

An
Bord
Pleanála

Board Order
ABP-314600-22

Planning and Development Acts 2000 to 2022

Planning Authority: Donegal County Council

Planning Register Reference Number: 22/51214

Appeal by Cathal Boyle of Fiafannon, Killybegs, County Donegal against the decision made on the 25th day of August, 2022 by Donegal County Council to refuse permission for the proposed development.

Proposed Development: Construction of one Enercon E138 wind turbine on an 81-metre tower with an electrical rating of 4.2 megawatts and an overall tip height of 149.38 metres. The construction of the wind turbine foundation, hardstanding and assembly area. Provision of a site entrance and an access track within the site. Construction of an on-site 20kV substation and underground electrical cable. All associated site development and ancillary works, all at Cornacahan and Cunlin, Killybegs, County Donegal.

Decision

GRANT permission for the above proposed development based on the reasons and considerations under and subject to the conditions set out below.

Reasons and Considerations

Having regard to national policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions of greenhouses gases, the Wind Energy Development Guidelines for Planning Authorities 2006, the provisions of the Donegal County Development Plan 2018-2024, as varied, and the character of the landscape along with the planning history of the site and the distance to existing residential development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of impact on the visual amenities and landscape character of the area, would not seriously injure the amenities of property in the vicinity, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted the content of the Inspector's second report dated 14th day of September, 2023, wherein the Inspector referred to the policy context, subsequent to the adoption of Variation Number 2 of the Donegal County Development Plan 2018-2024, which confirms that the site is located within an area where windfarms are not normally permissible. However, in such areas a windfarm development will be open for

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consideration on sites with an extant planning permission where such proposals shall be generally confined to the planning unit of the existing development. This contingency applies to the subject case as there is an extant permission on site, and therefore the recommendation of the inspector in his second report that the proposed development would materially contravene the relevant development plan policy does not apply. Furthermore, in reaching its decision, the Board also accounted for and agreed in full, with the assessment of the inspector in his first report dated 28th day of November, 2022, that the proposed development would be in accordance with the proper planning and sustainable development of the area in all substantive technical grounds, such as visual impact, shadow flicker, noise and environmental assessments and that the inspector recommended a grant of permission on that basis. The Board also noted that the planning authority did not recommend refusal of permission on any substantive technical grounds, but refused permission solely on the basis of its interpretation of then applicable policy, specifically that the proposed development was located outside of an area open for consideration for windfarm development. The Board further noted that these issues were fully ventilated by all parties and observers to the application and appeal at that stage, and that practical examination of such matters was relevant to the decision of the Board to grant permission for this specific development, in the context of its allowance as an open for consideration project. The Board also noted that Variation Number 2 of the Development Plan does not alter the substantive assessment of these technical issues.

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Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, 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 proposed 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 ten years from the date of this Order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

3. This permission shall be for a period of 30 years from the date of the commissioning of the wind turbine. The wind turbine and related ancillary structures shall then be decommissioned and removed unless, prior to the end of the period, planning permission shall have been granted for its continuance for a further period.

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

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4. 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 7 metres per second or greater, and
 - (ii) 40 dB(A) L90,10min at all other wind speeds,
- (b) 43 dB(A) L90,10min at all other times

where wind speeds are measured at 10 metres above ground level.

Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority a noise compliance monitoring programme for the proposed development, including any mitigation measures such as the de-rating of the turbine. 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 turbine.

Reason: In the interest of residential amenity.

5. (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) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
- (c) 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 turbine, this report shall be submitted to, and agreed in writing with, the planning authority. The developer shall outline proposed measures to address any recorded non-compliances, controlling turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

6. Details of any aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to commissioning of the turbine, the developer shall inform the planning authority, the Irish Aviation Authority and the Department of Defence of the as-constructed tip height and co-ordinates of the turbine.

Reason: In the interest of air traffic safety.

7. The construction of the proposed 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 proposed development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

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

8. Water supply 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.

9. On full or partial decommissioning of the turbine, or if the turbine ceases 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 removed or covered with soil to facilitate re-vegetation, within three months of decommissioning.

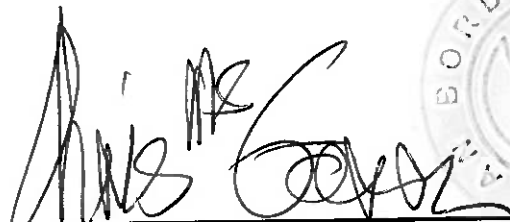
Reason: To ensure satisfactory reinstatement of the site upon cessation of the project.

10. 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 traffic safety and the proper planning and sustainable development of the area.

11. 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 the Board 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.


Chris McGarry

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

Dated this 27th day of October 2023.