

OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/07

NAME OF APPLICANT: MOANVANE WIND FARM LIMITED

ADDRESS BUILDING 4200,
CORK BUSINESS PARK,
CO. CORK. T12 D23C

ADDRESS FOR CORRESPONDENCE: C/O FEHILY TIMONEY AND COMPANY
ATTENTION: CRYSTAL LEIKER, CORE HOUSE, POULADUFF ROAD,
BALLYPHEHANE,
CO. CORK, T12 D773

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the increase in MW output from 50MW to up to 60MW from a permitted windfarm is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: In the townlands of Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh Co. Offaly

WHEREAS a question referred to Offaly County Council on 06/04/2021 as to whether the increase in MW output from 50MW to up to 60MW from a permitted windfarm in the townlands of Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) The Proposal to provide turbines with a higher rated generating capacity from 50MW TO 60MW
- (b) Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.
- (c) Article 6 and Article 9 of Planning and Development Regulations 2001, as amended
- (d) All planning conditions pertaining to An Bord Pleanála Decision 301619-18
- (e) Environmental Impact Assessment Screening Determination
- (f) Appropriate Assessment Screening Determination
- (g) The provisions of the Wind Energy Development Guidelines – Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government, June 2006

AND WHEREAS Offaly County Council has concluded that -

- (a) There would be no real likelihood of significant effects on the environment arising from the increase in the generating capacity of the turbines and in view of best scientific knowledge, the increase in generating capacity is not likely to have a significant effect on a European site.
- (b) The increase in generating capacity within Moanvane Wind Farm by providing turbines with a higher rated generating capacity from 50MW to up to 60MW in the context of the issued permission at the consented Moanvane Wind Farm (An Bord Pleanála Reference no. 301619-18) in the the townlands of Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh Co. Offaly does not constitute works or a material change of use as defined under Section 2(1) & 3(1) of the Planning & Development Act 2000 (as amended) and is therefore not development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides; that the increase in generating capacity within Moanvane Wind Farm by providing turbines with a higher rated generating capacity from 50MW to up to 60MW in the the townlands of Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh Co. Offaly does not constitute works or a material change of use as defined under Section 2(1) & 3(1) of the Planning & Development Act 2000 (as amended) and **is not development.**

MATTERS CONSIDERED In making its decision, the Planning Authority 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 any submissions and observations received by it in accordance with statutory provisions.


Senior Executive Officer

30/04/2021
Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report

Section 5 Declaration

File Reference:	<i>Dec 21/7</i>
Question:	<i>Whether the following is development and if so, exempted development: (a) Whether the Increase in MW output from 50MW to up to 60MW from a permitted windfarm is or is not development and is or is not exempted development.</i>
Applicant:	<i>Moanvane Wind Farm Limited, Building 4200, Cork Business Park, Co. Cork. T12 D23C</i>
Correspondence Address:	<i>Fehily Timoney and Company Attention: Crystal Leiker, Core House, Pouladuff Roads, Ballyphehane, Co. Cork T12 D773</i>
Location:	<i>In the townlands of Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh Co. Offaly</i>

1. INTRODUCTION:

The question has arisen as to whether an increase in Megawatt output from 50MW to up to 60MW from a permitted wind farm would be considered development, and if development would it be considered exempted development

The Applicants advise that there will be no physical change to the consented turbine envelope and no additional environmental effects to that described in the Environmental Impact Assessment Report (EIAR) submitted with the planning application, pertaining to the consented Moanvane windfarm and the Environmental Impact Assessment (EIA) carried out by the competent authority, therefore the increase in capacity complies in full with the planning consent governing the consented development.

2. BACKGROUND:

The site in question is located in east Offaly in townlands whose closest settlements are Geashill c.4.5km to the north-west, Walsh Island c.2.75km to the north-east, Clonygowan c.4.5km to the south-west and Portarlinton c.8km to the south-east. The regional roads in the area are the R420 Tullamore to Portarlinton road which lies to the west of the site, and the R400 Mullingar to Portarlinton road which lies to the east of the site. The local road, the L1013, joins the R420 just south of Geashill and off which the proposed entrance to the windfarm is located. The townlands in the planning boundary are Moanvane, Ballykean, Bogtown, Enaghan, Kilcooney, Ballycrystal and Kilcappagh.

The consented development, a windfarm “Moanvane Wind Farm” was granted by Offaly County Council (planning reference 17/335) and subsequently appealed to An Bord Pleanala (reference number ABP-301619-18) who upheld the Local Authority decision subject to 20 condition. The proposed development consists of the following elements:

- 12 no. wind turbines with a tip height of 169m and all associated foundations and hardstanding areas with an installed capacity of up to 50MW
- A 6km recreational amenity trail, associated signage, parking and recreational facilities
- 1 no. on-site electrical substation and all associated underground electrical and communication cabling connecting the turbines to the proposed on-site electrical substation
- 1 no. temporary construction compound
- Provision of new site access tracks and upgrading of existing access tracks and associated drainage
- Excavation of 1 no. borrow pit
- Works to facilitate the delivery of turbines along the Local Road L1013 within the townland Ballychristal to include temporary alterations to roadside boundary and the laying of temporary surfacing and the permanent setback of a roadside boundary wall
- Tree felling and all associated development works

The permitted development was subject to an Environmental Impact Assessment Report (EIAR) and a Natural Impact Statement was submitted as part of the proposal. The EIAR included a statement that the project would have an installed capacity of up to 50MW.

The applicant has stated that due in advancement in technology, it is now proposed to install turbines on site that will have a more efficient generating capacity. It is likely that the proposed turbines installed on site will have a combined installed capacity of over 50MW whilst maintaining the constant tip height of 169m and the turbine envelope assessed in the EIAR. It is further noted the turbines now proposed will not generate any new or additional environmental effects on the environment with regard to noise and there will be no physical alternations to the permitted turbines, therefore there will be no changes in regard to shadow flicker.

3. EIAR submitted with original planning application to Offaly County Council (planning reference 17/335) and subsequently appealed to An Bord Pleanala (reference number ABP-301619-18)

The following points are noted from the submitted EIAR/EIS;

- Section 2.4.2 of the submitted EIAR/EIS states *‘the proposed development will have a Maximum Export Capacity (MEC) of up to 50MW.’*
- Section 2.4.3.1 states the *‘that the wind turbines that will be installed on site will be conventional three-blade turbines, that will be geared to ensure the rotors of all turbines rotate in the same direction at all times. Each*

disciple within the EIAR/EIS have assessed various types and size of turbines within the 169m tip height envelope based on the worst case scenario. The exact combination of rotor diameter and hub height will be dictated by the final selection of the turbine make and model at turbine selection state/pre-construction. At this stage new turbines models or variants may be available that were not on the market at the pre-planning /EIAR/EIS stage which would better suit the site and fit within the turbine envelope. Should the circumstance arise the specific parameters of the new turbines will be assessed for their compliance with the criterial set out and considered in this EIAR/EIS and will have no greater impact that those identified in the EIAR/EIS'

4. REFERRALS:

Environment/Water Services	File referred, no response as of date of report.
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5. LEGISLATIVE CONTEXT:

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Section 2 (1) Planning and Development Act 2000 (as amended) states as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) Planning and Development Act 2000 (as amended) defines development as:

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 - Exempted Development, Planning and Development Act 2000 (as amended)

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

- (a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;*

6. PRECEDENT CASE:

An Bord Pleanála Reference 303313-18 - Request to make alterations to previously permitted windfarm (Cloncreen, Co. Offaly) to lengthen the blade of the turbines while remaining within the previously permitted tip height of 170 metres (application reference number 19.PA0047).

The Board determined that amendments in this case such as an increase in swept diameter wasn't material and didn't require a change to the SID, however it was acknowledged in the EIS submitted as part of the application that "*acknowledged turbine design parameters do have a bearing on the assessment of shadow flicker, noise, visual impact, traffic and transport and ecology (birds) in particular*"

7. EIA SCREENING

As the development is proposing to increase the output from 50MW to 60MW, it is considered the proposed development is sub-threshold when examined against the Planning and Development Regulations 2001 as amended, Schedule 5, PART 2, Section 13(a). Changes, extensions, development and testing

Any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would:-

- i. result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and
- ii. result in an increase in size greater than –
 - 25 per cent, or
 - an amount equal to 50 per cent of the appropriate threshold, whichever is the greater.

8. EVALUATION:

In the documentation submitted, the Applicant states that "no physical change to the consented turbine envelope and no additional environmental effects to that described in the Environmental Impact Assessment Report (EIAR) submitted with the planning application pertaining to the consented windfarm and the Environmental Impact Assessment (EIA) carried out by the competent authority, therefore the increase in capacity complies in full with the planning consent governing the consented development."

In the original EIAR the Applicant has stated that at pre-construction phase should turbines become available that "*the specific parameters of the new turbines will be assessed for their compliance with the criteria set out and considered in this EIAR/EIS and will have no greater impact than those identified in the EIAR/EIS*"

Furthermore, taken into account An Bord Pleanála Case Reference 303313-18 in relation to alternations to wind turbine design it was "*acknowledged in the EIS the turbine design parameters do have a bearing on the assessment of shadow flicker, noise, visual impact, traffic and transport and ecology (birds) in particular*"

A Comparative Environmental Report has been submitted with the Section 5 Application which consists of analysis to screen an increased output against the EIAR and NIS documentation submitted with the original application as Granted by Offaly County Council and An Bord Pleanala. The question raised in the Section 5 Application is whether the increase in MW output from up to 50MW to up to 60MW whilst maintaining the consented rotor envelope with a tip height of up to 169m will have a material impact on the impact assessment of the original EIAR. The report concluded that there will be no change to the impact assessment. For robustness the Developers Agent has carried out a Noise Modelling and a Collision Risk Model which indicates a turbine with a larger generator size showing that impacts will be the same if not less than those assessed under the 2017 EIAR.

Furthermore, the Applicant has submitted an Appropriate Assessment Comparison Report, comparing both the Stage 1 Appropriate Assessment Screening report & Stage 2 Natura Impact Statement submitted with the original Planning Application PL2/17/335) and An Bord Pleanala (reference number ABP-301619-18). The Stage 2 Natura Impact Statement comparison report concludes that 'beyond reasonable scientific doubt, that with the full implementation of the mitigation measures proposed with the 2017 NIS, there are not likely to be significant effects from the MW output in excess of 50MW on the two European sites identified for consideration in the Stage Two Natural Impact Statement (or any other European Site), either alone or in combination with other plans or projects'

9. ASSESSMENT:

The declaration request states

'Whether the Increase in MW output from 50MW to up to 60MW from a permitted windfarm is or is not development and is or is not exempted development'

As the developer has indicated the proposed increase of output is from 50MW to 60MW, the proposed increase in output is sub-threshold when examined against the Planning and Development Regulations 2001 as amended, Schedule 5, PART 2, Section 13. Changes, extensions, development and testing,

Furthermore, having fully considered the proposed amendments, it is considered that an increase of 20% or 10MW does not have a bearing on the assessment of shadow flicker, collision risk, noise assessment as well as landscape a visual impact assessment does not constitute works or a material change of use as defined under Section 2(1) & 3(1) of the Planning & Development Act 2000 (as amended) and is not development.

10. RECOMMENDATION:

The increase in generating capacity within Moanvane Wind Farm by providing turbines with a higher rated generating capacity from 50MW to up to 60MW does not constitute works or a material change of use as defined under Section 2(1) & 3(1) of the Planning & Development Act 2000 (as amended) and is therefore not development.

Michael Duffy

Michael Duffy
Assistant Planner
29th April 2020

Carroll Melia

Carroll Melia
A/ Senior Executive Planner
30th April 2021