

An
Bord
Pleanála

Board Order
ABP-315040-22

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/228

Appeal by Wym O'Connell of Papillon, Main Street, Causeway, Tralee, County Kerry and by Siobhán Fitzgerald of Sandford, Dromkeen, Causeway, Tralee, County Kerry against the decision made on the 10th day of October, 2022 by Kerry County Council to grant subject to conditions a permission to Sandford Energy Limited care of Philip O'Dwyer of Foxfort, Causeway, Tralee, County Kerry in accordance with plans and particulars lodged with the said Council:

Proposed Development: Construct a biogas production plant incorporating: two digestion tanks, a pre-mix tank and digestate tank, a substrate storage area and slurry storage tank with associated pumps, to construct a building containing CHP (Combined Heat and Power) unit and controls for digestion facility and machinery storage, a concrete underground covered soiled water tank with wheel wash, weighbridge, and biogas flare unit, to construct a water attenuation tank for storm/rain water on site, complete with class 1 oil interceptor/separator, silt traps, tree lined boundary fence on earthen bank and all associated site works at 'Sandford', Dromkeen West, Causeway, Tralee, County Kerry.

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

Having regard to the agricultural nature of the area, the siting of the proposed development within an existing farmyard facility and the distance from neighbouring properties, and having considered:

- (a) the national and regional policy objectives in relation to renewable energy including, in particular, the Climate Action Plan 2023 and Climate Action Plan 2024,
- (b) the provisions of the Kerry County Development Plan 2022 – 2028,
- (c) the Listowel Municipal District Local Area Plan, 2020-2026,
- (d) the national and regional renewable energy policy objectives,
- (e) the nature, scale, extent and layout of the proposed development,
- (f) the topography of the area, and
- (g) the pattern of development in the area,

it is considered that, subject to compliance with the conditions set out below, the proposed development would comply with the provisions of the County Development Plan, would not be prejudicial to public health, would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity, would not be likely to have significant effects on the environment, or the ecology of the area, would be acceptable in terms of traffic and safety, would be acceptable in terms of archaeology and would not give rise to increased risk of flooding of the site or of property in the vicinity. The proposed development 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 is satisfied that the limited increase in the volume of traffic and the demonstrated capacity to establish the necessary sightlines for the entrance onto the public road from within the area of land in the ownership of the applicant, would not endanger public safety by reason of traffic hazard.

Appropriate Assessment Screening

The Board agreed with the screening assessment and conclusion carried out in the Inspector's Report. The proposed development is not located in or immediately adjacent to a European site. The Lower River Shannon Special Area of Conservation (Site Code:002165), circa six to eight kilometres north and east of the site and the Kerry Head Special Protection Area (Site Code:004189), circa six kilometres north of the site are the European Sites in respect of which the proposed development has the potential to have a significant effect in view of the Conservation Objectives for the sites.

Appropriate Assessment

Having carried out Screening for Appropriate Assessment of the project, the Board concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European site, in view of their Conservation Objectives, and Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required. This determination is based on the following:

- (a) the nature, scale and design of the proposed development,
- (b) the nature of the receiving environment,
- (c) the separation distance of the proposed development from the European Sites and the demonstrated lack of any ecological connections, and
- (d) the lack of direct connections with regard to the source-pathway-receptor model.

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 that there is no reasonable scientific doubt as to the absence of such effects.

Conditions

1. The development shall be carried out in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 13th day of September, 2022 and by An Bord Pleanála on the 7th day of November, 2022, 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 and to regulate and control the layout of the proposed development.

2. Prior to the commencement of development, the plans and particulars for an alternative vehicle entrance on to the public road to the west of the existing site entrance within the land ownership of the applicants shall be submitted for the approval of the planning authority to ensure adequate sightlines to the proposed development.

Reason: In the interest of traffic safety.

3. The developer shall ensure that all mitigation measures, as set out in the reports and other particulars submitted with the application, 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 of this Order.

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

4. The following limits and requirements shall be complied with in the anaerobic digestion process. The overall quantity of materials accepted for processing at the facility shall not exceed 14,000 tonnes per annum. Only the following materials and annual maximum quantities thereof shall be accepted, stored and processed at the facility: Grass silage : 5,000 tonnes per annum, Maize silage : 5,000 tonnes per annum, Sugar beet : 2,000 tonnes per annum, Cattle slurry : 2,000 tonnes per annum. The materials in question shall only be sourced from those farms specifically identified in the planning application. Food waste shall not be accepted or processed at the facility.

Reason: In the interest of clarity and to regulate and control the layout of the development.

5. Deliveries to and from the site shall be confined to between the hours of 0700 to 1800 Mondays to Saturdays, unless otherwise agreed in writing with the planning authority.

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

6. Prior to commencement of development, revised planning drawings shall be submitted for the approval of the planning authority to detail pipework connections from the pre-mix treatment unit to the digesters 1 and 2.

Reason: In the interest of clarity and to regulate and control the layout of the development.

7. All proposed cladding on the building containing the Combined Heat and Power unit shall be finished in a matt dark grey/dark green. The use of white uPVC shall not be permitted on windows, doors, fascias, soffits and guttering. The Butyl rubber double layer bubble on the pre-mix tank, digestors and digestate structurers shall be matt dark grey/dark green in colour.

Reason: In the interest of visual amenity.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours 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 residential amenities of property in the vicinity.

9. External lighting shall be properly cowled and directed away from the public roadway and shall also not be visible from any point more than 100 metres away from the light.

Reason: To safeguard the amenities of the area and to prevent light pollution in the rural environment.

10. 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. This scheme shall include the following:
- (a) The proposed berm surrounding the proposed development indicated on the Site Layout Drawing received by the planning authority on the 13th day of September, 2022 shall be constructed 1.5 metres in height and 5 metres wide and landscaped on both sides with suitable native Irish hedges of Irish provenance and in consultation with recommendations from the All-Ireland Pollinator Plan, Pollinator Friendly planting Code Guidelines as per site layout planning drawing, PH-003, received on the 13th day of September, 2022.
 - (b) A plan to a scale of not less than 1:500 showing the species, variety, number, size and locations of all proposed trees and hedgerows (which shall comprise predominantly native species such as mountain ash, birch, willow, sycamore, pine, oak, hawthorn, holly, hazel, beech or alder).
 - (c) Specifications for mounding, levelling, cultivation and other operations associated with grass establishment.
 - (d) A timescale for implementation.

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.

11. The construction of the development shall be managed in accordance with a Construction and Environmental Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include inter alia:
- (a) All mitigation and control measures outlined in reports and all other particulars submitted with the application.
 - (b) Details of all archaeological or cultural heritage constraints as may be identified during pre-development archaeological testing and monitoring.
 - (c) Details in relation to site access and traffic management.
 - (d) Details of intended construction practice for the development, including noise management measures, and on-site management and off-site disposal of construction/demolition waste.

Reason: To safeguard the amenities of the area.

12. The proposed slurry storage tank shall be constructed in accordance with the relevant Department of Agriculture, Food and the Marine specifications. The walls and base of the proposed underground slurry storage tank shall be fully water tight. No polluting matter of any kind resulting from the proposed development shall be allowed enter into any tidal waters, river, stream, lake, canal, reservoir, pond, watercourse or other inland waters whether natural or artificial. The proposed infrastructure for the management of farmyard manures, slurries and soiled water shall be in full compliance with the S.I. Number 31 of 2014, European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014 and in accordance with the required farm buildings and structures specifications outlined by the Department of Agriculture, Food and Marine

Reason: In the interest of pollution control.

13. The proposed substrate storage pit shall be constructed in accordance with the relevant Department of Agriculture, Food and the Marine specification. The proposed substrate storage pit shall be properly maintained so as to prevent any leakage of effluent through floor. The proposed substrate storage pit shall be maintained in good condition and free of structural defects.

Reason: In the interest of pollution control.

14. No alteration to, or reconstruction in respect of, the activity to which this permission relates or any part thereof which would or is likely to result in a material change or increase in shall be carried out or commenced without prior notice to, and without the prior written agreement of the planning authority.

Reason: To regulate and control the layout of the development.

15. If deemed necessary at any time, the planning authority reserves the right to engage a third-party to carry out environmental monitoring (e.g. odour, noise, dust) on its behalf. Any and all findings or recommendations arising from such monitoring shall be fully implemented by the applicant.

Reason: To safeguard public health and to prevent pollution.

16. Noise generated from activities carried out within the facility shall not give rise to public noise nuisance beyond the facility boundaries. The applicant shall arrange the carrying out of a noise monitoring survey on an annual basis. The scope of this noise monitoring survey shall be agreed in advance with the planning authority. The results of the annual noise survey and an interpretative report shall be forwarded to the planning authority as soon as possible after the survey has been undertaken. The planning authority reserves the right to alter the frequency and scope of the said monitoring programme.

Reason: To safeguard public health and to prevent pollution.

17. All operations on-site shall be carried out in a manner such that air emissions and/or odours do not result in significant impairment of, or significant interference with amenities or the environment beyond the site boundary and at odour-sensitive locations.

Reason: To safeguard public health and to prevent pollution.

18. The emission stack serving the CHP plant shall be a minimum of 10 metres in height, as measured from finished ground level.

Reason: To safeguard public health and to prevent pollution.

19. Water supply and drainage arrangements for the site, including the disposal of surface and soiled water, shall comply with the requirements of the planning authority for such works and services. In this regard:

- (a) uncontaminated surface water run-off shall be disposed of directly in a sealed system, and
- (b) all soiled waters shall be directed to a storage tank. Drainage details shall be submitted to and agreed in writing with the planning authority, prior to commencement of development.

Reason: In the interest of environmental protection and public health.

20. The applicant shall enter into a maintenance contract with a suitably qualified and authorized entity for the on-going maintenance of the oil-separator system. The contract shall be maintained on an on-going basis and the applicant shall maintain records of same.

Reason: To safeguard public health and to prevent pollution.

21. The applicant shall notify the planning authority by both telephone and email as soon as practicable after the occurrence of any of the following:

- (a) An incident or accident that significantly affects the environment.
- (b) Any release of environmental significance to atmosphere from any potential emissions point including bypasses.
- (c) Any breach of one or more of the conditions attached to this grant of planning.
- (d) Any malfunction or breakdown of key environmental abatement, control or monitoring equipment.

The applicant shall include as part of the notification, the date and time of the incident, summary details of the occurrence, and where available, the steps taken to minimise any emissions.

Reason: To safeguard public health and to prevent pollution.

22. The applicant shall keep a record of all complaints relating to emissions from the activity in the form of a complaint log which should be maintained onsite for review by the planning authority. Each record shall give details of the date and time of the complaint, the name of the complainant (if available) and the exact nature of the complaint in a complaint log maintained on the site. A record shall be kept of the response (if any) to each complaint. The applicant shall facilitate the planning authority in the carrying out of inspections and/or audits of the facility by making relevant staff and data available on request. The applicant shall keep records of all monitoring carried out and shall retain such records for a minimum period of seven years. These records shall be made available to the planning authority on request.

Reason: To safeguard public health and to prevent pollution.

23. Within six months of the date of grant of planning permission, and prior to the removal of any digestate off-site from the facility, the applicant/developer shall prepare a Nutrient Management Plan in relation to the application to land of digestate from the facility. A copy of the current Nutrient Management Plan shall be maintained on-site at the facility at all times and shall be made available to the planning authority upon request. The Nutrient Management Plan shall be reviewed, at minimum, on an annual basis or in the event of any material change to any element of the plan.

Reason: In the interest of clarity and the protection of the environment.

24. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the EPA's Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.

Reason: In the interest of sustainable waste management.

25. In advance of operations commencing on-site, the applicant shall appoint an operations and environmental manager for the proposed development. Contact details for the person in question (to include an out-of-hours contact phone-number) shall be provided to the planning authority in advance of operations commencing and any subsequent change(s) to these details shall also be notified to the planning authority.

Reason: To safeguard public health and to prevent pollution.


26. Any and all hazardous waste/material generated at the site shall be taken directly to a suitably authorised waste facility or transferred to a suitably licensed waste collector.

Reason: To safeguard public health and to prevent pollution.



27. 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.



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

Dated this 8th day of June 2024