

An
Bord
Pleanála

Board Direction
BD-009792-22
ABP-308244-20

The submissions on this file (including the applicant's response to the Board's Section 132 notice and the subsequent responses of third parties and the planning authority to the Board's Section 131 notices) and the Inspector's report and addendum report were considered at a further Board meeting held on 17/01/2022.

The Board decided to grant permission, for the following reasons and considerations, and subject to the following conditions.

Reasons and Considerations

In reaching its decision, the Board had regard to:

- (a) European, national, regional and local policy and targets with regard to the development of alternative and indigenous energy sources (including for renewable energy, and wind energy in particular) and the minimisation of emissions from greenhouses gases,
- (b) the provisions of the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006,
- (c) the policies of the Planning Authority as set out in the Cork County Development Plan 2014,
- (d) studies carried out for/by Failte Ireland in 2007 and 2012 and Visit Scotland in 2016 on the effects of windfarm development on tourism,
- (e) the character of the landscape in the area and the absence of any ecological designations on the site,

- (f) the characteristics and topography of the site and of the general vicinity,
- (g) the planning history of the site and the pattern of existing and permitted development in the area,
- (h) the distance to dwellings and other sensitive receptors from the proposed development,
- (i) the Environmental Impact Assessment Report submitted,
- (j) the Appropriate Assessment Screening Report and Natura Impact Statement submitted,
- (k) the submissions made in connection with the planning application, the appeal, and the Board's statutory notices, and
- (l) the report, addendum report and recommendation of the Inspector.

Appropriate Assessment

The Board agreed with the screening assessment and conclusion carried out in the Inspector's report that the Gearagh Special Area of Conservation (Site Code: 000108) and the Gearagh Special Protection Area (Site Code: 004109) are European Sites for which there is a possibility of significant effects and must therefore be subject to Appropriate Assessment.

The Board considered the Natura Impact Statement and all other relevant submissions and carried out an appropriate assessment of the implications of the proposed development for European Sites in view of the sites' Conservation Objectives. The Board considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the sites' Conservation Objectives using the best available scientific knowledge in the field.

In completing the assessment, the Board considered, in particular, the following

- (i) site specific Conservation Objectives for these European Sites,
- (ii) current conservation status, threats and pressures of the qualifying interest features,

- (iii) likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects,
- (iv) mitigation measures which are included as part of the current proposal.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Sites, having regard to the sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development would not adversely affect the integrity of European Sites in view of the site's Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact assessment

In compliance with section 172 of the Planning and Development Act 2000, as amended, the Board completed an Environmental Impact Assessment of the proposed development, taking into account:

- the nature, scale, location, and extent of the proposed development,
- the Environmental Impact Assessment Report and associated documentation submitted with the application and appeal,
- the submissions from the applicant, the appellants, the planning authority, the observers and the prescribed bodies, and
- the Inspector's report and addendum report.

The Board considered that the Environmental Impact Assessment Report, supported by the information submitted by the applicant, identifies and describes adequately the direct, indirect and cumulative effects of the proposed development on the environment. The Board is satisfied that the information contained in the EIAR complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board agreed with the summary and examination, set out in the

Inspector's report, of the information contained in the Environmental Impact Assessment Report and associated documentation submitted by the applicant and submissions made in the course of the application, except for the matters specified below. The Board is satisfied that the Inspector's report sets out how these were addressed in the assessment and are incorporated into the Board's decision, except for the matters specified below.

The Board completed an environmental impact assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures proposed, as set out in Volume 1, Section 16.1, Table 16.1 of the EIAR and subject to compliance with the conditions set out herein, the effects on the environment of the proposed development by itself and cumulatively with other development in the vicinity would be acceptable. In doing so, the Board adopted the report and conclusions of the reporting inspector, except for the Inspector's conclusions with regard to ornithology and landscape & visual (sections 9.4.3 and 7.6/9.10 of the Inspector's report respectively).

The Board considered that the main significant direct and indirect effects of the proposed development on the environment are, and will be mitigated as follows:

- potential for direct impact on the Kerry Slug, an Annex II and IV species present on the site, which would be mitigated by way of a pre-commencement survey, trapping and translocation of to an alternative area beyond the development footprint,
- impacts on water quality, soils, air and the public road network arising from construction works, which would be mitigated by the temporary nature of the works phase and through the implementation of management plans which would be agreed with the planning authority.

The Board is satisfied that this reasoned conclusion is up to date at the time of taking this decision.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European energy policy, the National Planning Framework, the Regional Spatial Economic Strategy for the Southern Region, the provisions of the Cork County Development Plan 2014, and the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June, 2006, and would:

- make a positive contribution to the implementation of Ireland's national strategic policy on renewable energy and its move to a low energy carbon future,
- have an acceptable impact on the landscape having regard to its overall benefits,
- not seriously injure the residential or visual amenities of the area or of property in the vicinity,
- not adversely affect the archaeological or natural heritage, and
- be acceptable in terms of traffic safety and convenience.

The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission, the Board had regard to the significant man-made interventions in the landscape, including commercial forestry and agriculture, and did not agree that the proposed development would detract from the existing character of the area, undermine the setting of Gougane Barra and the framing of the town of Bantry, erode the landscape and visual quality of the coastal and designated scenic routes in the vicinity, adversely impact on the rural character of the area, compromise the scenic amenities of the area, contribute to the erosion of the visual and environmental amenity of the area, or conflict with the objectives set out in the Cork County Development Plan 2014, to such a degree as would warrant refusal of permission in this case. Based on the information submitted in the course of the application and

appeal, the Board did not accept the Inspector's view that the proposed development would result in a significant risk for collision of Annex I bird species including White-tailed Eagles which, it accepted, are not dependent on the site for breeding or wintering. Furthermore, it did not agree, based on the information submitted in the course of the application and appeal, that the cumulative impact of wind turbines in the area, inclusive of the proposed development, would substantially erode the quality of the environment for sensitive bird species to the extent that it would have significant adverse impacts on the ornithological importance of the area by way of disturbance and displacement of protected bird species and potential for bird strikes.

DECISION QUASHED

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 22nd day of September 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be ten years from the date of this order.

Reason: Having regard to the nature and extent of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

3. This permission shall be for a period of 30 years from the date of the commissioning of the wind turbines. The wind turbines and related ancillary structures shall then be decommissioned and removed unless, prior to the end of the period, planning permission shall have been granted for their continuance for a further period.

Reason: To enable the relevant planning authority to review the operation of the wind farm in the light of the circumstances then prevailing.

4. The mitigation measures and monitoring commitments identified in the Environmental Impact Assessment Report, Natura Impact Statement, and other plans and particulars submitted with the planning application and appeal shall

be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Prior to the commencement of development, the developer shall submit to, and agree in writing with, the planning authority, a schedule of these mitigation measures and monitoring commitments, and details of a time schedule for implementation of the mitigation measures and associated monitoring.

Reason: In the interest of clarity and protection of the environment during the construction and operational phases of the proposed development.

5. No development shall commence until a landscaping and biodiversity scheme has been submitted to and approved in writing by the planning authority to suitably screen the proposed development over the life of the facility. The scheme shall comprise a planting plan and schedule which shall include details of:
- (a) Existing and proposed ground levels in relation to an identified fixed datum;
 - (b) Existing area of tree cover, landscaping features and vegetation to be maintained;
 - (c) Location design and materials of proposed boundary treatment, fences and gates, where applicable;
 - (d) Proposed soft and hard landscaping works including the location, species and size of trees/shrubs to be planted at the substation;
 - (e) Details of reinstatement works, including timing and location of landscaping, to include native species;
 - (f) Biodiversity enhancement proposals;

(g) A programme for the timing, method of implementation, completion and subsequent on-going maintenance.

All of the hard and soft landscaping works shall be carried out in accordance with the approved scheme unless otherwise approved in writing by the planning authority.

Any trees/shrubs which within a period of five years from the completion of the approved landscaping scheme fail to become established, die, become seriously diseased, or are removed or damaged shall be replaced in the following planting season with equivalent numbers, sizes and species as those originally required to be planted unless otherwise approved in writing by the planning authority.

Reason: In the interests of visual amenity and to integrate the development into its surroundings.

6. The following design requirements shall be complied with:

(a) The hub height shall be within the range of 103.5 metres to 120 metres, and the blade length shall be in the range of 58.5 metres to 75 metres. The overall tip height shall be in the range of 175 metres to 178.5 metres and the height of the permanent meteorological mast shall be within the range of 100 metres to 112 metres. Details of the turbine design, hub height, blade length, tip height, and meteorological mast complying with these limits, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The wind turbines, including tower and blades, shall be finished externally in a light grey colour.

(b) Cables within the site shall be laid underground.

(c) The wind turbines shall be geared to ensure that the blades rotate in the same direction.

(d) No advertising material shall be placed on or otherwise be affixed to any structure on the site without a prior grant of planning permission.

Reason: In the interest of clarity and visual amenity.

7. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

8. The operation of the proposed development, by itself or in combination with any other permitted wind energy development, shall not result in noise levels, when measured externally at nearby noise sensitive locations, which exceed:

(a) Between the hours of 7am and 11pm:

- i. the greater of 5 dB(A) L90,10min above background noise levels, or 45 dB(A) L90,10min, at standardised 10m height above ground level wind speeds of 4m/s or greater
- ii. 40 dB(A) L90,10min at all other standardised 10m height above ground level wind speeds

(b) 43 dB(A) L90,10min at all other times.

Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority a noise compliance monitoring programme for the subject development, including any mitigation measures such as the de-rating of particular turbines. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 "Assessment of Noise with Respect to Community Response," as amended by ISO Recommendations R 1996-1. The results of the initial noise compliance

monitoring shall be submitted to, and agreed in writing with, the planning authority within six months of commissioning of the wind farm.

Reason: In the interest of residential amenity.

9. (a) Shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors.
- (b) The proposed development shall be fitted with appropriate equipment and software to control shadow flicker in accordance with the above requirement. Details of these control measures shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.
- (c) A report shall be prepared by a suitably qualified person in accordance with the requirements of the planning authority, indicating compliance with the above shadow flicker requirements at dwellings. Within 12 months of commissioning of the proposed wind farm, this report shall be submitted to, and agreed in writing with, the planning authority. The developer shall outline proposed measures to address any recorded non-compliances, controlling turbine rotation if necessary. A similar report may be requested at reasonable intervals thereafter by the planning authority.

Reason: In the interest of residential amenity.

10. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise interference with telecommunications signals in the area. Details of these measures, which shall be at the developer's expense, shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines and following consultation with the relevant authorities.

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

11. Details of any aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Prior to commissioning of the turbines, the developer shall inform the planning authority, the Irish Aviation Authority and the Department of Defence of the as constructed tip heights and co-ordinates of the turbines.

Reason: In the interest of air traffic safety

12. (a) Prior to commencement of development, details of the following shall be submitted to, and agreed in writing with, the Planning Authority:

(i) a Transport Management Plan, including details of the road network/haulage routes and the vehicle types to be used to transport materials on and off site and a schedule of control measures for exceptionally wide and heavy delivery loads. The plan should also contain details of how the developer intends to engage with and notify the local community in advance of the delivery of oversized loads,

(ii) a condition survey of the roads and bridges along the haul routes to be carried out at the developer's expense by a suitably qualified person both before and after construction of the wind farm development. This survey shall include a schedule of required works to enable the haul routes to cater for construction-related traffic. The extent and scope of the survey and the schedule of works shall be agreed in writing with the planning authority/authorities prior to commencement of development,

(iii) detailed arrangements whereby the rectification of any construction damage which arises shall be completed to the satisfaction of the planning authority,

(iv) detailed arrangements for the protection of bridges to be crossed,

(v) a construction traffic management plan, including details of temporary traffic arrangements/controls on roads,

(vi) a phasing programme indicating the timescale within which it is intended to use each public route to facilitate construction of the development.

(b) Within three months of the cessation of the use of each haul route to transport material to and from the site, a road survey and scheme of works detailing works to repair any damage to these routes shall be submitted to the Planning Authority.

(c) All works arising from the aforementioned arrangements shall be completed at the developer's expense, within 12 months of the cessation of each road's use as a haul route for the proposed development.

Reason: To protect the public road network and to clarify the extent of the permission in the interest of traffic safety and orderly development.

13. The developer shall facilitate the archaeological appraisal of the site and shall provide for the preservation, recording and protection of archaeological materials or features which may exist within the site. In this regard, the developer shall:

(a) notify the relevant planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development, and

(b) employ a suitably-qualified archaeologist prior to the commencement of development. The archaeologist shall assess the site (including by pre-development archaeological testing) and monitor all site development works. The assessment shall address the following issues:

- (i) the nature and location of archaeological material on the site, and
- (ii) the impact of the proposed development on such archaeological material.

A report, containing the results of the assessment, shall be submitted to the planning authority and, arising from this assessment, the developer shall, prior to commencement of construction works, agree in writing with the planning authority details regarding any further archaeological requirements (including, if necessary, archaeological excavation).

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

14. On full or partial decommissioning of the wind farm, or if the wind farm ceases operation for a period of more than one year, the turbines concerned and all decommissioned structures shall be removed, and foundations covered with soil to facilitate re-vegetation. These reinstatement works shall be completed to the written satisfaction of the planning authority within three months of decommissioning or cessation of operation.

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

15. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the relevant planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the relevant planning authority to apply such security or part thereof to the satisfactory

reinstatement of the public road. The form and amount of the security shall be as agreed between the relevant planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the delivery route.

16. Prior to commencement of development, the developer shall lodge with the relevant planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the relevant planning authority, to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the relevant planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the relevant planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.


Reason: To ensure the satisfactory reinstatement of the site.

17. 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, as amended, that a condition requiring a contribution in accordance with the

Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Board Member



Date: 17/01/2022

John Connolly

DECISION QUASHED