

An  
Bord  
Pleanála

Board Order  
ABP-306500-20

Planning and Development Acts 2000 to 2019

Planning Authority: Kildare County Council

Planning Register Reference Number: 18/1534

**Appeal** by Kildare Environmental Awareness Group of Dreenane Cross, Derrinturn, Carbury, County Kildare and by Lorraine Quinn of Drehid, Carbury County Kildare and by North Kildare Wind Farm Limited care of Fehily Timoney and Company of Core House, Pouladuff Road, Cork against the decision made on the 19<sup>th</sup> day of December, 2019 by Kildare County Council to refuse a permission to the said North Kildare Wind Farm Limited for the proposed development.

**Proposed Development:** Development of a wind farm, recreation amenity trail and all associated works and will consist of the following: up to 12 number wind turbines with a tip height of up to 169 metres and all associated foundations and hardstanding areas; one number on-site electricity substation; two number temporary construction compounds; all associated underground electrical and communication cabling connecting the turbines to the proposed on-site electricity substation; underground electricity cabling including joint bays on the public road connecting the proposed on-site electricity substation to the existing Dunfiirth substation within the townland of Dunfiirth via the L1004 public road; upgrade and extension to an existing

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recreation amenity trail and installation of signage, picnic tables and bicycle stands; upgrade of existing site entrance from the L5025 public road and use of one number existing site entrance on the L5012 public road; provision of new site access tracks and associated drainage; upgrade of existing access tracks and associated drainage; tree felling; and all associated site development works including landscaping. Permission is sought for a period of 10 years and an operational life of 30 years from the date of commissioning of the entire wind farm. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) accompany this planning application, all within the townlands of Ballynamullagh, Coolree, Drehid, Dunferth, Killyon, Kilmurry and Mulgeeth, County Kildare. Further public notices were received by the planning authority on the 25<sup>th</sup> day of October, 2019 with significant further information consisting of changes in regard to the Environmental Impact Assessment Report (EIAR) and Natura Statement Impact (NIS) submitted.

## 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.

**An amendment to this Board Order has been made**

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## Reasons and Considerations

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

- (a) National policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouses 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 Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019- 2031,
- (d) the policies of the planning authority as set out in the Kildare County Development Plan 2017 - 2023,
- (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 and distance to dwellings, and other sensitive receptors from the proposed development,
- (h) the Environmental Impact Assessment Report submitted,
- (i) the Natura impact statement submitted,

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- (j) the submissions made in connection with the planning application, and the appeal; and
- (k) the report of the Inspector.

### Appropriate Assessment Screening: Stage 1

The Board considered the Screening Report for Appropriate Assessment, and all other relevant submissions and carried out 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 noted that the proposed development is not directly connected with or necessary for the management of a European Site and considered the nature, scale and location of the proposed development, as well as the report of the Inspector.

The Board agreed with the screening report submitted with the application and with the screening exercise carried out by the Inspector. The Board concluded that, having regard to the qualifying interests for which the sites were designated and in the absence of a hydrological connection between the application site and the European Sites: Ballynafagh Lake Special Area of Conservation (Site Code: 001387), Ballynafagh Bog Special Area of Conservation (Site Code: 000391), Mount Hevey Bog Special Area of Conservation (Site Code: 002342), Mouds Bog Special Area of Conservation (Site Code: 002331), The Long Derries Edenderry Special Area of Conservation (Site Code: 000925), that could be screened out from the further consideration and that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effects upon these European Sites or any other European Sites in view of the sites' conservation objectives and that a Stage 2 appropriate assessment is therefore not required in relation to these European Sites.

**DATED** 24.11.20

**SIGNED:** Secretary

## 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 the River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299), and the River Boyne and River Blackwater Special Protection Area (Site Code: 004232) 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 the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects, the mitigation measures which are included as part of the current proposal, and the conservation objectives for this European Site. 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 Site, 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 River Boyne and River Blackwater Special Area of Conservation (Site Code: 002299), and the River Boyne and River Blackwater Special Protection Area (Site Code: 004232) or any other European Site in view of the sites' conservation objectives.

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## Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development. 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 identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

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 will be mitigated, as follows:

- Potential impacts on water quality are considered under the relevant headings. The site drains to the Fear English River which is a tributary of the River Blackwater and subsequently the River Boyne. There are a number of identified private and public wells within the wider area. Measures to prevent the release of sediments or hydrocarbons (including avoiding in-stream works, prevention of fuel/lubricant spills, limiting ground disturbance to the minimum required and preventing of silt laden surface water runoff) are set out in the Environmental Impact Assessment Report (EIAR) are specific and practicable. The proposed development, therefore, will not give rise to water pollution in the water courses within the site, in the Fear English River or in the wider Blackwater/Boyne catchment or in the aquifer underlying the application site and it is concluded that significant water quality impacts are not likely to arise.
- The Environmental Impact Assessment Report has reasonably identified construction related noise as having potential impact on residential amenity. Construction phase impacts in the form of short term increases in the traffic (private cars and Heavy Goods Vehicles) on the local road

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network are recognised, addressed in the Environmental Impact Assessment Report and, specifically in the 'Outline Construction and Environment Management Plan Appendix 2-2' of the Environmental Impact Assessment Report. The noise and vibration mitigation measures, such as the limiting of construction hours in accordance with a submitted Construction and Environment Management Plan, the use of plant with low potential of noise and/or vibration and consultation with residents are reasonable and practicable. Noise and vibration levels would be within acceptable emissions limits during normal operation.

- Impacts on biodiversity are likely to arise during construction works due to the removal of shrub/tree and soil/subsoil in preparation for the construction of the roads, turbine bases and the grid connection cable. It is noted, however that these areas are brownfield areas which have been subject to anthropogenic activity (tree planting, drainage ditches and agriculture) are of relatively low ecological importance. The impacts arising from the removal of habitat and disturbance would be mitigated by minimising the removal of existing vegetation and reinstatement of vegetation and following best practice and procedures during the construction phase.
- The site is a relatively flat site which is not prominent in views over a wide area. Landscape and visual impacts will be mitigated by separation distances from receptors especially residential uses and designated scenic views from the local road networks. No unacceptable visual impact will arise from the proposed development.
- Impacts on greenhouse gas emissions (in particular CO<sub>2</sub>) will be positive because the proposed development facilitates the transition from fossil fuel dependent energy sources to renewable sources and the connection of a renewable energy source to the national grid.

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The Board 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 Inspector.

### 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 the National Planning Framework, the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019- 2031, the provisions of the Kildare County Development Plan 2017 – 2023 and would not have an unacceptable impact on;

- the road network in the area,
- aviation safety,
- the character of the landscape or scenic views in the area,
- the residential amenities of the area,
- the archaeological or natural heritage of the area, and

would, therefore, be in accordance with the proper planning and sustainable development of the area.

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An Bord Pleanála

C. O'Leary



## Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 21<sup>st</sup> day of October, 2019, and by the further particulars received by An Bord Pleanála on the 24<sup>th</sup> day of January, 2020, 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 proposed development hereby permitted may be carried out shall be 10 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 30 years from the date of the first commissioning of the wind farm.

**Reason:** To enable the planning authority to review its operation in the light of the circumstances then prevailing.

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*C. O'Leary*

*[Signature]*

4. (a) Prior to commencement of development, a revised and updated Construction and Environmental Management Plan (CEMP) shall be submitted to, and agreed with writing with, the planning authority. The revised and updated plan shall provide finalised details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction waste.
- (b) The developer shall ensure that all construction methods and environmental mitigation measures, including operation monitoring requirements, as set out in the Environmental Impact Assessment Report and the revised CEMP (Appendix 2-2) and associated documentation, are implemented in full, save as may be required by conditions in this order.

**Reason:** In the interest of the protection of the environment.

5. The following design requirements shall be complied with:
- (a) The wind turbines, including masts and blades, and the wind monitoring mast, 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.

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- (d) No advertising material, other than those already applied for as part of this proposed development, 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.

6. A plan providing for the collection, removal and disposal of foul waste arising from staff facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.

**Reason:** To provide for the appropriate management of foul waste in the interests of public health and to prevent water pollution.

7. The following shadow flicker requirements shall be complied with:
- (a) Cumulative shadow flicker arising from the proposed development shall not exceed 30 minutes in any day or 30 hours in any year at any dwelling.
- (b) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings.
- (c) Prior to commencement of construction, a wind farm shadow flicker monitoring programme shall be prepared by a consultant with experience of similar monitoring work, in accordance with details to be submitted to the planning authority for written agreement. Details of the monitoring programme shall include

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Signed: Secretary *C. P. Kelly*



the proposed monitoring equipment and methodology to be used, and the reporting schedule.

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

8. 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 residential amenity.

9. Details of 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 co-ordinates of the 'as constructed' positions of the turbines and the highest point of the turbines (to the top of the blade spin) and wind monitoring masts.

**Reason:** In the interest of air traffic safety.

10. 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 mast, the turbines concerned, the wind monitoring mast and all decommissioned structures shall be removed, and foundations covered with soil to

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facilitate re-vegetation, all to 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.

11. 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.

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12. 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 7am and 11pm:
- (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 5m/s 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.

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13. Prior to commencement of development, a traffic management plan for the construction stage shall be submitted to, and agreed in writing with, the planning authority. The traffic management plan shall incorporate details of the road network to be used by construction traffic, including over-sized loads, and detailed arrangements for the protection of bridges, culverts or other structures to be traversed, as may be required. 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.

**Reason:** In the interest of traffic safety.

14. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site or by works carried out in relation to the laying of the grid connection, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

**Reason:** To ensure the satisfactory completion of the development.

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Signed: Secretary 



15. The developer shall pay to the planning authority a financial contribution as a special contribution under section 48(2) (c) of the Planning and Development Act 2000 in respect of works to the Johnstown Bridge Roundabout, works at the junction of the Derrymahon Road/L5025 and the R402 and any road strengthening works on the Derrymahon Road/L5025 between its junction with the R402 and the application site entrance, and that are required to facilitate the construction of the proposed development and that are undertaken by the local authority. The amount of the contribution shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office.

**Reason:** It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

An amendment to this  
Board Order has been made

24.11.20

Secretary

*C. O'Leary*

*[Signature]*

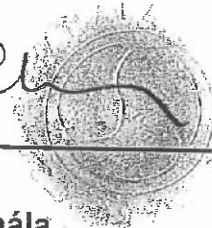
16. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the 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.



John Connolly

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



An amendment to this  
Board Order has been made

Dated this 7<sup>th</sup> day of SEPTEMBER 2020

Dated 24.11.20

Signed: Secretary C. O'Leary



**DECISION QUASHED**