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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Donegal County Council**

**Planning Register Reference Number: 19/51750.**

**Appeal** by Derrykillew Community Wind Farm Limited care of MKO of Tuam Road Galway against the decision made on the 11<sup>th</sup> day of June 2020 by Donegal County Council to refuse a permission to the said Derrykillew Community Wind Farm Limited for the proposed development.

**Proposed Development:** A 10-year planning permission for amendments to the wind farm development previously granted permission under planning register reference number 14/51400, An Bord Pleanála reference number PL 05E.245108 consisting of the following alterations:

- (a) increase in tip height of the five permitted turbines, from 136 metres to up to 150 metres,
- (b) amendments to locations of permitted turbines numbers 1 and 3,
- (c) increase in size of permitted hardstanding areas,
- (d) upgrading of existing access tracks and provision of new site access roads;
- (e) all associated underground electrical and communications cabling connecting the turbines to the on-site substation,
- (f) all associated site development works (including tree felling);

the proposed development will have an operational life of 30 years from the date of commissioning of the development and the application seeks a ten-year planning permission; all at Derrykillew, Corlea, Ballyshannon, County Donegal.

## **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**

Having regard to:

- (a) national policy relating to the development of sustainable energy resources,
- (b) the provisions of the “Wind Energy Development Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in June 2006, and the “Draft Revised Wind Energy

Development Guidelines” published by the Department of Housing, Local Government and Heritage in December, 2019,

- (c) the policies of the planning authority as set out in the Donegal County Development Plan 2018-2024,
- (d) the scale and community-based nature of the proposed development,
- (e) the general character of the site, and the landscape features and general topography of the surrounding area,
- (f) the separation distance of the proposed turbines from any inhabited dwellings,
- (g) modifications in terms of the increase in tip height of the proposed turbines as proposed under the current application,
- (h) the range of mitigation measures set out in the documentation received, including the Environmental Impact Assessment Report and the Natura impact statement
- (i) transboundary considerations and consultations relating to the site and to the proposed development, and
- (j) the submissions on file and the report of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the National, Regional and Local policies in respect of wind energy, and would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## **Appropriate Assessment**

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), the Donegal Bay Special Protection Area (site code: 004151), the Lough Derg (Donegal) Special Protection Area (site code: 004057), the Pettigo Plateau Special Area of Conservation (Northern Ireland) and the Pettigo Plateau Special Protection Area (Northern Ireland) are the European sites for which there is a likelihood of significant effects. The Board considered the Natura impact statement submitted with the application and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the assessment, the Board considered, in particular,

- (i) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and
- (iii) the conservation objectives for these European Sites,

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of these European Sites, in view of the sites' conservation objectives.

## **Environmental Impact Assessment**

In compliance with section 172 of the Planning and Development Act 2000, as amended, the Board completed an environmental impact assessment of the proposed development, taking into account the nature, scale, location, and extent of the proposed development, the Environmental Impact Assessment Report (EIAR) and associated documentation submitted with the application, the submissions on file and the report of the Inspector. The Board considered that the EIAR, supported by the information submitted by the applicant, identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the EIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and examination, set out in the Inspector's report, of the information contained in the EIAR and associated documentation submitted by the applicant and submissions made in the course of the application. The Board is satisfied that the Inspector's report sets out how this information was addressed in the assessment and recommendation (including environmental conditions), which are incorporated into the Board's decision.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as set out in Chapters 4 to 13 of the EIAR, and subject to compliance with the conditions set out herein, the effects on the environment of the proposed development, by itself and cumulatively with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the reporting inspector.

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

- (a) the visual impact arising from the permanent removal of forestry and the erection of 5 wind turbines of up to 150 metres in height will result in a moderate landscape effect within 10 kilometres of the site which will not be avoided, mitigated, or otherwise addressed by means of condition, but must be assessed in the context of the extant permission which allows for the provision of 5 turbines of up to 136 metres in height. The visual impact arising from the increase in height is not significant, and
- (b) the reduction of almost 30,000 tonnes of CO<sub>2</sub> emissions during the 30-year life span of the windfarm will have a moderate positive impact on climate change.

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

## Conditions

1. The development shall be carried and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted with the appeal to An Bord Pleanála on the 8<sup>th</sup> day of July 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. All of the environmental, construction and ecological mitigation and monitoring measures set out in the Environmental Impact Assessment Report (EIAR) and Natura impact statement (NIS) accompanying the application to the planning authority and other particulars submitted with the application to the planning authority shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions set out in this Order.

**Reason:** In the interest of clarity and the protection of the environment during the construction and operation phases of the development.

3. 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 of the development, the Board considers it appropriate to specify a period of validity of this permission in excess of five years.

4. This permission is for a period of 30 years from the date of commissioning of the wind farm. The wind turbines and related ancillary structures and temporary roadway shall then be removed and the site appropriately reinstated unless, prior to the end of this period, planning permission shall have been granted for their retention for a further specified period. Details of the reinstatement plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

**Reason:** To enable the impact of the development to be reassessed, having regard to the changes in technology and design during this period.

5. Post construction usage of the wind farm site by birds and bats shall be monitored for a period of five years which shall be carried out by a suitably qualified and competent ecologist. Full details of the methodology of monitoring and data collection, and reporting arrangements shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.

**Reason:** To ensure appropriate monitoring of the impact of the development on the fauna of the area.



6. (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 indicated in the Environmental Impact Assessment Report and including 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 to be carried out at the developer's expense by a suitably qualified person both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed with the planning authority/authorities prior to commencement of development,
  - (iii) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority/authorities,
  - (iv) detailed arrangements for temporary traffic arrangements/controls on roads,
  - (v) a programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.
- (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.

7. 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 standardised 10m height above ground level wind speeds of 4m/s or greater,
    - (ii) 40 dB(A)  $L_{90,10min}$  at all other standardised 10m height above ground level wind speeds
  - (b) 43 dB(A)  $L_{90,10min}$  at all other times.

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.

8. (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) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with, the planning authority.

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

9. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:
  - (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
  - (b) location of areas for construction site offices and staff facilities,
  - (c) details of site security fencing and hoardings,
  - (d) details of on-site car parking facilities for site workers during the course of construction,
  - (e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to

include proposals to facilitate the delivery of abnormal loads to the site,

- (f) measures to obviate queuing of construction traffic on the adjoining road network,
- (g) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works,
- (i) details of hours of construction, including arrangements for deliveries of materials to the site,
- (j) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels,
- (k) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater, and
- (l) off-site disposal of construction/demolition waste.

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

**Reason:** In the interest of amenities and safety.

10. The wind turbines, including masts and blades, and the anemometer mast shall be finished externally in a light grey colour.

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

11. (a) Cables within the site shall be laid underground.
- (b) The wind turbines shall be geared to ensure that the blades rotate in the same direction.
- (c) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.

**Reason:** In the interest of visual amenity and for clarification purposes

12. Prior to the commencement of development, the developer shall agree a protocol for assessing any impact on radio or television or other telecommunications reception in the area. In the event of interference occurring, the developer shall remedy such interference according to a methodology to be agreed in writing with the planning authority, following consultation with other relevant authorities and prior to commissioning the turbines.

**Reason:** In the interest 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. Subsequently, the developer shall inform the planning authority of the coordinates of the 'as constructed' positions of the turbines and the highest point of the turbines to the top of the blade spin.

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

14. 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 masts and the turbines concerned, shall be removed and all decommissioned structures shall be removed within three months of decommissioning.

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

15. 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.

16. 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 satisfactory reinstatement of the site upon cessation of the project coupled with an agreement empowering the 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 satisfactory reinstatement of the site.

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 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 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:** In the interest of road safety and the proper planning and sustainable development of the area.

18. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to 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.

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

**Dated this            day of            2021.**