



Planning and Development Acts 2000 to 2019

Planning Authority: Kerry County Council

Planning Register Reference Number: 19/381

Appeal by the Organising Committee of NMWT@Ballylongford care of Tullahinnell South, Ballylongford, Listowel, County Kerry and by Ballylongford Windfarm Group care of JOAM Consulting Limited of Harbour View, Cromane Lower, Killorglin, County Kerry against the decision made on the 6th day of June, 2019 by Kerry County Council to refuse permission to the said Ballylongford Windfarm Group for the proposed development.

Proposed Development: Construct a windfarm consisting of up to six wind turbines with an overall ground to blade tip height of up to 126.5 metres. The development will also include battery units, upgrading of existing access tracks and the provision of new internal access roads, the development and improvement of existing entrances onto the public road network, the provision of a wind anemometry mast (height up to 80 metres), a peat deposition area, underground electricity cables/cabling, an electricity substation with control room and associated equipment, temporary construction compound and all ancillary site and ground works. The windfarm is located in the townlands of Aghanagran Middle, Aghanagran Lower, Ballyline West and Tullahennell South, Ballylongford, County Kerry. The development will also consist of the connection of the proposed development, via underground electricity cables, to the existing ESB substation at Kilpaddoge, Tarbert, County Kerry. The

underground cable will be located in the townlands of Aghanagran Lower, Ballyline West, Ballymacasy, Lislaughtin, Glancullare South, Gurteenavallig, Meelcon, Carhoona, Farranawana, Doonard Upper, Doonard Lower, Tarbert and Kilpaddoge, County Kerry.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

The Board had regard to:

- (a) the 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 Kerry County Development Plan 2015-2021, including the Wind Energy Strategy for County Kerry, 2012,
- (d) the location of the windfarm site in an area which is identified in the development plan as an area 'Open for Consideration' where it is the policy of the planning authority to facilitate the development of appropriate wind energy proposals,
- (e) 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,
- (f) the characteristics of the site and of the general vicinity,
- (g) the pattern of existing and permitted development in the area, including other windfarms,
- (h) the distance to dwellings and other sensitive receptors from the proposed development,
- (i) the Environmental Impact Assessment Report submitted,
- (j) the Natura impact statement submitted,
- (k) the full documentation submitted with the planning application and at appeal stage,
- (l) the appeals and observation made in connection with the planning application, and
- (m) the report of the Planning Inspector.

Appropriate Assessment

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.

Stage 1 Screening Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Lower River Shannon Special Area of Conservation (Site Code: 002165), and the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) 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 and the distance of the development site from the European Sites.

Stage 2 Appropriate Assessment

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 Lower River Shannon Special Area of Conservation (Site Code: 002165), and the River Shannon and River Fergus Estuaries Special Protection Area (Site Code: 004077) 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 Planning 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.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted by the applicant in support of the planning application including at appeal stage,
- (c) the submissions from the planning authority, the appellants, the observer and the prescribed bodies in the course of the application and the appeal, and
- (d) the Planning Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and also adequately identifies and describes the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the Planning Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the planning application.

The Board considered and agreed with the Inspector's reasoned conclusions, that the main significant direct and indirect effects of the proposed development on the environment are, and would be mitigated, as follows:

Biodiversity

There will be habitat loss due to the construction of access roads, substation, hardstanding, cable trench and felling of trees. There will be general disturbance during construction and operation phases. These will be mitigated by the mitigation measures outlined in the Construction and Environmental Management Plan (Appendix 15A Volume 2 of Environmental Impact Assessment Report), pre-construction mammal surveys, invasive species management plans, and the appointment of an Environmental Clerk of Works.

Hydrology and Water Quality

Potential indirect effects could be caused by the increase in run-off, such as soil erosion and sediment release into the receiving watercourses. The Construction and Environmental Management Plan, Site Drainage Management Plan (Appendix 2 Volume 2 of Environmental Impact Assessment Report) and Surface Water Management Plan, all detail the mitigation measures to be taken to mitigate any significant effect.

Landscape and Visual

Possible cumulative impact arising from the proximity of the adjoining windfarm at Tullahennell, particularly on the R551 which forms part of the Wild Atlantic Way. It is considered, however, that the visual impact would not justify a refusal of planning permission having regard to the overall benefits of the proposed development, and in particular having regard to the context which is that of a highly moderated working landscape.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures set out in the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Planning Inspector.

The Board is satisfied that the reasoned conclusion is up to date at the time of taking this decision.

Proper Planning and Sustainable Development

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, relevant National and Regional guidance and the Kerry County Development Plan 2015-2021 and would

- make a positive contribution to 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,

- 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.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including the applicant's appeal submission received by the Board on the 2nd day of July 2019, 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 of use.

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 proposed windfarm development shall be served by Grid Connection Option A only.

Reason: In the interest of clarity.

5. (a) 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.
 - (b) 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.

6. Prior to commencement of development, a detailed Construction Management Plan for the construction stage 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 Construction 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 period,

(c) an emergency response plan, and

(d) 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 available for public inspection by the planning authority.

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

7. 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.

8. The following design requirements shall be complied with:
- (a) The wind turbines will have a maximum tip height of 126.5 metres. Final details of the turbine design, hub height, tip height and blade length complying the maximum limit and within the range set out in the application documentation, along with details of colouring, 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) 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.

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:

the greater of 5 dB(A) $L_{90,10\text{min}}$ above background noise levels, or 43 dB(A) $L_{90,10\text{min}}$, and
 - (b) 43 dB(A) $L_{90,10\text{min}}$ 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 windfarm.

Reason: To protect the amenities of property in the vicinity of the site.

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 commencement of development.

- (c) A report 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 windfarm, 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-compliance, 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 interests of protecting telecommunications signals and of residential amenity.

12. Details of the 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 and the Irish Aviation Authority of the 'as constructed' tip heights and co-ordinates of the turbines and wind monitoring masts.

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.
 - (ii) A condition survey of the roads and bridges along the haul routes shall be carried out at the developer's expense by a suitably qualified person both before and after construction of the proposed 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.
 - (iv) Detailed arrangements for the protection of any 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 proposed development.

- (vii) Within three months of the cessation of the use of each public road and 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, and agreed in writing with, the planning authority.
- (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.

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. Prior to the commencement of development, a fence shall be erected around the buffer zone to the ringfort (RMP: KE005-020) in the study area and, thereafter, this fence shall remain in-situ for the duration of the construction phase.

Reason: In order to safeguard the ringfort in the interest of conservation.

15. 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 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.

16. Prior to commencement of development, details of the community gain proposals shall be submitted to, and agreed in writing, with the planning authority.

Reason: In the interests of the community and orderly development of the area.

17. On full or partial decommissioning of the windfarm, or if the windfarm 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 relevant planning authority within three months of decommissioning or cessation of operation.

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

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 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.

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 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 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.

20. 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 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 An Bord Pleanála 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

Chris McGarry

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board

Dated this day of 2020