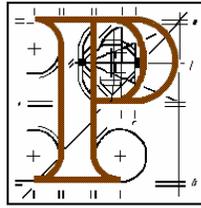

An Bord Pleanála



Ref.: PL03.236950

Development: Erection of two wind turbines with towers up to 80m in height and total tip height up to 115m with ancillary equipment, at Booltiagh townland, near Connolly, Co. Clare.
An EIS has been submitted with this application

Planning Application

Planning Authority: Clare County Council
Planning Authority Ref.: 09/828
Applicant: Booltiagh Wind Limited.
Type of Application: Permission
Planning Authority Decision: Refuse permission (1 no. reason)

Planning Appeal

Type of Appeal: First party
Appellants: Booltiagh Wind Limited

Inspector: Conor McGrath
Date of Site Inspection: 09/09/2010

1.0 INTRODUCTION

This report relates to a first party appeal against the decision of the planning authority to refuse permission for the proposed development for one stated reason.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site is located in the townland of Booltiagh, approximately 6 km north west of the village of Lissycasey on the N68, approx. 7km south west of the village of Connolly and approx. 8 km north east of the village of Kilmihil. Ennis lies approx. 19 km to the northeast.

The site lies at an elevation of approx. 170m, within a broad upland area, which generally runs in an east-west direction. The undulating landscape is characterised by blanket bog and forestry, with occasional lakes, including Cloonmackan Lough to the north and Lough Naminna to the northeast of the site. The local high point of Ben Dash (267m) lies approx. 4 km to the east. The Mid-Clare Way travels in a generally north-south direction across Ben Dash.

The site as outlined in red comprises an area of approx. 0.67ha, within a landholding of approx. 20.7ha. The site is bounded to the south by a local road running north-east to south-west between Kilmaley and Creegh. The lands generally rise to the north, from the road and are mainly comprised of blanket bog. A rough agricultural track extends into the site from an existing entrance from the road. A stream flows southwest through the south-eastern corner of the site.

Lands to the west are generally under coniferous forestry, while lands to the north and east are open in nature. Lands to the north and west accommodate an existing windfarm of 13 no. turbines. There is a 20/110kV substation within the forested area to the west and a 110kV overhead power line extends east-west across the site.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development comprises the erection of two wind turbines on the site, described as an extension of the existing Booltiagh wind farm. The proposed turbines have a hub height of 80m with a maximum tip height of 115m, each with a power output of approx. 1.5MW. The existing adjoining wind farm is identified as having 55m hub heights.

A new entrance is to be provided in the south-western corner of the site and new internal roads will be provide to access the turbine site. Turbine bases will require excavations of 14m x 14m and transformers will be located within the turbine towers. The existing 110kV lines will either be relocated or placed underground to facilitate the development, however undergrounding is the preferred option. It is proposed to connect to the adjoining 20/110kV substation to the west.

The application was accompanied by an Environmental Impact Statement and the principle points arising are identified below.

Ch. 1 Introduction

The EIS adopts a grouped format structure. Interaction of the foregoing is dealt within each topic as appropriate. No significant difficulties were encountered.

Ch.3 Alternatives

The subject site meets the generic site selection criteria and also reduces visual impacts. The EIS does not examine or assess alternative locations. Alternative turbines types are considered.

Ch 4 Human beings:

There will be no significant effect on land use and activities in the area. The nearest dwelling is approx. 750m from the turbine locations. There will be economic impacts through employment creation and local sourcing of materials and services. There is no evidence that wind farms affect tourist numbers. Significant impacts from traffic movements are not expected. There is no evidence of safety issues arising from driver distraction due to wind farms. No significant mitigation measures are proposed.

Ch 5. Flora and Fauna

The exact location of the turbines was not available at time of the assessment, and surveys were not carried out at the optimum time to identify flora. The closest designated site is Lough Naminna NHA, less than 2km to the east. Habitats occurring on the site include,

- Upland Blanket Bog, an Annex 1 habitat, evaluated as being of high value, local importance.
- Upland eroding stream, which flows to Lough Acrow (NHA), evaluated as being of moderate value, local importance.
- Wet grassland. This is evaluated as being of local value.
- Cut-over bog, within the southern and eastern parts of the site. Cut-over areas are completely re-grown and can be considered of good quality blanket bog, evaluated as being of high value, local importance.

No red data book plant species were identified. The level of mammal observance is on a par with what would be expected without night monitoring. Surrounding areas will provide more suitable drier areas. Bats were not surveyed for as the bat monitoring season was finished and this is not an optimum habitat for bats. No rare invertebrate species were recorded or considered to be present. Most bird species recorded were common and widespread. The site does not provide good breeding opportunity for most birds. There is a hen harrier nesting site within 1km of this site, which provides good foraging habitat.

There will be a direct loss of semi-natural habitat. Hydrological impacts will not be significant as drainage has already been implemented on the site. Potential pollution of the watercourse on the southern boundary is a significant potential impact and should be avoided. The proposed windfarm and associated tracks will be a significant impact as a significant amount of high quality blanket bog has already been lost to forestry and development. Hen Harriers also forage in this area.

Impacts on habitats would be minimal compared with the surrounding area and most impacts will be temporary. Section 5.10.2.1 refers to the provision of one or possible two turbines in locations yet to be identified, probably on cut-over or blanket bog. There will be a moderate negative impact. Impact on the stream is a temporary local impact of no significance. Any loss of wet grassland is not significant. There will be no significant impact on mammals invertebrates or amphibians.

Physical habitat loss will be significant for hen harriers as this area is used daily for foraging. Construction disturbance will be temporary. Breeding impacts will not be significant. Disturbance may prove significant negative to hen harriers. Collision risk is considered to be low.

Mitigation includes minimising habitat disturbance, treatment and reuse of excavated peat. Drainage works proximal to blanket bog should be avoided. Some form of management plan should be implemented. No mitigation for avifauna is offered as it is clear that an Annex 1 species, hen harrier will be adversely affected. The site is deemed highly important to hen harriers by the avian surveyors. The construction method statement should minimise erosion and silt laden run off proximate to the stream at the southern end of the site. Water protection measures should be agreed.

Ch. 6 Avifauna – hen harrier survey 2008/09

Hen harrier surveying has been taking place for many years by the authors, building up an accurate picture of the status of breeding and foraging in the area. The site is used every day for foraging and as a transit area. This proposal will have a significant negative impact on the population due to direct habitat loss and disturbance. There are no suitable breeding sites on the site. It is unlikely that suitable mitigation could be proposed.

CH. 7 Landscape and Visual Impact Assessment

The site is located within an area identified in the county wind energy strategy as preferred and open for consideration. The site can be described as a shallow saddle or bowl between high points to the northeast and west. The land uses and topography make it suitable for wind energy development. Turbine spacing is irregular in accordance with the guidance contained in the Wind Energy Guidelines. Lough Naminna (pNHA) is identified as a vulnerable landscape. A temporary construction compound will be required, close to the site entrance.

The magnitude of landscape change resulting from the development would be low due to the topography and the existing wind farm development. Fourteen viewpoints were selected and assessed. Impacts on these views are generally described as not significant, primarily due to the presence of existing and permitted wind energy development in the area. Views from adjoining roads are subject to medium impacts. One view is identified as being potentially adversely affected due to visual stacking of turbines. The proposed development is described as an appropriate intervention in the landscape.

CH.8 Hydrology and Geology

This area is not designated for geological reasons. The site is hydrologically separate from the catchment of Lough Naminna (NHA) and ground water flow and potential peat

slide direction would be away from the lake. Groundwater flows are generally toward the Doonbeg river, which is an important salmonid river.

Trial pit investigations indicate little peat depths and no over-riding need to use floating road construction. Peat to a depth of 1.5m will be excavated, stockpiled and reused for reinstatement works. Excess peat will be stored for use at decommissioning stage. Floating roads will be used where depths are in excess of 1.5m. Mitigation for loss of soils is not proposed. Storage of peat will ensure that it does not degrade.

No significant excavation of bedrock is proposed and residual impacts are negligible. Adequate separation from water bodies will be provided. The requirement for dewatering will be minimised and excavations will be closed as quickly as possible. In areas of steeper gradients, tracks will utilise material with lower permeability than the surrounding peat to reduce potential to act as a conduit for ground water.

Contamination of groundwater by concrete, suspended solids and fuels / oils will be mitigated by standard construction and operational practice. Where groundwater pumping is necessary, only treated water will discharge to watercourses. Residual impacts on ground water are slight adverse to negligible. The change in surface water run-off will be negligible as is flood risk.

A hydrogeologist / hydrologist will review final drainage design. Monitoring of streams to the south of the site will be undertaken pre and post construction.

Ch. 9 Archaeology and Cultural Heritage

This area was the subject of previous archaeological surveys in 1999 and 2003. There are no known archaeological sites or monuments in the area. No above ground archaeological features were identified on the site, but two ruined structures are present on the site. Mitigation comprises monitoring of groundworks and cordoning off, of the identified structures.

Ch. 10 Air Quality and Emissions

Air quality in this rural area is good. Vehicle emissions during construction will have indiscernible impacts. Dust is not likely to be a significant problem due to the soil type and rainfall levels. There are no sensitive dust receptors within 100m of the proposed works. Operational emissions will have not significant negative impact. There will be benefits in terms of avoided emissions. Standard mitigation measures are identified.

Ch. 11 Noise

Noise can be either mechanical, originating in the gearbox of the turbine, or aerodynamic. The closest residential property is over 1km from the site and the closest amenity site is Lough Naminna, 1.3km distant. There are no properties deemed sensitive based on nominal separation distances identified in the planning guidelines. A cumulative noise assessment was undertaken with other permitted windfarms (5 no.) in the vicinity. The contribution to noise at defined receptors is predicted to be negligible. Construction impacts are temporary and noise impacts are not expected to be significant at identified receptors. No operational or construction mitigation measures are necessary or proposed.

Ch. 12 Shadow Flicker and EMI

There are no nearby properties deemed sensitive to shadow flicker based on separation distances identified in the planning guidelines. No shadow flicker calculations were therefore undertaken and no mitigation measures are proposed.

No impacts on radio and television are anticipated but if they arose, they would be resolved through a protocol agreement with RTE. Impacts on other communication signals can be resolved by micro-siting of the turbines to avoid obstruction of line of sight or use of a diverter relay link. There were no objections from the IAA and no mitigation measures are proposed.

Ch. 13 Road Traffic and Transportation.

The delivery route for plant and equipment will be the same as that used for the existing Booltiagh wind farm, previously agreed with the Council. A new entrance will be required. There is no evidence of safety issues arising from driver distraction due to wind farms. The four-month construction period will generate an average of 13 no. vehicle movement per day with an average of 0.25 HGV movements per day.

4.0 RELEVANT PLANNING HISTORY

4.1 Subject Site

PA ref. 00/567 ABP ref. PL 03.120616: Permission granted on appeal to DP Energy Ltd. for a wind farm comprising 15 no. wind turbines at Booltiagh & Glenmore North, to the west of the appeal site. The development was reduced from 26 to 15 no. turbines and 13 of the 15 permitted turbines have been constructed.

PA ref. 07/2900: Permission granted for six additional wind turbines with 80m towers and total tip height of 120m, adjacent to the existing Booltiagh Wind Farm. A copy of the history file is attached herewith. The requirements of condition no. 11 included the following:

- 11(i) Ecologist to be retained to monitor hen harrier activity during construction and for five years afterwards.
- (ii) Compensatory habitat for the hen harrier shall be provided as per details submitted and shall be managed as per a management plan to be agreed.
- (vi) A survey of the Marsh Fritillary, EU Habitats Annex II species shall be provided prior to commencement of development. Where breeding colonies are identified, mitigation measures as specified shall be implemented.
- (viii) No works shall take place within the Lough Naminna NHA. Adjacent works shall not indirectly affect the conservation status, including hydrology, of the site.
- (ix) Wires and or fencing shall have visual markers to enhance visibility to avoid collision with hen harriers.

PA ref. 08/1678: Permission granted to DP Energy Ireland Ltd., for modification of Condition 2 of permitted development P07/2900, to extend the permitted lifetime to twenty years from the date of commissioning.

4.2 Wider Area (See map7.2 of the EIS)

4.2.1 Boolynaglearagh

PA ref. 99/2384 ABP ref. PL03.123268

Permission refused on appeal for the construction of a windfarm of 17 no. turbines, at Letteragh and Boolynaglearagh, approx. 6km east of the subject site, on grounds of visual and landscape impacts

PA ref. 03/79 ABP ref. PL03.204912

Permission granted for wind energy development comprising 17 no. turbines at Boolynageragh, Lissycasey. A first party appeal against conditions was withdrawn.

PA ref. 09/479 ABP ref. PL03.236376

This are current first and third party appeals against the decision to grant permission to Hibernian Wind Power Limited for a wind energy project comprising 11 no. wind turbines and associated works, at Boolynageragh, Lissycasey.

4.2.2 Kiltumper

PA ref. 09/358 ABP ref. PL03.234010: This is a concurrent appeal relating to a decision to grant permission for 2 wind turbines at Kiltumper, Kilmihil, approx. 5km southwest of the appeal site.

4.2.3 Glenmore

PA ref. 02/2228: Permission granted to Clare Winds Limited for the construction of a wind farm consisting of 11 turbines (75m hub height) at Glenmore, Boolynamweel & Sorrel Island, approx. 2/3km southwest of the appeal site.

PA ref. 09/438: Permission granted to Clare Winds Limited to Extend the Period of Validity of Planning Permission P02/2228 by 5 years.

4.2.4 High Street

PA ref. 03/80 ABP ref. PL03.204911: Permission granted on appeal to Hibernian Wind Power for a development comprising ten turbines, at Frure North and, High Street, approx. 2km southeast of the appeal site.

PA ref. 09/248: Permission granted for extension of duration of permission under ref. 03/80, PL03.204911.

4.2.5 Cahermurphy

PA ref. 03/2071 ABP ref. PL03.205692: Permission granted on appeal to erect 6 no. wind turbines and wind monitoring mast at Cahermurphy, Kilmihil, approx. 7km west of the appeal site.

PA ref. 09/267: Permission granted for extension of duration in respect of planning ref no. P03/2071.

4.2.6 Slieve Callan

PA ref. 10/09 ABP ref. PL03.237534: Ten-year permission granted by the planning authority for wind farm at Slieve Callan, comprising 31 no. turbines with hub height of 80 metres and rotor diameter of 90 metres and associated works. There is a current appeal relating to this decision.

5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

5.1 Decision

In considering the application, the planning authority sought further information in relation to a range of matters, including the following:

- Clarification of nature of impacts on hen harrier and further details of the cumulative impact thereon.
- Details of peat depths across the site.
- Details of the extent of peat removal and treatment of excavated peat.
- Details of all borrow pits.
- A landside / peat stability risk assessment.
- Revised contour plan and details of ffl of turbines.
- Details of the design of the site entrance and of sightlines at the public road.
- Details and assessment of the proposed haul route.
- Revised site layout plan overlain on a site habitat map.
- Evidence of consent to the undergrounding of the overhead powerline.
- Summary of all mitigation measures.

The planning authority subsequently decided to refuse permission for the proposed development for the following reason:

1. The planning authority is not satisfied, based on the details submitted with the application, that the proposed development, in itself and together with existing and permitted windfarm developments in the vicinity, will not have a significant adverse ecological impact on the habitat of the hen harriers, which are afforded protection under Annex 1 of the EU Birds Directive. In addition, the subject site is located on lands consisting primarily of blanket bog which provide foraging grounds for the hen harrier, which would be impacted upon as a result of the proposal. Accordingly, the proposed development would contravene policy CDP52 of the County Clare Development Plan 2005-2011 and Policy Env3 of the West Clare LAP 2009-2015. In addition the proposal would be contrary to the Wind Energy Development Guidelines, issued by the Department of the Environment, Heritage and Local Government (2006). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

5.2 Internal / Technical Reports

Planning: The site is not technically located on lands identified as “suitable” for wind energy development, however, having regard to the pattern of development and local and national policies, the proposal is acceptable in principle. Having regard to existing and permitted developments, there will not be a significant visual impact. There will be no significant impacts on residential amenity.

Concerns arise regarding impacts on the hen harrier. It has not been proved that the proposal would not impact on the natural heritage of the area. There are concerns regarding the incremental approach to the development of these lands and an overall masterplan should be identified for lands in the applicant’s ownership. Under the previous application (07/2900) consultation had taken place with NPWS. That development required a long-term monitoring programme, provision of a compensatory habitat to be managed for the hen harrier and a 25-year landscape model, charting the changes in land use and habitat in the area. While that application related to a new forestry plantation, this site is primarily blanket bog. While this could be classified as an infill development between windfarms, different circumstances relate to each.

The proposal is contrary to section 4.5 of the guidelines, which indicate that a planning authority may need further information on impacts on natural heritage, to include direct and indirect effects. Refusal recommended.

Area Engineer: Pre- and post construction surveys of the haulage route shall be carried out and restoration fees shall apply where appropriate.

County Archaeologist: Archaeological monitoring of ground works recommended.

Heritage Officer: Recent studies have shown that hen harriers are displaced by turbines and this proposal will have a significant effect on breeding hen harriers in the area. A large proportion of the site qualifies as Annex 1 Blanket Bog. Hen harriers are also likely to be affected by habitat loss due to forestry and other wind energy developments in the area. This proposal will add to these cumulative effects which is significant negative. The cumulative effect of the cluster of wind farms warrants further research in terms of habitat loss, disturbance and displacement. There are no mitigation measures possible or proposed. There is no compensation for loss of biodiversity, nor post-construction monitoring, proposed.

The likely significant negative impacts on hen harrier foraging and commuting routes and the loss of Annex 1 bog habitat, outweigh the positive contribution of the development. Strongly object as it is contrary to policies for nature conservation and biodiversity..

Road Design: No comment.

5.3 Prescribed Bodies

IAA: On approval, details of an aeronautical warning light scheme to be agreed, details of turbine co-ordinates and notice prior to erection of turbines to be provided.

6.0 FIRST PARTY GROUNDS OF APPEAL

The first party make the following points in their appeal against the decision to refuse permission for the proposed development:

- It is accepted that this upland area is important for hen harriers. The question is whether the 2 no. additional turbines will have a significant adverse effect thereon.
- Previous submissions indicate that provided turbines are not located within 500m of a nest site, the risk of collision is not a significant concern.
- This extension to the existing windfarm will have a small footprint when compared with an isolated new development.
- Undergrounding of the existing 110kV line will have a beneficial effect, removing a potential collision hazard.
- Since the cumulative assessment was undertaken for this and adjoining sites, the Boolynaglearagh development has been reduced from 19 to 11 no. turbines.
- There is therefore capacity for an additional 8 no. turbines before the same level of cumulative impact is reached.
- The refusal implies that no further wind energy development can be permitted in the area.
- Slieve Callan has, however, recently been identified in the Draft County Development plan as a preferred location for wind energy development, despite being a hen harrier stronghold.
- Similarly, Boolynaukaun, 2km to the south, is identified as a preferred development area. Previous surveys have identified this to be an area of significant harrier activity.
- There is a current application on Slieve Callan for 31 no. turbines, in relation to which DoEHLG have expressed concerns.
- In that case, the PA acknowledged the loss of hen harrier habitat and refer to provision of compensatory habitats and a long-term management plan therefor.
- Wind farms have previously been proposed and permitted within SPA's for hen harriers and in Annex 1 hen harrier habitats, subject to compensatory habitat provision and adoption of a long term management plan (PL04.235947).
- A similar approach should be adopted in this case.
- The developer therefore proposes to agree a suitable area of compensatory habitat and define a long-term management plan for the life of the proposal, to include reduced stocking levels and no further peat cutting. Details to be agreed.

10.0 PLANNING AUTHORITY RESPONSE TO GROUNDS OF APPEAL

No response to the first or third party appeals has been received from the planning authority.

11.0 PLANNING CONTEXT

11.1 GOVERNMENT WHITE PAPER; DELIVERING A SUSTAINABLE ENERGY FUTURE FOR IRELAND, ENERGY POLICY FRAMEWORK 2007-2020

The White Paper is set in the global and European context which has put energy security and climate change among the most urgent international challenges. Actions include achieving 15% of electricity consumption on a national basis from renewable energy sources by 2010 and 33% by 2020.

11.2 NATIONAL CLIMATE CHANGE STRATEGY 2007-2012

As our contribution to the EU's commitment under the Kyoto Protocol, we must limit the growth in our emissions to 13% above the 1990 levels in the 2008- 2012 period. Ireland is meeting its commitment through a variety of domestic measures, supplemented by Government purchases of carbon allowances.

Energy Supply (Ch 3); Electricity generation from renewable sources provides the most effective way of reducing the contribution of power generation to Ireland's greenhouse gas emissions. National targets for the contribution of renewables to power generation are for 15% of electricity consumed to be from renewable sources by 2010 and 33% by 2020. These are above and beyond existing EU targets. Annual emissions savings of 1.47 Mt will be achieved on foot of the Government's 15% target for 2010.

11.3 CLARE COUNTY DEVELOPMENT PLAN 2005- 2011,

CDP 52: The Planning Authority will normally only permit development where it can be clearly demonstrated that:

- i) There is no direct or indirect adverse affect on areas designated as sites or candidate or potential sites of national, European or international importance for wildlife and
- ii) There will be no direct or indirect impact upon protected species and their habitats; &
- iii) There will be no adverse impact upon features of major importance to wild flora and fauna; &
- iv) There are no adverse impact upon features of geological or geomorphological importance recognised by the Geological Survey of Ireland; &
- v) There are no significant adverse effects on local habitats or species.

VARIATION NO. 2: CO. CLARE WIND ENERGY STRATEGY (WES)

CDP25: Proposals for the development of infrastructure for the production and distribution of electricity through the harnessing of wind energy will be determined by reference to the County Wind Energy Strategy.

The WES has a target of 550 MW for renewable electricity which will enable the County to exceed its burden sharing of the national target for electricity from renewables and be an "exporter" of green electricity.

Chapter 4 identifies areas as Strategic, Acceptable in Principle, Open for Consideration or Not Normally Permissible. The purpose is to advise, in broad terms, what capacity each Landscape Character Areas (LCA) has for development and, indicate the scale of Wind Farm developments that may be acceptable in terms of cumulative impacts. The appeal site is located within a Strategic Area.

WES Eight: Strategic Areas

These key areas are considered to be most suitable for wind farm development and are of strategic importance because of;

- good / excellent wind resources,
- access to grid,
- distance from properties and
- outside any Natura 2000 sites.

Projects within these areas must:

- Demonstrate conformity with existing and approved wind farms to avoid visual clutter.
- Be developed in line with the Planning Guidelines for Wind Energy Development (DoEHLG 2006) in terms of siting, layout and environmental studies.
- Proximity to a Special Area of Conservation or Special Protection Area will require an Habitats Directive Assessment under Article 6 of the Habitat Regulations
- Must be developed in a comprehensive manner avoiding the piecemeal development of the land designated strategic.

Target wind energy generation from strategic areas is 400 MW

4 Section Four: Advice on Landscape Capacity for wind energy developments based on Landscape Character Areas (LCAs).

LCA	Overall Sensitivity to Wind Farm Developments	Appropriate size of Wind Farms (turbine numbers)	Capacity	LCTs in Clare LCA and corresponding LCTs in 2006 Planning Guidelines	Cumulative Advice from 2006 Planning Guidelines
Sliabh Callan This LCA encompasses upland hills and slopes of Sliabh Callan and Ben Dash	Medium to Low	Large: 11-20 turbines	The rolling hills, low settlement, extensive plantations reduce the overall sensitivity of this LCA to Wind Farm development. The area could accommodate a number of large or medium Wind Farms subject to careful siting to avoid significant impacts on skylines. Potential Renewable Energy Generation for this area is 250 MW (LCEA).	Upland Hills Moorland Hills Planning Guidelines: Moorland Mountain	Acceptable, depending on topography as well as siting and design of wind energy development involved.

Annex A sets out best practice and general considerations for wind energy developments in the county. Section A. 1.2, notes the following in relation to birds:

- Construction works should be timed and designed so as not to disturb breeding birds and site specific advice should be sought from a qualified and experienced ecologist.
- Yearly monitoring of wind farm developments associated with wind energy areas identified in the Strategy should be undertaken by professional ecologists and funded by the relevant wind energy developer.
- Where nesting hen harriers or merlins are recorded within close proximity to turbines, appropriate mitigation measures may be required to avoid any potential risks to displaying birds and newly fledged birds. Advice should be sought from a qualified and experienced ecologist.

11.4 WEST CLARE LAP 2009 – 2015

Lands to the south and west of the site are identified as Suitable for Wind Energy. This area does not include the appeal site.

Policy INF S13 Renewable Energy

Proposals for renewable energy will be considered provided that:

- a) There would be no significant impact on the character and amenity of the surrounding area;
- b) There would be no significant impact on the transportation network; and
- c) There would be no significant adverse environmental impacts

Policy INF S14 Windfarm Developments

The Council will assess applications for windfarm developments in relation to the Windfarm Development Guidelines (DoEHLG 2006). Proposals for windfarm developments will be considered where it can be clearly demonstrated that:

- a) They do not have an adverse visual impact on the landscape in which they are proposed; and
- b) They do not have a significant adverse impact on a site of archaeological or historical importance or on sites which have rare or protected flora and/or fauna or a delicate ecological character; and
- c) Power lines between ESB points of generation and windfarm substations should, where possible, be laid underground to minimise visual impact.

Policy ENV3 Protecting Areas of Nature Conservation

It is the policy of the Council to protect and promote the sustainable use and management of the natural heritage, flora and fauna of the Plan area through the promotion of biodiversity, the conservation of natural habitats and the upgrading of new and existing habitats. Proposals for development will be considered where it can be clearly demonstrated that:

- a) There will be no direct or indirect adverse impacts on areas designed as sites, or candidate/proposed sites, of national or international importance for wildlife;
- b) There will be no direct or indirect impact upon protected species and/or their habitats;
- c) There will be no adverse impact upon features of major importance to flora and fauna;

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- d) There will be no unacceptable effects to features of geological or geomorphological importance;
 - e) There will be no unacceptable effects on local biodiversity or wildlife corridors; and
 - f) A suitable protection zone has been established between proposed development and any feature that is important to local biodiversity. The extent of this protection zone will be decided on a case-by-case basis, in consultation with Clare County Council.ENV 7

11.5 WIND ENERGY DEVELOPMENT GUIDELINES - GUIDELINES FOR PLANNING AUTHORITIES.

Planning authorities should identify areas on development plan maps where wind energy development will be acceptable in principle. Sections 3.6 and 3.7 note that the designation of areas for protection or natural or built heritage or visibility in designated views or prospects does not automatically preclude wind energy development.

Planning authorities should have full regard to biodiversity considerations in determining applications for wind energy developments. Habitats that may be impacted by wind energy developments include peatlands. All are vulnerable, but those located in the uplands are particularly so owing to their location in high rainfall areas and where the growing season is short.

The extent to which birds will be impacted by wind energy developments will vary depending on species, season and location, and these impacts may be temporary or permanent. Those species groups considered to be most at risk are raptors, Swans, Geese, Divers, breeding waders and concentrations of waterfowl. Potential impacts on migratory birds and local bird movements between breeding, feeding and roosting areas require careful consideration.

Section 5.3 notes that in assessing wind energy developments, the underlying geology is a critical factor. Information to be submitted as part of a planning application should include geotechnical assessment and a landslide and slope stability risk assessment for the site. Provision must be made for carrying out site-specific investigations in order to identify the optimum location for each turbine, which may suggest minor adjustments to turbine location. In order to accommodate this practice there should be a degree of flexibility built into the planning permission and EIS.

Section 5.6 identifies noise emission limit values, however, in general, noise impacts are unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres. At distances greater than 10 rotor diameters from a turbine, the potential for shadow flicker is very low.

Chapter 6 discusses the siting and design of developments in the landscape, identifying six Landscape Character Types. Chapter 7 discusses planning conditions. Appendix 4 sets out best practice for wind energy development in peatlands.

12.0 ASSESSMENT

Having reviewed the application and appeal documentation and visited the site and surrounding area, it is proposed to consider the development under the following broad headings:

- Land use and development principle.
- Landscape and visual impacts.
- Ecology
- Soils and Geology
- Roads and Traffic
- 110kV Compound and Grid Connection.
- Adequacy of the EIS
- Other matters arising.

12.1 Land use and development principle.

It is policy at local and national levels to promote the development of renewable sources of energy, and in particular wind energy developments. The appeal site adjoins, but is excluded from, an area identified in the West Clare LAP 2009 as being suitable for wind energy development, however, the 2009 Wind Energy Strategy identifies the site as part of a Strategic Area. The lands are not subject to any landscape or conservation designations, which would preclude their development in this regard and there is an existing windfarm development immediately adjacent to the site. Having regard to the foregoing, it is considered that the proposed development would be acceptable in principle at this location.

12.2 Landscape and visual impacts.

12.2.1 The proposed development comprises the erection of two additional turbines adjacent to an existing windfarm development. I have visited the site and surrounding area and reviewed the photomontages submitted as part of the application and further information response. I consider that they provide a reasonable representation of the visual impacts of the proposed development. As noted above, the site is located within an area identified as a Strategic Area in the 2009 County Wind Energy Strategy, while the wider surrounding area is identified as Acceptable in Principle in this regard. While the site adjoins an existing windfarm development, there are a number of permitted development in the surrounding area, which have not yet been constructed. I consider the landscape of this area has the capacity to accommodate development of this nature and the designation contained in the Wind Energy Strategy is not considered to be inappropriate.

12.2.2 With regard to longer views to the site, it is not considered that the development would give rise significant additional visual impacts, having particular regard to the extent of existing and permitted wind energy developments in the area. The proposed turbines are larger than the existing turbines, however, they are similar to those permitted

under P07/2900. This is not considered to be a significant issue in longer views to the site.

12.2.3 The principle visual and landscape impacts will be in shorter views from the adjoining local roads. The proposed turbines are located approx. 80m and 260m from the adjoining road respectively. While the effect of the development will be, as described in the EIS, to “bring the receptor into the wind farm”, I do not consider that there would be significant additional adverse impacts on the character or visual amenities of the area.

12.2.4 Having regard to the nature and extent of development proposed, the provisions of the County Wind Energy Strategy and the surrounding pattern of existing and permitted developments, it is not considered that the proposed development would give rise to undue impacts on the landscape character or visual amenities of the area.

12.3 Ecology

12.3.1 Blanket Bog

12.3.1.1 The site occupies an area of elevated blanket bog, described in the EIS as being of good quality, of high value and of local importance. Intact active blanket bog is an Annex 1 habitat. Similarly, areas of cut-over bog occurring on the site are evaluated as being of good quality. The appeal site is not designated for nature conservation purposes. Lough Naminna Bogs NHA lies approx. 350-600m to the east of the site, the site synopsis for which is appended herewith. This site is described as being of considerable conservation interest as a good example of upland blanket bog.

12.3.1.2 The further information response stated that the volume of peat to be extracted from the site would be 4,570-cu.m. 70% will be deposited within an existing area of cut-over bog at the western end of the site, to max. 1m depth. It has also been indicated that the construction compound will be located on an area of cut-over bog close to the site entrance, however, no specific location or dimensions for this compound are identified. The impact of these works on the identified habitats on the site, which are likely to be relatively significant, were not assessed as part of the EIS.

The application has also proposed that the existing 110kV line crossing the site be undergrounded over a distance of approx. 400m, in order to facilitate the development. Works required in this regard would comprise a significant intervention to this site and the habitats arising thereon, both in terms of the excavation required and associated construction activities. I understand that undergrounding of a 110kV line will require the laying of three ducts within a trench of approx. 1m x 1.1m. All peat soils below the trench would have to be excavated to sound foundation. There is a need for permanent vehicular access along the line for installation and emergency repair. I also understand that a line termination mast and compound at the junction of the overhead and underground lines would be required. The impact of these works, required to directly facilitate the proposed development, have not been assessed.

12.3.1.3 The development requires the construction of approx. 535m of new internal roads and the upgrading of an existing poor quality agricultural track over

approx. 140m. Proposed internal roads are 5m wide and form a loop between the proposed site entrance in the south-western corner of the site and T2.

It would appear that there is potential for significant reduction in new road construction and mitigation of habitat impacts, through the use of the existing access roads and hard standing areas of the adjoining windfarm to the west, in order to facilitate this development. The consideration of alternatives in the EIS fails to consider such measures, which would significantly reduce the level of peat extraction required.

12.3.1.4 There are some difficulties with the flora and fauna section of the EIS. The EIS states that the site surveys, carried out in March, were not carried out at the optimum time to identify flora. Similarly, that section of the EIS states that the exact location of the turbines was not available at time of assessment. Section 5.10.2 refers to the effects of “*one or possibly two turbines as proposed*”. Notwithstanding these information deficiencies, the EIS states that there were no significant difficulties encountered in its preparation, particularly involving any data deficiency.

Surveys carried out in respect of the development under ref. 07/2900, identified the occurrence of the Marsh Fritillary butterfly on adjoining lands. The Marsh Fritillary is the only Irish butterfly species protected under the Habitats Directive. The permission granted in that case required that specific mitigation measures be undertaken in this regard. The subject EIS does not refer to or make any comment on the occurrence of this Annex II species in this area.

12.3.2 Hen Harrier

12.3.2.1 The potential impact of the development on the hen harrier is the sole reason for refusal in this instance. The hen harrier is a species identified for protection under Annex I of the Birds Directive. The appeal site is not located within an SPA identified in this regard, however, under Article 4 of the Directive, Member States are still required to strive to avoid pollution or deterioration of habitats of interest in areas outside specifically identified protection areas.

There is known to be approx. 5/6¹ no. breeding pairs of hen harrier in this area, which is a not insignificant number in the context of an all-island population of approx. 190-220 pairs. In 2008, two pairs were recorded as nesting within 1km of the site. It is not clear whether the subject planning application was referred to DoEHLG (NPWS), however, no response to a section 131 request from the Board in this regard has been received.

12.3.2.2 Detailed surveys of the site have been undertaken, which identify the appeal site as an important foraging site and transit route for the hen harrier. I note the following conclusions from the original EIS:

6.7.2 Because of the quality of the habitat and the high hen harrier activity it is deemed that this proposal will have a significant negative impact on the local hen harrier population.

6.8 Based on current levels of hen harrier usage, it is unlikely that any suitable mitigation could be proposed that would offer an acceptable solution for foraging

¹ DoEHLG correspondence in relation to PA ref. 07/2900 identified 6 no. breeding pairs in the area in 2008.

hen harrier. The proposal would mean the destruction of viable foraging habitat and the fragmentation of the remainder rendering it useless for the harrier. As it stand the proposals constitutes a significant negative impact on hen harriers

This impact, and in particular, the cumulative impact with other developments was considered at further information stage. I note the following points from the FI response:

- 7.5.1 The relatively small direct land take and the large foraging range of the hen harrier render the direct habitat loss negative but insignificant in isolation.
- 7.5.2 There may be cumulative impacts with permitted, but unbuilt, wind farm developments.
- 7.5.2 Due to clearfelling, there will be no net habitat loss due to forestry operations.
- 7.5.3 The displacement effect of this development alone would not normally be expected to be significant. However, based on current daily usage of the site, the displacement effect of the turbines is considered to be negative and significant. Displacement on nesting birds is considered neutral.
- 7.5.4 Given the high number of windfarms planned in the area, the cumulative displacement effect, are likely to be significantly negative, particularly for breeding birds.
- 7.5.5 There will be little direct disturbance during operations.
- 7.6 This section indicates that that there will be significant negative cumulative effects with other windfarms, but that the subject development, in itself, will have insignificant negative impacts. The proposed development will make only an incremental addition to the significant effects of other permitted developments. (Note: This is at odds with the findings in section 7.5.3 above)
8. Habitat loss, displacement or disturbance effects due to the proposal are not significant considering the size of the proposal and availability of suitable habitat in the surrounding area. Significant potential impacts occur in conjunction with other permitted development in the area. Mitigation measures, such as compensatory habitats or timing of activities, will address this development only, not the cumulative effects, which would still exist. Based on the high activity levels and combined impact with other permitted developments, a significant negative cumulative impact already exists. While the impact of the development in themselves are insignificant, the significant negative cumulative effect remains.

12.3.2.3 Section 6.7.2 and 6.8 of the EIS, and 7.5.3 of the FI response, conclude that there will be significant negative effects arising from this development, mainly due to the existing high levels of harrier activity on the site. This impact is described as insignificant when considered with the cumulative impacts arising from permitted wind energy development in the area.

12.3.2.4 While reports refer to the small footprint of development proposed, this does not appear to consider the full extent of disturbance arising from the development, including construction compounds, peat deposition areas and undergrounding of the overhead powerline, which would take some time to regenerate to levels approaching the existing habitats, if at all.

12.3.2.5 There is only one extant wind farm development in the surrounding area, despite the multiple outstanding permissions granted. The 6-turbine extension permitted under 07/2900, has not been constructed to date. Notwithstanding that surveys of that site did not report levels of hen harrier activity similar, or close to, the levels identified for the subject appeal site, conditions attaching to that permission require the provision of an area of compensatory habitat and implementation of a management plan, as well as on-going monitoring of hen harrier activity.

I note also that under ABP ref. PL04.235930, permission was granted for an extension to an existing windfarm within an SPA in Co. Cork, while two new wind farm developments in the same area were refused permission (PL04.236949, PL04.235947). Copies of the decision orders in these cases are appended herewith. In the case of that extension, however, the appeal site did not appear to be of direct value to the hen harrier and there were few reports of hen harriers in the vicinity. Nonetheless, it was still required to undertake mitigation measures including the provision of compensatory habitats. I would therefore draw a distinction between the subject appeal site and the site of PL04.235930.

12.3.2.6 In this case, the most significant factor appears to be the high levels of hen harrier activity, which occur on the appeal site. In this regard, potential disturbance / displacement effects may be greater for this, albeit smaller, site than for other larger scale developments. The report of the heritage officer notes that further research into the cumulative impacts arising in this wider area are required and that no proposals for compensatory habitats or other mitigation measures were proposed. Recently published studies, in particular that of Pearce-Higgins², indicate that certain bird species including the hen harrier, show significant turbine avoidance.

12.3.2.7 The first party appeal does not dispute the potential significant negative impacts of the development. The appeal proposes, however, that permission be granted subject to the provision of a compensatory habitat and definition of a long-term management plan, to include reduced stocking levels and no further peat cutting, details to be agreed. No specific proposals or details in this regard have been provided. In the absence of an assessment of the appropriateness of any such measures and a degree of certainty regarding their implementation, I do not consider that this matter could be adequately addressed by condition.

Having regard to the identified impacts arising in this case, I consider that the precautionary principle should apply and that permission should be refused for the proposed development, generally in line with the decision of the planning authority.

12.4 Soils and Geology

12.4.1 The appeal site generally comprises blanket bog of depths ranging between 0.2m and 3.6m, overlying a thin layer of mineral soil. Peat depths at T1 are reported to be 0.6m with a slope angle of approx. 7.7 degrees, while reported peat depths at T1 are 3.2m with a slope angle of approx. 6.02 degrees at peat base.

² *"The distribution of breeding birds around upland wind farms"* Journal of Applied Ecology (2009).

12.4.2 Ground conditions were examined and assessed to determine peat stability. Shear strength tests were undertaken, which classified the peat as soft to very soft, and a risk assessment for the project was therefore undertaken. The factor-of-safety for the existing site is determined to be acceptable and current risk of sliding is described as low. The factor-of-safety for each turbine location during construction, allowing for loading, is determined to remain acceptable, while post-construction the risk of bog-slide is described as low.

Having regard to the analysis contained in the submitted reports, I consider that the issue of slope stability has been adequately addressed. The mitigation measures identified, including the storage of peat, should be fully implemented.

12.4.3 The development involves the upgrading of 140m of existing track and construction of a total of 535m of new track across the site³. Access to T1 will comprise 140m of existing track and 280m of new road construction, including approx. 56m of floating roads. Upgrading of the existing track will include the use of floating roads. T2 will be accessed over 250m of new road from T1. Peat depths are indicated to be <1.5m on the route. It is reported that similar road construction on the adjoining wind farm has performed satisfactorily.

12.4.4 Approx. 4,570-cu.m. is of peat to be excavated from the site. Of this, approx. 70% will be deposited within an existing area of cut-over bog at the western end of the site, to a max. depth of 1m. The remaining 30% will be used in reinstatement and landscaping works. The geotechnical report states that this area of cut-over bog as yet to re-establish to its original vegetative state. I note, however, that the Flora and Fauna section of the EIS describes the cut-over area of the site as a good quality habitat and no assessment of the impact of deposition of such an extent of excavated peat within this area has been carried out. The geotechnical report also notes that the construction compound will be located in an area of cut away bog, however, the location of the compound is not identified. It does not appear that the estimated volume of excavated material takes account of works associated with construction of the compound. There is also a failure to consider the works associated with undergrounding of the overhead 110kV powerline and the significant excavation of peat required in this regard.

I note the absence of an assessment of the interaction of identified impacts in the EIS, which would be expected to consider such issues.

12.5 Roads and Traffic

12.5.1 A four month construction period is identified with average vehicle movements of 13 vehicle movements per day. Approx. 2,000-cu.m. of stone will be imported for road and crane pad construction. 70 no. loads of concrete deliveries will be required, with a maximum of 35 deliveries in one day.

12.5.2 The site adjoins an existing wind farm and it is indicated that the proposed development will utilise the same haul route at that development. This route runs

³ Section 7.4.3 refers to the construction of 1500m of new track

southwest / north-east along the adjoining local road to the R474 at Inch Bridge, approx. 4km southeast of Ennis. Having regard to the current condition of this road and its previous use as a haul route, and the limited scale of development proposed, I do not have any objection to the development in this regard. I note the planning condition recommended by the area engineer in his report of 18/05/2010, in this regard.

12.5.3 The development proposes the creation of a new vehicular entrance and internal roadway. Contrary to statements contained in the EIS, it is not proposed to use an existing entrance to the site. Adequate sightlines should be achievable at the new location, in accordance with the details submitted at further information stage.

12.5.4 To the west of the site is the sub-station, vehicular entrance and internal access roads serving the existing adjoining windfarm. This entrance, running into the forestry plantation, is provided to a good standard and could adequately serve the proposed development. It would be logical to make use of the existing adjoining road network to facilitate this development, reducing the extent of excavation and road construction on the subject site. While this matter is not considered in the application, section 13.4.3.3 does refer to the use of the existing wind farm road system and I note that the applicant / developer in the current and previous cases is the same.

12.6 110kV Line and Grid Connection.

12.6.1 The site is traversed by an existing 110kV overhead power line, running west-east. This line is to be under-grounded in order to facilitate the development and it is proposed that the development would connect to the grid through the existing adjoining substation. The ability to connect to the grid using the existing sub-station is an advantage of the subject site, while the placement of the existing overhead line underground would have some beneficial visual impacts.

12.6.2 While no objection to the proposed undergrounding of the line has been raised by Eirgrid, no proposals in this regard are contained in the application. Such works would require significant levels of excavation, as identified above. I understand that a compound and line termination mast would also be required at the junction of the overhead and underground sections of the line, at the eastern end of the site. No assessment of such features and the site works otherwise required, particularly in terms of cumulative habitat loss, has been carried out.

12.7 Adequacy of the EIS

12.7.1 The proposed development, comprising two turbines with an output of approx. 3MW, is below the threshold identified in section 3(i) of part 2 of the fifth schedule of the Planning and Development Regulations. The development comprises an extension to an existing wind energy development, however, and an EIS was therefore prepared in respect thereof.

12.7.2 As noted above, there are a number of areas in which it is considered that the EIS, and supplementary information submitted, are deficient and fail to adequately identify and assess the potential impacts of the proposed development, including the following:

- Item 2(b) of Schedule 6 of the Planning and Development Regulations 2001, as amended, requires that the EIS contain a description of the aspects of the environment likely to be significantly affected by the proposed development, including the inter-relationship between the above factors.

The subject EIS does not contain a specific section identifying the interaction of the identified factors. Table 1.1 of the EIS indicates that Interaction of the foregoing will be *dealt with within each topic as appropriate*. This is not the case, however, and the individual chapters of the EIS fail to consider potential interactions. In particular, the interactions between flora and fauna and hydrology and geology, have not been considered. This matter was not raised by the planning authority.

- The EIS refers to the placement of the existing overhead power line underground but has failed to describe or assess the implications and impact of such works. These works are required to directly facilitate the proposed development.
- The flora and fauna section of the EIS is based on sub-optimal surveys and the extent of existing habitat loss and disturbance has not adequately assessed.
- The examination of alternatives fails to consider the use of the existing adjoining windfarm access roads in order to avoid impacts on adjoining blanket bog habitats. Similarly, alternative sites, adjoining the existing windfarm, which do not have high levels of hen harrier activity, have not been considered.

12.8 Other Matters Arising:

12.8.1 There is some confusion in the planning application documentation regarding the extent of the site. The planning application form refers to a site area of 6.735ha. The site layout plans identify a development boundary of 6735-sq.m. and a land control boundary of 20,6970-sq.m. While the description of the site in the EIS does not identify a site area, chapter 4, refers to an area of “perhaps 0.2km². The cumulative impact assessment submitted at further information stage refers to an area of 23ha, while the geotechnical report submitted at FI stage refers to a site area of 49.5ha.

12.8.2 The application drawings outline the access roads and turbine locations in red, the remainder of the lands are outlined in blue. The measurements contained on the layout plans (0.6735ha and 20.69ha) would appear to be correct. The area outlined in red in the application does not appear to make provision for other works required to facilitate the development, however, including undergrounding of the overhead line, peat deposition and provision of a construction compound.

13.0 CONCLUSION

13.1 The proposed development represents an extension to an existing wind farm. The area is identified in the county wind energy strategy as appropriate for such development and in terms of visual and landscape impacts, there is no objection in principle to the

proposed development. The development will result in the loss of some annex 1 blanket bog habitat, however, the extent of such loss has not been adequately identified or assessed. Having regard to the identified deficiencies in the EIS, it is not considered that there is adequate information on which to assess the proposed development. While I note the provisions of Article 111 (2) of the regs, having regard to the overall assessment of the proposed development, I would recommend that permission be refused in this instance.

13.2 The site is an important foraging habitat for the hen harrier, an Annex 1 bird species. While the significant cumulative impacts of the proposed development in conjunction with permitted wind energy developments in the area, are acknowledged, it is not clear that the development in itself will not have significant negative impacts on the hen harrier. In this regard, I consider that the precautionary principle should apply and that permission should be refused, generally in accordance with the decision of the planning authority.

13.3 I would raise concerns regarding the piecemeal nature of wind energy development in this area, which is clearly of importance for this annex 1 species, notwithstanding that it is not a designated SPA. Such cumulative assessment would be in accordance with the provisions of the Wind Energy Strategy for Strategic Areas. I note the comments of the first party in their appeal submission regarding the provision of compensatory habitats and implementation of an agreed management plan, however, in the absence of any detailed proposals in this regard, I do not consider that this matter can be appropriately addressed by condition.

14.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be overturned in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

Reasons and Considerations:

1. It is policy under CDP52 of the County Clare Development Plan 2005-2011 and ENV 3 of the West Clare Local Area Plan 2009-2015, that proposals for development will be considered where it can be clearly demonstrated that there will be no direct or indirect impact upon protected species and/or their habitats. These policies are considered to be reasonable.

The appeal site consists primarily of blanket bog and is identified as an important foraging habitat for the hen harrier, which is afforded protection under Annex 1 of the EU Birds Directive. The Board is not satisfied, based on the details submitted with the application and appeal, that the proposed development, by itself and in conjunction with existing and permitted windfarm developments in the vicinity, will not have a significant adverse ecological impact on the habitat of the hen harriers.

Accordingly, the proposed development would contravene the above policies and would therefore be contrary to the proper planning and sustainable development of the area.

2. The Board is not satisfied that the Environmental Impact Statement and the supplementary information submitted by the applicant, provides adequate information on the potential impacts, and/or the significance of those impacts, of the proposed development on relevant aspects of the environment, to enable it to assess, in a full and complete manner, the impact on the environment in accordance with the legislative requirements as set out under Article 94 of the Planning and Development Regulations, 2001 to 2009, as amended, and, in particular,
- (a) There is a failure to adequately describe the nature and extent of works to be carried out on the site, in particular the impacts on habitats arising on the site due to construction activities associated with the development, including the proposed undergrounding of the 110kV overhead powerlines.
 - (d) There is a failure to either wholly or adequately address the inter-relationship between the topics identified in paragraph (2)(b) of Schedule 6 of the Regulations.

Accordingly, the Board is not satisfied that the proposed development would not have significant adverse impacts on the environment and the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Conor McGrath
Inspectorate