

An
Bord
Pleanála

Board Order
ABP-317480-23

Planning and Development Acts 2000 to 2022

Planning Authority: Fingal County Council

Planning Register Reference Number: FW22A/0204

Appeal by William McFarland of Argyll House, Strand Road, Bray, County Wicklow and by others against the decision made on the 23rd day of June, 2023 by Fingal County Council to grant subject to conditions a permission to Kilshane Energy Limited care of CWPA Planning and Architecture of Unit 10, North Street Business Park, Seatown West, Swords, County Dublin in accordance with plans and particulars lodged with the said Council.

Proposed Development: The proposed development will consist of the following: (1) the construction of a new gas turbine power generation station with an output of up to 293 megawatts. The proposed station will consist of one number gas turbine and one number 28 metres high exhaust stack partially enclosed by a 12 metres high acoustic wall; one number single storey admin building and warehouse (circa 926 square metres; one number single storey packaged electronic/electrical control compartment (PEECC) (circa 72 square metres); one number single storey Continuous Emission Monitoring System (CEMS) shelter (circa 14.8 square metres); one number 16.2 metres high x 024.4 metres fuel oil tank; one number 15.3 metres high x 09.2 metres raw/fire water tank; one number 16.2 metres high x 018.3 metres demin water tank and miscellaneous plant equipment, (2) the demolition of a detached

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residential dwelling (circa 142 square metres Gross Floor Area) and associated farm buildings (circa 427 square metres Gross Floor Area) located in the north west corner of the subject site to facilitate the proposed development, (3) road improvement works to 493.34 metres of Kilshane Road (L3120), including the realignment of a portion of the road (293.86 metres) within the subject site boundary and the provision of new footpaths, off-road cycle ways, together with the construction of a new roundabout linking the proposed realignment of Kilshane Road back to the existing road network to the northeast of the subject site and to the proposed internal road network to serve the proposed development, (4) the construction of entrance gates, low wall and railings fronting the realigned Kilshane Road and a private internal road network providing for vehicular, cyclist and pedestrian access to serve the development. Construction of three metres high security fencing within development, (5) total provision of 26 number car parking spaces including one number disabled persons parking space and two number EV electrical charging points, (6) provision of security lighting columns to serve the development and the installation of closed circuit television system (CCTV) for surveillance and security purposes, (7) provision of 20 number sheltered bicycle parking spaces, (8) provision of hard and soft landscaping works, tree planting and boundary treatments including three metres high security fence along Kilshane Road and the perimeter of the subject site boundary, (9) provision of new on-site foul sewer pumping station to serve the development, (10) provision of underground surface water attenuation areas to serve the development and all associated site development and excavation works, above and below ground, necessary to facilitate the development, all at Kilshane Road, Kilshane, Finglas, Dublin. This application relates to a development that will require an Industrial Emissions Directive licence from the Environmental Protection Agency. Further public notices were received by the planning authority on the 18th day of January, 2023 and the 3rd day of May, 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:

- (a) the National Planning Framework – Project Ireland 2040,
- (b) the National Development Plan 2021-2030,
- (c) the Climate Action Plan 2023,
- (d) the Government Policy Statement on Security of Electricity Supply, November 2021,
- (e) the Eastern and Midland Regional Assembly Regional Spatial and Economic Strategy 2019-2031,
- (f) the Fingal County Development Plan 2023-2029,
- (g) the nature, scale, and extent of the proposed development,
- (h) the separation distances between the proposed development and dwellings or other sensitive receptors,
- (i) the submissions made in connection with the application, and
- (j) 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 absence of likely significant effects of the proposed development on European Sites,

it is considered that, subject to compliance with the conditions set out below, the proposed development would accord with European, national, regional and local planning and related policy including the provisions of the Fingal Development Plan 2023-2029 and would be consistent with the obligations of the Climate Action and Low Carbon (Amendment) Act, 2021 and the Climate Action Plan 2023. It is also considered that the proposed development would not have an unacceptable impact on the environment or biodiversity, would not seriously injure the residential amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board noted that the proposed development is not directly connected with or necessary to the management of a European Site. In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of potential significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's conservation objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect any European site in view of the conservation objectives of such sites, and that a Stage 2 Appropriate Assessment is not, therefore, required.

Environmental Impact Assessment

The Board completed an environmental impact assessment of the proposed development, taking into account:

- (a) the nature, scale 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 planning authority, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report.

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU.

The Board agreed with the summary and 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 application. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and recommendation (including environmental conditions) and are incorporated into the Board's decision.

Reasoned Conclusion on the Significant Effects

Having regard to the examination of environmental information contained above, and in particular to the Environmental Impact Assessment Report and supplementary information provided by the applicant, and the submissions from the planning authority, prescribed bodies and observers in the course of the application and appeal, it is considered that the main significant direct and indirect effects of the proposed development on the environment are as follows:

Population and human health – With the implementation of mitigation, in the form of a Construction and Environmental Management Plan (CEMP) during construction and design-in features during operation, including stack height to ensure compliance with air emission values, the residual effects of the proposed development are expected to be limited to minor or insignificant. The cumulative effect of the proposed development alongside other development is anticipated to be long-term, significant and positive, with respect to employment and the provision of a reliable power supply for the area. There are also no unacceptable risks to health and safety identified either during construction or operation.

Biodiversity – With the implementation of mitigation, including a Construction and Environmental Management Plan and Landscaping Plan and Green Infrastructure Plan for the project, residual medium to long-term impact upon biodiversity and ecological integrity is anticipated of negligible magnitude. No significant cumulative effects are anticipated during the construction or operational phases of the project.

Land, soils, geology, water, air quality and climate - With the implementation of mitigation through management measures in a Construction and Environmental Management Plan, as well as surface water management, and designed-in features such as stack height and a secondary wall to oil tanks, no significant negative impacts are predicted.

Noise and vibration – No significant residual effects are predicted with respect to noise and vibration. Mitigation includes adherence to regulations for the control and abatement of noise during construction and selection of low noise generating equipment during operation, as well as a 12 metre high barrier.

Material assets (energy, water, waste) – Separate network agreements will be undertaken with service providers. Mitigation includes minimising and managing waste streams. No significant residual effect is predicted.

Material assets – traffic and transportation – Heavy traffic will result during the construction phase, with Kilshane Cross junction operating over capacity. This will be for a short-term period associated with construction works and can be suitably managed through implementation of a Construction and Environmental Management Plan and Construction Traffic Management Plan (CTMP). During the operational phase, near capacity traffic at Kilshane Cross junction results every few years as a worst-case scenario of traffic volumes associated with the site. With junctions operating within capacity for general day-to-day operation. With the implementation of mitigation measures, short-term negative effect is outlined during construction, and periodic (every few years) significant negative effect during operation, the pervasive effect is not significant.

Archaeology and cultural heritage – No direct impact upon cultural heritage and direct impact identified with respect to archaeological features of significance previously identified on the site. Mitigation includes archaeological monitoring, recording of features, and reporting on the completion of archaeological excavation. With the application of mitigation, no predicted significant effects are anticipated.

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Landscape and visual impacts – Effects ranging from imperceptible, not significant, for most views assessed, with moderate or significant effect for one view. The residual impact is reflective of existing patterns of intensification of agricultural land into development for industry and infrastructure, as envisaged by the zoning of these lands. In light of the context of the area, the zoning of the site and the patterns of industrial and infrastructure development in the area, this impact is within acceptable parameters.

Having regard to the above, the likely significant environmental effects arising as a consequence of the proposed development have been satisfactorily identified, described and assessed in this Environmental Impact Assessment. The Board considers that the Environment Impact Assessment Report is compliant with Article 94 of the Planning and Development Regulations, 2001, as amended.

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 additional information received by the planning authority on the 11th day of January, 2023 and clarification of additional information received by the planning authority on the 24th day of April 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, or as otherwise stipulated by conditions hereunder, and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Mitigation and monitoring measures outlined in the plans and particulars, including the Environmental Impact Assessment Report and additional information/clarification of additional information submitted with the application, shall be carried out in full, except where otherwise required by conditions attached to this permission.

Reason: In the interest of protecting the environment and in the interest of public health.

3. For the avoidance of doubt: -
 - (a) The output from the gas turbine power generation station shall not exceed 293 megawatts.
 - (b) The development shall be used solely as described in the application documentation as a back-up energy supply system and shall not be used on a continuous basis. The developer shall maintain records of the usage of the plant and output which shall be made available on request by the planning authority.
 - (c) The operational lifespan of the proposed gas turbine power generation station shall be 25 years, unless authorised for a further period under a subsequent grant of permission, and the facility shall be decommissioned, and the site reinstated in accordance with condition number 4 below.

Reason: In the interest of clarity (a and b) and to consider the future circumstances (c).

4. Subject to the implementation of this grant of planning permission, within five years from the date of grant of permission (or as otherwise may be agreed in writing with the planning authority), the developer shall submit detailed plans and proposals for the restoration and reinstatement of the entire site following decommissioning of the plant and with details of all necessary statutory consents. The restoration works shall be completed within two years of the closure of the plant site or cessation for a period of five years or more.

Reason: To ensure the satisfactory restoration of the site.

5. The construction of the development shall be managed in accordance with a Construction Environmental 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 (but not limited to):
- (a) location of the site and materials compound(s) including area(s) identified for the storage of construction refuse,
 - (b) location of areas for construction site offices and staff facilities,
 - (c) details of site security fencing and hoardings,
 - (d) a Construction Traffic Management Plan (CTMP) which shall include provisions for a temporary works speed limit at the developer's expense,
 - (e) details of on-site car parking facilities for site workers during the course of construction,
 - (f) 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,
 - (g) measures to obviate queuing of construction traffic on the adjoining road network,

- (h) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network,
- (i) arrangements to be put in place for construction workers to encourage and facilitate use of public transport during the course of site development works, to include the use of shuttle transportation and/or temporary footpath provision to bus stops, or equivalent alternative,
- (j) details of appropriate mitigation and monitoring measures for noise, dust and vibration, and monitoring of such levels,
- (k) 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,
- (l) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil,
- (m) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains,
- (n) a record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be kept for inspection by the planning authority,
- (o) a programme and schedule of all environmental protection measures to be employed and timing of such measures, and the name of the person(s) responsible for implementation of these measures.
- (p) all mitigation measures set out in the Environmental Impact Assessment Report (Jan 23), the application documentation, responses to request for further information and request for clarification of further information, as may be amended by conditions attached hereto and all other applicable conditions,
- (q) a system for receiving and investigating complaints,
- (r) a Construction and Demolition Resource Waste Management Plan,

- (s) works to be carried out between the hours of 0700 to 1900 Monday to Fridays inclusive, Saturday between the hours of 0800 to 1400 and not at all on Sundays and Public Holidays,
- (t) a record of daily environmental checks, complaints received, investigation of complaints and outcomes, including corrective action, to be maintained and made available to the council on request, and
- (u) the approved plan shall be fully implemented in the course of the construction works.

Reason: In the interests of amenities, public health and safety.

6. A detailed Operational Environmental Management Plan (OEMP) shall be prepared and submitted for the written agreement of the planning authority prior to the commencement of works, including enabling works. The Operational Environmental Management Plan shall set out all proposed operational activities and include a schedule of all environmental protection measures to be employed, the timing of such measures, and the role(s) responsible for implementation of these measures. The Operational Environmental Management Plan shall include all the operational stage mitigation measures set out in the Environmental Impact Assessment Report (Jan 23), the application documentation, responses to request for further information and request for clarification of further information, as may be amended by conditions attached hereto and all other applicable conditions.

Reason: In the interests of environmental protection and the protection of the amenities in the area.

7. The Kilshane Road upgrade and realignment works shall be completed and available for use by traffic prior to commencement or operation of the permitted gas turbine power plant unless otherwise agreed in writing with the planning authority.

Reason: In the interest of orderly development.

8. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes to the proposed buildings and overground tanks shall be submitted for the written agreement of the planning authority. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination.

Reason: In the interest of visual amenity.

9. The proposed development shall be amended as follows:
- (a) the combined height of the proposed butt wall and railing shall be 1.8 metres. No palisade fencing shall be used as an external site boundary,
 - (b) elevation and cross section drawings (including above ground) to illustrate the sump containment pit and water wash drains tank and eastern elevation of the inlet air filter, and
 - (c) a piece of public art or sculpture or architectural feature to be designed in consultation with the council.

Revised drawings showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

10. (a) Drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.
- (b) Prior to commencement of development, the developer shall submit to the planning authority for written agreement a Stage 2 - Detailed Design Stage Storm Water Audit.
- (c) Upon Completion of the development, a Stage 3 Completion Stormwater Audit to demonstrate Sustainable Urban Drainage System measures have been installed and are working as designed and that there has been no misconnections or damage to storm water drainage infrastructure during construction, shall be submitted to the planning authority for written agreement.

Reason: In the interests of public health and surface water management.

11. The developer shall enter into water and/or wastewater connection agreement(s) with Uisce Éireann (formally Irish Water), prior to commencement of development.

Reason: In the interest of public health.

12. Provision shall be made for the Kilshane Road upgrade and realignment works within the development. Details of such provision, phasing, construction, demarcation and treatment of the old roadway, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details shall include a taking in charge drawing. The new road/upgraded road shall be a public road with works meeting standards for taking in charge and maintained by the developer to taking in charge standards, until taken in charge by the council.

Reason: In the interest of sustainable transportation.

13. Prior to the operation of the development, a Mobility Management Strategy shall be submitted to, and agreed in writing with, the planning authority. This shall provide for incentives to encourage the use of public transport, cycling, walking and carpooling by staff employed in the development and to reduce and regulate the extent of parking. Provision also to be included for EV charging points to be operational prior to commencement of the use. A Mobility Management Coordinator shall be appointed to ensure implementation and monitoring of the plan.

Reason: In the interest of encouraging the use of sustainable modes of transport.

14. All overground and overhead services and poles where necessary shall be relocated underground to a suitable location.

Reason: In the interests of visual and residential amenity.

15. The site shall be landscaped (and earthworks carried out) in accordance with the submitted details, including the Green Infrastructure Plan (April 23), which accompanied the application submitted, unless otherwise agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of residential and visual amenity.

16. Comprehensive details of the proposed public lighting system to serve the development shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development/installation of the lighting. All external lighting for the development during both construction and operation shall be cowled and of a type that ensures deflection of lighting downwards. The design of lighting to serve the operational development shall accord with guidelines with respect to lighting sensitive to bats. The agreed lighting system shall be fully implemented and operational, before the proposed development is operational.

Reason: In the interests of public safety, amenity and biodiversity.

17. The number of employees and visitors in the development hereby permitted shall comply with the restrictions for the Dublin Airport Outer Public Safety Zone stipulated in the Public Safety Zones Report (ERM 2003) or any superseding publication.

Reason: In the interest of public safety.

18. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which 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, and
- (b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site and monitor all site development 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 further 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 for determination.

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

19. Clearance of vegetation from the development site shall only be carried out between September and February (outside the main bird breeding season).

Reason: To avoid the destruction of bird nests, eggs and nestlings and promote the biodiversity of the area.

20. (a) Prior to commencement of development, all trees, groups of trees, hedging and shrubs which are to be retained shall be enclosed within stout fences not less than 1.5 metres in height. This protective fencing shall enclose an area covered by the crown spread of the branches, or at minimum a radius of two metres from the trunk of the tree or the centre of the shrub, and to a distance of two metres on each side of the hedge for its full length, and shall be maintained until the development has been completed.
- (b) No construction equipment, machinery or materials shall be brought onto the site for the purpose of the development until all the trees which are to be retained have been protected by this fencing. No work shall be carried out within the area enclosed by the fencing and, in particular, there shall be no parking of vehicles, placing of site huts, storage compounds or topsoil heaps, storage of oil, chemicals or other substances, and no lighting of fires, over the root spread of any tree to be retained.
- (c) No trench, embankment or pipe run shall be located within three metres of any trees/shrubs/hedging which are to be retained on the site.
- (d) All retained trees/shrubs/hedges and new planting shall be maintained in accordance with the submitted landscape plans for the application and following the completion of the development, any tree or hedging plants which within a period of two years die, are removed, or become seriously damaged or diseased shall be replaced with equivalent size/species.

(e) Works to be supervised by a Landscape Architect.

Reason: To protect trees and planting during the construction period in the interest of visual amenity.

21. 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 accepted in writing by the planning authority, to secure the protection of the trees on site and to make good any damage caused during the construction period, coupled with an agreement empowering the planning authority to apply such security, or part thereof, to the satisfactory protection of any tree or trees on the site or the replacement of any such trees which die, are removed or become seriously damaged or diseased within a period of two years from the substantial completion of the development with others of similar size and species. 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 secure the protection of the trees on the site.

22. Prior to any additional development taking place above roof parapet level, including lift motor enclosures, air handling equipment, storage tanks, ducts or other external plant, telecommunication aerials, antennas or equipment, details to be submitted to, and approved in writing by, the planning authority.

Reason: To protect the visual amenities of the area.

23. Prior to the commencement of development, the developer shall submit for the written agreement of the planning authority, details of, and evidence of liaison with the Dublin Airport Authority and the Irish Aviation Authority, of the following:


- (a) strategy for the use of cranes on site,
- (b) strategy to ensure appropriate wildlife hazard reduction techniques and management, and
- (c) details of appropriate aeronautical obstacle warning lighting/markings (if required).

Reason: In the interest of aircraft safety.

24. 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.

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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.


Patricia Calleary

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

Dated this 16 **day of** May **2024.**