

Planning and Development Acts 2000 to 2022

Planning Authority: Cork County Council

Planning Register Reference Number: 21/05372

Appeal by Karin Kempf and others of Carrigdangan, Kilmichael, Macroom, County Cork and by others against the decision made on the 21st day of March, 2022 by Cork County Council to grant subject to conditions a permission to Keel Energy Limited care of MKO of Tuam Road, Galway in accordance with plans and particulars lodged with the said Council.

Proposed Development: The proposed development includes the provision of: 1. Up to three number wind turbines with a maximum overall ground to blade tip height up to 176.5 metres along with the associated foundations and hard-standing areas, serviced/accessed via the existing Carrigarierk Wind Farm infrastructure, permitted under An Bord Pleanála Planning References 04.246353 and 301563-18 (Cork County Council Planning References 15/730 and 17/431); 2. An operational life of the proposed development aligned with that of the existing Carrigarierk Wind Farm (25 years from 2021); 3. Underground electrical (33 kV) and communication cabling connecting the proposed turbines to the existing 110 kV substation in the townland of Carrigdangan; 4. Upgrade of existing tracks and provision of new site access roads and hardstand areas; 5. One number borrow pit; 6. A temporary construction compound; 7. Forestry felling; 8. Operational stage site signage;

9. Site drainage and 10. All associated site development works and apparatus, all in the townlands of Derryleigh, Gortnahoughtee, Cloghar, Gurteen, Gortatanvally, Lackabaun and Carrigdangan, County Cork. Further public notices were received by the planning authority on the 24th day of January, 2022.

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:

- (a) Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by Directive 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union,
- (b) EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy,
- (c) National policy including the Climate Action Plan 2023,
- (d) Project Ireland 2040 – National Planning Framework,
- (e) 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, and the Draft Revised Wind Energy Guidelines published by the Department of Housing, Local Government and Heritage in December 2019,
- (f) Regional Spatial Economic Strategy for the Southern Region 2020,

- (g) Cork County Development Plan 2022-2028,
- (h) the nature, scale and design of the proposed development as set out in the planning application and the pattern of development in the vicinity,
- (i) the likely consequences for the environment and the proper planning and sustainable development of the area in which it is proposed to carry out the proposed development and the likely significant effects of the proposed development on European Sites,
- (j) the documentation submitted with the planning application, including the Natura Impact Statement and the Environmental Impact Assessment Report and the further information furnished to the Board,
- (k) the submissions on file and appeals made to An Bord Pleanála in connection with regard to the planning application, and
- (l) the report and recommendation of the Inspector, including the examination, analysis and evaluation undertaken in relation to appropriate assessment and environmental impact assessment.

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with the European, National, Regional and Local planning, would be acceptable in respect of its likely effects on the environment and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposal for the Bandon River Special Area of Conservation (site code 002171), the Gearagh Special Area of Conservation (site code 000108), the Gearagh Special Protection Area (site code 004109) and the Cork Harbour Special Protection Area (site code 004030), in view of these sites' conservation objectives. 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 site's conservation objectives using the best scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the

- (i) site specific conservation objective for these sites,
- (ii) current conservation status, threats and pressures of the qualifying interest features,
- (iii) the likely direct and indirect impacts arising from the proposal both individually or in combination with other plans or projects,
- (iv) the mitigation measures which are included as part of the current proposal, and
- (v) views of prescribed bodies in this regard.

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 integrity of the aforementioned European Sites, 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 Site, in view of the site's conservation objectives and there is no reasonable scientific doubt as to the presence of such effects.

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:

- (a) the nature, scale, location and extent of the proposed development,
- (b) the Environmental Impact Assessment Report and associated documentation submitted in support of the application,
- (c) the submissions from the applicant and the planning authority, and
- (d) the Inspectors report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. 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 planning application.

Reasoned conclusions on the significant effects

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Benefits/positive impacts on the **Air and Climate**, the proposed development will have a significant positive effect on human health and population due to the displacement of carbon dioxide the atmosphere arising from fossil fuel energy production.
- Negative impacts on **human health and population** arising from construction include noise, traffic and dust disturbance to residents of neighbouring dwellings. All of these impacts are low to moderate. Adequate mitigation measures are proposed to ensure that these impacts are not significant and include adequate mitigation for operational noise.
- Negative impacts on **Water** could arise as a result of accidental spillages of chemicals, hydrocarbons or other contaminants entering the drainage system and discharging to the river thereafter during the construction and operational phases. These impacts will be mitigated by measures outlined within the application and can, therefore, be ruled out.
- Negative impacts on **biodiversity** including habitat loss, disturbance/displacement of species, pollution of rivers and streams draining the site and the spread of invasive plant species will be mitigated by a suite of measures outlined in the Construction and Environmental Management Plan contained in Volume 3: Appendix 4-4 of the Environmental Impact Assessment Report.

- **Negative Noise and Dust** impacts arise during the construction phase from construction activities. These impacts will be mitigated through adherence to best practice construction measures. Noise disturbance from the operation of turbines is not likely to arise given the separation distances between turbines and residential properties. Impacts arising from noise and dust disturbance during both the construction and operational stage can therefore be ruled out.
- **Negative traffic** impacts arise during the construction phase of the development, these impacts will be mitigated through the implementation of a traffic management plan and a construction management plan. Impacts arising from traffic can therefore be ruled out.

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 the Environmental Impact Assessment Report, and subject to compliance with the conditions set out below, the effects of the proposed development on the environment by itself and in combination with other plans and projects in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions of the Inspector.

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 information submitted on the 10th day of December, 2021, 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 is constructed shall be 10 years from the date of this Order.

Reason: In the interest of clarity.

3. 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 planning authority to review its operation in the light of the circumstances then prevailing.

4. The developer shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report and associated documentation are implemented in full, save as may be required by conditions set out below.

Reason: In the interest of protection of the environment.

5. The overall tip height of the turbine shall be no less than 175 metres and shall not exceed 176.5 metres in height.

Reason: In the interest of clarity.

6. (a) All mitigation, environmental commitments and monitoring measures identified in the Environmental Impact Assessment Report shall be implemented in full as part of the proposed development.
- (b) All mitigation and environmental commitments identified in the Natura Impact Statement shall be implemented in full as part of the proposed development.

Reason: In the interests of development control, public information and clarity.

7. The developer shall retain the services of a suitably qualified and experienced bat specialist to undertake bat surveys on regular intervals within the relevant period for this site for a minimum period of three years. Details of the surveys to be undertaken and associated reporting requirements shall be developed following consultation with, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for three years, with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Housing, Local Government and Heritage. In the event that significant barotrauma levels are recorded, the effected turbines shall be ceased from operation until adequate mitigation measures are agreed with the planning authority and fully implemented.

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

8. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate annual bird surveys of this site. Details of the surveys to be undertaken and associated reporting requirements shall be developed following consultation with, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for five years, with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Housing, Local Government and Heritage.

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

9. The construction of the development shall be managed in accordance with a Construction Environment 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 hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interests of public safety and residential amenity.

10. In the event that invasive plant species are found prior to or during works at the appeal site, the developer shall submit an Invasive Management Species Action Plan for the written approval of the planning authority which shall include full details of the eradication of such invasive species from the appeal site prior to construction on the site or if discovered during construction as soon as is practicably possible.

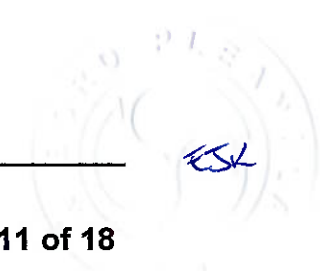
Reason: In the interests of nature conservation and mitigating ecological damage associated with the development.

11. Trees to be felled and buildings to be demolished shall be examined prior to felling and demolition to determine the presence of bat roosts. Any works shall be in accordance with the Transport Ireland Infrastructure Guidelines for the Treatment of Bats during the construction of National Road Schemes.

Reason: In the interest of wildlife protection.

12. (a) No additional artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission.
- (b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road. Their location within the compound shall be agreed with the planning authority prior to commencement of work on site.
- (c) All lighting shall be operated in such a manner as to prevent light overspill to areas outside of the compound.
- (d) Prior to the commencement of development, the developer shall submit a detailed lighting plan for the written agreement of the planning authority. The plan shall include the type, duration, colour of light and direction of all external lighting to be installed within the external areas of the development site.

Reason: In the interests of clarity, and of visual and residential amenity and protection of local biodiversity.



13. The developer shall comply with the following aviation requirements:
- (a) notify the Irish Aviation Authority of their intention to commence crane activities with a minimum of 30 days prior notification of their erection, and
 - (b) consult with the Irish Aviation Authority and the Dublin Airport Authority and develop mitigation measures for bird hazards. Details shall be submitted to the planning authority for written agreement.

Reason: In the interest of orderly development.

14. 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) $L_{90,10min}$ above background noise levels, or 45 dB(A) $L_{90,10min}$, at standardised 10 metre height above ground level wind speeds of 7 metres per second or greater, and
 - (ii) 40 dB(A) $L_{90,10min}$ at all other standardised 10 metre 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.

15. 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 subject development, including any mitigation measures such as the use of appropriate equipment and software to suitably control shadow flicker at nearby dwellings, including control of turbine rotation, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority. 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.

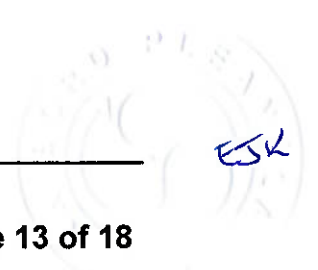
Reason: In the interest of residential amenity.

16. Prior to the commencement of development, the developer shall submit to and agree in writing with the planning authority, details of an obstacle warning light scheme which can be visible to night vision equipment.

Reason: In the interest of aviation safety.

17. Water supply, wastewater treatment and surface water attenuation and disposal shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.



18. 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, and
 - (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.

19. The delivery of large-scale turbine components for the construction of the windfarm shall be managed in accordance with a Traffic 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 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 interests of public safety and residential amenity.

20. On full or partial decommissioning of the turbines or if the turbines cease operation for a period of more than one year, the mast and the turbine concerned shall be removed and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation, within three months of decommissioning.

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

21. 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 interests of protecting telecommunications signals and of residential amenity.

22. The developer shall ensure that all plant and machinery used during the works be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

Reason: In the interest of the proper planning and sustainable development of the area.

23. All new surface water outfalls shall be constructed in a manner which protects riparian habitat and does not result in excessive erosion of such habitat.

Reason: In the interest of habitat protection.

24. The developer shall retain the services of a suitably qualified and experienced Ecologist to undertake pre-construction surveys at the various project elements, including any river crossings, immediately prior to commencing work in order to check for the presence of protected species and bird species in the vicinity.

Reason: In the interests of protecting ecology and wildlife in the area.

25. 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.

26. 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 interests of traffic safety and the proper planning and sustainable development of the area.

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27. 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: In the interests of orderly development and visual amenity and to ensure satisfactory reinstatement of the site.

28. 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 this permission.



Eamonn James Kelly

Eamonn James Kelly

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this *12th* day of *October*, **2023.**