



An
Bord
Pleanála

Board Order
ABP-317406-23

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 22/816.

Appeal by Knocknamork Limited care of MKO of Tuam Road, County Galway against the decision made on the 24th day of May, 2023 by Kerry County Council to refuse a permission for the proposed development.

Proposed Development: (i) underground electrical cabling (33kV), (ii) upgrade of access junctions; (iii) access roads (new and upgrade of existing); (iv) temporary access road; (v) borrow pit; (vi) site drainage; (vii) forestry felling; and (viii) all associated site development ancillary works and apparatus. The development subject to this application forms part of grid connection and access arrangements which will facilitate the permitted Knocknamork renewable energy development, Cork County Council reference number 19/4972. Concurrent planning applications in relation to the overall grid connection and access arrangements will also be lodged to Cork County Council and An Bord Pleanála. An operational period and extended planning permission duration to align with the permitted Knocknamork renewable energy development, Cork County Council reference number 19/4972 is sought. An Environmental Impact Assessment Report (EIAR) and Natura Impact Statement (NIS) have been prepared in respect of the proposed

development and accompanies this application at the Townlands of Cummeenavrick, Glashacormick, Clydaghroe, Cummeennabuddoge, County Kerry. The proposed development was revised by further public notices received by the planning authority on the 30th day of March 2023.

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 nature and scale of the proposed development, mitigation measures proposed for the construction, and operation of the site and subject works, the planning history including the planned renewable energy development (Cork County Council Register Reference number 19/4972), and the policies and objectives of the Kerry County Development Plan 2022-2028, it is considered that, subject to compliance with the conditions set out below, the proposed development would not have a significant negative impact on the water quality downstream and would not adversely affect the environmental amenities of the area, would not adversely affect the traffic flow along the N22 or the visual or residential amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.



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 on a site,
- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,
- (c) the further information and associated documentation submitted by the applicant,
- (d) the submissions received from the prescribed bodies, the planning authority and third parties, and
- (e) the Planning Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the developer, 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 during the application.

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.

- The risk of pollution of ground and surface waters during the construction phase through a lack of control of surface water during excavation and construction, the mobilisation of sediments and other materials during excavation and construction and the necessity to



undertake construction activities in the vicinity of existing watercourses. The construction of the proposed project could also potentially impact negatively on ground and surface waters by way of contamination through accidents and spillages. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan, and the implementation of mitigation measures related to control and management of sediments, accidental spills and contamination, and drainage management.

- The proposed development would give rise to a short-term increase in vehicle movements and resulting traffic impacts during the construction phases. These impacts would be mitigated by the agreement of measures within a Construction and Environment Management Plan.
- The overall proposed project, including the permitted development (Cork County Council Register Reference number 19/4972), the concurrent Strategic Infrastructure Development Application before the Board for part of the grid connection (ABP314275-22) and the proposed development of this 33kV cable would have a direct long term positive impact on the climate by supplying electricity to the national grid from renewable energy sources.

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, 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.



Appropriate Assessment – Stage 1

The Board considered the screening report for Appropriate Assessment and all other relevant submissions, and carried out an Appropriate Assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites. The Board noted that the proposed development is not directly connected with, or necessary for, the management of a European Site and considered the nature, scale, and location of the proposed development, as well as the report of the Inspector. The Board agreed generally with the screening report submitted with the application and with the screening exercise carried out by the Inspector.

The Board concluded that, having regard to the qualifying interests for which the sites were designated and in the absence of connections to, and distance between, the application site and the European Sites, Mullaghanish Bog Special Area of Conservation (Site Code: 001890), St. Gobnet's Wood Special Area of Conservation (Site Code: 000106), Blackwater River (Cork/Waterford) Special Area of Conservation (Site Code: 002170), Old Domestic Building, Curraglass Wood Special Area of Conservation (Site Code: 002041), Kilgarvan Ice House Special Area of Conservation (Site Code: 000364), The Gearagh Special Area of Conservation (000108), The Gearagh Special Protection Area (Site Code: 004109), could be screened out from further consideration and that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effects on these European Sites or any other European Sites in view of the Sites' conservation objectives and that a Stage 2 Appropriate Assessment is therefore not required in relation to these European Sites.



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 Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365) and Mullaghanish to Musheramore Mountains Special Protection Area (Site Code: 004162) in view of the sites' conservation objectives. The Board considered that the information before it, as well as the report of the Inspector, was adequate to allow the carrying out of an Appropriate Assessment.

In completing the assessment, the Board considered the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, the mitigation measures which are included as part of the current proposal and the conservation objectives for these European Sites'.

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 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 Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (000365) and Mullaghanish to Musheramore Mountains Special Protection Area (Site Code: 004162) or any other European Site in view of the Sites' Conservation Objectives.



Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and revised by further plans and particulars received by the planning authority on the 20th of March 2023, and amended by the further plans and particulars received by An Bord Pleanála with the appeal, 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 interests of clarity and of the proper planning and sustainable development of the area.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission(s), Cork County Council planning register reference number 19/4972, and any agreements entered into thereunder.

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s).

3. (a) All of the environmental, construction, ecological and heritage-related mitigation measures, as set out in the Environmental Impact Assessment Report, the Natura Impact Statement, and the Construction and Environmental Management Plan, 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.

- (b) Prior to commencement of development a badger survey shall be undertaken. In the event of badger sett(s) being identified appropriate mitigation and avoidance shall be agreed in writing with the planning authority.
- (c) There shall be no felling or scrub clearance within the bird nesting season (1st March to 31st August).
- (d) A finalised Invasive Species Management plan detailing the methodology of control of invasives and monitoring shall be agreed in writing with the planning authority prior to commencement of development.
- (e) An Environmental Report on the Habitat Enhancement Area shall be submitted to the planning authority on an annual basis.
- (f) A Mitigation and Monitoring report prepared by a suitably qualified ecologist clearly indicating compliance with all ecological conditions listed in those reports from Section a) shall be submitted to the planning authority for agreement in writing.

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

4. (1) All mitigation measure in relation to Archaeology and cultural heritage as set out in Chapter 11 of the EIAR (Tobar Archaeological Services: 29th of July 2022) shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this permission.
- (2) The Construction Environmental Management Plan (CEMP) shall clearly identify and highlight the location of all archaeological and cultural heritage constraints located in proximity to the proposed works (Chapter 11 of the EIAR). The CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.
- (3) The developer shall employ a suitably qualified, archaeologist to monitor all ground disturbance required for this development. No groundworks of any type (including any enabling works or advance site investigations) are to take place in the absence of the archaeologist without his/her express consent. The use of appropriate machinery to ensure the preservation and recording of any surviving archaeological remains shall be necessary.
- (a) The archaeological monitoring programme shall be carried out under licence from National Monuments Service and in accordance with an approved method statement. A period of 5-6 weeks shall be allowed to facilitate processing and approval of the licence application and method statement.



- (b) Should archaeological material be found during the course of the archaeological monitoring, the archaeologist shall have work on site stopped pending a decision regarding appropriate mitigation. The developer shall be prepared to be advised by the National Monuments Service with regard to any mitigating action (preservation in situ and/or excavation). The developer shall facilitate the archaeologist in recording any material found.
- (4) The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of archaeological monitoring and of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features and other objects of archaeological interest.

- 5. 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 incorporate all mitigation measures set out in the application documentation and 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, site offices, construction parking and staff facilities, re-fuelling arrangements security fencing and hoardings;

- (b) a comprehensive construction phase traffic management plan including 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;
- (c) a comprehensive decommissioning and operation phase traffic management plan similar to the requirements for the construction phase plan;
- (d) measures to prevent the spillage or deposit of clay, rubble, or other debris on the public road network;
- (e) details of appropriate mitigation measures for noise, dust, and vibration, and monitoring of such levels;
- (f) 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;
- (g) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (h) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses.
- (i) Surface water discharge from compounds will be via a class 1 oil interceptor.
- (j) An audit list of all construction and operational mitigation measures, their timelines for implementation and responsibility for reporting.
- (k) The location and specification of all attenuation/ settlement ponds.



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

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

6. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest existing noise sensitive location shall not exceed:
- (i) An LAeqT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday inclusive. [The T value shall be one hour.]
 - (ii) An LAeqT value of 45 dB(A) at any other time. [The T value shall be 15 minutes]. The noise at such time shall not contain a tonal component.
 - (iii) At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.
- (b) All sound measurement shall be carried out in accordance with ISO 1996-1:2016 "Assessment of Noise with respect of Community Response", Description and Measurement of Environmental Noise.

Reason: To protect the amenities of property in the vicinity of the site.



7. The developer shall appoint a suitably qualified ecologist to monitor and ensure that all avoidance/mitigation measures relating to the protection of flora and fauna are carried out in accordance with best ecological practice and to liaise with consultants, the site contractor, the National Parks and Wildlife Service and Inland Fisheries Ireland. A report on the implementation of these measures shall be submitted to the planning authority and retained on file as a matter of public record.

Reason: To protect the environmental and natural heritage of the area.

8. No instream works shall be carried out from October 1st to June 30th, fish removal shall take place within cofferdams prior to dewatering and Inland Fisheries Ireland shall be notified in advance of any works. The Ecological Clerk of Works shall ensure all mitigation detailed in application documentation relative to watercourse crossings are employed and watercourse crossings shall not lose material to the rivers.

Reason: In the interest of environmental protection.

9. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 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 amenities of property in the vicinity.

10. 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.

11. All road surfaces, culverts, watercourses, verges, and public lands shall be protected during construction and, in the case of any damage occurring, shall be reinstated to the satisfaction of the planning authority at the developer's expense. Prior to commencement of development, a road condition survey shall be carried out to provide a basis for reinstatement works. Details in this regard shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In order to ensure a satisfactory standard of development.

12. 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 on 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: To ensure satisfactory reinstatement of the site.



13. 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.




Chris McGarry

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

Dated this 23rd day of January 2024.