



An
Bord
Pleanála

Inspector's Report PL.04.247396

Development	Technician facilities building including office, toilets, showers, kitchen, storage and service yard.
Location	Knockacummer Wind Farm, Rockchapel, Co. Cork.
Planning Authority	Cork County Council
Planning Authority Reg. Ref.	15/6632
Applicant(s)	Knockacummer Wind Farm Ltd.
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Patrick Cremins
Observer(s)	None
Date of Site Inspection	30 th November 2016
Inspector	Kenneth Moloney

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.2. Planning Authority Reports	4
3.4. Third Party Observations	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Development Plan.....	6
6.0 The Appeal	6
6.2. Applicant Response	8
6.3. Planning Authority Response	11
6.4. Observations.....	11
7.0 Assessment.....	11
8.0 Recommendation.....	15
9.0 Reasons and Considerations.....	15
10.0 Conditions	16

1.0 Site Location and Description

- 1.1. The appeal site is located within a rural upland area and situated approximately 3.5km east of Rockchapel and immediately south of the R576.
- 1.2. The appeal site is a current wind farm site. The subject site is elevated and the character of the local area is characterised by coniferous forestry.
- 1.3. The size of the site is 0.48 ha (1.19 acres) and the shape of the site is irregular.
- 1.4. The access to the appeal site is from the regional road via an access track constructed for the wind farm.
- 1.5. The appeal site is a construction compound site which is surrounded by two embankments on two of the sides and a drainage ditch on the other two sides.
- 1.6. The access track adjoins the side of the hardstanding area.
- 1.7. The gradient of the compound area falls slightly towards the regional road, i.e. to the north.
- 1.8. In the immediate area of the appeal site there are telecommunication structures.

2.0 Proposed Development

- 2.1. The proposed development is for the construction of a new technician facilities building which has a total gross floor area of 371 sq. m. and a maximum height of 5.546 m.
- 2.2. It is proposed that the building will comprise of meeting rooms, canteen, technicians office, toilets, shower and changing room.
- 2.3. The proposed building will be primarily finished in metal cladding and render.
- 2.4. The proposal provides car parking provision for 14 no. spaces including a disabled parking space.
- 2.5. The proposed development provides for landscaping.
- 2.6. Additional information sought in relation to (a) Natura 2000 sites, (b) landscaping, (c) fill and maintain the cold water tank, (d) details in relation to sanitary facilities, (e) details of high alarm system for the wastewater storage tank, (f) details of proposed

junction improvements, (g) confirmation of the expiry date of the operation of . L.A Ref. 04/8354 (appeal ref. 210685), and (h) a breakdown of the internal office space.

3.0 Planning Authority Decision

3.1. Cork County Council decided to grant planning permission subject to 21 conditions. The following condition is noteworthy;

- Condition no. 4 requires a hen harrier survey to be carried out.

The remainder of the conditions are standard for the nature of the development.

3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report are as follows;

- The existing staff facility is unsatisfactory for staff and as such a modern facility is proposed.
- A condition should be attached to any permission restricting the life of the permission to that with L.A. Ref. 04/8354.
- No visual impacts anticipated.
- Full details of the proposed landscaping required.
- EIA not required.

3.2.2. Area Engineer; - Additional information sought in relation to (a) fill and maintain the cold water tank, (b) details in relation to sanitary facilities, (c) details of high alarm system for the wastewater storage tank, (d) details of proposed junction improvements.

3.2.3. Ecologist- Additional information sought in relation to Hen Harrier surveys, management of food waste, environmental protection measures, proposals for environmental supervision and water quality monitoring to demonstrate how the system is performing in terms of protecting water quality.

3.2.4. Environment; - No objections subject to conditions.

3.2.5. There is a submission from the Department of Arts, Heritage and Gaeltacht who request the applicant to clarify details of food waste storage on the site.

3.3. Third Party Observations

There is one third party submission and the issues raised have been noted and considered.

4.0 Planning History

- L.A Ref. 04/8354 (appeal ref. 210685) – Permission **granted** for 29 no. wind turbines.
- L.A. Ref. 07/12954 – Permission was **granted** for development of 10 no. barrow pits.
- L.A. Ref. 10/5211 – Extension for the duration of permission of 29 no. wind turbines, 2 no. met masts, substation and construction and upgrading of existing tracks.
- L.A. Ref. 11/5246 – Permission **granted** for modifications to L.A. 04/8354 including modifications to permitted internal roads, omission of internal access road, construction of new road and provision of on-site water and wastewater storage tanks.
- L.A. Ref. 13/4324 – Planning permission was **granted** for temporary remedial works adjacent to R576.
- L.A. Ref. 14/4179 – Permission **granted** for 2.5km of new forest track, clearfelling, felling and replanting of existing conifer plantation on an afforested area of approximately 40ha in size.
- L.A. Ref. 14/ 4688 – Permission **granted** for erection of 3 no. permanent 80m high met masts.
- L.A. Ref. 15/6631 – Permission sought to develop technician facilities with total gross floor area of 60 sq. m.

5.0 Policy Context

5.1. Development Plan

The operational Development Plan is the Cork County Development Plan, 2014 – 2020.

The regional road, i.e. R576, situated to the north of the appeal site is a designated 'Scenic Route'.

The appeal site is located within a wind energy area designated 'normally discouraged'.

6.0 The Appeal

6.1. The following is the summary of a third party appeal submitted by Planning Partnership on behalf of Patrick Cremins.

Section 5 Road Declaration

- The Board determined a referral (RL.3323) in relation to the subject site.
- RL.3323 determined that the importation of materials to facilitate surface upgrading and strengthening works constitutes development and that works carried out to allow delivery of components does not come within the scope of the exempted development provisions.
- An Bord Pleanála concluded that the works to be carried out to an existing forestry track within the confines of an SAC/SPA and a SPA are development and not exempted development.
- The works to the forestry track which forms an integral part and facilitated the construction of the wind farm remains unauthorised.
- The granting of planning permission for the wind farm is questionable.

- The Board are requested to refuse permission for the proposed development as development required to facilitate the subject development does not have the benefit of planning permission.

Non-compliance with prior commencement of development conditions

- An Bord Pleanála permission (appeal ref. 002165) was the subject of 21 no. conditions.
- The Board's attention is drawn to 4 no. key conditions of the parent permission and these include conditions no. 3, 14, 15 and 17.
- Condition no. 3 requires a Section 47 Agreement in relation to a compensatory habitat management plan for the hen harrier.
- Cork County Council have not received any details in relation to this Section 47 Agreement.
- Having regard to the Natura 2000 status of the site that non-compliance with condition no. 3 is considered significant.
- Condition no. 14 relates to the restriction of noise levels.
- No noise monitoring was undertaken in house no. 2 and therefore the noise monitoring is non-compliant.
- Condition no. 15 relates to a shadow flicker monitoring report.
- No shadow flicker monitoring was undertaken in house no. 3 and therefore the shadow flicker monitoring is non-compliant.
- Condition no. 17 relates to a detailed reinstatement programme.
- It is submitted that no reinstatement programme has been submitted to Cork County Council and this is a material matter of non-compliance.
- It is contended that the wind farm could be considered unauthorised due to non-compliance of conditions.
- It is submitted that the applicant relying on so called comfort letters to proceed with the development is questionable. This would present similarities with a recent judgement in the Court of Appeal in Bailey v Kilvinane Wind Farm Ltd.

This judgement concludes that the developer could not reasonably conclude that the Planning Authority could have reasonably approved the departure from the permitted development.

- The response to item no. 7 of the submitted additional information confirms that the wind farm became operational on the 16th December 2014.
- It is contended that development is required to facilitate the proposed development which does not comply with previous permissions.

Unauthorised Landfill – the requirement for remedial action

- It is contended that illegal dumping has undertaken at the site.
- It is submitted that the EIA submitted with the parent application makes no reference to this dumping.
- The submitted OCEMP which accompanied the planning application confirms (pg. 6) that it is not expected that any contamination material will be encountered during excavation.
- The OCEMP outlines that should any soil contamination be found during work on site then appropriate remediation measures shall be found.
- It is submitted that the proposed development should be refused permission as the development could result in the disturbance of the buried domestic waste and any remedial measures required would lead to the spread of leachate, landfill gas and slurries from the site. This in turn could result in contamination of watercourses within the confines of the designated SAC / SPA, and a general nuisance to residents.
- As an alternative measure the Board are requested to issue a S. 131 or S. 132 requesting the applicant to address concerns.

6.2. Applicant Response

The following is the summary of a response submitted by the applicant's agent;

Introduction

- It is contended that the appellant does not raise any substantive ground of appeal regarding the nature of the application itself.
- It is submitted that the submitted grounds of appeal relates more to planning compliance.
- It is submitted that the existing wind farm underwent a full EIA and environmental assessment.
- No enforcement proceedings have been issued in relation to the wind farm.
- It is considered that there is nothing in the appellant's submission that would constitute a viable grounds of appeal.

Ground of Appeal no. 1

- The appellant refers to an existing track, approximately 2km in length, which was the subject of RL.3323 and is accessed from the R576.
- It is submitted that the appellant argues that the subject track does not have planning permission.
- It is argued that this conclusion does no represent the Board's findings in RL.3323.
- It is contended that the Board did not determine whether or not the development had planning permission nor did it confirm that the road was unauthorised.
- The subject of a referral is to determine whether a development is or is not exempted development.
- It is submitted for clarity that the access road was fully permitted under L.A. Ref. 04/8354 (appeal ref. 210685).
- The proposed development is not dependent on this access road as all normal access to the proposed facility will be via the R634.

Ground of Appeal no. 2

- It is submitted that the wind farm is operating in full compliance with all conditions.
- Appendix 3, attached to the submission, confirms compliance with conditions no. 3, 14, 15 and 17 of the parent permission.
- It is submitted that any claims that there is non-compliance with pre-commencement planning conditions are unfounded.

Ground of Appeal no. 3

- It is submitted that the illegal dumping referred to by the appellant occurred in lands in the vicinity of the site boundary in 2001 / 2002 prior to the applicant's ownership and operation of the current wind farm.
- These historic tip sites underwent clean-up / remediation under the supervision of Cork County Council.
- It is submitted that full regard has been to these historic landfill sites in the original planning application (L.A. Ref. 04/8354).
- It is submitted that the location of these wind farms avoided windfarm infrastructure at both design and construction stage. There was no interaction between wind farm construction and landfill sites.
- The site of the historic landfill is situated approximately 500m south west of the of the appeal site.
- There is no watercourses in the immediate vicinity of the appeal site or no hydrological connections from the appeal site to the historic landfill sites.
- A response to the additional information request demonstrates that there is an overall improvement in water quality in water sampling locations downstream of the historic illegal landfill.
- Works associated with the temporary compound indicated no contaminated material within the footprint of the proposed development and it is not

expected that any contamination material will be encountered during excavation.

6.3. **Planning Authority Response**

6.4. **Observations**

None

7.0 **Assessment**

7.1. Introduction

Prior to assessing this appeal it is important to consider the precise nature of the grounds of the appeal submission and its relevance to a planning appeal assessment. The appeal submission is from a third party appellant and there are three areas of concern in his appeal submission. These concerns include the planning status of the access road to the appeal site, non-compliance with conditions of the parent permission and claims of illegal dumping. I would note that none of these concerns relate to any potential implications of the proposed development itself. I will consider the issue in relation to the planning status of the access road under the heading access below and I will consider the issue of illegal dumping and potential soil contamination under the heading AA Screening below. However I would consider that the alleged non-compliance of conditions, notwithstanding the applicant's response, are outside the jurisdiction of the Bord cannot be considered further.

7.2. Principle of Development

The development proposed comprises of a single storey building associated with the existing wind farm operation. The location of the proposal is on the site of the former construction compound which is associated with the development of the windfarm. The proposed building will accommodate meeting and office space for wind farm technicians to carry out functions such as record keeping and monitoring turbine performance.

The overall site has an established wind farm use which arose under planning permission under L.A. Ref. 04/8354 (appeal ref. 210685) and this permission is now operational. Therefore the current proposal for a technician facility before the Board is an ancillary use to an established wind farm use.

Overall I would consider, having regard to the location of the site and the planning history that the ancillary use, as proposed, to an established use is acceptable in principle.

7.3. Access

The vehicular access to serve the proposed development is essentially a narrow access road which commences at the R576 and travels slightly uphill before turning onto a narrow access track which approaches the appeal site.

I would note that the Area Engineer, reporting on this case, is satisfied with the sightline provisions from the access road onto the regional road and in general the access arrangements are considered acceptable. Having regard to the appeal submission I have reviewed referral case RL3332 and I would consider that this case was essentially a question whether certain works to the access road is or is not development and whether it is or is not exempted development. Therefore having regard to the Board determination in relation to RL3332 I would not consider that the planning status of the access road to the appeal is under question.

Overall, having regard to the information on the file I would consider that the access arrangements to serve the proposed development are acceptable.

7.4. Visual Impact

The appeal site is located approximately 2km south of the R576 which is a designated Scenic Route in accordance with the provisions of the Cork County Development Plan, 2014 – 2020. However having regard to the local topography and the established forest plantation the proposed development would not be visible from

the Scenic Route. In addition the proposed development includes a comprehensive landscaping plan which would provide for screening.

As such I would consider that the proposed development would not adversely impact on established amenities in terms of visual impact.

7.5. Appropriate Assessment

The purpose of the Appropriate Assessment Screening is to determine, on the basis of a preliminary assessment and objective criteria, whether a plan or project, alone or in combination with other plans or projects, could have significant effects on a Natura 2000 site in view of the site's conservation objectives. The 'Appropriate Assessment of Plans and Projects in Ireland Guidelines, 2009,' recommend that if the effects of the screening process are 'significant, potentially significant, or uncertain' then an appropriate assessment must be undertaken.

The appeal site is located within an SPA, i.e. Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (Site code 04161). This SPA covers a large area in the counties of Cork, Limerick and Kerry and supports one of the largest populations of hen harriers in the Country. The hen harrier is a qualifying interest in this SPA.

I would note that the AA screening reviewed a hen harrier monitoring survey, as part of the monitoring programme for the established wind farm. The results of the survey for the 2014 season reported that hen harrier breeding did not occur within the boundaries of the windfarm site or in the immediate area and sightings in the immediate area were low. The AA screening also concluded that the afforested area adjoining the appeal site did not provide suitable nesting or foraging areas for the hen harrier and that recently replanted clearfelled land adjacent to the other sides of the site do not currently provide suitable nesting habitat. There is a submission on the file from the Department of Arts, Heritage and the Gaeltacht which outlines some

concerns in relation to food waste management as it is stated that poorly managed food waste may attract pests to the site which will act as a potential threat for hen harrier nests. In response to the clarification of the additional information sought by the Local Authority Ecologist the applicant has demonstrated that there was no sightings of Hen Harrier in the environs of the proposed development during recent monitoring surveys. It is stated that any sightings were at a distance of greater than 1km from the appeal site. Having regard to the information available and the nature and scale of the proposed development I would conclude that the proposal is not likely to have a significant effect on the qualifying interest, i.e. the hen harrier.

The appeal site is located approximately 1.6km outside the boundary of the Lower River Shannon SAC (Site Code 002165) however part of the area drains to a tributary of the cSAC. The River Feale forms part of the Lower River Shannon cSAC and is designated at the point where the tributary confluences near Glenacarneay Bridge, west of Rockchapel.

The proposed development could potentially cause flood risk and pollution impacts on receiving waters during the construction stage and operational stage. The proposed development runs the risk of causing increased siltation and pollution impacts affecting the receiving surface waters.

There is therefore potential for surface water run-off from the appeal site to adversely impact on the water quality of the SAC outside the boundary of the appeal site which may impact on the ecological significance of the SAC. However there are existing site drains in place that serve the existing wind farm development and also the applicant carried out a zone of contribution test for the proposed well and concluded that the proposed well will not influence the groundwater flow to the SAC.

Furthermore I would note that there are no wastewater discharges from the proposed development as all wastewater from the proposed building will be stored in

a tank and emptied periodically. This will therefore remove any potential threat to the SAC from waste water. It is proposed that surface water drainage from the proposed development will feed into the overall surface water drainage for the established wind farm. In addition the site design includes surface water drainage proposals such as an infiltration basin and the majority of the site will be finished with compacted, crushed stone to minimise the rate of storm water run-off. The applicant has also submitted results from water quality monitoring which confirms that the quality of local watercourses have improved between the base line year monitoring and 2016.

I would note that the Local Authority Ecologist is satisfied that the applicant has addressed concerns that may give rise to impacts on the Hen Harrier or water quality of the SAC.

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on any European Sites, i.e. site code 04161 and site code 002165, in view of the sites conservation objectives and a stage 2 AA is therefore not required.

8.0 Recommendation

8.1. I have read the submissions on the file, visited the site, had due regard County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

9.0 Reasons and Considerations

Having regard to the planning history and the established use on the existing landholding and to the overall scale, design and height of the proposed development, it is considered that subject to compliance with the conditions set out

below that the proposed development would not seriously injure the amenities in the area, and would therefore be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, and as amended by plans and particulars submitted to Cork County Council on 4th April 2016, and amended on the 19th August 2016, and, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Monitoring of the construction phase shall be carried out by a suitably qualified environmental scientist / engineer to ensure that all Environmental mitigation measures contained in the OCEMP are implemented. Within three months of the completion of construction report containing the results of monitoring shall be submitted to the Planning Authority.

Reason: To ensure full implementation of mitigation measures and provide protection to natura sites.

3. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate annual breeding and wintering bird surveys of this site. Details of the surveys to be undertaken

and associated reporting requirements shall be developed in consultation with the Department of Arts, Heritage and the Gaeltacht, and shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for five years, save with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Arts, Heritage and the Gaeltacht.

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

4. Prior to commencement of development, a Construction Management Plan shall be submitted to and agreed in writing with the planning authority. The plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, offsite disposal of construction/demolition waste.

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

5. All drainage arrangements, including the 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 and to ensure a proper standard of development.

6. During the development works, the developer shall not permit any material from the site to be spread or deposited along the public roadway. The developer shall be responsible for maintaining the roadway in a neat, tidy

and safe condition to the satisfaction of the planning authority.

Reason: In the interest of traffic and public safety.

7. No polluting matter shall be allowed to drain from the site and enter any waters on, adjacent to or around the site.

Reason: To safeguard the amenities of the area.

8. All operations shall be carried out in such a manner as to ensure that no odour or dust nuisance occurs beyond the site boundary because of such operations.

Reason: To safeguard the amenities of the area.

9. All waste generated on the site shall be disposed through appropriately licensed collection and disposal contractors.

Reason: To safeguard the amenities of the area.

10. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the satisfactory reinstatement of the public road in the vicinity of 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 in the vicinity of the site. The form and amount of the security shall be agreed between the planning authority and the developer, and in default of such agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the public road in the vicinity of the site.6

11. 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. 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 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.

Prior to the commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to the

planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

The proposed vehicular entrance shall be designed and constructed in accordance with the requirements of the planning authority. Details shall be agreed with the planning authority prior to the commencement of development.

Reason: In the interests of traffic safety.

All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

Water supply and drainage arrangements, including the 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 and to ensure a proper standard of development.

Surface water from the site shall not be permitted to drain onto any public roads.

Reason: In the interest of traffic safety.

That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

Kenneth Moloney
Planning Inspector

3rd February 2017