



An
Bord
Pleanála

Objective

Inspector's Report ABP-307647-20

Development	Ten year permission for two wind turbines with a 30 year operational life.
Location	Ballicknahee, Co. Offaly
Planning Authority	Offaly County Council
Planning Authority Reg. Ref.	20/70
Applicant	Columb Kane
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party v Refusal of Permission
Appellant(s)	Columb Kane
Observer(s)	Adrian Carey
Date of Site Inspection	08.10.2020
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The proposed turbines are to be located on agricultural fields approx. 2km north west of Clara in north Co. Offaly. The field boundaries where the proposed turbines are located form part of the county boundary between Offaly and Westmeath.
- 1.2. The applicant's house and farmyard are set back approx. 120 metres from the public road/R391 and the landholding is to the rear/north east of the house and farmyard area. An agricultural track runs from the farmyard through the landholding. Ground levels on the landholding rise towards the north east from approx. 67 metres above ordnance datum (AOD) at the public road to approx. 101 metres AOD adjacent to the location of the second (more northerly) proposed turbine. There are normal field boundaries around the exterior of the landholding. A tree-lined ringfort is located approx. 60 metres from the second proposed turbine.
- 1.3. The overall site has a stated area of 13.28 hectares.

2.0 Proposed Development

- 2.1. The application is for a ten year permission for:
 - Two wind turbines with a maximum height of 160 metres and combined electrical output not to exceed 4.98 megawatts for a 30 year operational life,
 - Associated site development, site entrance and access and reinstatement works.
- 2.2. In addition to standard planning application plans and particulars the application was accompanied by a 'Planning and Environmental Report' including an Appropriate Assessment Screening Report and photomontages as appendices.

3.0 Planning Authority Decision

3.1. Decision

The planning authority refused the planning application for one reason:

1. Objective EO-01 of the Offaly County Development Plan 2014-2020 (as amended) states that it is an objective of the Council to achieve a reasonable balance between responding to government policy on renewable energy and in enabling the wind energy resources of the County to be harnessed in an environmentally sustainable manner. This will be implemented having regard to the Council's Wind Energy Strategy and the identified suitable areas in the County for wind energy developments (Figure 9). These areas have been identified based on an assessment of ecological designations; landscape sensitivities; locations of settlements; and, technical considerations.

Objective EO-01 of the CDP states that development for wind energy outside of the identified areas shall not normally be permitted unless the exemptions provisions as outlined in Section 5.4 of the Wind Energy Strategy and Policy EP-05 apply. As these exemptions do not apply in this instance, the proposed development would materially contravene the appropriate policies and objectives of the CDP and the application shall be refused as would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer's Planning Report forms the basis for the planning authority decision. In summary, the report considers that the requirement for an environmental impact assessment report (EIAR) cannot be determined based on the information submitted and the Appropriate Assessment Screening Report is sub-standard. Notwithstanding, the site is not located within the identified Wind Energy Strategy Area and none of the exemptions to this are applicable. The development would materially contravene the relevant policies and objectives of the County Development Plan.

3.2.2. Other Technical Reports

Area Engineer – Further information requested including surveys on haul routes and detail of the proposed route for cable connection to the national grid.

Roads Section – Further information is required for a Stage 1/2 Road Safety Audit and detail of the works required to connect the proposed turbines to the national grid.

Environment & Water Services – A refusal is recommended. The development is outside the Wind Energy Development Area as defined in the County Development Plan 2014-2020.

3.3. Prescribed Bodies

3.3.1. Irish Aviation Authority (IAA) – Two separate responses were received.

One report states that it is the observations of the Engineering Department that the turbines are within Wolftrap DME flight inspection orbit and might have adverse effect on flight inspection procedures and profiles. It is recommended that the developer get a third party company to complete assessment.

The other report states that it is the observations of the Aerodromes Department that if permission is granted the applicant should be conditioned to contact the IAA to agree an aeronautical obstacle warning light scheme, provide as-constructed co-ordinates and tip-height elevation and give notification of intention to commence crane operations.

3.3.2. Department of Culture, Heritage & the Gaeltacht – Two separate responses were received.

1. Nature Conservation

Observations and recommendations are made in relation to bats (a suitable bat survey of the subject site should be sought as further information), hedgerows (a hedgerow survey of all hedgerows within the zone of influence should be sought as further information) and birds (inadequate detail submitted to support the determination that the construction and operational phases will not result in likely significant effects on any avian species). Reference is also made to the O’Grianna judgement in that it is not clear whether connection to the electricity grid forms part of the project but, if so, it must be included in any ecological assessments.

2. Archaeology

It is recommended that any groundworks should be subject to an archaeological monitoring condition in any grant of permission.

3.4. Third Party Observations

3.4.1. One submission was received from Residents of Ballicknahee, c/o Elizabeth Egan, Ballicknahee and was signed by 21 no. people. The issues raised are generally similar to those referenced in the observation received on foot of the grounds of appeal but also include:

- Concern about the impact on the narrow road infrastructure.
- Concern about impacts on the foundations and structure of houses in proximity to the proposed site entrance as a result of heavy machinery.

4.0 Planning History

4.1. None.

5.0 Policy Context

5.1. Project Ireland 2040 National Planning Framework (NPF)

5.1.1. The NPF is a high level strategic plan to shape the future growth and development of the country to 2040. It contains a number of National Policy Objectives (NPOs). NPOs relevant to the planning application include:

5.1.2. NPO 55 – Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.

5.2. Wind Energy Development Guidelines for Planning Authorities (2006)

5.2.1. The guidelines provide advice on wind energy development in terms of the development plan and development management processes. Guidance is given on matters such as noise, shadow flicker, natural heritage, archaeology, architectural heritage, ground conditions, aircraft safety and windtake. Chapter 6 provides guidance on siting and design of wind energy development in the landscape. This includes advice on siting, spatial extent and scale, cumulative effect, and spacing, layout and

height of turbines. Advice is also given regarding landscape character types as a basis for the application of the guidance on siting and design.

5.3. Draft Revised Wind Energy Development Guidelines (2019)

5.3.1. These provide for an update and review of the 2006 guidelines.

5.4. Eastern & Midland Regional Assembly Regional Spatial & Economic Strategy 2019-2031 (RSES)

5.4.1. Section 7.9 (Climate Change) states that the region will need to shift from its reliance on using fossil fuels and natural gas as its main energy source to a more diverse range of low and zero-carbon sources, including renewable energy and secondary heat sources. It states local authorities should harness the potential of renewable energy across the technological spectrum, including wind, focusing in particular on the extensive tracts of publicly owned peat extraction areas in order to enable a managed transition of the local economies of such areas in gaining the economic benefits of greener energy.

5.4.2. Regional Policy Objective (RPO) 7.36 – Planning policy at local authority level shall reflect and adhere to the principles and planning guidance set out in Department of Housing, Planning and Local Government publications relating to ‘Wind Energy Development’ and the DCCA Code of Practice for Wind Energy Development in Ireland on Guidelines for Community Engagement and any other relevant guidance which may be issued in relation to sustainable energy provisions.

5.5. Offaly County Development Plan 2014-2020

5.5.1. Section 3.5 (Wind) states site suitability is an important factor in determining the suitability of wind farms (turbines), having regard to possible adverse impacts associated with, for example, residential amenities, landscape, including views or prospects, wildlife, habitats, designated sites, protected structures or bird migration paths and compatibility with adjoining land uses.

5.5.2. A Wind Energy Strategy Map shows areas where applications for wind energy developments will be open for consideration, subject to site specific considerations and layout. In Areas Suitable for Wind Energy Development, projects shall be open

for consideration, where projects can demonstrate that they will not have likely significant effects on the conservation objectives of European Sites. In all other areas Wind Energy Developments shall not normally be permitted – except as provided for under exemption provisions and as specifically described in Section 5.4 of the Wind Energy Strategy and Policy EP – 04 (cumulative effects of wind farms).

5.5.3. Objective EO-01 is specifically cited in the local authority’s reason for refusal:

‘EO-01 – It is an objective of the Council to achieve a reasonable balance between responding to government policy on renewable energy and in enabling the wind energy resources of the county to be harnessed in an environmentally sustainable manner. This will be implemented having regard to the Council’s Wind Energy Strategy as follows:

1. In Areas open for consideration for Wind Energy Development, as identified in Map 3.2, the development of Wind Farms and smaller wind energy projects shall be open for consideration.

2. In all other areas Wind Energy Developments shall not normally be permitted – except as provided for under exemption provisions and as specifically described in Section 5.4 of the Wind Energy Strategy and Policy EP-05’.

5.5.4. Policy EP-05 is also specifically cited in the local authority’s reason for refusal:

‘Policy EP-05 – It is Council policy that applications for wind energy development outside of the wind energy development areas open for consideration identified in Map 3.2 will not normally be permitted except when it can be demonstrated that the proposal falls into the following category:

Category A: Single Turbines that are sited close to and specifically relate to the operations of an industrial/commercial premises or a school, hospital or other community-related premises. Supporting evidence must be provided detailing that the development will only facilitate and is only related to the operation of the business or community facility.

Each proposal within this category will be open for consideration outside of the wind energy development areas and subject to site specific assessment in accordance with relevant guidance’.

5.5.5. A ‘Wind Energy Strategy for County Offaly Methodology Statement’ accompanies the Plan. It outlines the rationale of the Council’s policy towards wind energy

developments and will form the basis for assessment of planning applications and assist in the decision making process.

5.6. Draft Offaly County Development Plan 2021-2027

- 5.6.1. Policy CAEP-35(c) requires a 2km separation from turbines to town and village settlement boundaries.
- 5.6.2. A Draft Wind Energy Strategy shows the areas of the county that are Areas Open for Consideration for Wind Energy Development and Areas Not Deemed Suitable for Wind Energy Development. There is a slight change from these areas as identified in the current Plan.

5.7. Natural Heritage Designations

- 5.7.1. The closest Natura 2000 site is Clara Bog SAC approx. 2.8km to the south west. The closest heritage area is Woodfield Bog pNHA approx. 1.7km west of the proposed turbines.

5.8. EIA Screening

- 5.8.1. The relevant class for EIA is Schedule 5, Part 2 (3)(i) – ‘Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total power output greater than 5 megawatts’. The Planning and Environmental Report submitted with the application contains an ‘EIA screening exercise’ concluding that, having regard to the characteristics and location of the project and characteristics of potential impacts, there is no real likelihood of significant effects on the environment. I note the planning authority’s Planning Report contains a similar exercise. The planning authority concluded that further information is required to determine whether or not an EIAR is required and notes the absence of any grid connection detail.
- 5.8.2. The proposed development comprises two turbines with a combined electrical output not to exceed 4.98 megawatts. As the relevant thresholds of Schedule 5 are not met or exceeded, EIA is not mandatory for this development. I consider the number of turbines is the more significant of the two separate issues set out in Part 2 (3)(i). Turbines can be visible over significant areas whereas the energy generated is generally accommodated by subterranean cabling and therefore has a more limited

environmental impact. Two turbines comprise only 40% of the total number of turbines that would require mandatory EIA, less than half of the turbine number threshold. The combined electrical output is also below the threshold, albeit by a limited amount. However, in the context of wind energy development, the number of turbines has a greater impact on the receiving environment than the amount of power generated.

5.8.3. Notwithstanding, to ascertain whether this sub-threshold development may potentially require EIA there are four main considerations as a preliminary examination:

1. Is the size or nature of the proposed development exceptional in the context of the existing environment?

5.8.4. The site and surrounding area generally comprise agricultural farmland with some one-off housing. The proposed wind turbines are 161 metres high and are located approx. 660 metres away from the closest residential curtilage boundary. Wind turbines are becoming an increasingly more common sight in certain areas of the country and wind energy development is promoted in national policy. There are relatively large areas of County Offaly where the principle of wind turbines is envisaged under the County Development Plan(s). The closest existing facility appears to be the two turbine Leabeg development approx. 19km to the south west. The closest permitted but undeveloped site is the 29 no. turbine Yellow River site approx. 18km to the east. I do not therefore consider that a two turbine development could be considered exceptional in the context of the existing environment.

2. Will the development result in the production of any significant waste, or result in significant emissions of pollutants?

5.8.5. The development would not involve the use, storage, handling or production of any substance that would be harmful to human health or the environment. It would not produce solid waste, release pollutants or any hazardous, toxic or noxious substances. It would not result in discharge of pollutants to ground or surface waters.

Noise prediction modelling has been submitted as Annex 3 of the applicant's Planning and Environmental Report. 47 no. houses fall within the '10-times rotor diameter criteria', 1.21km, and the noise assessment was carried out on all houses within this diameter. Noise levels are predicted to range between 33.9dB(A)LA₉₀ and 38.6dB(A)LA₉₀, substantially below the 43dB(A)LA₉₀ limit prescribed in the Wind Energy Development Guidelines for Planning Authorities 2006.

The Planning and Environmental Report considers there is potential to exhibit operational phase radiation in the form of electromagnetic fields emanating from the electricity lines which will connect the proposed turbines to the switchroom. However, given the distance to houses, and the undergrounding of cabling, impact is assessed as negligible.

Therefore, I do not consider the development would result in the production of waste or result in significant emission of pollutants.

3. Is the proposed development located on, in adjoining or have the potential to impact on an ecologically sensitive site or location?

5.8.6. The closest heritage area is Woodfield Bog pNHA approx. 1.7km west of the proposed turbines. I consider this distance is sufficient to ensure there would be no potential impact. There is no pathway from this site to the pNHA.

The submitted Planning and Environmental Report recommends a separation distance of 71 metres (73 metres provided) between turbine blade tip and treelines and hedgerows for bats and states this was a key consideration in the project design process. The Department of Culture, Heritage and the Gaeltacht welcomed this in their report though considers that it is not appropriate to introduce mitigation measures in the absence of appraisal of the level of bat activity at the site.

I have carried out an Appropriate Assessment screening of the proposed development (Section 8.0 of this Report), and concluded that it would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Therefore, the development is not located on, in or adjoining an ecologically sensitive site or location and would not have the potential to impact on any ecologically sensitive site or location.

4. Does the proposed development have the potential to affect other significant environmental sensitivities in the area?

5.8.7. Ringfort (OF002-036) is located immediately west of proposed Turbine 2. A report from the Department of Culture, Heritage and the Gaeltacht was submitted on the planning application which recommended an archaeological monitoring condition be attached to any grant of permission.

The submitted Planning and Environmental Report states the proposed site boundary does not encroach onto the footprint of the feature ensuring there will be no direct effects. The applicant 'can confirm that there will be no groundworks or ground disturbance within 20m of the feature'. There will be a long-term (though not in the context of the ringfort), reversible and significant operational phase visual effect on the ringfort due to proximity, according to the applicant. Mitigation is proposed as archaeological monitoring and ensuring the micrositing of Turbine 2 will not be considered within 60 metres of the ringfort or associated infrastructure within 20 metres.

I consider, having regard to the Department's recommendation, that there would be no undue significant effect on the ringfort subject to appropriate archaeological monitoring and buffer zone conditions.

Conclusion

- 5.8.8. Having regard to the nature and scale of the proposed development and the absence of significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Grid Connection

- 5.8.9. The applicant considers that the underground connection of the proposed development to the Clara 38kV substation, the preferred option, or to any of three other substations within 10km, accords with the exempted development provisions of, Schedule 2, Part 1, Classes 26 and 27 of the Planning & Development Regulations, 2001 (as amended) because the proposed development is not of a scale which engages the EIA Directive and therefore the O'Grianna Judgement. As the proposed development does not require EIA, I do not consider the O'Grianna Judgement a matter for this planning application.

6.0 The Appeal

6.1. Grounds of Appeal

The main points made can be summarised as follows:

- The decision to refuse permission solely on the basis that the development is located outside of a 'Wind Energy Development Area' is unwarranted without having regard to:

- (i) The relatively small scale of the development – There are just two turbines. These small-scale developments can provide a very valuable contribution to renewable energy production while significantly ameliorating perceived environmental and amenity issues associated with larger schemes. Objective EO-01 states that wind energy development shall not 'normally' be permitted (outside areas open for consideration for Wind Energy Development) except as provided for under exempt provisions and as set out in Section 5.4 of the Wind Energy Strategy and Policy EP-05. These generally relate to exempt developments or minor exceedances of same. Section 5.4 again states 'normally'. It is clear that some discretion and flexibility is provided by the County Development Plan to consider proposals on their merits and the development, therefore, would not materially contravene the Plan. If the Board does consider it to be a material contravention of the Plan, it can be granted having regard to the fact that rapid deployment of renewal energy infrastructure is of the highest strategic and national importance and national and regional policy institutes a strong presumption in favour of the rapid deployment of wind energy development e.g. 2006 Guidelines and the Climate Change & Low Carbon Development Act, 2015.

The Planning Officer's Report did not identify any substantive reasons for refusal related to the proper planning and sustainable development of the area. The development will have no likely significant effects on the environment. Any perceived deficiencies as identified in the Planning Officer's report could have been addressed by a further information request.

- (ii) National and regional policy – There is universal acknowledgement of the urgency of transitioning to renewable energy sources. Ireland continues to lag significantly in reducing greenhouse gas emissions. Government policy strongly supports increased generation of renewable electricity. It is a national target to achieve 70% of electricity from renewable sources by 2030. Achieving targets requires a step change in how projects are delivered, including smaller projects such as that proposed. There should be a positive presumption in favour of such wind energy developments where all other criteria can be achieved. The development will facilitate the diversification of the rural economy.
- (iii) Site suitability – The site complies favourably with the three key criteria which contribute to the suitability of an area to accommodate wind energy developments as set out in Section 5.3.1 of the Wind Energy Strategy: available access to suitable grid connections within 10km, the absence of overwhelming environmental constraints and low density of adjacent residential development. It is considered difficult to understand why it was not included in a ‘Wind Energy Development Area’. The development can be connected to the Clara 38kV substation approx. 1.6km southwest of the site, among other options. The development compares favourably to the Considerations for Evaluation of Wind Energy in Section 3 of the Wind Energy Strategy: the site is 1km east of Woodfield Bog pNHA and approx. 3km north east of Clara Bog SAC, the site is of low ecological importance, is in an area of low landscape sensitivity, wind speed is viable for a wind energy development and the nearest house is 822 metres from a turbine, with 47 no. houses between 822 metres and 1.21km. Though within the 2km buffer applied to the area of high landscape sensitivity associated with the pNHA there is no evidential basis for the selection of this distance. The site does not exhibit any significant environmental constraints. The Wind Energy Development Areas are unduly restrictive. The Planning & Environmental Report submitted with the application did not identify any likelihood for significant effects on the environment such as biodiversity, water, cultural heritage, landscape, noise and shadow flicker. The

development will not result in a proliferation of turbines as there are no other wind farms in the wider environs.

- The planning authority decision is predicated on the fact that the site is not located within a Wind Energy Development Area. However, the site complies with the key criteria of the Strategy and will not result in any likely significant effects on the environment or local amenity.

6.2. Planning Authority Response

6.2.1. The planning authority requests that the Board supports its decision.

6.3. Observations

6.3.1. One observation has been received from Adrian Carey, Ballickmoyler, Clara. It also states 'Ballicknahee Residents' but no other name is contained within the observation. The main points made can be summarised as follows:

- There has been a misrepresentation to avoid mandatory commissioning of an EIAR. It is stated the combined electrical output shall not exceed 4.98 megawatts (mw). The Planning and Environmental Report submitted with the application specifies a specific turbine, a Goldwind GW121. Therefore, one such turbine must be 2.49mw or less. A specification for a Goldwind GW121 turbine is attached to the observation which gives its power rating as 2.5mw and not 2.49mw as stated. An Enercon E-126 turbine is also referenced in the Planning and Environmental Report. A specification for this is also attached to the observation. This turbine has a minimum power of 3mw with a maximum of 4mw. The observation believes it is proposed to install this turbine, with a potential 8mw combined output, because it is much easier to obtain finance as it has a 15 year manufacturer warranty. Most turbines only have a two year warranty. It is considered the statement that the GW121 turbine produces 2.49mw, rather than the 2.5mw the manufacturer's data states, was inserted to avoid the expense and public consultation of an EIAR. In the case of the Enercon turbines, the EIAR threshold is exceeded. The statement that the exact type of turbine to be installed has not been determined is a vague and convenient excuse. The observation considers an EIAR should have been prepared at the initial planning stage and the appeal is fundamentally flawed.

- The Draft Revised Wind Energy Development Guidelines (2019) specifies a minimum distance of four times the hub height to an adjoining property. The curtilage of the closest adjoining property is approx. 660 metres. This is based on online mapping. A turbine height of 161 metres gives a minimum distance of 644 metres. A surveyor may be able to dispute this distance. It is possible that at least one turbine is too close under the Draft Guidelines. Section 4.3.2 of the Draft Guidelines states that it is essential local communities are properly involved in the planning process and planning authorities should require developers to engage in public consultation. This did not take place.
- The Draft Guidelines refer to noise restriction limits and noise sensitive locations. One house, H28, on the Horseleap Road (the closest house 660 metres away), has a 40db projected sound wave passing through the bottom of the back garden based on a 12 metres/second (m/s) wind. A turbine's noise level generally reaches maximum level at rated power. A report is attached to the observation (Sound Technical Report for the Sand Hill Proposed Wind Project Alameda County California March 2016) based on the Goldwind GW121 2.5mw turbine. This includes reference to various weighted sound levels and the noise impact of two turbines close together (decibel addition) and it states that rated power for the turbine is at 11m/s whereas the applicant's figure is based on 12m/s. The observer states that the decibel level at H28 would be 42.641, and the observer 'is certain given time our engineer would show an infringement of the 43db mandatory limit' given other factors.
- In relation to the areas suitable for wind energy developments in the 2014-2020 Wind Energy Strategy the River Brosna is 1km away, Clara Bog is 3.5km away, the centre of Clara is 2.5km away. It is within the 2km buffer of a landscape sensitivity area. It is in an excluded area within the County Development Plan 2014-2020 and it is not a small one-off turbine.
- To permit the application could set a precedent for similar development impinging or circling other towns. The development would be injurious to visual amenity and result in a significant reduction in property values. The observation states an aggregate loss of €10m within 14km is reasonably possible. Property loss alone would exceed the €6m capital cost of development. There is no good

reason to place turbines close to towns other than a developer saving grid connection costs.

- It is inevitable that microscopic particles of grease and fluid will be regularly deposited over the entire area of the adjacent significant organic farm (Kilbeggan Organic Foods) which cannot allow any pesticides, herbicides or artificial fertiliser onto the land.
- A turbine is within 65 metres of a ringfort (OF002-036). There is a somewhat inevitable probability the ancient rath will be damaged or potentially destroyed. Turbine 2 is far too close and should not be permitted in any event.
- It is unknown if the development would impinge on biodiversity in the River Brosna.
- Existing mills in Clara produce hydro-electricity in a low key, noise free and visual impact free way.
- Clara Bog has been submitted to UNESCO and is visited by thousands.
- Images have been submitted to give an idea of the size of the development in relation to other familiar structures.
- YouTube links are provided giving an understanding of the noise of two 2.5mw turbines and the life of an American family living 1600ft away.
- Shadow flicker detail submitted is inaccurate and does not fully show the extent of shadow flicker in the morning for properties H28 to H20.

6.4. Further Responses

6.4.1. None sought.

7.0 Assessment

Having examined the application details and all other documentation on file, including the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with National, Regional and Offaly County Development Plan 2014-2020 Policy
- Landscape and Visual Impact
- Access and Traffic
- Noise
- Shadow Flicker
- Impact on Property Values
- EIA Screening

7.1. Compliance with National, Regional and Offaly County Development Plan 2014-2020 Policy

- 7.1.1. National, regional and Offaly County Development Plan 2014-2020 policy is favourable towards the provision of renewable forms of energy such as wind. Notwithstanding, the planning authority decided the proposed development would materially contravene the appropriate policies and objectives of the County Development Plan 2014-2020. NPO 55 of the NPF promotes renewable energy generation at appropriate locations. The RSES considers that local authorities should harness the potential of renewable energy and focus on the extensive tracts of publicly owned peat extraction areas.
- 7.1.2. The current relevant guidelines are the Wind Energy Development Guidelines for Planning Authorities (2006) which gives guidance on relevant matters. Draft Revised Guidelines were published in December 2019.
- 7.1.3. Chapter 3 (Energy Strategy) of the Offaly County Development Plan 2014-2020 was prepared in the context of a number of documents, including the Wind Energy Development Guidelines (2006). The Council have prepared a Wind Energy Strategy for the county. Considerations such as ecological designations, the Slieve Bloom Mountains, landscape sensitivity, urban areas and technical and other considerations were evaluated. After analysing these considerations, a wind energy map was produced indicating the areas deemed suitable for wind energy development based on a combination of factors that include available access to suitable grid connections, the absence of overwhelming environmental constraints and low densities of adjacent residential development.

- 7.1.4. Although wind energy development is generally encouraged, Offaly County Council Objective EO-01 states that it is an objective of the Council to achieve a reasonable balance between responding to government policy on renewable energy and in enabling the wind energy resources of the county to be harnessed in an environmentally sustainable manner. The two substantial areas of the county that have been designated as being Areas Suitable for Wind Energy Development are the eastern area of the county and an area in the north west of the county. The site subject of the current application is not located within a Wind Energy Development Area. It is located approx. 9km east of the north west area. (The Wind Energy Strategy in the Draft Plan shows some alterations to the boundaries of the current Areas Open for Consideration. The boundary of the north west area is closer to the site than the current Plan but remains approx. 5km away).
- 7.1.5. Objective EO-01 and Policy EP-05 state that applications for wind energy development outside of the two identified areas will not normally be permitted except single turbines that are sited close to and specifically relate to the operations of an industrial/commercial premises or community-related premises. The proposed development is not within this category.
- 7.1.6. The planning authority's reason for refusal states that to permit the development would materially contravene the appropriate policies and objectives of the County Development Plan. The grounds of appeal disputes that it would be a material contravention in the first instance, but if considered by the Board to comprise a material contravention, it could and should still be permitted having regard to section 37(2)(b) of the Planning & Development Act, 2000 (as amended).
- 7.1.7. The grounds of appeal consider that, because the wording of Objective EO-01 and Policy EP-05 state that, outside Areas Open for Consideration for Wind Energy Development, wind energy developments will not be 'normally' permitted, this allows flexibility and discretion to the planning authority and, as such, to permit a wind energy development outside Areas Open for Consideration would not materially contravene the Plan. I do not concur with the grounds of appeal in this regard. I consider the County Development Plan 2014-2020 is very clear that wind energy development proposals will only be considered if they are located in Areas Open for Consideration for Wind Energy Development. I consider that both Objective EO-01 and Policy EP-05 clearly identify what type of wind energy development may be considered outside

these areas i.e. single turbines that are sited close to and specifically relate to the operations of an industrial/commercial premises or a community-related premises. I do not consider the wording in the Plan is so vague as to permit larger scale wind energy developments outside Areas Open for Consideration.

7.1.8. The grounds of appeal consider that, in the event the Board does not agree that the wording of the Plan is such that to permit the development would not require a material contravention of the Plan, the proposed development can still be permitted having regard to section 37(2) of the Planning & Development Act, 2000 (as amended). There are four issues to be considered in this regard set out under section 37(2)(b):

- The proposed development is of strategic or national importance – The grounds of appeal consider the rapid deployment of renewable energy infrastructure is clearly of the highest strategic and national importance. While the development of renewable forms of energy is encouraged under national policy, I do not consider that the scale of the proposed development, at two turbines and 4.98mw, can be considered to be of strategic or national importance. The grounds of appeal itself refers on a number of occasions to the small-scale nature of the proposed development.
- There are conflicting objectives in the development plan or the objectives are not clearly stated – As set out in Section 7.1.7 of this Assessment, I do not consider that this is the case.
- Permission should be granted having regard to the RSES for the area, section 28 guidelines, section 29 policy directives, statutory obligations of the local authority and any relevant Government or Ministerial policy – I consider that the Wind Energy Strategy in the County Development Plan 2014-2020 has been prepared in accordance with the relevant guidelines and policies.
- Permission should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan – Map 1 of the Wind Energy Strategy in the Draft County Development Plan 2021-2027 shows the location of existing and permitted wind turbines in the county. The permitted turbines appear to be in Areas Open for Consideration in the 2014-2020 Plan. There do not appear to be any turbines permitted outside Areas Open for Consideration. Therefore, I do not consider the current

application can be considered on foot of the pattern of development or permissions granted since the making of the Plan.

- 7.1.9. Having regard to the foregoing, while national, regional and Council policy is favourable towards the provision of wind energy, the site is outside the Areas Open for Consideration for such development in the County Development Plan 2014-2020. To permit the development would materially contravene the Offaly County Development Plan 2014-2020 and I do not consider that the provisions of section 37(2)(b) of the Planning & Development Act, 2000 (as amended) are applicable.

7.2. Landscape and Visual Impact

- 7.2.1. The visual impact and scale of the proposed development is raised in the observation. This is clearly a significant issue as the proposed turbines will be substantial features in the landscape.
- 7.2.2. Wind turbines are structures of significant height and the proposed turbines will reach a height of 161 metres. Notwithstanding, turbines are a relatively common feature of many areas, including within Co. Offaly. Section 6.18.1 (Appropriate setback Distances to apply) of the Draft Guidelines (2019) considers that a setback which is the function of the size of turbine should be key to setting the appropriate setback and suggests that a setback distance for visual amenity purposes of four times the tip height should apply between a wind turbine and the nearest point of the curtilage of any residential property, subject to a mandatory minimum 500 metres setback. The Draft Guidelines (2019) include this as Specific Planning Policy Requirement (SPPR) 2. In relation to the current application, the turbine height is 161 metres, necessitating a separation distance of 644 metres. The closest residential curtilage to the west is approx. 660 metres away. Therefore, the proposed development would be considered acceptable in visual amenity terms under the Draft Guidelines (2019).
- 7.2.3. The Planning and Environmental Report submitted with the application references the landscape and visual impact issue. Photomontages from various vantage points in the vicinity and Zone of Theoretical Visibility maps have been submitted. The bulk of visibility will be south of the site. The land is 'low sensitivity' in the County Development Plan 2014-2020 though there are areas of medium and high landscape sensitivity in the wider study area. The Planning and Environmental Report considers the development would have a slight to moderate visual impact.

7.2.4. Having regard to the separation distance between the proposed turbines and residential properties, and the photomontages and landscape sensitivity of the general area, I consider that the proposed development would be acceptable in terms of its impact on the landscape and the visual amenity of the area.

7.3. Access and Traffic

7.3.1. The observation to the planning authority raised concern about the width of the road network and possible impact on existing houses. The Area Engineer sought a proposal for before and after surveys of the haul routes to determine and rectify any damage to roads and structures. The Road Design report sought a Stage 1/2 Road Safety Audit to identify any road safety concerns/implications.

7.3.2. The Planning and Environmental Report submitted with the application states that it is likely the turbine components will enter Galway Port and exit the M6 at Junction 6. The R446 to Horseleap will be used and then the R391. The Report considers that temporary works such as removal of street furniture will be required at a number of locations and the 'precise scope of these works will be discussed with the respective local authorities prior to the commencement of development'.

7.3.3. A new access point is to be constructed, approx. 90 metres north of the applicant's existing house and farmyard entrance, for the development, including the switchroom building and the temporary construction compound. The Regional Road R391 is relatively straight at this location. The site layout plan shows sightlines of 160 metres in both directions. I consider these sightlines can be achieved. Neither the Area Engineer nor the Road Design Section indicated any concern about sightlines. The entrance, during construction, would be approx. 30 metres wide but the layout plan indicates that much of this would be revegetated post-construction. While I consider it reasonable that a separate access point is provided for the wind energy development, as opposed to using the existing domestic and agricultural access point, roadside boundary drawings of the proposed access would be necessary.

7.3.4. I do not consider there is any issue, in principle, with the haul routes. I consider it a matter for the developer to liaise with any relevant organisations should there be particular pinch points on the route.

7.3.5. The Site Layout Drawing Key drawing submitted shows the temporary compound location is approx. 70 metres from the closest third-party property boundary to the

north of the site and approx. 170 metres from the nearest house to the north. The proposed vehicular access is approx. 100 metres from the closest third-party property to the north. I do not consider there will be any reasonable likelihood of undue impact on the structural integrity of any of these houses as a result of the proposed development.

- 7.3.6. The internal access to the compound and switchroom building is approx. 200 metres in length. The existing farm track, which is approx. 1km in length, is to be upgraded and extended by approx. 250 metres to serve Turbine 2. A spur off the existing track is also required to serve Turbine 1.
- 7.3.7. Having regard to the foregoing, I do not consider that the access and traffic issues associated with the application are significant.

7.4. Noise

- 7.4.1. The issue of noise is raised in the observation received on foot of the grounds of appeal.
- 7.4.2. Section 5.6 (Noise) of the Wind Energy Guidelines (2006) is relevant. The closest noise sensitive locations in the vicinity are the houses along the R391 to the west of the turbines. The Guidelines recommend that, in low noise environments, the daytime limit of the LA90, 10 min of the wind energy development noise be limited to an absolute level within the range 35-40 dB(A) at nearby noise sensitive locations. External amenity is less important at night and a fixed limit of 43 dB(A) will protect sleep inside properties.
- 7.4.3. A noise prediction aerial photograph has been submitted in Annex 3 (Noise Prediction Modelling) of the Planning and Environmental Report. This sets out various noise prediction bands from the turbines. This shows all noise sensitive locations (houses) are comfortably outside the 43 dB(A) threshold. It appears that a fraction of the approx. 180 metres long rear curtilage of the house identified as H28 may be inside the 40dB(A) – 43 dB(A) band.
- 7.4.4. The Guidelines state that, generally, noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres, though the Draft Guidelines (2019) state separation distance alone cannot be relied upon as a mechanism to accurately control noise levels. Having regard to the

foregoing, and to the distances between noise sensitive locations and the proposed turbines, I do not consider that noise would be a significant concern.

7.5. Shadow Flicker

- 7.5.1. Shadow flicker has been raised as a concern in the submission to the planning authority and the observation received on foot of the grounds of appeal.
- 7.5.2. Shadow flicker is addressed in Section 5.12 of the Wind Energy Guidelines (2006). The guidelines state the effect lasts only for a short period and happens only in certain specific combined circumstances. The guidelines recommend that shadow flicker at houses within 500 metres should not exceed 30 hours per year or 30 minutes per day. The guidelines also consider that, at distances greater than 10 rotor diameters from a turbine, the potential for shadow flicker is very low.
- 7.5.3. 10 rotor diameters from the turbines is 1.21km. A shadow flicker assessment was undertaken by the applicant using specialist shadow flicker prediction modelling software. 'Expected' values over the course of a year are a more realistic prediction of likely impact because historic meteorological data can be assumed in the model whereas over the course of a day it may be sunny all day or not at all. The modelling results show that houses at which shadow flicker is expected to occur will experience between 45 minutes and 8 hours 41 minutes of shadow flicker per year, significantly below the 30 hours per year limit in the guidelines. However, more than half of the 47 no. houses are predicted to exceed the 30 minutes per day criterion in a 'worst case' scenario though the applicant considers this to be a significant over-estimation and not representative of actual conditions. Notwithstanding, technical solutions are available to ensure instances of shadow flicker do not exceed either of the permissible limits. The applicant has undertaken to implement the appropriate technological mitigation measures in full.
- 7.5.4. Having regard to the foregoing, I consider that it has been demonstrated that any shadow flicker would be significantly less than the maximum annual limit and where the daily limit may be exceeded technological solutions are available as mitigation. Therefore, I do not consider shadow flicker to be a significant concern with the proposed development.

7.6. Impact on Property Values

- 7.6.1. The observation received on foot of the grounds of appeal considers that the proposed development would result in a significant reduction in property values.
- 7.6.2. I note the concerns raised in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusion set out in this report, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

7.7. EIA Screening

- 7.7.1. The observation received on foot of the grounds of appeal considers that the proposed development has been misrepresented to avoid the mandatory commissioning of an EIAR.
- 7.7.2. This issue has been addressed in Section 5.8, above. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Appropriate Assessment Screening

The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for Appropriate Assessment of a project under Part XAB (section 177U) of the Planning and Development Act 2000 (as amended), are considered fully in this assessment.

8.1. Background to the application

- 8.1.1. The applicant has submitted a basic screening report for Appropriate Assessment as part of the planning application. The 'Appropriate Assessment Screening Report' prepared by Galetch Energy Services and dated 2nd March 2020 is attached as Annex 1 of the applicant's Planning and Environmental Report. The report seeks to

provide supporting information to carry out a screening for appropriate assessment for the proposed development. A desktop study was undertaken to collate information on Natura 2000 sites within 15km of the proposed development. Six Natura 2000 sites are briefly assessed. The applicant's AA Screening Report concluded that 'The planning authority can, therefore, exclude the risk that the proposed development will have an impact on any Natura 2000 site and can proceed to determine that Appropriate Assessment is not required as the proposed development, individually or in combination with other plans or projects, will not have any adverse effect on any Natura 2000 sites'.

8.1.2. Notwithstanding the comments in the planning authority's Planning Report that the applicant's screening report is substandard, I am satisfied, having reviewed the documents, drawings and submissions, that the information allows for a complete examination and identification of any potential significant effects of the development, alone, or in combination with other plans and projects on European sites.

8.1.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development would have any possible interaction that would be likely to have significant effects on a European Site(s).

8.2. **Brief description of the development**

8.2.1. The applicant provides a description of the project on Page 1 of the AA Screening Report. In summary, the development comprises a ten year permission for:

- Two wind turbines with a maximum height of 160 metres and combined electrical output not to exceed 4.98 megawatts for a 30 year operational life,
- Associated site development, site entrance and access and reinstatement works.

8.2.2. The overall site area largely comprises agricultural fields. A new vehicular access and roadway, approx. 200 metres in length, is to be constructed from the R391 public road to serve the proposed development. The internal roadway from the proposed switchroom building and construction compound close to the applicant's farmyard to the proposed locations of the turbines largely already exists. The proposed turbine locations are agricultural fields with a higher ground level than the farmyard area.

Extensions of the existing track to serve the specific turbine locations are also required.

8.2.3. Taking account of the characteristics of the proposed development in terms of its location and scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European Sites:

- Construction related pollution
- Habitat loss/fragmentation
- Habitat/species disturbance (construction and/or operational)

8.3. Submissions and Observations

8.3.1. None of the submissions from the prescribed bodies, or from third parties, refer specifically to appropriate assessment.

8.4. European Sites

8.4.1. The development site is not located in or immediately adjacent to a European site. The closest European site is Clara Bog SAC approx. 2.8km to the south west.

8.4.2. The European sites that occur within what I consider to be the possible zone of influence of the proposed development are presented in the table below. In this regard the closest SAC (Clara Bog) and all SPAs within 15km are considered. Having regard to the scale of the proposed development; the separation distances involved; and the absence of identified pathways; I do not consider that any other European Sites fall within the possible zone of influence.

Summary of European Sites Within the Possible Zone of Influence of the Development

European Site (Code)	List of Qualifying Interests / Special Conservation Interest	Distance from Proposed Development (km)	Connections (source, pathway, receptor)	Considered Further in Screening?
Clara Bog SAC (000572)	Semi-natural dry grasslands and scrubland facies on	2.8	None	No

	calcareous substrates (important orchid sites) (6210) Active raised bogs (7110) Degraded raised bogs still capable of natural regeneration (7120) Depressions on peat substrates of the Rhynchosporion (7150) Bog woodland (91D0)			
Lough Ennell SPA (004044)	Pochard (A059) Tufted Duck (A061) Coot (A125) Wetland and Waterbirds (A999)	12.6	Air	No

8.5. Identification of likely effects

- 8.5.1. In relation to construction-related pollution, I note the site is not within or adjacent to any European site. The closest European site is 2.8km from the site. There are no watercourses on site that could provide a pathway from this site to the SAC which is on the opposite side of Clara town from the application site. The next nearest Natura 2000 site is Split Hills and Long Hill Esker SAC almost 6km away. As there are no watercourses there is no possibility of construction-related pollution.
- 8.5.2. In terms of habitat loss/fragmentation, no part of the site is located within or adjacent to a European site and there will be no loss or fragmentation of habitat.

8.5.3. With regard to habitat/species disturbance at operational stage, the nature of the proposed development, i.e. wind turbines, raises an issue in relation to its impact on birds. The only SPA within 15km, which is considered to be a reasonable distance from the two-turbine development, is Lough Ennell SPA approx. 12.6km to the north east. It has four Qualifying Interests: Pochard, Tufted Duck, Coot and Wetlands and Waterbirds. The three identified species are migratory species. The Appropriate Assessment Screening Report submitted with the application states that the 'pochard and tufted duck are unlikely to leave the waterbody of Lough Ennell as it represents prime foraging and nesting habitat; and, while Coot may on occasion utilise sites away from the SPA, it is highly unlikely they would travel the substantial distance to the proposed development site'. Section 5.2.2 (Environmental Implications – Natural Heritage – Species – Birds) of the Wind Energy Development Guidelines (2006) states that the species of birds most at risk by wind energy developments includes waterfowl and migratory birds. The main potential impacts from windfarm developments are:

- Disturbance during construction and operation phases leading to temporary or permanent displacement of birds from the development site or environs – Given these birds are waterbirds associated with Lough Ennell, I do not consider there will be any displacement from the environs of the development site as a result.
- Collision mortality – The Guidelines state studies have shown that this is a low risk.
- Barrier to movement – The Guidelines state studies have shown the response by birds to wind energy developments may vary by species and/or season.
- Direct loss or degradation of habitats for breeding, feeding and/or roosting, particularly in wetland sites – No loss or degradation will occur given the agricultural nature of the site and distance to Lough Ennell.

Having regard to the nature and limited scale of the development, together with the separation distance of the appeal site from European Sites, I do not consider that the operation of the development is likely to cause disturbance to species or habitats.

8.5.4. In terms of the 'in combination' effect, I do not consider this is a concern. Map No. 1 (Location of developed and permitted but not yet developed wind farms in County Offaly, 2020) of the Draft Plan shows that the closest existing facility appears to be the two turbine Leabeg development approx. 19km to the south west. The closest

permitted but undeveloped site is the 29 no. turbine Yellow River site approx. 18km to the east. The Irish Wind Energy Association website shows that there are no closer windfarms, or indeed any, in Co. Westmeath.

8.6. Mitigation measures

- 8.6.1. No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

8.7. Screening Determination

- 8.7.1. The proposed development was considered in light of the requirements of section 177U of the Planning and Development Act 2000 (as amended). Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project, individually, or in combination with other plans or projects, would not be likely to give rise to significant effects on any European Sites in view of the sites' conservation objectives, and Appropriate Assessment including the submission of Natura Impact Statement is not, therefore, required.

9.0 Recommendation

- 9.1.1. I recommend that the planning application be refused for the following reasons and considerations.

10.0 Reasons and Considerations

1. Objective EO-01 of the Offaly County Development Plan 2014-2020 states that it is an objective of the Council to achieve a reasonable balance between responding to government policy on renewable energy and in enabling the wind energy resources of the County to be harnessed in an environmentally sustainable manner. This will be implemented having regard to the Council's Wind Energy Strategy. Policy EP-05 and Objective EO-01 of the Plan state that applications for wind energy development outside of the identified wind energy development areas will not normally be permitted. The site is not located in an area identified for wind energy development. Therefore, the proposed

development would materially contravene Policy EP-05 and Objective EO-01 of the Offaly County Development Plan 2014-2020 and would be contrary to the proper planning and sustainable development of the area.

Anthony Kelly

Planning Inspector

27.01.2021