



Planning and Development Acts 2000 to 2019

Planning Authority: Offaly County Council

Planning Register Reference Number: PL2/19/606

Appeal by Wendy and Nora Dunne care of Karen Feeney Architect of The Studio, Drumcooley House, Edenderry, County Offaly, by Regina and Jude Sheridan of Shean, Edenderry, County Offaly and by Cloncant Renewable Energy Limited care of Malachy Walsh and Partners of The Elm Suite, Loughmore Centre, Raheen Business Park, County Limerick against the decision made on the 21st day of February, 2020 by Offaly County Council to refuse permission to the said Cloncant Renewable Energy Limited for the proposed development.

Proposed Development: A 10-year planning permission with a 30-year operational life for development on a site area of 60.674 hectares. The development will consist of up to 8 (eight) wind turbines with a tip height of up to 187 metres, and all associated foundations and hardstanding areas; approximately 4,750 metres of new internal access roads, associated drainage and turning areas; upgrade of approximately 3,500 metres of the existing L50062 public road including upgrade of the existing bridge; a new bridge crossing of the Figile River to provide access between Turbine 3 and Turbine 4; a 2,950 metre recreation trail and all associated development to include gravel pathways, a footbridge across the Figile River, a parking area,

signage, information boards and outdoor fitness equipment; an off-site electrical substation and a battery energy storage facility; all associated underground electrical and communications cabling to connect the turbines to the substation including approximately 1,550 metres along the R401 Regional Road; a spoil storage area; a permanent meteorological mast up to 110.5 metres high; two number temporary construction compounds; two number temporary blade adapter set-down areas within the wind farm site and at the junction of the R402 and R401 at Rathmore, Edenderry, County Offaly; turbine delivery route works including widening of the junction of the R420 and R402 at Ballina, Geashill, County Offaly and all associated site development works. The overall development is for a nine (9) turbine wind farm, with a separate planning application being submitted to Kildare County Council for one (1) turbine located in the townland of Ticknevin, Carbury, County Kildare, all in the townlands of Ballykilleen, Shean, Kilcumber, Cloncant and Cushaling, Edenderry, County Offaly.

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 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 of the Eastern and Midland Region 2019,
- (d) the policies of the planning authority as set out in the Offaly County Development Plan 2014-2020, including the Wind Energy Strategy for County Offaly Methodology Statement 2014,
- (e) the location of the wind farm 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,
- (f) 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,
- (g) the characteristics of the site and of the general vicinity,
- (h) the pattern of existing and permitted development in the area, including other wind farms,
- (i) the distance to dwellings and other sensitive receptors from the proposed development,
- (j) the Environmental Impact Assessment Report submitted,
- (k) the Natura impact statement submitted,

- (l) the appeals and observations made in connection with the planning application, and
- (m) the report of the Inspector.

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 and adopted the screening assessment and conclusion carried out in the Inspector's report that the only European site in respect of which the proposed development has the potential to have a significant effect is the River Barrow and River Nore Special Area of Conservation (Site Code: 002162).

Appropriate Assessment – Stage 2

The Board considered the Natura impact statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development for European Site, the River Barrow and River Nore Special Area of Conservation (Site Code: 002162), in view of the site's 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 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 site's 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:

- the nature, scale and extent of the proposed development,
- the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- the submissions from the planning authority, the appellants and the observers in the course of the application, and
- the 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 identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment.

The Board agreed with the examination, set out in the 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 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 as follows:

- **Population and Human Health:** Shadow flicker during the operational phase such as would impact negatively on sensitive receptors and populations in the vicinity of the site. These impacts are substantially avoided by the limited number of sensitive receptors in close proximity to the site and mitigation measures which include the applicant's commitment to zero shadow flicker at residential receptors. During the construction phase, noise impacts may arise from construction activities such as site preparation and construction of the turbine foundations, roads and substation. Predicted operational noise levels will be within the relevant best practice noise criteria for wind farms. A suite of mitigation measures to manage noise and vibration during the construction phase are set out in the Environment Impact Assessment Report. Post commissioning monitoring will be necessary to ensure the operational noise levels comply with the relevant day and night-time criteria.

- **Landscape and Visual:** Localised significant visual impact of the development from intermittent sections of the local roads in the vicinity and on local properties therein. The impact of the proposed development, coupled with existing and permitted windfarms in the vicinity, will have a cumulative impact on the visual character of the wider landscape. These impacts will not be avoided, mitigated, or otherwise addressed by means of condition. The impact is balanced by the nature of the landscape which is considered to be a moderated, working landscape and which is robust.
- **Biodiversity:** There will be habitat loss due to the construction of access roads, substation, hardstanding, cable trench etc. and felling of trees. There will be general disturbance during construction and operation phases. These will be mitigated by the replanted forestry lands in County Offaly mitigation measures outlined in the Construction and Environmental Management Plan, pre-construction mammal surveys, and the appointment of a Project Ecologist.
- **Water:** 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 details the mitigation measures to be taken to mitigate any significant effect.
- Positive environmental impacts will arise during the operational phase from the generation of renewable energy and the provision of a recreational amenity trail.

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 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 Regional Spatial and Economic Strategy of the Eastern and Midland Region 2019 and the provisions of the Offaly County Development Plan 2014-2020. The proposed development would

- make a positive contribution to Ireland's national strategic policy on renewable energy and its move to a low energy carbon future,
- not have an adverse impact on the landscape,
- not seriously injure the residential or visual amenities of the area,
- not adversely affect the natural heritage,
- not adversely impact the road network in the area, 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, as amended by the further plans and particulars received by An Bord Pleanála on the 19th day of March, 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 mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, and other plans and particulars submitted with the planning application and the appeal shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

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

3. Prior to commencement of development, a detailed Environmental 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 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 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 Environmental Management Plan shall be available for public inspection by the planning authority.

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

4. The mitigation measures contained in the Natura impact statement submitted with the application shall be implemented in full.

Reason: In the interests of clarity and the proper planning and sustainable development of the area and to ensure the protection of the European sites.

5. The period during which the 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.

6. This permission shall be for a period of 25 years from the date of the first commissioning of the wind farm.

Reason: To enable the relevant planning authority to review the operation of the wind farm in the light of the circumstances then prevailing.

7. The following design requirements shall be complied with:

- (a) The wind turbines, including masts and blades, shall be finished externally in a colour to be 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.

8. Within one year of the commissioning of the wind farm, details of amenity trail and public access arrangements, generally set out in the planning application documents, and the timescale for their realisation shall be submitted to the planning authority for its written agreement.

Reason: In the interest of advancing the recreational amenities of the area.

9. Existing trees and vegetation along the north-eastern boundary of the proposed temporary blade transfer area adjacent to the Grand Canal as delineated on drawing number 19877-MWP-14-00-DR-C-5006 received by An Bord Pleanála on the 19th day of March, 2020 shall be retained. A revised site layout plan with the necessary alterations shown thereon shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

10. 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) L90,10min above background noise levels, or 45 dB(A) L90,10min, at wind speeds of 9m/s or greater,
 - (ii) 40 dB(A) L90,10min at all other wind speeds, and

- (b) 43 dB(A) L90,10min at all other times

where wind speeds are measured at 10m 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.

- 11. The following shadow flicker requirements shall be complied with:
 - (a) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings to limits specified in the Environmental Impact Assessment Report.
 - (b) Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a shadow flicker compliance monitoring programme for the operational wind farm.

Reason: In the interest of residential amenity.

12. 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.

13. 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 'as constructed' tip heights and co-ordinates of the turbines and wind monitoring masts.

Reason: In the interest of air traffic safety.

14. (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) Local Road L50062 off R401 shall be used for the delivery of turbine components and ancillary parts, only. It shall not be used by any other construction related traffic.
- (iii) 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/authorities prior to commencement of development.
- (iv) Detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority.
- (v) Detailed arrangements for the protection of bridges to be crossed.
- (vi) Detailed arrangements for temporary traffic arrangements/controls on roads.
- (vii) A phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction of the proposed development.

- (viii) 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.

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 (utilising the suite of mitigation measures set out in section 12.5 of the Cultural Heritage Chapter of the Environmental Impact Assessment Report) and monitor 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. 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 planning authority within three months of decommissioning or cessation of operation.

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

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 roads. 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 routes.

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 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.

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

Dated this day of 2020.