

Planning and Development Acts 2000 to 2022

Planning Authority: Tipperary County Council

Planning Register Reference Number: 21/1502

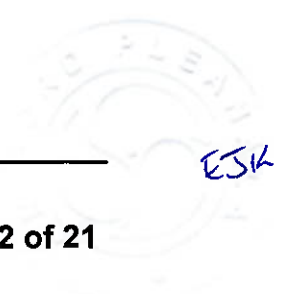
Appeal by Helen and Richie Butler of Ballyhomuck, Cloneen, Clonmel, County Tipperary, and by ABO Wind Ireland Limited of Unit 3, Aspen Court, Cornelscourt, Dublin, against the decision made on the 27th day of October, 2022 by Tipperary County Council to grant, subject to conditions, a permission to ABO Wind Ireland Limited in accordance with plans and particulars lodged with the said Council.

Proposed Development: A 10-year permission of a wind farm project. The development will consist of: Construction of up to seven number wind turbines with a maximum overall tip height of 150 metres, comprising a tower of between 75 to 95 metres high, to which three blades of between 55 to 70 metres in length will be attached; associated hard stand areas at each turbine; one number 30 metre permanent meteorological mast and all associated infrastructure and works; one number 38kV electrical substation and all associated infrastructure and works; 20kV underground cables facilitating the connection of turbines to 38kV electrical substation and all associated infrastructure and works; circa 19 kilometres of 38kV underground cabling and all associated works along public roads to facilitate the connection of the

proposed 38kV wind farm electrical substation to the existing 38/110kV Doon substation in the townland of Ballyvaughan; provision of a new site entrance on the L2035; upgrading of existing agricultural tracks and construction of new site tracks and all associated works as required; a temporary site compound and all associated works; demolition of two number derelict buildings; provision of two cattle underpasses circa 400 metres and circa 580 metres to the east of the new site entrance; and all associated infrastructure and site development works. The proposed underground cabling works are located within the public road corridor cross Protected Structure RPS S121 (Loughcapple Bridge) all at Knockroe, Kilnagranagh, Newtowndrangan, Tullowcussaun, Ballyvadlea, Ballyhomuck, Kilburry West, Milestown, Bannixtown, Quartercross, Clare More, Killusty North, Killusty South, Kiltinan, Loughcapple, Grange Beg, Miltown Britton, Mullenranky, Kilmore, Ballinvoher, Redmondstown and Ballyvaughan. The proposed development was revised by further public notices received by the planning authority on the 2nd day of June 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

The Board had regard to the following:

- (a) National policy, including the Climate Action Plan 2023, with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouse gases;
- (b) Regional Spatial and Economic Strategy for the Southern Region 2020;
- (c) 'Wind Energy Guidelines-Guidelines for Planning Authorities' issued by the Department of the Environment, Heritage and Local Government in June 2006, and the Draft Wind Energy Guidelines published by the Department of Housing, Local Government and Heritage in December 2019;
- (d) the relevant policies of the planning authority as set out in the Tipperary County Development Plan 2022-2028;
- (e) the character of the landscape in the area and the absence of any ecological designation on or in the immediate environs of the wind farm site;
- (f) the characteristics of the site and of the general vicinity;
- (g) the pattern of existing and permitted development in the area, including other wind farms;
- (h) the distance to dwellings or other sensitive receptors from the proposed development;
- (i) the Environmental Impact Assessment Report submitted with the application;
- (j) the Natura Impact Statement submitted with the application;
- (k) the submissions made in connection with the application, the responses to further information, and the information provided in the appeals; and
- (l) the report of the Inspector.

Appropriate Assessment: Stage 1

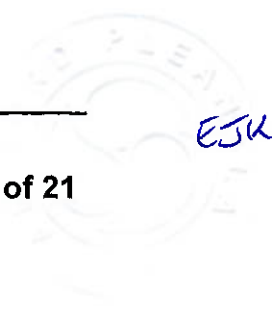
The Board noted that the proposed development is not directly connected with, or necessary for, the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion reached in the Inspector's report that the Lower River Suir Special Area of Conservation (Site Code 002137) is the only European site for which there is a possibility of significant effects and which must therefore be subject to Appropriate Assessment.

Appropriate Assessment: Stage 2

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the Lower River Suir Special Area of Conservation in view of the site's Conservation Objectives. The Board concluded that the information before it was adequate to allow for a complete assessment of all aspects of the proposed development and to allow them reach complete, precise and definitive conclusions for appropriate assessment.

In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (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 proposal;
- (iii) the conservation objectives for the European Site; and
- (iv) the views contained in the submissions.



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 Site, 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 doubt remaining as to the absence of such effects.

Environmental Impact Assessment:

The Board completed an Environmental Impact Assessment of the proposed development taking account of:

- (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 planning application, including the further information submissions;
- (c) the submissions made in connection with the application, the responses to further information, and the information provided in the appeals; and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, adequately considers alternatives to the proposed development and identifies and describes adequately the direct, indirect, secondary and cumulative effects of the proposed development on the environment. 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, and would be mitigated, as follows:

- **Population and Human Health:** Noise, vibration and shadow flicker during the construction and/or the operational phases would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR), the Outline Construction and Environment Management Plan (OCEMP) and Environmental Management Plan (EMP). There will be a positive impact on the socio-economic profile of the area due to community funding.
- **Biodiversity:** Habitat loss associated with construction will impact on habitats of generally low ecological value with no rare or protected species recorded. Potential impacts to habitats and faunal species, aquatic fauna and invertebrates, avian species and bats would be mitigated by the implementation of the measures during the construction and/or operational phases set out in the Environmental Impact Assessment Report.
- **Material Assets, Cultural Heritage and the Landscape:** Roads and traffic impacts will be mitigated during construction by the measures set out in the EIAR and a Traffic Management Plan. The main impacts will occur during the construction stage which will be short-term and temporary. Impacts during the operational stage would be negligible. Potential impacts on unknown cultural heritage would be mitigated by archaeological monitoring with provision made for resolution of any archaeological features/deposits that may be identified. Localised visual impacts will occur primarily from in proximity to the site and from local properties. However, the impacts would be balanced to a degree by the nature and characteristics of the receiving environment and by the number and layout of turbines being proposed.

- **Land, Soils, Water, Air and Climate:** Potential significant effects on hydrology, hydrogeology and soils would be mitigated by a series of best practice construction management and pollution prevention measures and other specific measures outlined in the EIAR, including the OCEMP, the Environmental Management Plan, and Surface Water Management Plan. Positive air quality and climate impacts are identified for the operational phase due to the offsetting of fossil fuels by the generation of renewable energy. Construction noise will be mitigated by the measures set out in the OCEMP while operational noise will be mitigated by curtailment of turbine operation, if required.

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

Having considered the totality of the EIAR, associated documentation submitted with the application and the report of the Inspector, the Board concluded that any likely significant effects on the environment would be mitigated by the mitigation measures proposed by the applicant.

Proper planning and sustainable development:

It is considered that, subject to compliance with the conditions set out below, the proposed development would accord with European, national, and regional planning and 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, would not pose a risk to water quality and would be acceptable in terms of traffic safety and convenience. 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 further information received on 2nd day of June 2022 and the 6th day of September 2022, and the further plans and particulars received by the Board on the 23rd day of November 2022, the 22nd day of December 2022, and the 28th day of February 2023, 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 agreed particulars.

Reason: In the interest of clarity.

2. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, including any revisions/ addendums to same, and other plans and particulars submitted with the application shall be implemented in full.

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

3. The mitigation measures contained in the Natura Impact Statement, including any revisions/ addendums to same, submitted with the application shall be implemented in full.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of European sites.

4. The period during which the proposed development hereby permitted may be constructed shall be 10 years from the date of this Order.

Reason: In the interests of clarity.

5. This permission shall be for a period of 30 years from the date of the first commissioning of the wind farm.

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

6. The following design requirements shall be complied with:
- (a) The wind turbines will have a maximum tip height of 150 metres;
 - (b) Final details of the turbine design, hub height, tip height and blade length complying with the maximum limit and within the range set out in the application documentation and the further information received by the Board, along with details of colouring, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development;
 - (c) Cables within the site shall be laid underground;
 - (d) The wind turbines shall be geared to ensure that the blades rotate in the same direction;
 - (e) 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.

7. Prior to any development taking place on the site the developer shall submit for the written agreement of the planning authority:
- a) the final detail and specification of the proposed grid connection route, including details of the methodology to cross each of the bridges along the route;
 - b) the locations of grid connection joint boxes /bays relative to the preferred solution for the N24 project shall be agreed with the N24 Waterford to Cahir Project Team.

Reason: In the interests of clarity and proper planning and sustainable development.

8. During construction stage, the developer shall employ a suitably qualified and experienced geotechnical engineer to monitor the stability of all existing slopes adjacent to the works and all temporary slopes created by the works. Should any land slippage occur during the course of the works the developer shall immediately inform the planning authority and provide details on how further slippage shall be prevented and necessary measures to remediate the site.

Reason: In the interest of environmental protection and orderly development.

9. Site development and building works shall be carried out only between the hours of 0700 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.

10. The operation of the proposed development, by itself or in combination with 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) $L_{90,10\text{mins}}$ above background noise levels, or 45 dB(A) $L_{90,10\text{mins}}$, at standardised 10-meter height above ground level wind speed of 6m/s or greater.
 - (ii) 40 dB(A) $L_{90,10\text{ mins}}$ at all other standardised 10-meter height above ground level wind speeds.
 - (b) 43 dB(A) $L_{90,10\text{ mins}}$, 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 Recommendation 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 the commissioning of the wind farm.

Reason: In the interests of residential amenity.

11. The developer shall comply with the following shadow flicker requirements:
- (a) Cumulative shadow flicker arising from the proposed development shall not exceed 30 minutes in any day or 30 hours in any year at any dwelling;
 - (b) The proposed turbines shall be fitted with appropriate equipment and software to control shadow flicker at dwellings;
 - (c) Prior to commencement of development, a wind farm shadow flicker monitoring programme shall be prepared by a consultant with experience of similar monitoring work, in accordance with details to be submitted to the planning authority for written agreement. Details of the monitoring programme shall include the proposed monitoring equipment methodology to be used, and the reporting schedule.

Reason: In the interests of residential amenity.

12. Details of the materials, colours and textures of all the external finishes of the proposed substation building and enclosing fence shall be submitted to and agreed in writing with the planning authority, prior to commencement of the development.

Reason: In the interests of the visual amenity of the area.

13. Details of a pre-construction and post construction monitoring and reporting programme for birds shall be submitted to and agreed in writing with the planning authority prior to commencement of development. The bird surveys shall be undertaken by a suitably qualified and experienced bird specialist. The surveys shall be completed annually for a period of five years following commissioning of the wind farm and copies of the report submitted annually to the planning authority and to the National Parks and Wildlife Service.

The pre-construction mitigation measures outlined in the Environmental Impact Assessment Report to protect birds shall also be implemented during the decommissioning phase of the project.

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

14. Detailed measures in relation to the protection of bats shall be submitted to and agreed in writing with the planning authority, prior to commencement of development. These measures shall be implemented as part of the development. Any envisaged destruction of structures that support bat populations shall be carried out only under licence from the National Parks and Wildlife Service and details of any such licence shall be submitted to the planning authority.

Reason: In the interest of wildlife protection.

15. Prior to commencement of development, details of a post-construction monitoring and reporting programme for bats shall be submitted to and agreed in writing with the planning authority. Monitoring shall be undertaken by a suitably qualified and experienced bat specialist and identify any measures required to mitigate any identified effects. The surveys shall be completed annually for a period of three years following commissioning of the wind farm and copies of the report submitted to the planning authority and the National Parks and Wildlife service.

Reason: To ensure the appropriate monitoring of the use of the site by bat species.

16. A bird and bat corpse survey, carried out by a competent ecological surveyor, shall be conducted seasonally under the operational turbines. The survey shall be carried out in accordance with up-to-date best practice concerning timing and using trained search dogs. The result shall be forwarded annually to the planning authority and the National Parks and Wildlife Service.

Reason: In order to monitor bird and bat mortality associated with the operational wind farm.

17. Prior to the commencement of the development, the details of the proposed replanting scheme shall be submitted and agreed in writing with the Local Authority.

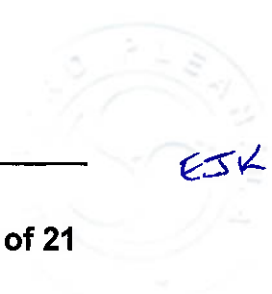
Reason: In the interests of protecting local biodiversity.

18. 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 the protection of telecommunications signals and of residential amenity.

19. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. Prior to the commissioning of the turbines, the developer shall inform the planning authority and the Irish Aviation Authority of the as-constructed tip heights and co-ordinates of the turbines and the wind monitoring masts.

Reason: In the interests of air traffic safety.



20. Prior to commencement of the development, a traffic management plan for the construction phase shall be submitted to, and agreed in writing with, the planning authority. The developer shall liaise with the N24 Waterford to Cahir Project Team in the preparation of the plan. A Traffic Management Co-ordinator shall be appointed to implement and monitor the plan and shall act as a point of contact for the planning authority, other relevant bodies and members of the public in relation to traffic and transportation matters.

The traffic plan shall incorporate the following:

- (i) Details of the road network/haulage routes and the vehicle types to be used to transport materials to and from the 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 shall be carried out at the developer's expense by a suitably qualified person both before and after the construction of the proposed 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 within the relevant planning authorities and Transport Infrastructure Ireland prior to commencement of development. Any damage to the road, drainage, boundaries or associated features of the public road shall be rectified at the developer's expense to the satisfaction of the planning authority;
- (iii) Detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority;
- (iv) Detailed arrangements for the protection of bridges to be crossed;
- (v) Detailed arrangements for temporary traffic arrangements/control on roads and protocols to keep residents informed of upcoming traffic related matters, temporary lane/road closures and delivery of turbines;

- (vi) Details of the establishment of a communication and complaints protocol to ensure that local residents are aware of the construction programme, haul routes, traffic control measures and to provide contact details for complaints or queries;
- (vii) A phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction of the proposed development. In the event that the proposed development is being developed concurrently with any other windfarm in the area or the N24 Cahir to Waterford project, the developer shall consult with and arrange suitable traffic phasing arrangements with the planning authority;
- (viii) Within three months of the cessation of the use of each public road and haul route to transport material to and from the site, a road survey and scheme of works detailing works to repair any damage to these routes shall be submitted to, and agreed in writing with, the planning authority.

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, the amenity of local residents and to clarify the extent of the permission in the interest of traffic safety and orderly development.

21. The developer shall comply with the requirements of Irish Water with regard to the protection of drinking water sources and infrastructure in proximity to the development, and in respect of any potential diversions and connections to the public network.

Reason: In the interests of public health.

22. The developer shall facilitate the preservation, recording and protection of archaeological materials and features that may exist on or 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 operations (including hydrological or geotechnical investigation) relating to the proposed development;
 - (b) employ a suitably qualified archaeologist who shall assess the site and monitor all site investigations and other excavation works.

The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site; and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall agree in writing with the planning authority details regarding any future archaeological requirements (including, if necessary, archaeological excavation) prior to commencement of construction works.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-sit or by record) and protection of any archaeological remains that may exist on the site.

23. Prior to the commencement of development, details of the proposed community benefit fund shall be submitted to, and agreed in writing with, the planning authority.

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

24. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the turbines and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

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

25. Prior to commencement of the development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other such security as may be acceptable to the relevant 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 relevant planning authority to apply such security or part thereof to the satisfactory reinstatement of the public roads. The form and amount of the security shall be as agreed between the relevant planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála.

Reason: To ensure the satisfactory reinstatement of the delivery routes.

26. Prior to commencement of the development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other such 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 of the site. 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.

Reason: To ensure the satisfactory reinstatement of the site.

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 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.

Eamonn James Kelly

Eamonn James Kelly

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board.

Dated this 01 day of December, 2023.