



An
Bord
Pleanála

Board Order
ABP-300686-18

Planning and Development Acts 2000 to 2018

Planning Authority: Westmeath County Council

Planning Register Reference Number: 17/6292

Appeal by Coole Wind Farm Limited care of McCarthy Keville O'Sullivan of Block 1, G.F.S.C., Moneenageisha Road, Galway against the decision made on the 12th day of December, 2017 by Westmeath County Council to refuse permission for the proposed development.

Proposed Development: Ten-year planning permission for a wind farm development with a 30-year operational life (from date of commissioning of the entire wind farm) and all associated works. The proposed development will consist of (a) up to 13 wind turbines with a tip height of up to 175 metres and all associated foundations and hardstanding areas, (b) one on-site electrical substation, (c) one number temporary construction compound, (d) all associated underground electrical and communications cabling connecting the turbines to the proposed on-site substation, (e) provision of new site access roads, upgrading of existing access tracks and associated drainage, (f) excavation of one number borrow pit, (g) construction of a link road between the R395 and R396 Regional Roads to facilitate turbine delivery, (h) junction improvement works to facilitate turbine delivery, including providing hardsurfacing at the N4 in the vicinity of its junction with the L1927 Local road

in the townland of Joanstown and the widening of the L1927 and L5828 junction in the townland of Boherquill, and (i) all associated site development works (including tree felling) in the townlands of Coole, Monkstown, Camagh (Fore by), Doon, Clonsura, Mullagh, Boherquill, and Joanstown, County Westmeath.

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

In arriving at its decision the Board had regard to:

- (a) European, national, regional and local policy and targets with regard to the development of alternative and indigenous energy sources (including for renewable energy, and wind energy in particular) and the minimisation of emissions from 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 June, 2006,
- (c) the policies of the planning authority as set out in the Westmeath County Development Plan 2014 -2020,
- (d) the location of the wind farm site primarily on flat peatlands, which are acknowledged within the Wind Energy Development Guidelines – Guidelines for Planning Authorities and the Midland Regional Planning Guidelines, 2010–2022, as having potential to accommodate large scale energy production in the form of wind farms,
- (e) the planning history of the site,
- (f) the character of the landscape in the area and the absence of any ecological designations on the site,
- (g) the characteristics of the site and of the general vicinity,
- (h) the pattern of existing and permitted development in the area,

- (i) the distance to dwellings and other sensitive receptors from the proposed development,
- (j) the Environmental Impact Assessment Report submitted,
- (k) the Appropriate Assessment Screening Report and Natura Impact Statement submitted,
- (l) the submissions made in connection with the planning application, and
- (m) the report and recommendation of the Inspector.

Appropriate Assessment

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Statement 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 considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

Stage 1

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that Lough Derravaragh Special Protection Area (Site Code: 004043), Garriskil Bog Special Protection Area (Site Code: 004102), Lough Iron Special Protection Area (Site Code: 004046) and Garriskil Bog candidate Special Area of Conservation (Site Code: 000679) are the European sites for which there is a likelihood of significant effects.

The Board was satisfied that all other European Sites could be screened out of any further assessment because of the nature and Conservation Objectives of the European Sites, the absence of relevant Qualifying Interests downstream of the works, the absence of an aquatic connection between the European Site and the windfarm site, or the location of the European site significantly outside of the core foraging range of birds detailed in the Scottish Natural Heritage Guidance Assessing Connectivity with Special Protection Areas (SPAs), (Version 3 – June 2016) document.

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 Lough Derravaragh Special Protection Area (Site Code: 004043), Garriskil Bog Special Protection Area (Site Code: 004102), Lough Iron Special Protection Area (Site Code: 004046) and Garriskil Bog candidate Special Area of Conservation (Site Code: 000679), 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 assessment, the Board considered, in particular,

- (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,
- (iii) the Conservation Objectives for these European Sites, and
- (iv) the views of the Department of Culture, Heritage and the Gaeltacht.

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 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 account:

- (a) the nature, scale and location of the proposed development,
- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,
- (c) the submissions made in connection with the planning application, and
- (d) the Inspector's report.

The Board considered that the EIAR, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and 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 and, in doing so, agreed with the examination, set out in the Inspector's report, of the information contained in the EIAR, the associated documentation submitted by the applicant, and submissions made in the course of the application, and adopted the Inspector's assessment in this regard.

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated as follows:

- impacts arising on population and human health as a result of noise and traffic nuisance during the construction phase, which would be mitigated by the temporary nature of the works phase, the use of specific roads, traffic management and construction management measures outlined in the Construction and Environmental Management Plan, and by conditions restricting noise levels and requiring detailed traffic management proposals to be submitted;
- impacts arising on lands and soil as a result of excavating peat during construction could increase risk of peat slide. Mitigation measures for peat stability, excavation, storage and removal, including monitoring of any movement, are detailed within the EIAR and the Construction and Environmental Management Plan;
- impacts on bats as a result of collision with turbine blades during operation, which would be mitigated by the positioning of the turbine blades sufficient distances from the riparian habitat, by seeking the advice from a qualified ecologist and following best practice and procedures during the operational phase;

- impacts on birds during the construction works, and as a result of collision with turbine blades during operation, which would be avoided as the project would not result in significant displacement or loss of habitat for birds and, by engaging a project ecologist, by the low risk of collision for bird species and by following best practice and procedures during the operational phase;
- impacts on hydrology and water quality arising from the potential indirect effects caused by increased run-off, such as soil erosion and sediment release into the receiving watercourses, which would be mitigated by the project design features including attenuation measures and the absence of in-stream works, and the measures outlined in the Construction and Environmental Management Plan, which includes Watercourse Crossing Methodologies and an outline Site Drainage Management Plan;

The Board concluded that, subject to the implementation of the mitigation measures set out in the EIAR, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment, by itself and in combination with other plans and projects in the vicinity, would be acceptable, having regard to its overall benefits.

Proper Planning and Sustainable Development

Notwithstanding Policy P-WIN 6 of the Westmeath County Development Plan 2014-2020, it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European energy policy, the National Planning Framework, the Regional Planning Guidelines for the Midland Region 2010–2022, and the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006, and would:

- make a positive contribution to the implementation of Ireland's national strategic policy on renewable energy and its move to a low energy carbon future,
- have an acceptable impact on the landscape,
- not seriously injure the residential or visual amenities of the area or of property in the vicinity,
- not adversely affect the archaeological or natural heritage, and
- 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.

Material Contravention

The Board noted the wording of the planning authority's decision to refuse permission on the grounds that the proposed development would materially contravene the development plan, and accepted that the provisions of section 37(2)(b) of the Planning and Development Act, 2000 apply. However, having regard to

- the Government White Paper entitled 'Ireland's Transition to a Low Carbon Energy Future, 2015-2030' published by the Department of Communications, Energy and Natural Resources in December 2015, which sets out that a 2020 national target of 40% renewables energy is likely to require a total of 3,500 - 4,000 megawatts of onshore renewables generation capacity,

- the confirmation by EirGrid (2017), that 2,600 megawatts of wind generation capacity was available in April 2017,
- the strategic importance of wind energy in meeting this target, and
- the scale and energy output from the proposed development (50MW),

the Board decided to grant permission, in accordance with the provisions of section 37(2)(b)(iii) of the 2000 Act, having considered that the proposed development would make a significant contribution towards the achievement of this Government target.

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 period during which the development hereby permitted may be carried out shall be ten years from the date of this Order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years

3. This permission shall be for a period of 25 years from the date of the commissioning of the 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 relevant planning authority to review the operation of the wind farm in the light of the circumstances then prevailing.

4. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars, including the Natura impact statement, 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.

Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority, a schedule of these mitigation measures and monitoring commitments, and details of a time schedule for implementation of the mitigation measures and associated monitoring.

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

5. Prior to commencement of development, a detailed environmental management plan for the construction and operational stages shall be submitted to and agreed in writing with the planning authority, generally in accordance with the proposals set out in the Environmental Impact Assessment Report. The environmental management plan shall incorporate the following:
- (a) a detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, construction hours and the management of construction waste;
 - (b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction and operation period;
 - (c) proposals in relation to public information and communication.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority.

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

6. No development shall commence until a landscaping and biodiversity scheme has been submitted to, and agreed in writing, with the planning authority to suitably screen the proposed development over the life of the facility. The scheme shall comprise a planting plan and schedule which shall include details of:
- (a) Existing and proposed ground levels in relation to an identified fixed datum;
 - (b) Existing area of tree cover, landscaping features and vegetation to be maintained, including areas along the R396 Regional Road and the L-5755 Local Road at the turbine site and at the borrow pit site. Measures shall be implemented to enable the hedgerow and tree line along the L-5755 to be maintained on both sides of the borrow pit entrance;
 - (c) Location design and materials of proposed boundary treatment, fences and gates, where applicable;
 - (d) Proposed soft and hard landscaping works including the location, species and size of trees/shrubs to be planted at the substation;
 - (e) Details of the reinstatement works, including timing and location of landscaping, to include native species for the temporary link road, the construction access off the R396, the borrow pit and upgrade locations along the haul route;
 - (f) Biodiversity enhancement proposals;
 - (g) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise agreed in writing with the planning authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise agreed in writing with the planning authority.

Reason: In the interests of visual amenity and to integrate the development into its surroundings.

7. The following design requirements shall be complied with:
 - (a) The hub height shall not exceed 105 metres, the tip height shall not exceed 175 metres, and the blade length shall not exceed 70 metres. Details of the turbine design, and hub height, tip height, and blade length complying with these limits, 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) Within one year of the commissioning of the turbines, the link road element of the development shall cease to be used and shall be decommissioned and reinstated, or covered and grassed, in compliance with the landscaping and biodiversity scheme required under condition number 6 of this order.

Reason: In the interests of clarity and visual amenity.

- 8. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

- 9. The operation of the proposed development, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

- (a) Between the hours of 0700 and 2300:

- (i) the greater of 5 dB(A) $L_{90,10min}$ above background noise levels, or 45 dB(A) $L_{90,10min}$, at wind speeds of 7 metres per second or greater

- (ii) 40 dB(A) $L_{90,10min}$ at all other wind speeds

- (b) 43 dB(A) $L_{90,10min}$ at all other times

where wind speeds are measured at 10 metres above ground level.

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 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.

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.
- (b) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to the 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, controlling 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. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise interference with telecommunications signals in the area. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines and following consultation with the relevant authorities.

Reason: In the interest of protecting telecommunications signals and of residential amenity

12. Details of any aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to commissioning of the turbines, the developer shall inform the planning authority, the Irish Aviation Authority and the Department of Defence of the 'as constructed' tip heights and co-ordinates of the turbines.

Reason: In the interest of air traffic safety

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 and 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. The plan should also contain details of how the developer intends to engage with and notify the local community in advance of the delivery of oversized 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 in writing 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 the protection of bridges to be crossed,
 - (v) detailed arrangements for temporary traffic arrangements/controls on roads,

- (vi) a phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.
- (b) Within three months of the cessation of the use of each haul route to transport material to and from the site, a road survey and scheme of works detailing works to repair any damage to these routes shall be submitted to the planning authority for agreement.
- (c) All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

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

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. In this regard, the developer shall:
- (a) notify the relevant 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 (including by pre-development archaeological testing) 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, prior to commencement of construction works, agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation).

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.

15. 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 turbines concerned and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

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

16. Rock from the borrow pit 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.

17. 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 relevant planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the relevant 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 relevant 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 delivery route.

18. Prior to commencement of development, the developer shall lodge with the relevant planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the relevant planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the relevant 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 relevant 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.

19. 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.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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

Dated this day of 2019.