



An
Bord
Pleanála

Inspector's Report

ABP-313375-22

Development

Proposed 13 turbine wind farm development of c. 86 megawatts and associated works.

Location

Townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill, Monamantry, Coolglass, Crissard and Kylenebehy, Co. Laois.

Prospective Applicant

Coolglass Wind Farm Limited

Planning Authority

Laois County Council

Type of Application

Pre-Application Consultation under s.37B of the Planning and Development Act 2000, as amended

Inspector

Máire Daly

1.0 Pre-Application Consultation

- 1.1. The Board received a request on the 20th of April 2022 to enter into a pre-application consultation under Section 37B of the Planning and Development Act, 2000, as amended (hereinafter referred to as ‘the Act’), in relation to a proposed windfarm development for 13 no. wind turbines development of c.86 megawatts and associated works in County Laois. The request was received from SLR Consulting Ireland who were representing the prospective applicant, Coolglass Wind Farm Limited.
- 1.2. Two consultation meetings were subsequently held between An Bord Pleanála and the prospective applicant on 16th June 2022 and 16th November 2022. The primary purpose of the meetings was to address the issue of whether or not the proposed development constitutes strategic infrastructure for the purposes of the Act and to consider matters relating to the proper planning and sustainable development of the area or the environment, which may have a bearing on the Board’s decision and to outline the procedures involved in making the application. The prospective applicant formally requested closure of the pre-application consultation process by correspondence received by the Board on 17th March 2023.
- 1.3. This report provides an overview of the proposed project, a summary of the meeting that took place and the advice provided by the Board’s representatives at those meetings. It provides a recommendation that the Board determine that the proposed development constitutes strategic infrastructure within the meaning of the Act. The report should be read in conjunction with the meeting records that are on the Board’s file.

2.0 Site Location and Description

- 2.1. The prospective site is located within the administrative area of Laois County Council, approximately 2km south of the settlement of Timahoe in County Laois.
- 2.2. The majority of the prospective site area is comprised of commercial plantation woodland, with the site divided between two large parcels. The northern parcel is proposed to contain 7 no. turbines (turbine no.s T1 to T7) and the southern parcel is

to have 6 no. proposed turbines (T8 to T13). The site spans Fossy Mountain and its slopes which is also comprised of agricultural fields. Extensive views of the surrounding landscape are available at different points on site and the site area also includes some popular walking routes. Given the sites topography, which is at a raised elevation, the turbines will be visible from an expansive area of hinterland in all directions.

- 2.3. European sites, proximate to the site include the Ballyprior Grassland SAC (Site Code:002256), River Barrow And River Nore SAC (Site Code:002162), River Nore SPA (Site Code:04233) and Lisbigney Bog SAC (Site Code:000869).
- 2.4. The proposed development site is c. 1.8km away from the County Kilkenny boundary at its most southern extent. Nearby consented and / or operational Wind Farms include: Pinewoods Wind Farm c.6km southwest and Bilboa Wind Farm approximately 14km south.

3.0 Proposed Development

3.1. The proposal is comprised of:

- A 13-turbine wind farm development within 2 no. clusters with each turbine having the potential to generate 6.6MW of power. Tip height not to exceed 180m, with rotor diameter and hub height currently undefined but within design envelope as follows:

Turbine Type	Tip Height	Hub Height	Rotor Diameter
Siemens Gamesa 155	180	102.5	155
Vestas 162	180	99	162
Nordex 163	180	98.5	163

- 110 kV underground connection to an internal substation – the exact substation is TBD, with two grid connection options under consideration. The

preferred option will be assessed as part of the EIAR. Underground cable will be a 110 kV connection to the preferred substation within the public roadway.

- Access tracks - The northern cluster is proposed to be accessed via the R426 and the local road L3851 which passes the townlands of Aughoney approximately 3.5 km south of Timahoe village. The southern parcel is to be accessed off the L3851. Access to all turbine sites is to be facilitated via existing forestry tracks.

4.0 Planning History

4.1. No relevant history on proposed site.

4.2. Relevant Planning History on nearby sites:

- **ABP ref. 247143 (Laois Co. Co. Ref. 15/401)** Permission refused in March 2017 for 1 no. 500KW wind turbine, electrical switch room and control facility, access track, associated infrastructure and ancillary site works at Knocklead, Timahoe, Co. Laois.

Refusal Reason: Having regard to the nature of the proposed development, which is for an isolated wind turbine, and not related to auto-production, it is considered that the proposed development would constitute a piecemeal and ad hoc approach to the development of lands that are designated as being Open for Consideration for the development of wind energy, as set out in the Wind Strategy in Appendix 5 of the Laois County Development Plan 2011 – 2017. In the absence of a demonstrated need for the turbine at this location, the Board is not satisfied that the proposed development, by itself and by the undesirable precedent that it would set, would not prejudice a coordinated approach to the development of wind energy in this area, or undermine the Wind Strategy for the County, contrary to Policies EC 7/P49, ET 9/P04 and ET 9/P10 as set out in the Development Plan, which policies encourage the development of wind energy in the County. Having regard to the proximity of the nearest dwelling to the north, neither is the Board satisfied that the effects on the amenity of this residential property from noise or shadow flicker have been satisfactorily addressed. The proposed development would, therefore,

seriously injure the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.

5.0 Prospective Applicant's Case

5.1. The prospective applicant's case can be summarised as follows:

- The prospective applicant believes that the proposed development is strategic development as defined under the 7th Schedule of the Act given that the project includes for 13 no. turbines with individual power outputs up to approximately 6.6 MW, with a total proposed power output of c. 85.8 MW
- The proposed development appears to meet the requirements for strategic economic and social importance by contributing to renewable electricity generation and carbon reduction targets set out in European and National policies and would make a positive contribution to same. The proposal has potential to generate up to approximately 248,030 GWh/year which could power approximately 59,054 homes.
- The development would contribute substantially to the fulfilment of the following objectives in the National Planning Framework (NPF) NPO 54 and NPO 55 and regional strategic outcome RSO9 which supports the transition to low carbon and clean energy.
- The project is contained wholly within the jurisdiction of Laois County Council. However, given the proximity of other jurisdictions (2km to Kilkenny), landscape and visual, hydrological and other considerations have the potential to have significant effects within the Kilkenny administrative area.

The Board should note that for the purposes of their assessment, the prospective applicant has chosen three particular turbine types to provide as much design flexibility as possible but within an approximate 10% threshold of the initial candidate turbine, the SG155 discussed at the first pre-app meeting. These turbine types and their design parameters are outlined under Section 3.1 above.

6.0 Consultation Meetings

6.1. Two pre-application consultation meetings were held, these are summarised as follows:

1st Meeting - 16th June 2022

- 6.1.1. The prospective applicant gave a presentation to the Board's representatives, outlining details of the development. The prospective applicant outlined that two grid connection options are under consideration. The preferred option will be assessed as part of the EIAR but does not form part of the proposed application. The prospective applicant also outlined the scoping, surveys, stakeholder consultation and community consultation which has taken place to date all of which will be used to inform the information contained in the EIAR.
- 6.1.2. With respect to the local planning policy context, the prospective applicant noted that the Laois County Development Plan 2021-2027 came into effect in March 2022. The prospective applicant referred to several climate mitigation objectives with regard to this (CM RE 1, CM RE 2, CM RE 5, CM RE 6 and CM RE 7). The prospective applicant referred to Appendix 5 of the Wind Energy Strategy of the adopted development plan and noted that the proposed development is located in an area 'not open for consideration.' The prospective applicant advised generally that submissions were made at draft and material amendment stage of the adopted development plan seeking an omission of the 1.5-kilometre separation distance from Appendix 5 as it was considered that the inclusion of this separation distance conflicted with policy objectives in the development plan which promoted wind farm development. The prospective applicant noted however that the Wind Energy Strategy was not amended and that a draft Ministerial Direction was published for public consultations directing the removal of this set-back distance; the prospective applicant advised that a recommendation is to be made by the Office of the Planning Regulator to the Minister on this matter. The prospective applicant expressed its opinion that this matter would be resolved in due course.
- 6.1.3. Following the presentation, the following issues were discussed and highlighted by the Board's representatives:

- The need to carry out extensive consultations with the NPWS given the potential sensitivities of the site in relation to the qualifying interests (FWPM and others) of the River Barrow and River Nore SAC and Special Conservation Interests (SCIs) of the River Nore SPA. Also any changes to the drainage regime on Fossy Mountain should be carefully considered.
- The importance of the site in terms of historical and archaeological heritage should also be fully assessed.
- With regard to the renewable energy strategy of the local authority and the matter referred to the OPR, the Board's representatives recommended clarity to be provided on this matter in any subsequent planning application. The prospective applicant stated that it was its belief that the Wind Energy Strategy for the county was to be reviewed at an early stage.
- The Board advised that the current 'not open for consideration' designation for the subject site in the current county development plan would be a significant matter and, in the event that this designation was not changed by the time an application was submitted, would need to be addressed in terms of rationale and justification for the proposed development.
- The need to consider the turbine delivery route in particular regarding the avenue of mature deciduous trees which line the regional road on entry to the settlement of Timahoe.
- The need to consider the effects on tourism and amenities of the area, including on County Kilkenny. The Board also recommended that due regard should be had to effects on any designated areas and forestry generally; also on any walkways or trails in the vicinity of the subject site.
- Noting that the proposed grid connection would not form part of the subsequent planning application, the Board recommended that this element should be considered in the EIAR from a cumulative effects perspective.

2nd Meeting – 16th November 2022

- 6.1.4. The prospective applicant provided the Board's representatives with an overview of the scoping responses received, how they have addressed these responses and how they have fed into the evolution of the proposed development.

- 6.1.5. The IFI requested that biological and physico-chemical surveys are undertaken, and the prospective applicant stated that these surveys are ongoing. Redesign of access tracks have been undertaken to minimise the number of watercourse crossings. Micro siting of turbines has been implemented as a result of the IFI response.
- 6.1.6. The prospective applicant stated that they had not received official engagement from NPWS since the scoping report was issued, however their project ecologist had engaged with NPWS prior to scoping and that the NPWS highlighted that aquatics was the chief concern.
- 6.1.7. The response received from Geological Survey Ireland (GSI) highlighted concerns in relation to the two Public Water Schemes that are in proximity of the proposed development (Kyle & Orchard Springs and Swan Water Supply Scheme). Ground investigations were ongoing.
- 6.1.8. Laois County Council noted that the landscape assessment should be robust and consider cumulative impacts and listed a number of planning policies which the prospective applicant should consider in any case within their assessment. The visual impacts of the proposed development and cumulative visual impacts with existing and permitted windfarms shall also be taken into account in the overall assessment of the proposed windfarm.
- 6.1.9. Preliminary Design and Environmental Assessment remains the same and encompasses 13 wind turbines, access tracks, turbine delivery route, internal substation and internal electricity grid route. Grid Connection of 110 kV is proposed via underground connection to a substation and two grid connection options are under consideration. The preferred option will be assessed as part of the EIAR but does not form part of this application. Non-material changes incorporated included a re-design of the internal access tracks between several turbines in both clusters which minimises watercourse crossings in the design, re-orientation of temporary construction compound 1 and the project substation and increasing separation distances to nearest residential receptors. Bat buffers have also been applied and micrositing of some turbines were noted (e.g. T5).
- 6.1.10. The prospective applicant also highlighted changes to Irish legislation. The Planning and Development, Maritime and Valuation (Amendment) Act 2022 was signed into

law on 24th July 2022 and among the main changes, this legislation provides an option to obtain an opinion from An Bord Pleanála on design flexibility and design options for Schedule 7 Strategic Infrastructure Developments. However, the relevant provisions of the Act (s.37CC and CD) had not been commenced to date and the associated regulations have not been produced. The presentation made by the prospective applicants identified three turbine types of varying dimensions which were indicated by the prospective applicant as potential options.

6.1.11. Following the presentation, the following issues were discussed and highlighted by the Board's representatives:

- The Board's representatives raised concern and sought clarity in relation to the current Laois CDP 2021-2027 wind energy policy. Specifically, the Board representatives noted that part of the proposed development is in an area that is identified as 'open for consideration' for wind energy and partly in an area 'not open for consideration' as per the 2021-2027 Plan. The Board representatives also noted the Ministerial Direction in which the Minister has ordered the deletion of the setback distance of 1.5 km from Section 6.1 of the plan – Buffer Zones. The prospective applicant stated that it was a draft Ministerial Direction which is now an actual Ministerial Direction and is aware that the proposed development is partially in an 'areas not open for consideration'.
- The Boards representatives noted this response and stated that the issue of compliance with the wind energy strategy set out in the plan and any justifications for departing from the provisions set out in the Plan, specifically the siting of part of the proposed development in an area currently indicated as 'not open for consideration' for wind energy development, would have to be detailed in any application submitted.
- The Boards representatives advised the prospective applicant to ensure that all Landscape Visual Impact Assessments are robust and that all policies are up to date.
- The Board's representatives advised that formal contact with NPWS should occur before the application is submitted.

- Discussions took place in the context of the Derryadd Judgement and where a range of options are being put forward (turbine height and make etc.), details should be provided so as the Board can fully evaluate the impacts. The Board representatives noted that the provisions relating to design options for Seventh Schedule SID projects contained in the Planning and Development (Maritime and Valuation (Amendment) Act, 2022 had not to date been commenced, that associated regulations are required and that further guidance and advice from the Department as to implementation is required.

6.1.12. A formal request to close the pre-application consultation was received by the Board on 17th March 2023.

7.0 Legislative Provision

7.1. Section 2(1) of the Planning and Development Act 2000, as amended ('the Act'), defines 'strategic infrastructure' as including, inter alia

'(a) any proposed development in respect of which a notice has been served under section 37B(4)(a)',

7.2. The Board is asked to decide if the proposal as outlined is or is not strategic Infrastructure Development as defined by Section 37A of the Act. Strategic Infrastructure is defined in the Seventh Schedule of the Act and Class 1 includes the following category of development: *'an installation for the harnessing of wind power for energy production (a windfarm) with more than 25 turbines or having a total output greater than 50MW'.*

7.3. Section 37A (2) of the Act requires that any development specified in the Seventh Schedule should be made to the Board, if the proposed development falls within one or more of the following:

(a) the development would be of strategic economic or social importance to the State or the region in which it would be situate;

(b) the development would contribute substantially to the fulfilment of any of the objectives in the National Planning Framework or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate;

(c) the development would have significant effect on the area of more than one planning authority.

7.4. Environmental Impact Assessment (EIA)

7.4.1. Schedule 5 of the Planning and Development Regulations, 2001 (as amended) transposes Annex I and II of the EIA Directive and sets out prescribed classes of development, for which an environmental impact assessment is required. The following classes are noted:

Part 2 Class 3 (i)

'Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts'.

7.5. Appropriate Assessment

Designated Sites in proximity to site:

7.5.1. The nearest Natura 2000 sites are as follows:

- Ballyprior Grassland SAC (Site Code:002256),
- River Barrow And River Nore SAC (Site Code:002162),
- River Nore SPA (Site Code:04233) and
- Lisbigney Bog SAC (Site Code:000869).

7.5.2. The prospective applicant has indicated that it is their intention to include an NIS with the application which is considered to be appropriate.

8.0 Assessment

8.1. Section 37A (1) – Is the development specified in the Seventh Schedule of the Act?

8.1.1. Based on the information submitted by the prospective applicant through the consultation process, the proposed development would include 13 turbines with a potential to generate 6.6MW of power each, giving a total power output of c. 85.8MW. The proposed development would exceed the 50MW threshold of the Seventh Schedule development under Class 1 (Energy Infrastructure). Therefore, the proposed development satisfies Section 37A (1) of the Act.

8.2. Section 37A (2) - Does the proposed development specified in the Seventh Schedule fall within one or more of the paragraphs referred to as (a), (b) and (c) and outlined below?

(a) – Strategic Economic or Social Importance to the State or Region

- 8.2.1. The prospective applicant’s case is that the proposal satisfies the conditions under section 37A(2)(a) of the Act as it will represent a significant economic contribution to the region and to the country as a whole.
- 8.2.2. The proposal has potential to generate up to approximately 248,030 GWh/year which could power approximately 59,054 homes and the proposal is in alignment with European REPowerEU objectives of “overriding public interest”.
- 8.2.3. The project would assist in meeting national renewable energy targets and would also result in significant reductions in carbon emissions from electricity generation, while reducing the country’s reliance on fossil fuel. The proposed development appears to meet the requirements for strategic economic and social importance by contributing to renewable electricity generation and carbon reduction targets set out in the aforementioned European and National policies and would make a positive contribution to same. Further information on the economic and social importance of this development was provided as an addendum to the first pre-application meeting minutes on 20th July 2022
- 8.2.4. Having regard to the national and regional policy context and the details of the subject proposals outlined above, I am satisfied that the development would clearly be of strategic economic importance to the State and the region and would therefore comply with the condition set out in Section 37A(2)(a) of the Act.

8.3. (b) - Fulfilment of Objectives in the National Planning Framework or in any regional spatial and economic strategy.

- 8.3.1. The prospective applicant states that the proposed development would contribute to the objectives of the National Planning Framework (NPF) and the provisions of the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland region.
- 8.3.2. Having reviewed the NPF, I note the following relevant National Policy Objectives (NPOs) which aim to reduce our carbon footprint and promote renewable energy:

- NPO 54: Reduce our carbon footprint by integrating climate change action into the planning system in support of national targets for climate policy mitigation and adaptation objectives, as well as targets for greenhouse gas emissions reductions.
- 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.

8.3.3. At regional level I note that the RSES for the Eastern and Midland region recognises the need to shift 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. In particular RS0 9: supports the transition to low carbon and clean energy: to pursue climate mitigation in line with global and national targets and harness the potential for a more distributed renewables focused energy system to support the transition to a low carbon economy by 2050.

8.3.4. The Strategy supports an increase in the amount of new renewable energy sources in the Region which includes the use of wind energy.

8.3.5. Having regard to the above, I am satisfied that the development would meet relevant national policy objectives of the NPF and would serve to fulfil the relevant regional policy objectives of the RSES for the Eastern and Midland Regional Assembly. The development would therefore satisfy the requirement set out in Section 37A(2)(b) of the Act

8.4. (c) - Significant effect on the area of more than one planning authority.

8.4.1. The site is fully contained within the area of one planning authority, Laois County Council, however it is within proximity to the border with Kilkenny (2 km), and given its proximity, landscape and visual, hydrological and other considerations may have the potential to have significant effects within the Kilkenny administrative area. Accordingly, I am therefore of the opinion that the proposal would come within the scope of this requirement to be considered as complying with section 37A(2)(c) of the Act.

8.5. Prescribed Bodies

- 8.5.1. In view of the scale, nature and location of the proposed development, as described in this report, it is recommended that the prospective applicant should consult with the prescribed bodies listed in the attached Appendix A in respect of any future application for approval.

9.0 Conclusion

- 9.1. Based on the above assessment, it can be concluded that the proposed development would exceed the threshold set out in the Seventh Schedule of the Act and therefore satisfies the requirements of Section 37A (1) of the Act. It can also be determined that the development is of strategic importance by reference to the requirements of Section 37A(2)(a) and Section 37A(2)(b) of the Act and may have a significant effect on the area of more than one planning authority as per Section 37A(2)(c) of the Act. Accordingly, the proposed development constitutes strategic infrastructure.

10.0 Recommendation

- 10.1. I recommend that the Board serve a notice on the prospective applicant, pursuant to Section 37B(4) of the Planning and Development Act 2000, as amended, stating that it is of the opinion that the proposed development constitutes a strategic infrastructure development within the meaning of Section 37A of the Act for the reasons and considerations set out below.

11.0 Reasons and Considerations

- 11.1. Having regard to the size, scale and location of the proposed windfarm and related development, and to the policy context, it is considered that the proposed development as described above, constitutes development that falls within the definition of energy infrastructure in the Seventh Schedule of the Planning and Development Act 2000, as amended, thereby satisfying the requirements set out in Section 37A(1) of the Act.

11.2. The proposed development is also considered to be of strategic importance by reference to the requirements of Sections 37A(2)(a), (b) and (c) of the Planning and Development Act 2000, as amended. An application for permission for the proposed development must therefore be made directly to An Bord Pleanála under Section 37E of the Planning and Development Act 2000, as amended.

Máire Daly
Senior Planning Inspector

21st March 2023

Appendix A:

Note 1: The following is a list of prescribed bodies considered relevant for the purposes of Section 37E (3) (c) of the Act.

- Minister for Housing, Local Government and Heritage (Development Applications Unit)
- Minister for Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media
- Minister for Agriculture, Food and the Marine
- Department of the Environment, Climate and Communications
- National Parks & Wildlife Service
- Minister for Transport
- Irish Water
- Inland Fisheries Ireland
- Transport Infrastructure Ireland
- Environmental Protection Agency
- The Heritage Council
- An Taisce
- An Chomhairle Ealaíon
- Fáilte Ireland
- Irish Aviation Authority
- Office of Public Works
- Eastern and Midlands Regional Assembly
- Kilkenny County Council
- Laois County Council

Further notifications should also be made, where deemed appropriate.

Note 2: The prospective applicant should be advised to submit a standalone document (which may form part of the EIAR) with the planning application, which outlines the mitigation measures, in the interest of convenience and ease of reference.

Note 3: In addition to setting out the overall height of the turbines, the prospective applicant is advised to submit drawings and documents, including turbine dimensions, sufficient to describe the nature and extent of the development.