



An
Bord
Pleanála

Board Order
ABP-318295-23

Planning and Development Acts 2000 to 2022

Planning Authority: Carlow County Council

Planning Register Reference Number: 22/340

Appeal by Justin and Susan Hayden and Mary Farrell of Coolnakisha, Leighlinbridge, County Carlow against the decision made on the 25th day of September, 2023 by Carlow County Council to grant subject to conditions a permission to Boolyvannanan Renewable Energy Limited care of ERM Consultants of The Greenway Building, 112-114 Saint Stephen's Green, Dublin in accordance with plans and particulars lodged with the said Council:

Proposed Development: Erection of five wind turbines with turbine blade diameter of 117 metres and overall height to tip of 136.5 metres, one permanent meteorological mast, access road and internal tracks, electricity substation, temporary construction compound, turbine laydown area, control building, one borrow pit, crane hardstanding, underground cabling, up to approximately 18 hectares of forestry felling and all associated site works, with an operation lifetime of 30 years in the townlands of Boolyvannanan and Coolnakisha, County Carlow. The proposed development was revised by further public notices received by the planning authority on the 1st day of August, 2023.

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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 made its decision consistent with the:

- Climate Action and Low Carbon Development Act 2015, as amended;
- Climate Action Plan 2024,

and in coming to its decision, the Board had regard to the following:

- European legislation, including of particular relevance:
 - Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directives) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union.
 - EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy and amending Directive EU/2023/2413 which aims to speed up the EU's clean energy transition.

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- National and regional planning and related policy, including:
 - National policy with regard to the development of alternative and indigenous energy sources and the minimisation of emissions from greenhouse gases,
 - 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,
 - the objectives and targets of the National Biodiversity Action Plan 2023-2030.
- Regional and local level policy, including the:
 - Regional Spatial Economic Strategy for the Southern Region, 2020.
 - policies of the planning authority as set out in the Carlow County Development Plan 2022-2028, including the Wind Energy Strategy for County Carlow.
- Project Ireland 2040 – the National Planning Framework.
- The character of the landscape in the area and of the general vicinity, and the planning history on the site including permissions ([An Bord Pleanála reference number PL 01.240424, Carlow County Council planning register reference number 11/154], and planning register reference numbers 20/180 and 21/15.)

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- The distance to dwellings and other sensitive receptors from the proposed development.
- 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 likely significant effects of the proposed development on a European Site.
- The submissions and observations received in relation to the proposed development.
- The Environmental Impact Assessment Report submitted.
- The Natura Impact Statement submitted.
- The report and recommendation of the person appointed by the Board to make a report and recommendation on the matter.

Appropriate Assessment Screening

The Board considered the Screening Report for Appropriate Assessment, the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment screening exercise and an Appropriate Assessment in relation to the potential effects of the proposed development on the following designated European Sites:

- River Barrow and River Nore Special Area of Conservation (Site Code: 002162).
- River Nore Special Protection Area (Site Code: 004233).

The Board considered that there is potential for significant effects on these sites and that Appropriate Assessment is, therefore, required.

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Appropriate Assessment

The Board considered that the information before it was adequate to allow the carrying out of an 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 current proposal, and
- (iii) the conservation objectives for the 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. In completing the Appropriate Assessment, the Board adopted the report of the Inspector and concluded that, by itself or in combination with other plans and projects in the vicinity, the proposed development would not be likely to have an adverse effect on any European site in view of the sites' conservation objectives and there is no reasonable significant doubt 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 on the site,

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- (b) the Environmental Impact Assessment Report (EIAR) and associated documentation submitted in support of the application,
- (c) the submissions received the prescribed bodies and observers, 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 application.

Reasoned Conclusion 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:

- Positive environmental impacts would arise during the operational phase from the generation of renewable energy.
- The impacts on residential amenity during the construction and operational phases would be avoided by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and associated Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and

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management of dust, noise, water quality, traffic movement, noise monitoring and turbine pre- programming, as well as a mitigation strategy to control the level of daily shadow flicker experienced at affected dwellings.

- The impacts on biodiversity during the construction phase include disturbance to birds and bats with potential for collision risk during the operational phase.
- Changes to water quality potentially impact aquatic habitats and species due to run-off and sedimentation of watercourses. Impacts will be mitigated by the implementation of the measures set out in the Environmental Impact Assessment Report (EIAR) and associated Construction and Environment Management Plan (CEMP) which include specific provisions relating to the control and management of water quality, avoidance of watercourses /streams and habitat management measures, pre-construction mammal surveys, bat protection measures and the appointment of an Ecological Clerk of Works as well as post construction monitoring.
- Positive environmental effects would arise in terms of restoration of peatland habitat.
- Roads and traffic impacts associated with the construction phase will be mitigated through preparation of a Construction Traffic Management Plan which will be agreed with the local authority prior to the commencement of development.
- The risk of pollution of ground and surface waters during the construction phase which would be mitigated by the implementation of measures set out in the Environmental Impact Assessment Report (EIAR) and associated Construction and Environment Management Plan

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(CEMP) which include specific provisions relating to groundwater, surface water and drainage.

- Visual and landscape impacts would arise during the operational phase of the development due to the presence of the turbines and associated infrastructure in the upland area. The site is located within an area which has been identified as having a moderate capacity to absorb a development of this nature and scale in landscape and visual terms. The location of the site and the existing topography and landscape features provide a level of assimilation of the development into the landscape.
- The impact on cultural heritage would be mitigated by archaeological monitoring with provision made for resolution of any archaeological features or deposits that may be identified.

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 amendments to the permitted 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.

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Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including further information received by the planning authority on the 2nd day of June 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 development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted is constructed shall be 10 years from the date of this Order.

Reason: In the interest of clarity.

3. 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 its operation in the light of the circumstances then prevailing.

4. The following design requirements shall be complied with:

- (a) The wind turbines shall have a maximum tip height of 136.5 metres.

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- (b) Final details of the turbine design 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.

Reason: In the interest of visual amenity.

- 5. The mitigation and monitoring measures contained in the submitted Environmental Impact Assessment Report (EIAR), shall be implemented.

Reason: To protect the environment.

- 6. The mitigation and monitoring measures contained in the submitted Natura Impact Statement (NIS), shall be implemented.

Reason: To protect the integrity of European Sites.

- 7. The developer shall ensure that all construction methods and environmental mitigation measures set out in the Environmental Impact Assessment Report, Natura Impact Statement and associated documentation are implemented in full, save as may be required by conditions set out in this order.

Reason: In the interest of protection of the environment.

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8. A suitably qualified Project Ecological Clerk-of-Works shall be retained by the developer to undertake pre-construction surveys at the various project elements, including any river crossings, immediately prior to commencing work in order to check for the presence of protected species in the vicinity.

Reason: In the interest of nature conservation and the protection of ecology and wildlife in the area.

9. A bog (restoration) rewetting plan and ecological and hydrological monitoring programmes of the bog restoration shall be agreed with the planning authority prior to commencement of development.

Reason: To guide the restoration process and to determine whether restoration measures are successfully contributing to the achievement of its objectives.

10. Wildflower and grass seed shall only be introduced to the site if the prior written agreement of the planning authority has been obtained.

Reason: To conserve biodiversity which includes genetic biodiversity.

11. The developer shall review usage by birds of the wind farm site and document bird casualties through an annual monitoring programme which shall be submitted by the developer to, and agreed in writing with, the planning authority prior to commencement of development. This programme shall be developed in consultation with the Department of Arts, Heritage and the Gaeltacht, and shall cover the entire period of the operation of the wind farm.

Reason: To ensure appropriate monitoring of the impact of the development on the fauna of the area.

12. The developer shall prepare an Invasive Species Management Plan for the written agreement of the planning authority and all plant and machinery used during the works should be thoroughly cleaned and washed before delivery to the site to prevent the spread of hazardous invasive species and pathogens.

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

13. The operation of the proposed development, by itself or in combination with any 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) $L_{90,10min}$ above background noise levels, or 45 dB(A) $L_{90,10min}$, at standardised 10 metre height above ground level wind speeds of 7m/s or greater.

(ii) 40 dB(A) $L_{90,10min}$ at all other standardised 10 metre height above ground level wind speeds.

(b) 43 dB(A) $L_{90,10min}$ 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

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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 Recommendations 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 commissioning of the wind farm.

Reason: In the interest of residential amenity.

14. Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a shadow flicker compliance monitoring programme for the subject development, including any mitigation measures such as the use of appropriate equipment and software to suitably control shadow flicker at nearby dwellings, including control of turbine rotation, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority. Shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.

Reason: In the interest of residential amenity.

15. Mitigation measures detailed to prevent interference with telecommunications or broadcast signals, shall be implemented to minimise interference with said 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 and/or providers. All measures known to be required

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in the first instance shall be completed prior to the erection of the turbines at the site.

Reason: In the interest of protecting telecommunications and broadcasting signals and of residential amenity.

16. Details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to 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 wind monitoring masts.

Reason: In the interest of air traffic safety.

17. Prior to commencement of development, a transport management plan for the construction stage shall be submitted to, and agreed in writing with, the planning authority. The traffic management plan shall incorporate details of the road network to be used by construction traffic, including over-sized loads, and detailed arrangements for the protection of roads, bridges, culverts or other structures to be traversed, as may be required. The plan shall also contain details of how the developer intends to engage with and notify the local community in advance of the delivery of oversized loads. Any works, including reinstatement works, to existing junctions on the national road network shall comply with Transport Infrastructure Ireland (TII) standards as outlined in TII Publications and shall be subject to Road Safety Audit as appropriate.

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

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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,
- (b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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 site and to secure the preservation and protection of any archaeological remains that may exist within the site.

19. Prior to commencement of development, the community gain proposals and a programme for delivery, 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.

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20. On full or partial decommissioning of the windfarm, or if the windfarm ceases operation for a period of more than one year, the masts and the turbines concerned (including foundations) shall be removed and all decommissioned structures shall be removed within three months of decommissioning.

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

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 acceptable to the 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 planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. 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 the satisfactory reinstatement of public roads.

22. 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 upon 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.

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Reason: To ensure the satisfactory reinstatement of the site.

23. 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 the Board 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 this permission.



Peter Mullan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 21st day of November, 2024.