



Planning and Development Acts 2000 to 2020

Planning Authority: Donegal County Council

Planning Register Reference Number: 18/51741

APPEAL by Behy Renewable Energy Limited care of McCarthy Keville O'Sullivan Limited of Tuam Road, Galway against the decision made on the 18th day of July, 2019 by Donegal County Council to refuse permission.

Proposed Development: A 10 year planning permission for a wind farm with a 30 year operational life (from the date of commissioning) and all associated works consisting of (a) up to seven number wind turbines with a tip height of up to 150 metres and all associated foundations and hardstanding areas, (b) one number on-site electrical sub-station, (c) one number temporary construction compound, (d) one number anemometry mast with a height of up to 100 metres, (e) recreational amenity trail and associated signage, parking and recreational facilities, (f) all associated underground electrical and communications cabling connecting the turbines to the proposed on-site substation, (g) upgrading of existing access tracks and provision of any new site access roads required including new site access onto the local road network in the townland of Tullyhorky and associated drainage, (h) excavation of one number borrow pit, and (i) all associated site development works (including tree felling), all at Behy, Cashelard, Tullyhorky and Doobally, County Donegal.

Decision

REFUSE permission for the above proposed development in accordance with the reasons and considerations 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 coming to this 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 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 set out in the Regional Spatial and Economic Strategy for the Northern and Western Regional Assembly,
- (d) the policies of the planning authority as set out in the Donegal County Development Plan 2018-2024,

- (e) the character of the landscape in the area and the absence of any ecological designations on the wind farm site,
- (f) the characteristics of the site and of the general vicinity,
- (g) the pattern of existing and permitted development, and the distance to dwellings and other sensitive receptors from the proposed development,
- (h) the Environmental Impact Assessment Report submitted,
- (i) the Natura Impact Statement submitted,
- (j) the appeal and submissions made in connection with the planning application and the appeal, and
- (k) the report of the Inspector.

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 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 Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information that is reasonable and sufficient to allow the Board to carry out an Environmental Impact Assessment and to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board was satisfied that the information and data available was up to date at the time of taking the decision.

The Board was satisfied the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation and are incorporated into the Board's decision.

Reasoned Conclusions

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 as follows:

- potential impacts arising on population and human health as a result of noise and shadow flicker to residential property in the vicinity, which would be encountered during the operational phase and would be mitigated by detailed noise and shadow flicker curtailment strategies following selection of the turbine technology and subsequent curtailment of wind turbine operations in certain environmental conditions, including wind speeds, wind directions and lighting;
- potential impacts during the construction phase for wintering/roosting Hen Harrier, which would be avoided based on the separation distances to the locations of the winter roost sites that the Hen Harrier have shown fidelity towards;

- significant negative impacts on a confirmed breeding pair of Hen Harrier considered to be of national/international significance during the construction and operation phases of the wind farm arising from displacement and fragmentation of the core breeding territory for Hen Harrier;
- significant negative cumulative impacts on Hen Harrier in combination with the permitted Derrykillev Community Wind Farm during the operation phase, as a result of the direct and indirect loss of substantial suitable breeding and foraging habitat for Hen Harrier;
- there is significant uncertainty as to the likely effectiveness of the proposed mitigation measures proposed to address the impacts of the development on Hen Harrier. Significant impacts would not be compensated for via the mitigation proposed, including the revised Hen Harrier habitat enhancement plan, and would, therefore, fail to preserve and maintain sufficient diversity of area and habitat for Hen Harrier breeding and foraging and would have a significant adverse effect on Hen Harrier;
- the proposed development would fail to ensure the continued presence and reproduction of Hen Harrier in their current area of distribution in south County Donegal;
- potential impacts arising on lands, soil and geology, as a result of the increased risk of peat slide and failure, which would be mitigated by the measures to address peat stability, excavation, storage and removal, including monitoring;

- potential impacts on water quality, hydrology and hydrogeology 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;
- potential positive impacts on air and climate during the operational phase arising from the connection of renewable energy technology to the national grid, thereby facilitating a transition from fossil-fuel dependent energy sources to renewable sources;
- potential long-term visual impacts on landscape from intermittent sections of the local roads and trails within and traversing the site, the impacts of which would be reduced where screening is available and maintained, and as these affected locations are isolated with limited through-traffic and visual receptors, as well as already featuring an altered landscape, by virtue of the long-established commercial forestry.

The Board concluded that the appeal site and surrounding area is of importance to Hen Harrier, a species included for protection in Annex I of the Birds Directive (2009/147/EEC) and classed as amber-listed in the 'Birds of Conservation Concern in Ireland' (Colhoun & Cummins, 2013), and that notwithstanding the mitigation measures set out by the appellant to address the impacts of the development on Hen Harrier, it is considered that the proposed development would have a significant adverse effect on Hen Harrier in failing to preserve and maintain sufficient diversity of area and habitat for Hen Harrier and failing to ensure the continued presence and reproduction of Hen Harrier in their current area of distribution in south County Donegal.

Appropriate Assessment: - Stage 1

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 agreed with the screening assessment and conclusion carried out in the Inspector's report that the Lough Golagh and Breesy Hill Special Area of Conservation (Site Code: 002164), Pettigo Plateau Special Protection Area (Site Code: UK9020051), Donegal Bay Special Protection Area (Site Code: 004151), Durnesh Lough Special Protection Area (Site Code: 004145), Lough Derg (Donegal) Special Protection Area (Site Code: 004057) and Sligo/Leitrim Uplands Special Protection Area (Site Code: 004187), are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment: - 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 Golagh and Breesy Hill Special Area of Conservation (Site Code: 002164), Pettigo Plateau Special Protection Area (Site Code: UK9020051), Donegal Bay Special Protection Area (Site Code: 004151), Durnesh Lough Special Protection Area (Site Code: 004145), Lough Derg (Donegal) Special Protection Area (Site Code: 004015) and Sligo/Leitrim Uplands Special Protection Area SPA (Site Code: 004187), 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 screening and 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.

Conclusions on Proper Planning and Sustainable Development

The Board considered that to refuse permission for the proposed development based on a perceived inability to adequately assess wind energy developments with regard to planning policy and guidance would not be warranted, and having regard to the nature and scale of the proposed development, it is considered that, in principle, the proposed development would facilitate and support the achievement of European and National renewable energy and climate change policies. However, the Board considered, based on the details submitted with the application and the appeal that the proposed development would not be in accordance with the proper planning and sustainable development of the area, by reason of significant adverse impact on Hen Harrier.

Reason for Refusal

Objective NH-O-1 of the Donegal County Development Plan 2018-2024 aims to protect, sustainably manage and enhance the rich biodiversity of County Donegal for present and future generations, and objective NH-O-10 aims to maintain and restore ecosystems and to conserve valuable or threatened habitats and species in order to prevent further loss of biodiversity.

Policy NH-P-5 of the Donegal County Development Plan 2018-2024 requires consideration of the impact of development on habitats of natural value that are key features of the County's ecological network and to incorporate appropriate mitigating biodiversity measures into development proposals. These objectives and this policy are considered to be reasonable.

The appeal site is located in a non-designated regionally important area for Hen Harrier. The identified pair of Hen Harrier confirmed to be breeding in the area are considered to be of national/international importance and the appeal site is identified as an important foraging habitat for Hen Harrier, which is afforded protection under Annex 1 of the EU Birds Directive (2009/147/EEC) and classed as amber-listed in the 'Birds of Conservation Concern in Ireland' (Colhoun & Cummins, 2013).

The Board is not satisfied, based on the details submitted with the application and the appeal, notwithstanding the mitigation measures set out to address the impacts on Hen Harrier, that the proposed development, by itself and in conjunction with the permitted Derrykillev Community Wind Farm development, would not have a significant adverse impact on Hen Harrier.

It is considered that the proposed development would be contrary to objectives NH-O-1 and NH-O-10, and policy NH-P-5, of the Donegal County Development Plan 2018-2024, as set out above. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Chris McGarry

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

Dated this day of 2020.