Statement, the documentation submitted in support of the application and appeal, the submissions on file, the planning history of wind farm development and energy infrastructure in the vicinity and the assessment of the Planning Inspector in relation to the potential for impacts on European sites. In completing the screening exercise, the Board adopted the Planning Inspector's report and concurred with his analysis and conclusions, and concluded that, by itself and in combination with other development in the area the proposed development would not be likely to have significant effects on European sites (including Saint Gobnet's Wood Special Area of Conservation (Site Code 000106) and Mullaghanish to Musheramore Mountains Special Protection Area (Site Code 004162)) in view of their conservation objectives other than The Gearagh Special Protection Area (Site Code 004109), The Gearagh Special Area of Conservation (Site Code 000108) and the Bandon River Special Area of Conservation (Site Code 002171) in relation to which sites a Stage Two analysis is required.

Appropriate Assessment

Having regard to the nature, scale and location of the proposed development, the Natura Impact Statement and the contents of same and the documentation submitted in support of the application and appeal, the submissions on file, the planning history of development in the vicinity and the report of the Planning Inspector, the Board undertook an Appropriate Assessment in relation to the potential impacts of the proposed development on The Gearagh Special Protection Area (Site Code 004109, the Bandon River Special Area of Conservation (Site Code 002171) and The Gearagh Special Area of Conservation (Site Code 000108). The Board accepted the examination, analysis and evaluation set out in the Planning Inspector's report and concurred with his conclusions and adopted his report. The Board, therefore, concluded that by itself or in combination with other plans or projects, including the grid connection route, the proposed development would not adversely affect the integrity of these European Sites in view of the sites' conservation objectives.

Environmental Impact Assessment

The Board undertook an Environmental Impact Assessment of the proposed development, taking into consideration the nature, scale and location of the proposed development, the Environmental Impact Statement and the documentation submitted in support of the application and appeal, the submissions made on file, including those from the Department of Arts, Heritage and the Gaeltacht, the planning history of development in the vicinity and the report of the Planning Inspector. It is considered that the Environmental Impact Assessment, together with the documentation on file identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. The Board completed an Environmental Impact Assessment in relation to the proposed development. The Board concluded that the effects on the environment would be acceptable by itself and cumulatively with other development in the vicinity, including other wind farms and the proposed grid connection route, subject to the implementation of the mitigation measures proposed and to compliance with the conditions as set out below. In undertaking this assessment, the Board adopted the report and conclusions of the Planning Inspector.

Conclusions on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would accord with the national and regional wind energy policies and guidelines, would be in accordance with the provisions of the Cork County Development Plan 2014, including the policies set out therein in relation to wind energy, would not be unduly visually dominant and would be acceptable within this landscape, would not seriously injure the amenities of the area or of residential property in the vicinity, would not give rise to a risk of pollution, would not detract from archaeological features or from architectural heritage, would be acceptable in terms of traffic safety and convenience and would not be prejudicial to public health. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board noted that the planning authority had decided to refuse permission because it was considered that the proposed development would constitute a material contravention of the Development Plan. However, having considered the Planning Inspector's report the Board considered that the proposed development would not materially contravene Development Plan policy ED 3-5. Furthermore, having regard to the siting, design and visual impact of the proposed wind farm the Board was satisfied that the proposed development would not seriously injure the visual or residential amenities of the area and would accord with national policy in relation to renewable energy and Government policy as expressed in the "Wind Energy Development Guidelines for Planning Authorities". Accordingly, the Board considered that, having regard to the provisions of Section 37(2)(b)(iii) of the Planning and Development Act, 2000, it was not constrained from granting planning permission in this instance.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application to Cork County Council, and as received by An Bord Pleanála by way of First Party appeal (on the 21st day of March 2016) and First Party response submissions to Third Party appeals and responses (on the 28th day of April, 2016), except as may otherwise be required in order to comply with the following conditions. In this regard,
 - (a) 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.
 - (b) Specifically, the mitigation measures described in the Environmental Impact Statement, the revised Environmental Impact Statement and Natura Impact Statement and other details submitted to the planning authority and to An Bord Pleanála shall be implemented in full during the construction, operation and decommissioning of the development.

Reason: In the interest of clarity.

2. The 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 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.

3. This permission shall be for a period of 25 years from the date of the commissioning of any 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 continuance for a further period.

Reason: To enable the planning authority to review its operations in the light of the circumstances then prevailing.

4.
 - (a) The permitted turbines shall have a maximum tip height of 140 metres. Details of the turbine design and height shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. 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.
 - (e) The access tracks within the site shall be surfaced in gravel or hard-core, either from the borrow pits on site or imported to the site from nearby quarries, and shall not be hard topped with tarmacadam or concrete.
 - (f) Roads, hard-standing areas and other hard-surfaced areas shall be completed to the written satisfaction of the planning authority within three months of the date of commissioning of the windfarm.

- (g) Soil, rock and other materials excavated during construction shall not be left stockpiled on site following completion of works. Excavated areas including the borrow pits and areas of peat placement shall be appropriately restored within three months of the date of commissioning of the wind farm, in accordance with details to be submitted to, and agreed in writing with, the planning authority.

Reason: In the interest of visual amenity, traffic safety and orderly development.

- 5. 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.

Reason: In the interest of air traffic safety.

- 6. 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) L90,10min

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, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation 1996 "Acoustics – Description, measurement and assessment of environmental noise". 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.

7. (a) Blasting operations at the borrow pits shall take place only between 1000 hours and 1700 hours, Monday to Friday, and shall not take place on Saturdays, Sundays or public holidays. Monitoring of the noise and vibration arising from blasting and the frequency of such blasting shall be carried out at the developer's expense by an independent contractor who shall be agreed in writing with the planning authority.
- (b) Prior to the firing of any blast, the developer shall give notice of his intention to the occupiers of all dwellings within 500 metres of the borrow pit concerned. An audible alarm for a minimum period of one minute shall be sounded. This alarm shall be of sufficient power to be heard at all such dwellings.

Reason: In the interests of public safety and residential amenity.

8. (a) Vibration levels from blasting shall not exceed a peak particle velocity of 12 mm/second, when measured in any three mutually orthogonal directions at any sensitive location. The peak particle velocity relates to low frequency vibration of less than 40 hertz where blasting occurs no more than once in seven continuous days. Where blasting operations are more frequent, the peak particle velocity limit is reduced to 8 millimetres per second. Blasting shall not give rise to air overpressure values at sensitive locations which are in excess of 125 dB (Lin)max peak with a 95% confidence limit. No individual air overpressure value shall exceed the limit value by more than 5 dB (Lin).
- (b) A monitoring programme, which shall include reviews to be undertaken at annual intervals, shall be developed to assess the impact of any blasts. Details of this programme shall be submitted to, and agreed in writing with, the planning authority prior to commencement of any quarrying works on the site. This programme shall be undertaken by a suitably qualified person acceptable to the planning authority. The results of the reviews shall be submitted to the planning authority within two weeks of completion. The developer shall carry out any amendments to the programme required by the planning authority following this annual review.

Reason: To protect the residential amenity of property in the vicinity.

9.
 - (a) The proposed development shall be fitted with appropriate equipment and software to suitably control shadow flicker at nearby dwellings, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
 - (b) 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.
 - (c) 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. 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.

10. Prior to 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.

Reason: In the interest of residential amenity and orderly development, and to prevent any interference with such services.

11. A pre-construction and post-construction monitoring and reporting programme for birds (particularly Hen Harrier and Merlin) shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The surveys shall be undertaken by a suitably qualified and experienced bird specialist. Surveys shall be completed annually for a period of five years following commissioning of the wind farm and copies of the reports to the planning authority shall also be submitted to the National Parks and Wildlife Service.

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

12. (a) Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the planning authority:
 - (i) a Transport Management Plan, including details of the road network/haulage routes, the vehicle types to be used to transport materials on and off-site, and a schedule of control measures for exceptionally wide and heavy delivery loads,
 - (ii) a condition survey of the roads and bridges along the haul routes and grid connection route to be carried out at the developer's expense by a suitably qualified person both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes 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,
 - (iii) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority/authorities,
 - (iv) detailed arrangements for temporary traffic arrangements/controls on roads, and

- (v) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.
- (b) All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of the use of each road as a haul route or grid connection route for the proposed development.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

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

13. Prior to commencement of development, a detailed reinstatement programme providing for the removal of all turbines and ancillary structures (but not turbine bases, access roads/tracks, cabling or the sub-station) shall be submitted to, and agreed in writing with, the planning authority. 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 agreed programme and all decommissioned structures shall be removed within three months of decommissioning.

Reason: To ensure satisfactory reinstatement of the site upon full or partial cessation of the project.

14. 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 or along the grid connection route. 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 or along the grid connection route.

15. 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.

16. The construction of the development shall be managed in accordance with a Construction Environmental 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 or the laying of the grid connection,
 - (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/peat,
 - (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.

17. Rock from the borrow pits shall be won only for the purposes of road/hardstand construction on the site, and shall not be sold or transported off site without a prior grant of planning permission.

Reason: In the interest of orderly development.

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 or by works carried out in relation to the laying of the grid connection, 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. 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 orderly development.

20. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000, as amended, in respect of works to the public road in the vicinity of the site which are required to facilitate the proposed development and which are undertaken by the local authority. The amount of the contribution 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 for determination. The contribution shall be paid prior to the commencement of the development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

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

Dated this day of 2016.