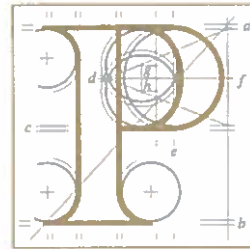


Our Ref: 09.PA0041
P.A.Reg.Ref:

Your Ref:



An
Bord
Pleanála

Karen Keane, Planning Dpt.
Kildare County Council
Planning Section
Áras Chill Dara
Devoy Park, Naas
Co. Kildare

13th October 2016

Re: Maighne Wind Farm consisting of up to 47 no. turbines, 1 no. electricity substation and associated works, Co. Kildare and Co. Meath.

Dear Madam,

An order has been made by An Bord Pleanála determining the above mentioned case. A copy of the order is enclosed.

Please be advised that section 37H(5) states that where an applicant for permission fails to pay a sum in respect of costs in accordance with a requirement made under subsection 2(c) the Board, the authority or any person concerned (as may be appropriate) may recover the sum as a simple contract debt in any court of competent jurisdiction.

In accordance with section 146(5) of the Planning and Development Act, 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to the decision within 3 working days following its decision. In addition, the Board will also make available the Inspector's Report and the Board Direction on the decision on its website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

Information is set out overleaf in relation to challenges to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

If you have any queries in relation to the matter please contact the undersigned officer of the Board. Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Sinead McNerney
Executive Officer
Direct Line: 01-8737295

ADHOC/PA0041/58



Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act, 2000, as amended

A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

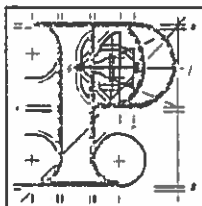
The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website, www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice.

An Bord Pleanála



STRATEGIC INFRASTRUCTURE DEVELOPMENT

PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

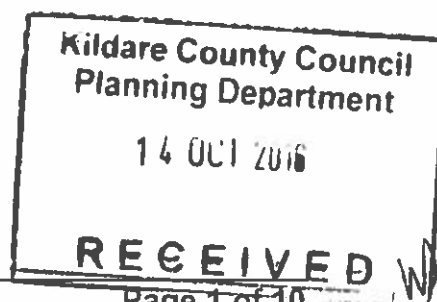
An Bord Pleanála Reference Number: 09.PA0041

(Planning Authorities: Kildare County Council and Meath County Council)

APPLICATION for permission under section 37E of the Planning and Development Act, 2000, as amended, in accordance with plans and particulars, including an environmental impact statement and a Natura impact statement, lodged with An Bord Pleanála on the 9th day of April, 2015 by Element Power Ireland Limited care of Fehily Timoney and Company of Core House, Pouladuff Road, Cork.

PROPOSED DEVELOPMENT:

- (i) Erection of up to 47 number wind turbines with an overall tip height of up to 169 metres.
- (ii) Construction of foundations and hardstanding areas in respect of each turbine.
- (iii) Construction/upgrade of nine number site entrances from public roads.
- (iv) Construction of approximately 31 kilometres of new site access tracks and associated drainage.
- (v) Upgrade of approximately 10 kilometres of existing access tracks and, where required, upgrade of associated drainage.
- (vi) Excavation of three number borrow pits.



- (vii) Establishment of four number temporary construction site compounds and associated parking areas.
- (viii) Construction of drainage and sediment control systems.
- (ix) Construction of one number electricity substation (which will operate at a voltage up to 220 kilovolts) including:
 - Two number control buildings containing worker welfare facilities.
 - Electrical infrastructure.
 - Parking.
 - Fencing.
 - Appropriate Landscaping.
- (x) Installation of approximately 75 kilometres of medium voltage underground cabling (which will operate at a voltage up to 33 kilovolts) between the proposed turbines and the proposed on-site substation. Approximately 36 kilometres will be laid within the public roadway.
- (xi) Installation of high voltage underground cabling (which will operate at a voltage up to 220 kilovolts) between the proposed on-site substation and either the existing substation at Woodland, County Meath (totalling approximately 29 kilometres, of which approximately 28 kilometres will be laid within the public roadway) or the existing substation at Maynooth, County Kildare (totalling approximately 23 kilometres, of which approximately 17 kilometres will be laid in the public roadway).
- (xii) Installation of joint bays along the cable route.
- (xiii) Installation of underground communication cables.
- (xiv) Installation of a permanent meteorological mast up to 100 metres in height.
- (xv) Temporary alterations to the public road at identified locations to accommodate the delivery of turbines.
- (xvi) Associated site works including landscaping.

(xvii) Tree felling.

(xviii) Peat excavation.

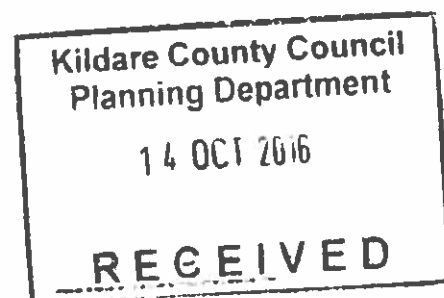
(xix) A 10 year permission and a 30 year operational life from the date of commissioning of the entire wind farm.

The proposed development of the Maighne Wind Farm is located in the following townlands of County Kildare and County Meath:

County Kildare: Moyvally, Calf Field, Ballyonan, Tanderagee, Royaloak, Ballynakill, Drumsru, Cappanargid, Barnaran, Cloncurry, Glenaree, Derrybrennan, Lullymore West, Kilpatrick, Drummond, Ballybrack, Lullymore East, Nurney, Haggard, Ballyshannon, Coonagh, Ballinderry, Williamstown, Freagh, Cadamstown, Knockcor, Collinstown, Calfstown, Dreenan, Ballina, Ballynadrumny, Feighcullen, Cloncumber, Ballynakill Lower, Ballyteige North, Allenwood South, Ballynakill Upper, Derryvarroge, Clonagh, Ballynamullagh, Parsonstown, Kilmurry, Loughnacush, Killyon, Mucklon, Dysart, Clonkeeran, Coolree, Mulgeeth, Drehid, Hortland, Dunfierth, Kilshanchoe, Kilkeaskin, Johnstown, Gorteen, Donadea, Donadea Demesne, Dunmurraghill, Baltracey, Kilnamoragh North, Derrycrib, Knockanally, Painestown, Hodgestown, Newtownmoneenluggagh, Loughtown, Killickaweeny, Nicholastown, Pitchfordstown, Cappagh, Killbrook, Killeighter, Cloncurry, Boycetown, Taghadoe, Donaghstown, Barreen, Derrinstown, Bryanstown, Kealstown, Graiguelin.

County Meath: Boolykeagh, Johnstown, Ballycarn, Dolanstown, Balfeaghan, Calgath, Kemmins Mill, Martinstown, Milltown, Phepotstown, Barstown, Mulhussey, Longtown, Jenkinstown, Warrenstown, Collistown, Cullendragh, Culcommon, Ballynare, Ribstown, Portan.

As referred to in the public notice dated the 28th day of October, 2015; the applicant submitted significant additional information to An Bord Pleanála on the 24th day of September, 2015.



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DECISION

REFUSE permission under section 37G of Planning and Development Act, 2000, as amended, for the above proposed development based on the reasons and considerations set out below.

DETERMINE under section 37H(2)(c) the sum to be paid by the applicant in respect of costs associated with the application as set out in the Schedule of Costs below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included the submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

1. It is considered that in the absence of any national wind energy strategy with a spatial dimension or of wind energy strategies at local level in County Kildare and County Meath, the development of a large scale wind farm comprising 47 number turbines in a number of clusters spread over an extensive geographical area straddling the boundary between the two counties would be premature pending the adoption of such strategies and would represent an undesirable precedent that could undermine any future wind energy strategy for the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

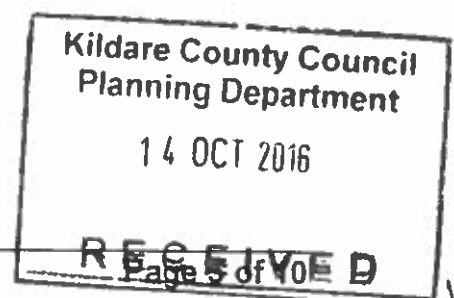
2. The Board considered that the widely dispersed cluster-based layout adopted in the proposed development would have inevitable adverse effects including a disproportionately large visual envelope, the need for extensive underground cabling in poor quality minor roads and undue proximity to areas of sensitivity from a heritage or residential point of view. The Board considered that in a situation where such adverse effects were absent the energy output from the proposed development might be realised in a more efficient and less intrusive manner by a more spatially concentrated development. The Board determined that the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the nature, structure and condition of the existing public road network serving the development, which includes substantial sections of substandard legacy roads, and to the extensive cable trenching works proposed it is considered that the proposed development could have significant adverse effects on the long term structural integrity of significant elements of the local road network, is thereby likely to give rise to the creation of traffic hazards and to potentially increased maintenance costs to the local authority. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's further reasons for refusal, the following observations by the Board apply.

Leinster Outer Orbital Route

The Board noted the existence of a Route Protection Corridor for the Leinster Outer Orbital Route in the current development plans for County Kildare and County Meath and the potential conflict between the corridor as outlined and elements of the proposed development. The Board did not consider that this potential conflict was in itself an appropriate reason for refusal given the present very early stage of planning for the route corridor and the clear scope that exists for mutual accommodation.



Grid Connection

The Board did not agree with the Inspector's view in relation to the proposed grid connection and considered that there was sufficient information to hand to allow an environmental impact assessment of the proposed grid connection to the Dunfirth Sub-station to be undertaken and completed.

Aviation Safety

The Board noted the very strong and contrary cases made by both the Department of Defence/Air Corps and the applicant's specialist aviation consultants in relation to the compatibility of wind turbines and air navigation in the subject area. The Board determined not to seek further information on this matter in light of the substantive reasons given for refusal, and in particular Reason Number 1. The Board considered the matter to be one that would benefit from a definitive policy-based resolution given the specialist nature of some of the issues involved and the apparent potential relationship to aspects of national security.

Visual Impact

The Board decided not to accept the Inspector's recommendation to refuse permission on grounds relating to visual impact as the Board considered that notwithstanding the various landscape designations set out in Chapter 14 and Appendix 3 of the Kildare County Development Plan 2011-2017, the local landscape is one of considerable robustness wherein extensive cross-country views, while possible given the basin-like nature of the current and former bogland, are rarely achieved due to the extent and depth of barrier and boundary vegetation. This limits, in the Board's view, any adverse visual impact of the proposed development to a number of key localised areas of particular sensitivity, specifically the canal corridors (and associated human settlements) and the setting of the historical sites at Carbury and Lullymore. In other circumstances these concerns could have been addressed by the omission of selected turbines and/or clusters.

Equine Industry

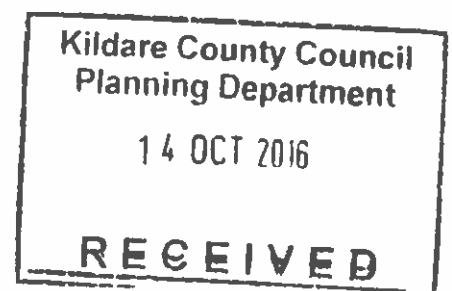
The Board noted the Inspector's recommendation to refuse permission on the grounds that the proposed development would have a potentially significant adverse effect on the equine industry – mainly through reputational damage. While this industry is undoubtedly of major significance in the economy of County Kildare the Board disagreed with the Inspector's view and noted the lack of any specific evidence that wind turbines pose a threat to the welfare of horses and declined to cite the matter as a reason for refusal of permission.

Hydrology, Hydrogeology and Water Quality

Notwithstanding the Inspector's concerns in relation to potential impacts on hydrogeology and on public and private drinking water supplies in the area, the Board did not consider it reasonable to expect the applicant to have completed a detailed or final design for turbine foundations at this stage of the process. The Board further considered that the local environment was relatively robust, that it was reasonable to assume that good engineering practice would prevail and that any construction impacts would be limited in space and time. It was not therefore accepted that there would be significant adverse impacts on the surface and ground water environment to warrant a reason for refusal of permission.

Noise and Human Settlement

The Board accepted that there were some deficiencies in the environmental information provided including in relation to noise measurements in the Environmental Impact Statement and the potential impact on residential dwellings in the vicinity. The Board considered that this matter was not in itself a reason for refusal, that it might have been addressed by seeking further information but decided not to do so in light of the substantive reasons cited above for refusal of permission.



Ecology

The Board accepted that there were deficiencies in the environmental information provided including in relation to ecology in the Environmental Impact Statement and in particular in relation to insufficient baseline data across all ecological receptors. The Board considered that this matter was not in itself a reason for refusal, that it might have been addressed by seeking further information but decided not to do so in light of the substantive reasons cited above for refusal of permission.

Appropriate Assessment

The Board accepted that there were deficiencies in the information provided in relation to European sites in the application and the further information submitted. In particular, the Board noted the failure to consider the potential hydrological effects arising from forestry clearance, replanting and the possible spread of alien invasive species. The Board further noted the failure to develop and design detailed mitigation measures relating to these effects until after the determination of the application which would result in a significant level of uncertainty regarding the effectiveness of such measures. As a consequence, the Board did not consider it was in a position to complete an appropriate assessment of the potential effects of the proposed development on nearby European sites. However, the Board decided not to cite the above deficiencies as a reason for refusal as they might have been addressed by seeking further information but in light of the substantive reasons cited above for refusal of permission this option was not pursued.

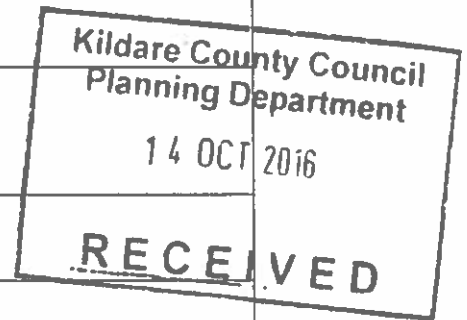
Roads and Traffic Matters

The Board noted the Inspector's concerns in relation to the information provided in the application and the further information submitted in relation to traffic flows, visibility splays and the carrying capacity of a number of the rural roads within which underground cables are to be installed. These were judged not to be matters which in themselves warranted a refusal of permission. They could have been addressed by seeking further information but the Board decided not to do so in light of the substantive reasons cited above for refusal.

SCHEDULE OF COSTS

In accordance with the provisions of section 37H(2)(c) of the Planning and Development Act 2000, as amended, the amounts due to be paid by the applicant are as follows:

Name	Amount awarded	Reasons and Considerations
An Bord Pleanála	€52,198	In accordance with schedule of costs incurred.
Kildare County Council	€16,068	The Board considered the sum sought by the planning authority was reasonable.
Meath County Council	€4,126	The Board considered the sum sought by the planning authority was reasonable.
Kildare Environmental Awareness Group	Nil	See below
Meath Environmental Protection Alliance	Nil	See below
Moyvalley Engineering	Nil	See below
Dermot Ennis	Nil	See below



The Board decided not to award costs to the observers in the case for the following Reasons and Considerations.

Having regard to:

- the submissions made on the case by the observers in writing;
- the detailed and reasoned reports of the Board's inspector, and
- the Board's decision in the case,

it is considered that the strategic infrastructure development application process has enabled full participation by the observers in the case and there are no particular circumstances arising that would justify the developer having to make a contribution towards the costs of the observers in this case.

A breakdown of An Bord Pleanála's costs is set out in the attached Appendix 1.

A handwritten signature in black ink, consisting of a stylized 'W' followed by a horizontal line.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 12th day of October 2016.



Appendix 1.

Strategic Infrastructure Development

Cost of determining the Application.

File No. 09.PA0041

Brief Description of Development: Maigne Wind Farm consisting of up to 47 number turbines, one number electricity substation and associated works, County Kildare and County Meath.

1. Costs incurred by An Bord Pleanála in determining the application.

An Bord Pleanála's Costs		
(1)	An Board Pleanála's Organisational Costs (a) Pre-application Consultation - €5,060.00 (b) Application - €143,000.00	€148,060.00
(2)	Costs Invoiced to Board (a) Consultant Ecologist:- €29,054.27 (b) Public Notices:- €20,084.56	€49,138.83
	Total Chargeable Costs	€197,198.83
(1)	(a) Application Fee:- €100,000.00 (b) Pre-application Consultation fee paid - €4,500.00	€104,500.00
(2)	Observer Fees	€40,500.00
	Total Fee Income	€145,000.00
	Amount due to be paid by the applicant	€52,198.83

Kildare County Council
Planning Department

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2. Sum(s), which the Board considers reasonable, to be paid by the applicant to the planning authority or planning authorities.

	Name of Planning Authority	€
(1)	Kildare County Council	€16,068.00
(2)	Meath County Council	€4,126.25

3. Sum(s), which the Board considers reasonable, to be paid by the applicant to other persons as a contribution to the costs incurred by such persons during the course of consideration of the application.

	Name of Person	€
(1)	Kildare Environmental Awareness Group	Nil
(2)	Meath Environmental Protection Alliance	Nil
(3)	Moyvalley Engineering	Nil
(4)	Dermot Ennis	Nil



Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 12th day of October 2016.