



Planning and Development Acts 2000 to 2021

Planning Authority: Laois County Council

Planning Register Reference Number: 19/530

Appeal by Pat Fogarty of Clonkeen, Portlaoise, County Laois and by others against the decision made on the 4th day of January, 2021 by Laois County Council to grant subject to conditions a permission to Bord a Móna Powergen Limited care of Fehily Timoney and Company of J5 Plaza, North Park Business Park, North Road, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: Develop a Renewable Gas Facility, associated peat deposition area and external and internal road upgrades at Cúil Na Móna Bog within the townland of Clonboyne and Clonkeen, Portlaoise, County Laois. The total area of the proposed development is 17.34 hectares and consists of the following elements:

1. Renewable Gas Facility (6.85 hectares) including the following:
Weighbridge and Weighbridge Office – 21 square metres in area 4.45 metres high, Administration Building 228 square metres in area 5.1 metres high, Reception Building 2,700 square metres in area 11.75 metres high, Odour Abatement unit 400 square metres in area stack height 18 metres, Tank Farm – two number primary digestion tanks (6,500 cubic metres) 22 metres high;

two number secondary digestion tanks (5,650 cubic metres) 17.2 metres high; two number buffer storage (450 cubic metres) six metres high; four number liquid feed intake tanks (100 cubic metres) 12 metres high; two number process water tanks (30 cubic metres) 7.5 metres high; four number pasteurisation tanks (30 cubic metres) 7.5 metres high, Gas Upgrade and Injection Plant 1,278 square metres, Covered Digestate lagoon 55,100 cubic metres capacity, Surface water attenuation pond 20 metres x 30 metres, Wastewater below ground holding tank 10 cubic metres capacity, Palisade site fencing 2.4 metres high, 1,420 metres in length, On-site electrical sub-station up to 22 square metres, Circulation yard area 3,500 square metres including 28 number car parking spaces.

2. Peat deposition and surrounding area (9.13 hectares)

3. External road upgrades including proposed new roundabout, upgrade of R445 and local access road to existing site entrance – 660 metres in length (0.91 hectare)

4. Internal upgrade of site access road – 443 metres in length (0.45 hectare).

Permission is sought for a period of 10 years and is a development that is for the purpose of an activity requiring an Industrial Emission Licence from the EPA. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) has been prepared and accompanies this planning application, all at Cúil Na Móna Bog, within the townland of Clonboyne and Clonkeen, Portlaoise, County Laois, as amended by the further public notices received by the planning authority on the 6th day of November, 2021 and on the 11th day of November, 2021.

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.

Reasons and Considerations

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

- (i) the Climate Action Plan 2021, as updated, and the provisions of the Climate Action and Low Carbon Development (Amendment) Act, 2021;
- (ii) the relevant provisions of Project Ireland 2040, the National Planning Framework;
- (iii) the policies, as set out in the Regional Spatial and Economic Strategy for the Eastern and Midlands Region, 2019 – 2031;
- (iv) Eastern–Midlands Region Waste Management Plan 2015 - 2021, the provisions of the Laois County Development Plan 2017 - 2023, including the policies in relation to renewable energy and support for gas development;
- (v) the requirement for the waste management/renewable energy facility to be subject to and regulated under an Industrial Emissions Licence to be issued by the Environmental Protection Agency;
- (vi) the requirement for the waste management/renewable energy facility to secure Animal By-Products approval from the Department of Agriculture, Food and the Marine and Gas Safety Case approval from the Commission for the Regulation of Utilities;
- (vii) the location of the proposed site on cutaway bogland at the edge of Cúil na Móna Bog;

- (viii) the pattern of existing and permitted development in the vicinity of the site;
- (ix) the location of the proposed development close to the national road network and the proximity to the Gas Networks Ireland network for the export of gas;
- (x) the relatively close proximity to the source of feedstock material and locations which are suitable for the spreading of digestate;
- (xi) the design, nature, and extent of the proposed anaerobic digester structures for renewable biogas and digestate production, appropriate to their location in an area characterised by former industrial peatland use;
- (xii) the nature of the landscape and the absence of any specific conservation or amenity designation for the site;
- (xiii) mitigation measures proposed for the control of emissions to the environment including relation to emissions to air and the minimisation of odours and noise;
- (xiv) the submissions on file including those from prescribed bodies, appellants, observers and the planning authority;
- (xv) the documentation submitted with the application, including the Environmental Impact Assessment Report, Appropriate Assessment Screening Report, Natura Impact Statement, and additional information and Addenda, and
- (xvi) the report of the Planning Inspector.

Screening for Appropriate Assessment

The Board noted that the proposed development is not directly connected with, or necessary to, the management of a European site.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion in the Inspector's Report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the sites' Conservation Objectives.

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the River Barrow and River Nore Special Area of Conservation (Site Code 002162), River Nore Special Protection Area (Site Code 004233), Slieve Bloom Mountains Special Protection Area (Site Code 004160), and Slieve Bloom Mountains Special Area of Conservation (Site Code 000412) are European sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment.

Appropriate Assessment

The Board considered the Natura Impact Statement (including the addenda) 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 (River Barrow and River Nore Special Area of Conservation (Site Code 002162), River Nore Special Protection Area (Site Code 004233), Slieve Bloom Mountains Special Protection Area (Site Code 004160), and Slieve Bloom Mountains Special Area of Conservation (Site Code 000412)). The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed

development in relation to the Sites' conservation objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the Site Specific Conservation Objectives for these European Sites, the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, specifically other EPA licenced facilities in the area, the view of the Department of Arts, Heritage and the Gaeltacht including their concerns in relation to nitrogen emissions, and the mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of 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 the European Sites in view of the Sites' Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on full and detailed assessment of all aspects of the proposed project including mitigation measures in relation to the Conservation Objectives of the relevant European Sites and an assessment of the in-combination effects with other plans and projects including historical projects, current proposals, and future plans.

Environmental Impact Assessment

The Board completed, in compliance with Section 172 of the Planning and Development Act, 2000, as amended, 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 and Addenda and associated documentation submitted in support of the application;
- (c) the submission made by the applicant, the planning authority and the observers in the course of the application; and
- (d) the Planning Inspector's report.

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

The Board agreed with the examination, as set out in the Inspector's report, of the information contained in the EIAR and associated documentation submitted by the applicant, including at appeal stage, and submissions from the planning authority, prescribed bodies, appellants, and observers made in the course of the planning application.

Reasoned Conclusions on the Significant Effects

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:

- (a) Climate - the proposed development will have a significant net positive impact on the environment under the heading of climate due to the

replacement of non-renewable gas with renewable biomethane gas that will be produced on site for injection into the gas network;

- (b) Biodiversity - there will be habitat loss (including removal of peat) primarily due to the construction of the proposed renewable gas facility at the site. However, the area was generally identified as an area of Local Importance in relation to biodiversity. The site is a cutaway bog and forms a small section (approximately 2.4%) of the larger Cúil na Móna Bog. Measures for the construction, operation and decommissioning phases are set out relating to general mitigation, habitat/flora mitigation, fauna mitigation. Mitigation measures include implementation of a Biodiversity Management Plan;
- (c) Air Quality - the development has the potential to generate odours that would impact negatively on amenity and human health and these will be mitigated by on site control of storage areas, procedures to minimise odour release including from vehicles and the installation of odour abatement equipment;
- (d) Hydrology and Surface Water Quality - there is the potential for surface water quality to be adversely affected by the proposed development. The potential for any pollution event can be avoided by implementation of mitigation measures contained within the CEMP, the design of the operational surface water drainage system and the fact that surface water discharge and monitoring will be subject to the provisions of an IE Licence;
- (e) Hydrology and Surface Water Quality - potential indirect impacts on water arising from the disposal of digestate will be avoided by the fact that the quality of the digestate to be spread will be subject to the provisions of the IE licence and will be spread in accordance with the

provisions of the European Union Good Agricultural Practice for the Protection of Waters Regulations 2017 as amended;

- (f) Hydrogeology - the proposed development is to be served by the public system, subject to upgrade. Irish Water has stated that a connection to the network can be facilitated. Therefore, there will be no risk to existing private wells in the vicinity as the operation of the proposed development will not use groundwater;
- (g) Traffic and Transportation - there will be some increase in heavy traffic on the local, regional, and national road network during the construction and operational phases. Alterations to the regional road network are proposed as part of the planning application and this will give rise to road safety benefits. Overall, the impact to the road network will not be significant;
- (h) Noise and Vibration - the applicant has demonstrated that noise impacts arising from the operational stage will not be significant. Potential noise impacts arising from the operation of the proposed development will be controlled by an Industrial Emissions Licence issued by the EPA; and
- (i) Landscape and Visual Impact - a Landscape and Visual Impact Assessment has indicated that the impact of the proposed development will not be significant. The site is not located in a particularly unique or distinctive landscape.

The Board was, therefore, satisfied that the proposed development would not have any unacceptable direct or indirect effects on the environment.

Conclusions on Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would comprise an acceptable form of energy recovery from biodegradable and agricultural waste; would be in accordance with European, national, and regional waste and sustainable energy policies and the provisions of the Laois County Development Plan 2017 - 2023; would not give rise to a risk of serious pollution given its regulation by the Environmental Protection Agency; would not be prejudicial to public health; would not interfere with a protected view and prospect of importance or the heritage of the area; would not seriously injure the amenities of the area or property in the vicinity; would be acceptable in terms of pedestrian and traffic safety and convenience; and would not give rise to a major accident risk. 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 submitted on the 19th day of May, 2020, the 13th day of October, 2020, and the 11th day of November, 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 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.

3. All environmental mitigation measures set out in the Environmental Impact Assessment Report and Natura Impact Statement, and associated documentation and addenda submitted by the developer with the application, by way of further information, clarification of further information, and the appeal shall be implemented in full except as may otherwise be required in order to comply with the conditions of this order.

Reason: In the interest of clarity and to protect the environment during the construction and operational phases of the development.

4. A maximum of 80,000 tonnes per annum of raw materials shall be treated in the anaerobic digesters.

Reason: In the interest of clarity.

5. Monitoring of the construction phase shall be carried out by a suitably qualified and competent designated person to act as the Ecological Clerk of Works and to ensure that all environmental mitigation measures contained in the documentation which accompanied the planning application, including appendices, addenda, further information, clarification of further information, and response to the grounds of appeal, are fully implemented. The designated person shall liaise with the planning authority or members of the public in the event of complaints or queries in relation to environmental mitigation measures during the construction phase. The name and contact details of the

designated person shall be provided to the planning authority prior to the commencement of any development on site.

Reason: To safeguard the amenities of the area.

6. An annual report on the operation of the facility hereby permitted shall be submitted to the planning authority. The content of this report shall be as agreed in writing with the planning authority and shall include, inter alia, the following:

- (a) details of the source of all feedstock and final disposal areas of digestate;
- (b) the volumes of raw materials treated in the anaerobic digester in the previous 12 months;
- (c) the volume of digestate produced and stored in previous 12 months; and
- (d) the volume and weight of gas produced on site in previous 12 months.

Reason: In the interest of orderly development and to ensure compliance with the parameters, as set out in the application.

7. Detail of the finishes of the buildings and structures on site shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

8. (a) Prior to commencement of development on site the developer shall submit, for the written approval of the planning authority, the detailed design for the proposed new roundabout junction and all works to the public road network. No development shall commence until the written approval of the planning authority has been provided in this regard.
- (b) Prior to commencement of development on site the developer shall provide, for the written approval of the planning authority, a Stage 2 Road Safety Audit for the detailed design.
- (c) A Stage 3 Road Safety Audit shall be carried out on completion of construction and prior to operation of the facility for the written approval of the planning authority.
- (d) A Stage 4 Road Safety Audit shall be carried out for the written approval of the planning authority.
- (e) Details of the junction of the existing public road and proposed site access road, including boundary treatments, shall be submitted for the written approval of the planning authority and the works shall be in place prior to operation of the facility.

Reason: In the interests of clarity, traffic safety, and the proper planning and sustainable development of the area.

9. Details of all signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, or as otherwise agreed with the planning authority.

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

10. Feedstock deliveries to the site and transport of digestate from the site shall be confined to between the hours of 0800 and 1830 Mondays to Fridays and 0800 and 1300 on Saturday and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interests of orderly development and residential amenity.

11. Water supply and drainage arrangements, including the attenuation and disposal of surface water shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

12. Prior to commencement of development, the developer shall enter into a water connection agreement with Irish Water.

Reason: In the interest of public health.

13. Lighting shall be provided in accordance with a scheme, details of which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. The scheme shall minimise obtrusive light.

Reason: In the interest of amenity and public safety.

14. 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.

15. Site development and building works shall be carried out only between the hours of 0700 to 1900 Mondays to Fridays inclusive and 0800 to 1800 on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the amenities of property in the vicinity.

16. The construction of the development shall be managed in accordance with a finalised 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 appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
 - (j) 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;
 - (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil/peat;

- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains;
- (m) Provision of a wheel wash; and
- (n) Details of the proposed development's key construction management personnel.

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

Reason: In the interests of amenities, public health, and safety.

17. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the 'Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects', published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

18. The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. All planting shall be adequately protected from damage until established. Any plants which die, are removed, or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting

season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In the interest of visual amenity.

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.

Dr. Maria FitzGerald

Maria FitzGerald

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this *23rd* day of *May* 2022.

