

An
Bord
Pleanála

Board Direction
BD-009903-22
ABP-308019-20

The submissions on this file and the Inspector's reports were considered at Board meetings held on 03/06/21, 10/12/21, 13/01/22, 21/02/22 and 25/01/22.

The Board decided to refuse substitute consent for the following reasons and considerations.

Reasons and Considerations

1. Having regard to the totality of the documentation on file, the Board is not satisfied that exceptional circumstances exist that would justify the grant of substitute consent, specifically by reason of the significant effects on the environment which occurred as a consequence of the 2003 peat slide event during the early stages of the construction phase of the development and that the works undertaken in the early stages of the construction phase had or contributed to unacceptable direct and indirect residual effects on the environment. While recommencement of construction was undertaken and with remedial works associated with the peat slide event incorporated into the development, this does not fully mitigate the significant environmental effects on the environment of the peat slide event. In this context, and noting the commentary of the applicant in presenting an argument that exceptional circumstances apply in this instance, that the investigation of the (peat slide event) and the measures to address it have dramatically increased the understanding regarding construction of wind farms on peat and informed best practice guidelines and the assessments contained in the application documentation, it is considered that in this case, significant effects on the environment occurred with significant permanent residual effects that cannot be fully mitigated, that the significant effects on the environment were clear, profound and unacceptable, and that notwithstanding changes to construction management and mitigation implemented after these significant effects on the environment occurred, the development in this case does not fall within the scope of the exceptional circumstances test for a substitute consent

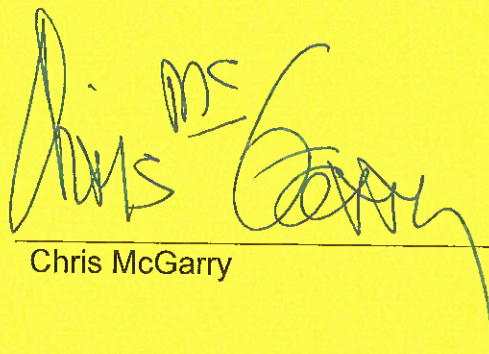
application. In conclusion and by reference to the provisions of Section 177K(1A) of the Planning and Development Act 2000, as amended, the Board is precluded from granting substitute consent in this case.

2. Having regard to the examination of environmental information contained in the application, and in particular the remedial Environmental Impact Assessment Report and supplementary information provided by the applicant, and the submissions from the planning authority, prescribed bodies and observers in the course of the application, it is considered that the significant direct and indirect effects on the environment were as a consequence of the 2003 peat slide event, that these environmental effects were significant and permanent and that the residual impact on the environment from these significant effects cannot be fully mitigated. The Board concluded that the development would have unacceptable direct or indirect effects on the environment, that the development would be contrary to the proper planning and sustainable development of the area and that the residual environmental impact would preclude a grant of substitute consent in this instance.

In deciding not to accept the Inspector's recommendation to grant substitute consent, the Board considered that the nature of the environmental impact assessment of the development including the environmental impact as it applied to the development prior to the peat slide event and the fact of the significant effects on the environment which occurred as a result of the peat slide event, cannot be aligned with a case that would satisfy the application of exceptional circumstances in this instance, notwithstanding any assessment that the environmental management of peat/soil removal works may have changed during the second phase of construction after the peat slide event itself. In coming to this conclusion, the Board had regard to the view of the Inspector at section 7.15 of her report dated 21/03/21, which noted the risk of peat erosion, peat instability and peat slippage arose through a lack of control over, or mismanagement of the excavation and peat/soil removal works. The Inspector noted that these impacts did occur during the early stages of the construction, though they were managed and controlled during the later construction and operational phases. Furthermore, the Inspector noted at Section 7.15 under the heading, 'Reasoned Conclusion on Significant Effects' of her report dated 12/03/21 that, 'the works undertaken in the early stages of the construction phase had or

contributed to unacceptable direct and indirect effects on the environment. However, I am also satisfied that, subject to the continued implementation of mitigation measures, the windfarm project (after the 2003 peat slide event) did not and would not have any unacceptable direct or indirect impacts on the environment.' The Board shared the view of the Inspector that the early stage construction phase works had or contributed to unacceptable direct and indirect effects on the environment. The Board determined that this fact was central to a conclusion that exceptional circumstances do not apply in this instance, notwithstanding that subsequent construction and operational performance at the development might be deemed as not having any unacceptable direct or indirect impacts on the environment. Furthermore, the Board determined that in this case works undertaken subsequent to the peat slide event and during the operation of the windfarm, did not render acceptable the significant environmental effects caused as a consequence of the peat slide event and noted that the residual impact of these significant effects cannot be fully mitigated. In this regard, the Board concluded that the development would have unacceptable direct or indirect effects on the environment, that the development would be contrary to the proper planning and sustainable development of the area and that the residual environmental impact would preclude a grant of substitute consent in this instance.

Board Member



Chris McGarry

Date: 01/02/2022

