



An  
Bord  
Pleanála

**Board Order**  
**PL 08.248768**

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**Planning and Development Acts 2000 to 2018**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 17/300**

**Appeal** by Silverbirch Renewables Limited care of Malachy Walsh and Partners of Reen Point, Blennerville, Tralee, County Kerry against the decision made on the 30<sup>th</sup> day of May, 2017 by Kerry County Council to refuse permission to the said Silverbirch Renewables Limited for the proposed development.

**Proposed Development:** A ten-year permission for development consisting of 14 number wind turbines with a rotor diameter of up to 120 metres and a blade tip height of up to 150 metres above ground level, two number permanent meteorological masts, two number medium voltage substations, one number high voltage substation, thirteen number new site entrances comprising of seven number new and six number upgraded site entrances, three number borrow pits and adjacent repositories, the provision of new and upgraded internal site service roads and surface water management measures, temporary site compounds, all underground cabling and associated infrastructure necessary to construct the development. The development is located in the townlands of Barna (two number turbines), Knockageeha (one number turbine), Reanasup (two number turbines), Lisheen (one number turbine), Reaboy (three number turbines), Ballynahulla (five

number turbines), and Tooreengarrive, Killarney, County Kerry. An Environmental Impact Statement and Natura Impact Statement have been prepared and submitted as part of the application. All at Reanasup/Lisheen/Knocknageeha/Reaboy/Barna/Ballynahulla/Tooreengarriv, Killarney, 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**

Having regard to:–

- (a) national policy relating 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, as 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 Kerry County Development Plan 2015, including the Kerry County Renewable Energy Strategy contained therein,
- (e) the location of the wind farm site in an area which is identified in the Kerry County Development Plan 2015 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 and the topography of the surrounding the site,
- (g) the characteristics of the site and of the general vicinity,
- (h) the pattern of existing and permitted development in the area, including other windfarms,
- (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, as set out in the documentation received, including the Environmental Impact Statement, Natura Impact Statement, and supplementary information provided to the Board with the grounds of appeal,
- (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 the observations and submissions made in relation to the environmental and natura impacts of the proposed development and its grid connection, and
- (m) the report of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not have a significant adverse effect on the landscape or the visual or residential amenities of the area, would not adversely affect the natural heritage or the integrity of any European site, including Natura 2000 sites or any protected species, would not be prejudicial to public health, and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

### **Appropriate Assessment**

#### **Stage 1**

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Assessment and all the other relevant submissions and carried out both an appropriate assessment screening exercise and an appropriate assessment in relation to the potential effects of the proposed development on designated European Sites.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that –

- The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365),
- The Blackwater River Special Area of Conservation (Site Code: 002170),
- The Castlemaine Harbour Special Area of Conservation (Site Code: 000343),
- The Lower River Shannon Special Area of Conservation (Site Code: 002165),  
and
- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161)

are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

## Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites, namely The Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365), The Blackwater River Special Area of Conservation (Site Code: 002170), The Castlemaine Harbour Special Area of Conservation (Site Code: 000343), The Lower River Shannon Special Area of Conservation (Site Code: 002165), and The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161), in view of the sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment.

In completing the appropriate assessment, the Board considered, in particular, the following:

- i. the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- ii. the mitigation measures which are included as part of the current proposal, and
- iii. the conservation objectives for the European Sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' Conservation Objectives.

## 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. All of the environmental, construction and ecological mitigation measures set out in the Environmental Impact Statement, the Natura Impact Statement, and other particulars submitted with the application, including the 'Silverbirch Windfarm – Pearl Mussel (*Margaritifera*) Impact Assessment and Review of Proposed Mitigation Measures (Munster Blackwater catchment) Explanatory Addendum', shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order.

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

3. The proposed development shall be amended as follows:
  - (a) Turbine numbers T8 and T9, and their associated access roads and ancillary works, shall be omitted from the development.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To ensure the protection of the natural heritage of the site and to avoid any adverse effect on the local population of the Hen Harrier.

4. 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.

5. 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.

6. (a) The permitted turbines shall have a maximum tip height of 150 metres. Details of the turbine design, height and colour shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development.
- (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) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.
- (e) No advertising material shall be placed on or otherwise affixed to any structure on the site without a prior grant of planning permission.
- (f) The access tracks within the site shall be surfaced in suitable material, acceptable to the planning authority, and shall not be hard topped with tarmacadam or concrete.
- (g) 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.
- (h) 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, to details to be submitted to, and agreed in writing with, the planning authority.

**Reason:** In the interest of the amenities of the area.

7. 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.



8. Wind turbine noise arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed the greater of:
- (a) 5 dB(A) above background noise levels or
  - (b) 43 dB(A) L90,10min

when measured externally at dwellings or other sensitive receptors. All of the noise mitigation measures set out in the submitted documentation shall be fully complied with.

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 for the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with Respect to Community Response," as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the wind farm.

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

9. (a) The proposed development shall be fitted with appropriate equipment and software to suitably control shadow flicker at nearby dwellings, including control of turbine rotation, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to the 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. A similar report shall be provided by the developer to the planning authority at such time intervals as may be required 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 and prior to commissioning the turbines.

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

11. (a) Full details of the upgrading works to the existing site accesses and the associated road improvement works to be undertaken along the public road at the access points, including any road widening and strengthening, designed to facilitate the proposed development, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

- (b) Prior to the commencement of any other development works on the application site, the developer shall have completed, to the written satisfaction of the planning authority, the upgrading works to the existing site access arrangements and the associated road improvement works along the public road in accordance with condition 11 (a) above.
- (c) The provision of the required upgrading of the site access arrangements and the associated road improvement works on the public road at the accesses shall be undertaken at the expense of the developer.

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

- 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 exceptional wide and heavy delivery loads.
  - (ii) A condition survey of the roads and bridges along the haul routes 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/authorities 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.
  - (iv) Detailed arrangements for temporary traffic arrangements/controls on roads.
  - (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 each road's use as a haul 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 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.

14. 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.

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 and 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) detailed method statements for construction, including method statements for the excavation of turbine foundations, the excavation of rock from the borrow pits, the crossing of watercourses, and the side-casting of excavated peat at suitable locations,
  - (b) location of the site and materials compound(s), including areas identified for the storage of construction waste,
  - (c) location of areas for construction site offices and staff facilities,
  - (d) 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,
  - (e) details of on-site car parking facilities for site workers during the course of construction,
  - (f) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
  - (g) 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,
  - (h) details of appropriate mitigation measures for construction-stage noise, dust and vibration, and monitoring of such levels,
  - (i) 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,
  - (j) appropriate provision for re-fuelling of vehicles,
  - (k) off-site disposal of construction waste and construction-stage details of how it is proposed to manage excavated soil/peat,

- (l) means to ensure that surface water run-off is controlled in accordance with the mitigation measures proposed in the submitted documents,
- (m) proposals for the management of invasive species, and
- (n) 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. Prior to the commencement of construction, construction-stage details of proposals for the management of surface water (a Construction Stage Surface Water Management Plan) shall be submitted to, and agreed in writing with, the planning authority. The plan shall set out the detailed measures to be undertaken to protect water quality during construction, and shall include the following:
- (a) Construction-stage design of the proposed drainage management system shall be undertaken by a suitably qualified drainage engineer with experience of design and construction in similar environments.

- (b) All construction areas shall have measures implemented to control surface water. No direct connectivity (including pumping from excavations) is permitted between construction areas and watercourses, or drains connecting to watercourses, which shall be adequately protected by means of settlement ponds, silt bags/socks/tubes or silt fencing.
- (c) Settlement ponds shall be appropriately sized to cater for storm events, and shall be at least of two-stage design or used in train.
- (d) Settlement ponds shall be fitted with a penstock control or similar, to control the release of waters. Suitable coir or jute matting or similar shall be used where necessary.
- (e) Clear span structures only shall be provided at watercourse crossings; bog mats alone shall not be used to span crossings.
- (f) Silt fencing shall be used to protect crossings of watercourses and drains.
- (g) Spoil heaps shall be covered or protected with silt fencing.
- (h) Construction vehicles and machinery shall be restricted to site roads and hardstanding area, where operating off these areas, bog mats shall be used. A minimum of 50 metres separation distance shall be maintained to watercourses and any drains connecting to them.
- (i) Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site clerk of works or similar environmental/construction professional who will report on compliance with the relevant mitigation measures. A daily inspection programme of the surface water management system shall be established and recorded. In particular, the satisfactory operation of the settlement ponds shall be monitored.

**Reason:** To protect water quality during construction.



18. (a) The quality of water discharging to watercourses shall be such that water quality downstream in the vicinity of Freshwater Pearl Mussel populations does not materially deteriorate as a result of felling or construction relating to the proposed development, by itself or in combination with other development within the Blackwater catchment.
- (b) Proposals for a detailed programme of water quality monitoring throughout the construction period (including during any felling activities) consistent with the requirements set out in “Forestry and Freshwater Pearl Mussel Requirements – Site Assessment and Mitigation Measures”, to illustrate compliance with the above requirement and, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (c) Continuous turbidity monitors shall be installed upstream and downstream of the site during any felling activities and construction.

**Reason:** To protect water quality and aquatic ecology, including Freshwater Pearl Mussel.

19. (a) A pre-construction and post-construction monitoring and reporting programme for birds, including Hen Harrier, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, following consultation with the National Parks and Wildlife Service. 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.

- (b) No construction shall be undertaken within 500 metres of any Hen Harrier nest during the breeding season.

**Reason:** To ensure appropriate monitoring of usage of the area by birds.

20. Rock from the borrow pits shall be won only for the purposes of road/hardstanding 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, and to limit the use of materials from the borrow pits to the specific purposes for which application was made.

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 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 cabling, 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.

22. 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.

23. 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 the 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 the Board to determine the proper application of the terms of the Scheme.

