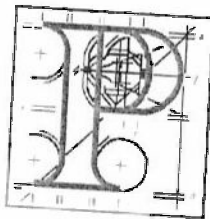


An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2016

Cork County

Planning Register Reference Number: 1506966

An Bord Pleanála Reference Number: PL04.246742

APPEAL by Sharon Clatworthy of Cleanrath North, Reananerree, Macroom, County Cork and by Kevin Corcoran of West Cork Ecology Centre, Mill Lane, Macroom, County Cork and by Cleanrath Windfarm Limited care of McCarthy Keville O'Sullivan Limited of Block 1, G.F.S.C., Moneenageisha Road, Galway and by others against the decision made on the 3rd day of June, 2016 by Cork County Council to grant subject to conditions a permission to the said Cleanrath Windfarm Limited in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: Ten year planning permission for development consisting of the construction of a windfarm of up to eleven wind turbines, with a maximum ground to blade tip height of up to 150 metres, upgrading of existing and provision of new internal access roads, provision of a wind anemometry mast (height up to 100 metres), two number borrow pits, underground electrical cabling, underground grid connection electrical cabling including all associated infrastructure, junction accommodation works for the proposed turbine delivery route and provision of a temporary roadway to facilitate turbine component deliveries, one number electricity sub-station with control building and associated equipment, one number construction compound, upgrading of the existing site access junctions, permanent signage, and all ancillary site works, all in the townlands of Cloontycarthy, Cleanrath North, Cleanrath South, Derreennacarton, Derrineanig,

Turnaspidogy, Milmorane, Coomlibane, Rathgaskig, Derragh, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha, and Lackabaun, County Cork. The planning application is accompanied by an Environmental Impact Statement and a Natura Impact Statement. The proposed development comprises the re-design of a windfarm at this location previously considered by Cork County Council and An Bord Pleanála under planning register reference number 11/5245 and PL 04.240801 respectively.

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 the Board in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard to the following:

- (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 – 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 2014-2020,

- (e) the location of the wind farm site in an area which is identified in the Cork County Development Plan 2014-2020 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 or any European site, 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 range of mitigation measures set out in the documentation received, including the Environmental Impact Statement, the Natura Impact Statement, the further information response submitted to the planning authority on the 12th day of April, 2016 and the further submissions from the applicant to the Board,
- (k) the planning history of the site and its surrounds,
- (l) 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 the related submissions made in respect of The Gearagh Special Area of Conservation (site code 000108) and Special Protection Area (site code 004109), and
- (m) the report of the planning inspector.

Appropriate Assessment Screening

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment carried out by the Inspector in respect of the identification of the five European sites, listed below, which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives.

- Mullaghanish to Musheramore Special Protection Area (Site code 004162);
- Mullaghanish Bog Special Area of Conservation (Site code 000390);
- The Gearagh Special Protection Area (Site code 004109);
- The Gearagh Special Area of Conservation (Site code 000108); and
- Saint Gobnet's Wood Special Area of Conservation (Site code 000106).

The Board agreed with the Inspector's screening out of Saint Gobnet's Wood Special Area of Conservation and Mullaghanish Special Area of Conservation on the basis of the conservation objectives for these sites, their separation distances from the appeal sites and the absence of any hydrological connectivity between the sites and the appeal site.

The Board concurred with and adopted the Inspector's conclusions that the only European sites with the potential for significant effects are Mullaghanish to Musheramore Special Protection Area (Site code 004162), The Gearagh Special Protection Area (Site code 004109) and The Gearagh Special Area of Conservation (Site code 000108).

Appropriate Assessment

The Board considered that the information before it, including the Natura Impact Statement submitted by the applicant, together with the submissions made by the parties to the appeal including those in respect of the Gearagh Special Area of Conservation and Special Protection Area, was adequate to allow for the carrying out of an appropriate assessment. In carrying out an appropriate assessment the Board considered:

- the nature of the proposed development,
- the mitigation measures proposed as part of the development,
- the conservation objectives for which The Gearagh Special Area of Conservation (site code 000108), The Gearagh Special Protection Area (site code 004109) and Mullaghanish-Muskeramore Special Protection Area (Site code 004162) are designated,
- the distances between the proposed site and these European sites and any other European sites, and
- the content of the Inspector's report.

The Board concurred with the Inspector's analysis in relation to these matters, and adopted his report and conclusions.

The Board concluded, beyond reasonable scientific doubt, that the proposed development (including the proposed grid connection), either individually or in combination with other plans and projects, would not adversely affect the integrity of these European sites, in view of those sites' conservation objectives, or of any other European sites.

Environmental Impact Assessment

The Board considered that the Environmental Impact Statement submitted with the application, the additional documentation submitted at application and appeal stages and all other submissions on file, were adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the proposed development. The Board adopted the Inspector's report on the environmental impact of the development and concurred with his conclusions. The Board completed an Environmental Impact Assessment and concluded that the proposed development, subject to compliance with the mitigation measures proposed, and subject to compliance with the conditions set out below, would not have unacceptable effects on the environment.

Proper Planning and Sustainable Development Considerations

It is considered that, subject to compliance with the conditions set out below, the proposed wind farm development would be in accordance with the National and County policies in respect of wind energy, would not seriously injure the visual or residential amenities of the area, would not have a significant adverse impact on the landscape or on the archaeological heritage of the area, would not give rise to any significant impacts on the ecology or the natural heritage of the area, 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.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by further plans and particulars submitted on the 12th day of April 2016, and as received by An Bord Pleanála by way of First Party appeal on the 29th day of June, 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, 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 phases 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 turbine. 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 150 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.

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

5. (a) The access tracks within the site shall be surfaced in 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. The quality of the material shall be to the written satisfaction of the planning authority.
- (b) 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 wind farm.
- (c) 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, protection of water quality and orderly development.

6. Details of any 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.

7. 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)

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. 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.

8. (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 the 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 interest of public safety and residential amenity.

9. (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 review to be 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 work 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.

10. (a) 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 – with the exception of participating landowners.

- (b) 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.

- (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.

11. 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.

12. Pre-construction and post-construction monitoring and reporting programmes for birds (particularly Hen Harrier and Merlin), otter, badger and Kerry slug shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The surveys shall be undertaken by suitably qualified and experienced specialists. 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 fauna and avifauna of the area.

13. (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 dealing with invasive species which are growing along the turbine delivery route and which may be disturbed to facilitate delivery of outsize loads,
 - (v) detailed arrangements for temporary traffic arrangements/controls on roads, and
 - (vi) 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.

14. A hydrological monitoring programme shall be established to demonstrate effectiveness of the proposed hydrological mitigation measures on river hydrology in the vicinity of the site. This shall include establishing permanent and automated flow monitoring points on the Toon and Lee catchments. Monitoring shall be carried out for at least one year prior to construction and for five years post commissioning of the wind farm. A comprehensive proposal for location, design, monitoring and reporting shall be submitted to, and agreed in writing, with the planning authority prior to the commencement of development. Details in respect of making the monitoring reports available for public inspection shall also be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

Reason: To demonstrate the effectiveness of mitigation measures on surface water flow with particular regard for the Gearagh Special Area of Conservation and to inform any future overall catchment management programme for this Special Area of Conservation.

15. 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 wind farm, or if the wind farm 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.

16. 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.

17. 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.

18. 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 materials 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 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.

19. Borrow pits shall be excavated to a depth not exceeding five metres below existing ground level. 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 clarity and of orderly development.

20. 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.

21. 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.

22. 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.

Nicholas Mulcahy

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

Dated this 19th day of MAY, 2017.

DECISION QUASHED