

An
Bord
Pleanála

Board Order
ABP-308019-20

Planning and Development Acts 2000 to 2021

Planning Authority: Galway County Council

Application for Substitute Consent by Gort Windfarms Limited care of Helen O'Keeffe, Senior Planner, Engineering and Major Projects, ESB of One Dublin Airport Central, Dublin Airport, Cloghran, County Dublin in accordance with section 177E of the Planning and Development Act, 2000, as amended by the insertion on section 57 of the Planning and Development (Amendment) Act, 2010, as amended.

Development: As constructed (1) Derrybrien wind farm and all on-site development works; (2) a 110kV electricity grid connection; (3) all ancillary works associated with the construction of those elements – including all works carried out in response to a peat slide event that occurred during construction; and the continued operation of the elements listed above. The development is located on a 514-hectare site. Item (1) – Derrybrien wind farm, comprises 70 number Vestas V52-850kW wind turbines (with a hub height of up to 49 metres, a blade length of 26 metres, and overall height of up to 75 metres), accessways and service roads, borrow pits/quarries, peat repositories, two number 49 metres high anemometer masts, a 110kV/20kV substation (Derrybrien Substation – comprising a fenced compound housing control buildings, outdoor electrical plant and equipment) and all associated ancillary

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works. Item (2) – the 110kV electricity grid connection consisting of overhead electrical lines [comprising 7.8 kilometres long Derrybrien – Agannygal 110kV connecting Derrybrien Substation with Agannygal Substation, and an overhead connection from Agannygal Substation to the pre-existing Ennis-Shannonbridge 110kV overhead line] with overhead electrical conductor supported by a total of 45 number support structures (34 number double wooden polesets, four number end masts, six number angle masts and one number intermediate mast), and Agannygal 110kV Substation [comprising a fenced compound housing control buildings, outdoor electrical plant and equipment]. Item (3) – ancillary works carried out include: tree felling, the development of temporary and permanent accessways, temporary construction works sites and all works carried out in response to a peat slide event that occurred in October 2003 including: engineering and drainage works, construction of in-stream barrages, development of borrow pits/quarries to development which comprises or is for the purposes of an activity requiring a waste licence, in the townlands of Coppanagh, Slieveanore, Loughatorick North, Boleyneendorrish, Kilbeg, Toormacnevin, Funshadaun, Derrybrien North, Derrybrien South, Bohaboy, Derrybrien West, Derrybrien East, Derreenamucka, County Galway.

This application for substitute consent is accompanied by a remedial Environmental Impact Assessment Report (rEIAR) and a remedial Natura Impact Statement (rNIS). Further public notices were received by An Bord Pleanála on the 9th day of August 2021.

Decision

The Board, in accordance with section 177K of the Planning and Development Act, 2000, as amended, decided to **REFUSE** substitute consent based on the Reasons and Considerations set out 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 any submissions and observations received by it in accordance with statutory provisions.

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

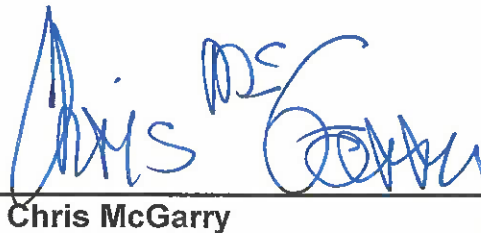
occurred with significant permanent residual effects that cannot be fully mitigated, that the significant effects on the environment were clear, profound and unacceptable, and that notwithstanding changes to construction management and mitigation implemented after these significant effects on the environment 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 21/03/2021, 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 12/03/2021 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



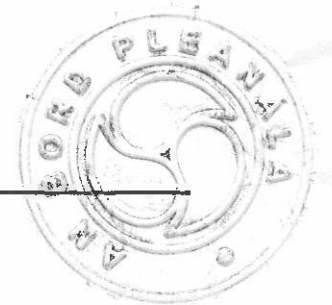
slide event and during the operation of the windfarm, did not render acceptable the significant environmental effects caused as a consequence of the peat slide event and noted that the residual impact of these significant effects cannot be fully mitigated. In this regard, the Board concluded that the 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.



Chris McGarry

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**



Dated this 4th day of February 2022