

Planning and Development Acts 2000 to 2022

Planning Authority: Kerry County Council

Planning Register Reference Number: 23/646

Appeal by Inchamore Wind Designated Activity Company care of Jennings O'Donovan and Partners Limited of Finisklin Business Park, Sligo against the decision made on the 31st day of July, 2023 by Kerry County Council to refuse permission for the proposed development.

Proposed Development: The development in County Kerry forms part of a renewable energy development comprising a five turbine wind farm and all associated works on lands in both counties Cork and Kerry. The development in County Kerry will consist of: Upgrade of existing forest access roads to include passing bays and all associated drainage infrastructure. Works at the entrance to an existing forest road accessed off the N22 to include localised widening of the forest road and creation of a splayed entrance, removal of existing vegetation for visibility splays and removal of street furniture. Advisory note: A planning application is being lodged with Cork County Council in relation to the elements in the project that are within the townlands of Inchamore, Milleeny and Derreenaling, County Cork. This development includes five wind turbines, underground cabling, site access roads, a borrow pit, a temporary site compound, a 38kv substation and all associated works

for which a ten-year planning permission is being sought at Derryreag (nDoire Aimhréidh), 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 nature and scale of the proposed development, the mitigation measures proposed for the construction and operation of the development 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 have a serious adverse impact on the conservation objectives of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site Code: 000365), the carrying capacity of the N22 or create road safety concerns with regards to access from the national road. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In arriving at its decision, the Board noted that the development, subject to the current appeal, is located within the administrative area of Kerry County Council, while the wind turbines and related works that form part of the overall renewable energy development, are proposed within the administrative area of Cork County Council. The Board also noted that the elements of the development that lie within Cork County Council are subject to a separate current planning application currently being considered by Cork County Council under Register Reference 23/5145 (Cork County Council).

Appropriate Assessment: Stage 1:

The Board noted that the proposed road development is not directly connected with or necessary for the management of a European Site. The Board completed an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites, taking into account the Screening Report for Appropriate Assessment submitted with the application and the report and screening assessment completed by the Inspector. The Board agreed with the inspector's assessment and conclusion that the European Sites for which there is potential for significant effects are 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). The Board concluded, in agreement with the inspector, that Appropriate Assessment is required for these European Sites.

Appropriate Assessment Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, the applicant's response to the submissions and the further submissions received and carried out an Appropriate Assessment of the implications of the proposed road development for European Sites in view of the conservation objectives 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). The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment and to allow it to reach complete, precise and definitive conclusions for Appropriate Assessment.

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In completing the assessment, the Board considered, in particular, the likely direct and indirect impacts arising from the proposed development, both individually and in combination with other plans and projects (including all aspects of the entire windfarm project as addressed in the inspector's assessment) and taking into account the mitigation measures which are included as part of the current proposal, in view of the conservation objectives for the European Sites.

The Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report with respect to the potential effects of the proposed development on the integrity of the aforementioned European Sites, having regard to the Sites' conservation objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, (including all aspects of the entire windfarm project as addressed in the inspector's assessment), would not adversely affect the integrity of European Sites, in view of the Sites' conservation objectives of those Sites and there is no reasonable scientific doubt as to the absence of such effects.

This conclusion is based on a complete assessment of all aspects of the proposed project, both alone and in combination with other plans and projects of relevance, (including all aspects of the entire windfarm project as addressed in the inspector's assessment) and took into account all submissions received during the course of the application.

Environmental Impact Assessment:

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

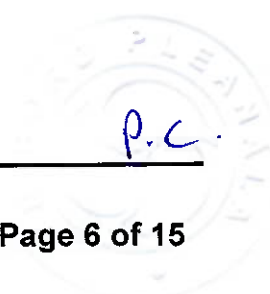
- (a) the nature, scale, location and extent of the proposed development;
- (b) the Environmental Impact Assessment Report and associated documentation submitted with the application;
- (c) the submissions received during the course of the application; and
- (d) the Inspector's report;

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant during the course of the application, 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 Conclusion of the Significant Effects:

The Board considered that the Environmental Impact Assessment Report, supported by the documentation submitted by the applicant during the course of the application, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU and Section 50(2) of the Roads Act 1993, as amended. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

- **Population and human health** – Short term positive economic and employment impact during construction phase, with long-term positive economic effect during operation resulting from a high-quality energy supply. Slight negative impact is anticipated from traffic noise, volume and dust during construction. With the application of mitigation, largely comprising implementation of a Construction Environmental Management Plan, no significant residual effect upon human health / safety is expected. In addition, with the implementation of mitigation, and installation of a blade shadow control system, the project will not result in significant impacts upon population in relation to shadow flicker.



- **Biodiversity** – Slight to moderate significant negative residual effects identified relating to bats and birds, and significant adverse impact resulting from the loss of wet heath and blanket bog habitat. The impact upon bats and birds would not be at a population level. Mitigation measures include water quality control; an Ecological Clerk of Works; restricted access to bog and heath; revegetation of bare surfaces; pre-construction surveys; buffer zones; protection of bats; measures to minimise impact upon Kerry Slug; implementation of a Habitat Enhancement Plan; measures to reduce collision risk and monitoring. The significant effect to wet heath and blanket bog habitat will also be adequately compensated through implementation of a Habitat Enhancement Plan for the project.
- **Land, soils, geology, water, air quality or climate** - With the implementation of mitigation through management measures in a Construction Environmental Management Plan, as well as surface water management, there is no risk of significant negative impacts.
- **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 the implementation of a Construction Environmental Management Plan.
- **Material assets (land use, telecommunications, electricity networks, air navigation, quarries, and utilities)** - Mitigation includes avoidance, implementation of measures through a Construction Environmental Management Plan for the project, aeronautical lighting/communications, and measures to protect water and limit the production of waste. No significant residual effects are predicted to result with respect to material assets including land use, telecommunications, electricity networks, air navigation, quarries, and utilities (gas, water and waste), arising from the project.

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- **Material assets – traffic and transportation** – Direct, negative, negligible to minor impact, that is short-term, will arise during the construction phase. With respect to mitigation, a Traffic Management Plan is attached to the Construction and Environmental Management Plan for the project. No right turn entry is proposed and mitigation includes signage and road markings to prevent such manoeuvres.
- **Archaeology and cultural heritage** – No direct impact upon cultural heritage and low potential for the presence of unrecorded archaeological features on the site. With respect to two recorded archaeological sites within the project site, the settings of these archaeological sites will be subject to short-term, slight, negative indirect impact during the construction phase. Mitigation includes archaeological monitoring, surveys, use of buffer zones and recording of any discovered features, which will be retained in-situ. With the application of mitigation, no predicted significant effects are anticipated upon cultural heritage resource (including archaeology).
- **Landscape and visual impacts** – Negative effects ranging from imperceptible, neutral, slight to moderate are identified. Cumulative impact is concluded to be low. There are no significant effects upon landscape and visual impact anticipated as part of the project.

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 environmental impact assessment report and, subject to compliance with the conditions set out herein, the effects on the environment of the proposed development by itself and cumulatively with other planned and permitted development in the vicinity (including all aspects of the entire windfarm project, including the elements of the proposed development under consideration by Cork County Council under Register Reference Number 23/5145) would not have any unacceptable direct or indirect effects on the environment. In doing so, the Board adopted the report and conclusions of the reporting Inspector.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the 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 NIS submitted with this 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. Details shall be submitted to and agreed in writing with the planning authority, confirming the incorporation of recommendations set out in the Road Safety Audit for the development, prior to commencement of development.

Reason: In the interest of traffic safety.

4. In the interest of clarity, no right turn entry movements are permitted from the N22 national road into the development site during construction. Prior to commencement of the development, the details of how this requirement will be secured shall be submitted to and agreed in writing with the planning authority.

Reason: In the interest of road and traffic safety.

5. Road upgrades and surfaces shall be finished to the satisfaction of the planning authority at the developer's expense. 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.

6. 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.

7. 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 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) Hours of development and building works, and periods when high noise generating activities will be undertaken;
 - (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, and to specifically mitigate impact upon the national road;
 - (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) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;

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- (j) 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;
- (k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;
- (l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains; and
- (m) 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 interests of amenities, public health and safety.

8. Prior to the commencement of development, 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) shall be prepared and submitted to the planning authority for written agreement. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness. 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.

9. 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.

10. 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.

Patricia Calleary

Patricia Calleary

Member of An Bord Pleanála

duly authorised to authenticate

the seal of the Board

Dated this *15* day of *February* 2024

