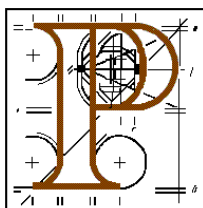


# An Bord Pleanála



## Inspector's Report

**PL16.244055**

### **DEVELOPMENT:-**

7 Wind Turbines with a maximum blade tip height of up to 156.5 metres, access roads, anemometry mast, peat storage areas, underground electricity connection cabling at Magheramore/Cregganbrack, Began, Claremorris, County Mayo.

### **PLANNING APPLICATION**

**Planning Authority:** Mayo County Council  
**Planning Authority Reg. No.** 13/631  
**Applicant:** PWWP Developments Limited  
**Application Type:** Permission  
**Planning Authority Decision:** Permission

### **APPEAL**

**Appellants:**

- (a) PWWP Developments Limited
- (b) James Johnston
- (c) Peter Sweetman and Associates
- (d) Michael Lyons
- (e) Our Lady's Shrine, Knock.
- (f) Breda Johnston

**Type of Appeal:** 1<sup>st</sup> v. Conditions and 3<sup>rd</sup> Party

**Observers:**

- (a) Teresa Byrne
- (b) Knock Tidy Towns

**DATE OF SITE INSPECTION:** 22.1.2015

**INSPECTOR:** Robert Ryan

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## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located 2 kilometres south-east of Knock Village and 7 kilometres north-east of Claremorris – the N17 is just over 2 kilometres to the west whilst the R323 is c.1.75 kilometres to the north. The site comprises of gently undulating (80-95m OD) relatively poor land consisting of peat, poor quality pasture and some forestry. Residential development comprises of scattered low density housing.

The site has an irregular configuration and is stated to be 66.63 hectares. The proposed development involves the erection of seven wind turbines with a maximum blade tip height of 156.5 metres (the exact make and model is uncertain, but dimensions will not exceed stated figures). In addition existing roads will be upgraded and over 2 kilometres of new roads constructed – there will also be peat storage areas, an anemometry mast (100 metres max.), temporary site compound and revisions to access junctions.

The proposed turbines would consist of cylindrical towers with a white or off-white matt finish and three blades for each propeller.

An EIS has been lodged with the application and this includes an Appropriate Assessment – Natura Impact Statement.

The developer has requested a 10 year planning permission with the construction phase taking approximately 18 months.

Under PL09/664 the planning authority granted planning permission for a wind farm comprising of seven wind turbines (maximum blade tip height of 145 metres) at this location with anemometry mast and ancillary works. The site was smaller than current proposal and involved different turbine locations. If this appeal is granted it will supersede previous permission.

It is important to note that there are two more concurrent appeals (viz. PL16.244033 (Ref. P13/617) and PL16.244034 (Ref. P13/633) by the same developer involving proposals for 6 and 7 wind turbines plus ancillary works which include an electricity substation on separate landholdings c.2 kilometres and 5 kilometres south of current appeal, each with a separate EIS. The three wind farms would have a capacity of 40.8MW and could avail of the Dalton Gate 3 grid connection.

## **2.0 DEVELOPMENT PLAN**

In the Mayo County Development Plan 2014 – 2020 the Landscape Protection Policy identifies all of the site and surrounding area as being within Policy Area 4 – Drumlins and Inner Lowland.

It is not affected by any Scenic views and there are no Scenic Routes nearby.

Claremorris and Knock (c.2 kilometres to the north) are designated as Key Towns, which are second tier towns in the Settlement Hierarchy and both have Area Plans prepared. Knock has a population of 811 in 2011 and Objective KTKK-05 requires all new development to make a positive contribution to the built and natural environment of the Plan area and does not affect the iconic status of Knock Basilica.

The site and its environs does not form part of an SAC or SPA or NHA.

The plan makes several references to renewable energy stating that it will be promoted in appropriate locations and that natural resources should be developed, but protection of county's natural/landscape resource base is also of major importance. Therefore it will only be permitted where there is no adverse impact on adjoining properties and the environment in particular.

## **3.0 RENEWABLE ENERGY STRATEGY FOR COUNTY MAYO 2011-2020**

This was adopted by Mayo County Council on the 9<sup>th</sup> May, 2011 and it is stated that the Strategy is underpinned by Strategic Environmental Assessment (SEA) and Habitats Directive Assessment (HDA). The Strategy clarifies the approach of Mayo County Council to renewable energy and is intended to reduce uncertainty on these matters. It continues that worldwide practice is to locate such developments outside designated or environmentally sensitive sites and areas.

It refers to Grid 25 which is a strategy to upgrade the electricity network by 2025 so as to take account of changing energy situation with special regard to renewable energy supply.

The Renewable Energy Strategy document will supersede all policies and objectives in relation to renewable energy in the County Development Plan – it has taken all policies and objectives contained in the Plan into consideration in its preparation.

Table 2 sets out advantages and disadvantages of Renewable Energy Developments.

The aim of this Strategy is to develop a plan led approach to the location of renewable energy.

Map 1 identifies potential areas for on-shore wind energy development. There are 4 classifications identified.

- Priority Areas – these are areas with planning permission and where on-shore wind farms can be developed immediately.
- Tier 1 – Preferred (Large Wind Farms) are areas where the potential for large wind farms is greatest.
- Tier 1 – Preferred (Cluster of Turbines) are areas identified as being most suitable for small clusters of wind turbines (clusters of up to 3 to 5 turbines depending on site conditions and visual amenity).
- Tier 2 – Open for Consideration identifies areas which may be considered for wind farms or small clusters of wind turbines but where the visual impact on sensitive or vulnerable landscapes, listed highly scenic routes, scenic routes, scenic viewing points and scenic routes will be the principal consideration. The Tier 2 classification will be reviewed by the Council following a determination by EirGrid of grid infrastructure for the County.

The appeal site is partially located within an area designated as Tier 1 – Preferred (Cluster of Turbines) with the remainder designated as a ‘Priority Area’ i.e. has outstanding permission.

#### **4.0 PLANNING AUTHORITY’S DECISION**

The planning authority decided to grant permission subject to 47 conditions including:

1. The permission is subject to submission of 19/12/2013 to include Natura Impact Statement and Environmental Impact Statement together with further information lodged on 14/8/2014 and 7/10/2014, except as amended by attached conditions.
2. The permission period for implementation is 10 years from the date of this order.

3. The development shall be for 25 years from the date of commissioning of the wind farm.
5. Need for a detailed reinstatement programme for the decommissioning of wind farm to be agreed prior to commencement of development.
6. there is no agreement/permission to connect the national grid or routing thereto.
9. All cabling from the turbines to substation shall be underground.
10. Condition survey of roads and bridges along the proposed haul route shall be undertaken.
15. Development shall be in accordance with all lodged documents including the EIS and NIS.
16. Need for monitoring plan to be agreed concerning surface water, groundwater, dust and continuous noise.
17. An Environmental Monitoring Committee shall be established.
18. Site preparation and construction works shall conform to the Inland Fisheries Ireland Guidance 'Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites'.
19. All watercourses in Yellow River Catchment shall be considered potential Atlantic Salmon Habitat.
20. All water pollution incidents shall be recorded and reported to IFI.
21. Need for a Management Plan to be agreed during construction period on site.
22. Need for an Emergency Response Procedure, with Inland Fisheries Ireland included as a notifiable body in the case of an environmental emergency.
23. Measures required in order to prevent spread of invasive species.
- 24/27. Environmental management measures.

28. Requires a buffer zone of 15 metres from fishery watercourses and open drains with connectivity thereto.
29. Concerns preparation of a Schedule of Works regarding drainage measures to be in place prior to ground works commencing.
30. An emission limit value of 25mg/l suspended solids shall apply prior to ground works commencing.
31. Monitoring programme to be lodged with planning authority on a monthly basis.
32. Need for suitably qualified scientist or engineer to supervise earthworks and construction phase.
33. Concerns noise levels during construction period, which shall be minimised.
34. Sets out dust level parameters.
35. Bunding requirements.
36. Need for oil abatement kits on site.
37. Waste management.
38. Site development works to be in line with DoEHLG best practice recommendations.
39. No stream diversions, culvert installations or replacements to be carried out without the consultation and agreement of the IFI.
40. Construction period shall not occur during the bird-nesting season and a monitoring programme shall be undertaken.
41. Need for preparation of a detailed Conservation Plan for rehabilitation of the site.
42. Noise and vibration levels shall comply with Section 9 of the EIS.
43. Archaeological requirements.
47. Need to contribute €10,000 per megawatt of electricity annually to a Community Fund.

## 5.0 PLANNING AUTHORITY AND OTHER TECHNICAL REPORTS

A Cover Report from the applicant's agents McCarthy Keville O'Sullivan (Planning and Environmental Consultants) states that the exact turbine model has yet to be determined. The turbines however will be standard 3 blade design rotating in the same direction in a white or off-white colour.

They conclude by stating that the proposed development represents the optimisation of a previously approved wind farm development at this location. This has been necessitated by the further analysis of the wind regime on site that has taken place since the previous permission. Their overall height will be increased by 8%. They continue that no third party dwellinghouse (i.e. non-contributing landowner) is located within 500 metres of any turbine location.

The Archaeologists Report dated 16/1/2014 recommends pre-development testing on areas designated for development prior to a planning decision being made.

Inland Fisheries Ireland (29/1/2014) state that the proposed development spans the Robe River and Yellow River catchments. The Yellow River provides highly productive salmon and trout spawning and nursery habitat for River Moy fishery, which is nationally important. The Robe River provides brown trout spawning and nursery habitat for the Lough Mask fishery. Both catchments must be upgraded to 'good ecological status' by 2021 and both are at risk of not achieving this level due to channelisation and morphology.

They set out a series of comprehensive conditions to be followed should permission be granted.

The Area Engineer (5/1/2014) refers to need to agree access to site for construction traffic.

Dr. Karol Donnelly's report of 6/2/2014 notes that there are some habitats corresponding with Annex 1 habitats within the study area, including raised bog and alkaline fen. Additional information is recommended.

The report of the Department of Arts, Heritage and the Gaeltacht dated 11/2/2014 requires more comprehensive information relating to birds including monitoring programme. More information is necessary about the Marsh Fritillary butterfly which is an Annex II Species found on the



site. There is also a lack of information concerning flora and vegetation communities of peatland and Annex I habitats on the site. Quantification of habitat loss is unclear.

The OPW report dated 7/2/2014 states that a number of channels and bridges scheduled as part of the Corrib Mask Arterial Drainage Scheme and Moy Arterial Drainage Scheme are located in the site areas and are maintained by them. They require a 7 metre maintenance strip for this purpose. Flooding should not occur at construction or operational stages.

The Environment Section (18/2/2014) require additional information regarding drainage impacts, road construction materials, turbine foundations and shadow flicker.

The Planning Report sought additional information on twenty points relating to birds, presence of Marsh Fritillary, flora and vegetation, fish, location of alkaline fen, archaeology, drainage, peat excavation, roadway construction, turbine foundation depths, shadow flicker, map of all lands owned by developer within 500 metres of each turbine and a map of all houses within 500 metres of each turbine.

A reply was lodged by McCarthy Keville O'Sullivan on the 14/8/2014 and new public notices were published.

The Roads Report dated 20/8/2014 has no objection to routes proposed, but an assessment of roads/bridges should occur prior to commencement. A cash deposit of €80,000 per mile for maintenance/repairs to any damage to public network to be lodged.

The Department of Arts, Heritage and the Gaeltacht (2/9/2014) states that concerns remain regarding bird impacts and cumulative impacts on birds as a result of the wind farm and other permitted/proposed wind farms. They state that the Council is advised against conditioning the future development or agreement of any required monitoring, such as the bird monitoring programme; any such requirements should be agreed and in place prior to project approval.

They note that Marsh Fritillary would be outside the site and within an area of the Annex I habitat.

The application area is within the Moy catchment and drains towards an unnamed tributary of the Yellow River, which is within the European Site, River Moy cSAC. Therefore, there is a direct hydrological

connection to the cSAC. Screening is of significant importance regarding impacts on European site.

The report of the Senior Archaeologist (3/9/14) confirms the need for archaeological monitoring.

The report of the Environment Section (30/9/14) considers that responses in relation to Items 14, 15, 16, 17 and 18 of additional information request re: watercourse buffers, impacts of peat excavation, road materials, turbine excavations and shadow flicker to be generally acceptable. It states that some environmental impacts will occur during the construction phase, but these are transient and of a temporary/short term nature. They enclose 14 conditions that would be considered appropriate in regard to environmental issues.

A further submission dated 7/10/2014 relating to bird monitoring and the Marsh Fritillary was lodged by McCarthy Keville O'Sullivan on behalf of applicant.

The final Planning Report dated 7/10/2014 outlines the project, 172 planning objections (summarised as being noise, setback distance, shadow flicker, visual impact, impact on wildlife, waterways, flora and fauna, health impacts, effects on bloodstock, property prices and saleability, future plans for sites, lack of public consultation and not indigenous to surrounding area). Further points of objection included impact on the Marian Shrine at Knock, impact on Knock Airport, inadequacy of road access, impact on turf harvesting, requirement under EU law to assess proposal in conjunction with two other wind farms to the south. Submissions referred to impact on tourism and included expert analysis relating to noise, visual impacts, ecology and design. Proximity to Gaelscoil is also mentioned and effects on turbary rights. Submissions by local representatives were also noted.

Potential Impacts and Mitigation Measures proposed in the EIS were set out in a tabular format. Internal and external reports were outlined along with local development plan criteria relating to renewable energy, which includes compliance with government wind energy guidelines of 2006.

It concludes by recommending that permission should be granted.

## 6.0 FIRST PARTY APPEAL

McCarthy Keville O'Sullivan (Planning Consultants) state that this is one of three proposed wind farms which in total would deliver 40.8MW with Grid 3 connection to the Dalton substation just outside Claremorris – this refers to connection to the national grid.

While they welcome the decision of the planning authority they are specifically objecting to condition nos. 5, 42, 45 and 47, which read as follows:

5. Prior to commencement of development, a detailed reinstatement program for the decommissioning of the wind farm shall be submitted to Mayo County Council for written agreement. They said program shall apply to full or partial decommissioning of the wind farm, or if the wind farm ceases operation for a period of more than one year. The said program shall provide for the dismantling and removal from the site of masts, turbines and buildings including foundations and roads. The site shall be reinstated in accordance with the said program (including all access roads) and all decommissioned structures shall be removed within three months of decommissioning.

**Reason:** To ensure the satisfactory decommissioning of the project.

42. Noise and vibration levels shall be at the levels stipulated in Section 9 of the EIS submitted to Mayo County Council on the 19/12/2013.

**Reason:** In the interest of residential amenity.

45. The developer shall lodge a cash deposit of €80,000 (eighty thousand euro) to Mayo County Council to provide for maintenance/repairs to any damage caused to existing public road network.

**Reason:** To safeguard the existing public local road network.

47. The developer shall pay to Mayo County Council an annual contribution of €10,000 per megawatt of electricity produced from the development, to a Community Fund to be established by Mayo County Council in accordance with the policy on community benefit contributions required for certain major developments adopted on 11/4/2014, towards the cost of the provision of environmental improvements, recreational or

community amenities, cultural and heritage facilities and social inclusion and community development in the locality.

**Reason:** It is considered reasonable that the developer should contribute towards the cost of environmental, recreational or community amenities which will mitigate the impact of the transport of waste peat on the local community.

They consider that these conditions are inappropriate in terms of their wording, content and/or clarity.

They divide the appeal into two parts – Part A relates to condition numbers 5 and 42 whilst Part B relates to condition numbers 45 and 47.

In relation to condition no. 5 they acknowledge the need for decommissioning, but state that the scale of the infrastructure conditioned to be removed and demolished is excessive and may in itself create unnecessary environmental impacts. They suggest what is regarded as a more standard wording that has been used by the Board.

Removal of foundations and roads is questioned due to such factors as noise, dust, concrete to be removed. They argue that turbine foundations should remain in-situ and be covered with earth. The new roads may benefit existing land users. Condition No. 5 does not allow any flexibility or more appropriate decommissioning, as suggested in the EIS. Removal of above ground elements would be acceptable, but roads and foundations could be retained. Therefore revised wording is requested.

### **Re C42 – Noise Levels**

They accept the need for noise limits at the operational phase, but argue that the condition should be reworded to that used by the Board in other wind farm cases. This would set a defined noise limit, but would allow for improvements (i.e. reduction) in noise levels emanating from the site through technological improvements.

### **Part B – Financial Conditions**

C. 45 - €80,000 bond.

They do not argue about the scale or the principle of this condition. However, the condition lacks clarity and does not specifically refer to a bond nor do we know when such a bond would be released. They

request the Board to reword the condition and add clarification as to when the bond would be released.

### **C. 47 – Communal Fund**

Their concerns relate to the following:

- Application of Local Authority Section 109 Funding through planning conditions; and
- Scale of the contribution.

Section 109 should ensure that funding is not by means of planning conditions. Secondly the scale proposed is excessive.

Mayo County Council's Policy on Community Benefit was adopted by the County Council on the 11/4/2014. Section 109 permits a local authority to make a resolution establishing a fund for the purposes of supporting community initiatives – this is separate to a local fund.

The current application was lodged before the community funding policy was adopted. However, in the EIS a community contribution and liaison committee has been proposed (Section 3.2). They point out that the Community Fund is a nationwide scheme with only 75% of funds raised being used in a local area – it is not targeted or proportional to any specific projects.

They reiterate that there is no objection to community funding or entering into an agreement with the local authority. However, they query whether a planning condition represents the best approach. The Renewable Energy Strategy refers to community benefit as a 'goodwill' contribution whereas in their view Condition 47 is not a goodwill contribution to the local community nor does it constitute an agreement with the applicant company.

They refer to contributions set out under the Planning Act (as amended) and state that this is not applicable here. In any event, the scale at €10,000 per MW is considered excessive and unrealistic. On the other hand they would fully comply with a contribution in line with that indicated in Section 3.2 of the EIS.

## 7.0 THIRD PARTY APPEAL

In this instance there are five appellants viz.

- Peter Sweetman and Associates
- Environmental Action Alliance – Ireland on behalf of James Johnston
- A & D Wejhchert and Partners Architects – on behalf of Our Lady’s Shrine Knock
- Breda Johnston
- Michael Lyons

Their objections can be summarised as follows:

- Development represents Project Splitting/Slicing, which contravenes EU law.
- EIS is inadequate and various environmental conditions are untenable.
- Lack of public consultation/participation, thus contravening Aarhus Convention.
- Lack of Appropriate Assessment by planning authority.
- Lack of EIA by planning authority.
- Cumulative Impact not properly considered.
- Infringement of turbary rights and problems of access/interference with rights of way, property rights and drainage systems.
- Negative visual impact on nearby Knock Shrine.
- Contravention of Knock Development Plan.
- SEA not undertaken.
- Peat Stability questioned.
- Noise impacts disputed.
- Grid connection to national grid does not form integral part of submission.

- Presence of protected species.
- Public notices inadequate.
- Negative impact on tourism.
- Devaluation of property.
- Shadow flicker.

## **8.0 PLANNING AUTHORITY TO BOARD dated 24/11/2014**

In response to the first and third party appeal submissions the planning authority state that this proposal is, in essence, a reconfiguration of an existing cluster of 7 wind turbines whose overall height has been increased from 145 metres to 156.5 metres.

They provide details of planning history and set out various development plan policies relating to renewable energy with which they consider that the project complies with, in particular Volume 1 – Section 2 and Section 4 (objections EY-01, EY-02 and CC-01); also Volume 2 – Renewable Energy Section 54.

It also complies with the Council’s Renewable Energy Strategy 2011-2020 as the site is within Tier 1 – Preferred (cluster of turbines), which is most suitable for a small cluster of turbines.

They outline main objections (including 1<sup>st</sup> party) in a tabular format and confirm that an Environmental Assessment was undertaken – see planning report. However, due to time and logistical constraints (three concurrent submissions) it was not possible to commit text version of EIA Assessment report to the file (see Appendix 1).

Likewise, they state that Appropriate Assessment was carried out, but again it was not possible to commit it to file (see Appendix 2).

In response to ‘Project Slicing’ they say that this is generally undertaken in order to avoid having to prepare an EIA. In this instance however three have been submitted and cumulative impacts were addressed.

In reply to P. Sweetman's submission it is stated that except for Condition 17 all the issues were undertaken in the EIS. These conditions refer to operational matters on foot of the EIS. For instance Condition 10 relates to haul routes – the planning authority had no objection to these routes or improvements, but a before/after road and bridge survey is required. Similarly Condition 26 is a product of Section 5.4.3 of the EIS which states that no salmonid species occur on drains/streams within the site, but site drains into the Yellow River (10 kilometres) which is a salmonid river. Therefore precautions are necessary and the developer must treat these watercourses as if they were salmonid.

They consider that there is adequate information in the EIS and on file to allow the Board to carry out an EIA.

In relation to objections that an SEA was not undertaken they contend that it was not required as these applications do not constitute a plan or programme within the meaning of Article 2(a) of SEA Directive 2001/42/EC. However, SEAs were carried out for the current county development plan and for the renewable energy strategy, both of which form the framework for future development consent for the wind farm proposed in this planning application.

As regards Project Splitting they state that the EU Commission has clarified on several occasions that the EIA Directive does not preclude projects from being subject to more than one decision and EIA provided that all the relevant impacts are fully and properly assessed.

A connection to the national grid ultimately lies with ESB/Eirgrid, who normally require a permission to be in place before deciding a route. Normally a 38KV is required. In this case a Grid 3 connection is in place at Dalton, Claremorris. The likely route is stated by applicant to be via an underground cable running alongside the public roadway from the site.

In response to inadequate public notices they state that Section 34(1A)(c) of the Planning and Development Act, as amended, is a notice to be published after a planning authority has made its decision and is therefore not relevant.

Regarding non-compliance with the Aarhus Convention on Public Participation they state that this is already enshrined in Irish planning law, which includes site and public notices and an appeal system.



## **Re: 1<sup>st</sup> Party Appeal**

Condition 5 – They contend that this is standard wording that has previously been used by the Board. They do not accept that underground works or building should be left on site as future drainage management would be left unresolved. Also it would be visually unacceptable.

Condition 42 – They would not object to the Board rewording this condition, but point out that noise levels indicated in the EIS did not exceed required limits.

Condition 45 – They note that the developer accepts the imposition of a bond, but expresses concern regarding ‘application’ of the cash deposit and the date of release.

The cash deposit refers to the need to provide for maintenance/repairs to any damage caused to existing public road network. The date of release would be the date of final completion of the project.

### **Condition 47 – Community Benefit**

They refer to Section 3.2 of the EIS, which includes a proposal for Community Gain and thus accepts the principle involved. The appeal submission states that there is no objection to contributions as per Section 3.2 and thus this is further acceptance of such a condition.

Community Benefit contributions were adopted by the Council on 14/4/2014 (see Appendix 2) and Condition 47 confirms this policy. Condition 47 relates to benefit contributions for the community as a result of the proposed development, a principle already accepted by the appellant. It reflects a Council resolution and does not fall within Section 48 or Section 49 of the Planning Act. The figure imposed is that set out on 14/4/2014 by the Council.

In relation to Turbary Rights (3<sup>rd</sup> party appeals) they state that the developer has furnished the consent of the landowners to making the application and therefore has adequate legal standing to make the planning application. Turbary Rights is a separate legal matter outside of planning considerations. They refer to Board decisions PL16.231189 and PL16.241506.

They accept that the White Clawed Crayfish is an Annex II species, but the stream is not an SAC although the Yellow River is. The presence of

a protected species is not a barrier to development – the critical factor is that the conservation status of the species in this stream must be maintained and/or improved and not lessened by the development. Mitigation measures have been put forward and therefore negative impacts are unlikely.

Several objections refer to issues addressed in the EIS e.g. noise, shadow flicker, flora and fauna, cumulative impact and devaluation. They have been considered in their Environmental Impact Assessment (Appendix 1).

They reject the view that Knock Development Plan has been contravened stating that Objective KTKK-05 relates to the development plan area only. They refer to previous permission, but state that while the turbines will have a visual impact the overall tranquillity of the Shrine will be unaffected and noise will not be a factor.

They conclude by stating that proposal complies with the development plan and renewable energy strategy. They again refer to outstanding permission for 7 turbines and consider present proposal to be marginal in terms of impact changes. The environmental impact assessment does not highlight any significant adverse effects on the environment nor does appropriate assessment identify any significant impacts on Natura 2000 sites. They request the Board to uphold their decision and enclose Environmental Assessment and Appropriate Assessment in appendices.

## **9.0 DEVELOPER TO BOARD RE: THIRD PARTY APPEALS**

In response McCarthy Keville O'Sullivan refer to concerns raised about birds issues. All bird species of conservation significance were analysed in relation to site topography and habitat and both winter and breeding surveys were carried out. In addition work was undertaken on the other two wind farm sites and cumulative impact addressed. Additional Information was lodged with the planning authority with bird monitoring during construction phase proposed.

A small Marsh Fritillary colony will not be affected by the proposed development.

They point out that EIS/AA submissions were acceptable to the planning authority and the planning report recommended permission. It is in line with plan policies/objectives at a suitable location for such an

enterprise. They refer to local, regional and national energy policies and documents.

They refer to the fact that there is an outstanding permission at this location for 7 turbines (Ref. 09/664).

In response to claims of Project Splitting/Project Slicing they point out that each of the three applications is a discrete site. A public information meeting regarding the three proposals was undertaken. All three have the same applicant and were lodged with the planning authority on the same day; indeed 3 EIS's were also lodged with cumulative impacts fully set out. They acknowledge that the Board must carry out its own EIA prior to issuing a decision.

Before the application was lodged pre-planning discussions were held with the planning authority who recommended the submission of three applications with separate EIS's, each site specific, but with cumulative impact analysis outlined. This had the advantage of allowing independent analysis for each site of such matters as shadow flicker, noise etc. which would be easier to understand from a public participation viewpoint as it would be site specific.

As regards substation they argue that a substation has already been permitted at Cloontooa under PL16.237401 (Reg. Ref. 09/663) – dated September, 2011 and this lasts for 10 years. It is standard practice for wind farms to be assessed separately to the connection route as this route can depend on the permission ultimately granted.

The Renewable Energy Strategy does not specifically define clusters in terms of extent of such areas and how many clusters each can accommodate. It is a strategy document that contains guidance on strategy issues in terms of identifying areas that have '...no or low planning constraint' (Section 6.4).

Their layout takes account of site constraints and sensitive receptors such as landscape. While it is a distinct application it will fulfil the Grid 3 connection capacity that has been secured for the project by their clients.

They repeat that grid connection has yet to be finalised and a condition has been included in the planning authority's decision on this issue. These conditions are relatively standard and indeed one is included in the Board decision PL16.237401. Their preference is for an

underground routing, but this has still to be determined. The Wind Energy Guidelines (Section 7.12) cover this point.

Regarding content of the EIS they state that both the EIS and Additional Information lodged fully comply with legal requirements. This was accepted by the planning authority and while they requested additional information this did not raise any fundamental issues in regard to the EIS. The Non-Technical Summary is also in compliance with the legislation. Section 2.13 of the EIS outlines scoping process, which involved 39 consultees.

They discuss various conditions raised by the appellants as inadequate/inappropriate viz. nos. 5, 6, 8, 10, 12, 16, 17, 19, 20, 21, 23, 26, 31, 33, and 37. They continue that the information is either presented/available within the EIS, or that relevant conditions have been imposed to clarify mitigation measures and ensure that they are properly implemented within the overall development. They consider the planning authority conditions follow best practice either from nearby permissions or from the Wind Energy Guidelines. Under Appendix 2 they have submitted a Preliminary Construction and Environmental Management Plan.

All public notices are compliant with the relevant legislation and public participation is reflected in over 170 submissions being lodged with the planning authority.

They state that Strategic Environmental Assessment (SEA) is not required, but was undertaken in the Renewable Energy Strategy.

The Appropriate Assessment is considered to be comprehensive and in any event the Board will be carrying out its own appropriate Habitats Directive Appropriate Assessment.

In response to the issue of Turbary Rights they state that their clients do not have the legal authority to prevent an individual with turbary rights from cutting turf. However, they have secured all the relevant consents required to facilitate the construction of the proposed development from relevant landowners (letters lodged with application). The proposed development has been designed and will be constructed in a manner that will increase the accessibility of the bog areas by improving existing and providing new access roads. There will be no adverse drainage impacts on Bog/Peatlands.

If any turf cutters are inconvenienced during construction a suitable agreement will need to be put in place so as to ensure that turbary rights are unaffected. In any event Section 34(13) of the Planning and Development Act indicates that planning permission does not in itself allow development to be undertaken.

As regards interference with rights-of-way they say that this is essentially a civil rather than a planning matter, but the proposal will not include any gates or fences that would restrict access to the site.

In relation to drainage they state that existing turf cutting regime has already created numerous man-made channels in this area. Their drainage proposals have been designed to mimic natural drainage and retain surface water run-off close to its source, as set out in the EIS – Section 3.6.1. All drainage will be monitored and professionally supervised.

Concerns raised about peat stability and peat disposal were considered by their engineering consultants AGEC who concluded that such issues would be unlikely to create problems such as slides or pollution at this location.

They acknowledge confusion regarding peat depths at turbine locations, in particular at M3, but the 7.3 metre depth is a spot measurement. Excavated material at this location should be 8,483m<sup>3</sup> rather than 8,300m<sup>3</sup>, which is quite minor. Analysis of peat depths for roads and other areas involved multiple probing and is considered to be an accurate summation.

They refer to EIS regarding construction of floating roads which is comprehensive and without adverse impacts on the underlying peat or its associated hydrology.

They acknowledge that white-clawed crayfish is a protected species, but state that the proposed development has been designed to avoid adverse impacts on existing watercourses in terms of their physical characteristics or water quality. Neither the IFI nor the DAHG raised this as an area of concern.

Visual impact is subjective, but this is an area deemed suitable for wind farm in the Renewable Energy Strategy. 13 photomontages were undertaken from a variety of locations within 15 kilometres of the site and ZTV's produced – cumulative impacts were included. The nearest turbine is 2.6 kilometres from Knock Shrine, but there is permission for

a turbine at 2.5 kilometres. They dispute accuracy of appellant's photographs and argue that their submissions represent best practice models.

In response to noise and vibration issues they have lodged Appendix 3 prepared by AWN Consulting Limited which states that the proposed development complies with the Wind Farm Guidelines 2006. Their review confirms EIS figures and they continue that wind shear was considered appropriately as part of baseline assessment. They therefore reject appeal submission and enclose a condition should permission be granted.

Given the outstanding permission they reject the view that tourism would be negatively affected and in any case perceptions of wind farms is not a critical issue for most people as per surveys undertaken. Likewise, they reject the contention that scheme would be contrary to development plan. They request the Board to uphold decision of the planning authority.

## **10.0 OBSERVERS**

Two submissions have been received from Knock Tidy Towns and Teresa Byrne.

Like appellants they consider visual impact, loss of amenity, distraction due to lights, turning blades, noise and non-compliance with development plan objectives to be unacceptable with significant negative impacts on the character of the area. Ms. Byrne's submission reflects that of Mr. Lyons regarding turbary rights and effects on bogland, access roads, reduced access to property and degradation of bogland. Legal ownership should be clarified at this stage of the process and she argues that information provided by way of consent is problematic. She refers to Section 22(9) of Planning Regulations 2001. She states that conditions attached to any permission must be capable of being implemented in full, but this is open to question here due to turbary rights. Changes to roads or waterways may affect such rights and could cause flooding, thus reducing turf quality. Peat depository areas are also a cause for concern. She encloses a Warning Letter dated 30/6/2014 issued by the planning authority to the developer regarding alleged unauthorised development at this location.

## **11.0 SECOND SUBMISSION BY BRED A JOHNSTON**

She investigated peat depths at certain locations previously measured by the developer, but found significant differences in figures obtained. In her view excavation will be higher than previously proposed. Impacts on white-clawed crayfish and various bird species e.g. Snipe. She encloses maps and photographs.

## **12.0 2<sup>nd</sup> SUBMISSION FROM PETER SWEETMAN AND ASSOCIATES**

They repeat concerns regarding Appropriate Assessment and Environmental Impact Assessment referring to previous European Court Decisions and consider that insufficient information is available upon which to make a decision. This is a case of project splitting/slicing.

Health issues such as sound or shadow flicker have been inadequately addressed (see their appendices and technical reports on these matters) and properties will be devalued. They support points raised by Michael Lyons regarding legal interest and impacts.

The lack of grid connection represents a major flaw legally. Impacts of peat removal are also problematic as is the overall case for wind farm development. The proposed development at this location is not sustainable in their opinion.

Subsequently in a letter dated 11/12/2014 Mr. Sweetman's solicitors O'Connell and Clarke sought a time extension in order to resubmit a revised appeal but in a letter dated 12/12/2014 this was rejected by the Board. O'Connell and Clarke then wrote to the Board on the 16/12/2014 seeking access to local authority documentation, but in a letter dated 23/12/2014 the Board replied that it was not in a position to grant access to the documentation requested.

## **13.0 THIRD SUBMISSION FROM PETER SWEETMAN AND ASSOCIATES dated 10/1/2015**

This refers to the judgement of Mr. Justice Peart in the case of O'Grianna and others v. An Bord Pleanála (copy enclosed) which refers to the need to include a grid connection rather than allow it to be treated as a separate application. In his view the Board has no option but to refuse the application and award him his costs.

**14.0 THIRD SUBMISSION FROM BREDA JOHNSTON dated 1/1/2015 in response to developer's submission**

She refers to a paper published by the Quarterly Journal of Engineering Geology and Hydrogeology in 2008 relating to 'Peat Slope Failure in Ireland' and from the information available she concludes that a prudent approach would be to adopt a best-practice reduction factor on peat-vane strength.

The uncertainty regarding peat depths is troublesome and calculations for roads/foundations is still unclear and needs clarification.

Notwithstanding the existing wind farm permission she states that this proposal is significantly different in terms of turbine size and layout, so its impact on tourism cannot be discounted.

She states that white-clawed crayfish are found here. Problems with substation connection, turbary rights, visual impact and noise (report by Dick Bowdler (acoustic consultant) (attached) are all raised again as causes for concern. The grid connection should have formed part of the EIS.

**15.0 2<sup>nd</sup> SUBMISSION BY MCCARTHY KEVILLE O'SULLIVAN dated 12/1/2015**

This is in response to planning authority submission on 1<sup>st</sup> and 3<sup>rd</sup> party appeals.

They concur with the planning authority's viewpoint that the proposed development complies with both the Mayo County Development Plan 2014-2020 and the Mayo Renewable Energy Strategy 2011-2020.

They also concur that the planning authority Environmental Impact Assessment review is acceptable. This concludes by stating that the proposed wind farm development, subject to mitigation measures proposed in the EIS would not be likely to have any significant adverse effects on the environment.

They also refer to a recent legal case involving a Judicial Review viz. O'Grianna v. An Bord Pleanála, which occurred after the planning authority had made its decision in this case. This judgement concluded that a cable route connection from a proposed wind farm should be included within the EIA of the consenting authority. In response to this they have lodged an addendum to the EIS so that the Board can carry



out a relevant assessment using the criteria established in the recent High Court judgement. In effect this has already been referred to within the EIS, but new additional details in relation to this element has been provided. In their view, no significant adverse environmental impacts would occur and the EIS findings have not been altered. Various mitigation measures have been put forward. They confirm that the cable route and junction accommodation works do not form part of the current planning application as they will be subject to separate consent procedures.

In the light of recent legal findings they have updated Article 6(3) Appropriate Assessment Natural Impact Statement – this includes underground cable route and junction accommodation works. Revised wording is highlighted in green. It concludes that there would be no significant or indeterminate impacts that would adversely affect the conservation objectives or overall integrity of any Natura 2000 site in the vicinity of the site of the proposed development.

They agree with the planning authority that this is not a case of ‘Project Slicing’.

The planning authority submission states that conditions imposed relate to subjects within the EIS and indicate how the planning authority will deal at an operational level with matters in the EIS.

They agree that SEA is not appropriate and that public notices are in line with legislation. Other issues such as turbary rights, development plan, EIS were all addressed in their previous submission.

Regarding response of planning authority to 1<sup>st</sup> party appeal condition re condition 5. They do not accept that removal of foundations or roads is necessary as they would have no significant adverse visual or drainage impacts.

Re condition 42 – The planning authority acknowledge that noise levels could be established as an upper limit not to be exceeded if considered suitable as they have requested.

Re condition 45 – They accept planning authority’s clarification regarding date of release of the bond upon final completion of the project.

Re condition 47 – The planning authority accept that community benefit fund does not come under Section 48 or Section 49 of the Planning Act

and confirms their view that it should not be imposed as a planning condition. However, they accept that a community benefit scheme as outlined in the EIS would be reasonable, but the planning authority's figures are excessive and unrealistic.

As stated above an addendum to the EIS and an updated NIS are enclosed including maps and synopsis information.

#### **16.0 SUBMISSION FROM THE DEPARTMENT OF ARTS, HERITAGE AND THE GAELTACHT, dated 9/1/2015**

This states that from a nature conservation perspective, the key outstanding issue of concern is in relation to the likely significant effects on birds. Their previous observations continue to stand.

They also refer to Conditions 17-32 relating to watercourses and aquatic species which need to be taken into consideration in the context of risks of significant effects on a European site, in view of its conservation objectives, where Annex I habitats or Annex II species are among the qualifying interests of the site.

#### **17.0 PLANNING HISTORY**

Reg. Ref. P09/664 – Permission granted by the planning authority for 7 wind turbines (up to 100 metre hub height) and a blade length of 45 metres at this location.

PL16.237401 (Reg. Ref. 09/663) – By order dated 14/9/2011 the Board granted permission for a ten year period for 4 wind turbines, an anemometry mast, electricity substation, roads, underground cabling and ancillary works at Cloontooa, c.2 kilometres south of present appeal site.

#### **18.0 REGIONAL GUIDELINES – WEST REGION (GALWAY, MAYO AND ROSCOMMON)**

CP33 – Supports the development of wind energy developments in suitable locations subject to normal technical and environmental considerations including Habitats Directive Assessment, where relevant and including the cumulative impact of such developments.

CO14 – Supports the identification of suitable wind energy developments through Habitats Directive Assessment, including consideration of cumulative and in combination effects, landscape character assessments or landscape management strategy and habitat designations.

CO15 – Objective to initiate a Regional Energy Strategy for the West Region in order to identify suitable and unsuitable locations for new energy projects including networks.

Section 1.5.3 – Future Investment Priorities include:

- Upgrade the energy supply and energy network infrastructure and support Renewable Energy development.

ED08 – Objective subject to Habitats Directive Assessment and/or other environmental assessment, to support the deployment of renewable energy infrastructure in appropriate locations.

Section 5.5.3 – Renewable Energy

This section states that securing indigenous renewable energy supplies will generate a more sustainable economy, lower carbon emissions, combat climate change and meet national government and EU renewable targets. This is reflected in objectives 1053 and 1054.

## **19.0 WIND ENERGY DEVELOPMENT GUIDELINES – DOEHLG – JUNE 2006**

Both planning authorities and An Bord Pleanála must have regard to these guidelines in the performance of their functions. These guidelines refer to various EU and Government Policy Documents including the National Development Plan, Sustainable Development – A Strategy for Ireland (1997), EU White Paper on Renewable Energy (November 1997), Green paper on Sustainable Energy (September, 1999), National Climate Change Strategy (2000) which sets out the Government's National Climate Change Strategy over a period of 10 years for achieving the necessary greenhouse gas reductions in line with KYOTO Protocol. The basic thrust of these documents is to encourage energy sources which are not reliant on fossil fuels.

## **20.0 STRATEGY FOR RENEWABLE ENERGY 2012-2020 – DEPARTMENT OF COMMUNICATIONS, ENERGY AND NATURAL RESOURCES**

This document states that under Directive 2009/28/EC the government are legally obliged to ensure that by 2020, at least 16% of all energy consumed in the state is from renewable sources, with a sub-target of 10% in the transport sector. It sets out five strategic goals including support delivery of the 40% target for renewable electricity through the existing GATE processes. It acknowledges that the growth of renewable energy and wind, in particular, requires the modernisation and expansion of the electricity grid.

## **21.0 ASSESSMENT**

### **Third Party Appeal**

- **Principle of Development**

It is fair to say that the broad thrust of Government policy is to support renewable energy growth and in particular wind energy. It is also widely accepted that climate change is an on-going reality that will have major environmental impacts and that a key component of this problem is increasing use of fossil fuels throughout the world. Government policies are reflected in regional, county and local plans which were quoted above.

In ‘Strategy for Intensifying Wind Energy Deployment’ the recommended plan-led approach sees spatial planning considerations as crucial in determining suitable areas where wind farms may be accommodated.

The ‘Renewable Energy Strategy for County Mayo’ was adopted in 2011 by the Council and is thus a relatively recent document which provides locational guidance for renewable energy development within the county. Avoidance of sensitive landscape and environmental designations is an integral consideration of this document. The appeal site is located within an area designated Tier 1 – Preferred (Cluster of Turbines) and is thus included within an area where such development is considered to be reasonable. The site is not an SAC, SPA or NHA nor are its environs.

Having regard to the above I would consider that the proposed development is acceptable in principle.

- **SEA**

It has been argued that a Strategic Environmental Assessment should have been undertaken, but this proposition has been rejected by both the developer and the planning authority on the basis that it (the application) does not constitute a plan or programme. Incidentally this would also appear to be the view of Mr. Sweetman. In my view the legislation does not require an SEA for this type of development and the argument is therefore rejected that such is necessary. In any event SEA was undertaken in relation to both the development plan and the RES.

- **Landscape/Visual Impact**

Mayo is rightly recognised as a county which contains many places of great natural beauty and is a prime tourism destination. The development plan contains a Landscape Appraisal for County Mayo with attached maps and a Landscape Sensitivity Matrix.

The appeal site is located within area K – East – Central Drumlin Spine, which is stated to be a mixture of bog/moorland, poor quality pasture and transitional woodland scrub with better quality pasture to the east and south.

There are no scenic routes or scenic views in this area nor are there any prominent slopes or ridgelines.

The county is divided into four landscape categories of which the site is within Area 4 – Drumlins and Lowlands. It is fair to say that the appeal site is not within a particularly scenic part of the county as found along the coastal or mountain areas.

The Visual Impact Assessment in the EIS has selected thirteen viewing points from a wide variety of locations which I consider to be representative, including cumulative impact with other wind farms. The EIS provides, in accordance with the guidelines, ZTV's with 20 kilometres and 25 kilometres radii. The nearest major routes are the N17 (c.2.5 kilometres) to the west, the N60 (c.4.0 kilometres) to the south-east and the N83 (c.9 kilometres) to the east. In addition there is the R323 (c.2 kilometres to the north) and R329 (c.2 kilometres to the north-west).

Given the topography these turbines will be visible from a wide range and the overall impact will be increased when other wind farm developments are included. Undoubtedly turbines have been increasing in height and capacity, but large blade diameters involve a slower rotation speed which is visually better. There is a subjective element to such tall structures appearing, but their tall slim design involving a matt white or off-white colour is to a high aesthetic standard which in my view would be acceptable at this location. It is also fair to say that the increasing size of turbines is difficult to perceive, as there are very few comparable scale indicators within such landscapes. This means that larger wind turbines do not necessarily result in significantly greater visual impact than smaller models. Indeed they can lead to less turbines being proposed due to increased capacity.

In this type of area consisting of variable or gently undulating landform the landscape lends itself to smaller clustered windfarms rather than large uniform groupings. Essentially this is acknowledged in the Renewable Energy Strategy wherein it is classified as Tier 1 – Preferred (Cluster of Turbines).

While there can be argument as to appropriate locations for photomontages it is my contention that having inspected the site and surrounding area they represent a reasonable perspective of the proposed development from a variety of roads and distances. In addition, cumulative impacts are also illustrated. Given the distance and topography the proposed turbines do not unduly dominate the landscape, but they will be visible from quite lengthy distances. I would also state that related infrastructure such as roads and compounds should not be visually disruptive with good use made of existing routes.

A key visual concern relates to the impact of turbines on Knock Shrine. This is quite evident in photomontage no. 8. As stated in the Knock Area Plan the shrine has great religious significance attracting over 1.5 million visitors each year. The shrine however is not in a remote rural location such as Lough Derg but is located within an urban setting comprising of a mixture of residential and commercial development with attendant parking facilities. It is not visually impressive and indeed the Basilica itself has, in my opinion, limited architectural merit. IN addition, this site already enjoys permission for a farm of 7 turbines the overall scale and disposition of which is not radically different to the current proposal. Given the separation distance noise is not an issue. I would therefore conclude that the visual impact of this scheme is not going to have a material effect on what the Knock Area Plan refers to as a

thriving community based around a religious product nor would objectives set out be materially contravened.

- **Lack of Environmental Assessment and Appropriate Assessment undertaken by the Planning Authority**

In their submission to the Board the planning authority under Appendix 1 have enclosed an Environmental Impact Assessment Report and under Appendix 2 an Appropriate Assessment Report. It would appear that neither were made available to the public, but this is a procedural matter for the planning authority. From the information submitted I am satisfied that the planning authority did undertake appropriate examination as required. The Board must also carry out such an assessment.

- **Public Participation/Notices**

The notices indicated in the application were validated by the planning authority and on inspection some were still in place. I am satisfied that the notices comply with the relevant legislation and provide a comprehensive outline of the intended development. In addition reference is made to EIS and NIS, which may be inspected and that submissions or observations in relation to the application may be made to the planning authority.

The planning process in Ireland allows for and encourages public participation. A simple perusal of the file indicates that numerous objections were lodged with the planning authority outlining a wide variety of concerns. On foot of additional information more objections were submitted. Subsequent to the decision of the planning authority five third party appeals have been lodged, so it is quite clear that there was considerable public knowledge and engagement with the proposed development. Indeed a public meeting was undertaken prior to lodgement. I would therefore reject this contention regarding participation.

- **Project Slicing or Splitting**

The appellants have argued that the three concurrent applications by the same developer involving twenty turbines in total plus ancillary works including roadways, a substation, anemometers and compounds should have been the subject of a single application and in addition the

subsequent connection to the national grid should have formed part of this scheme.

In reply the developer's agents have indicated that pre-planning meetings took place with the planning authority and it was considered that three separate applications represented the better option. From their point of view it necessitated the preparation of three separate EIS's so that not only the appellants, but the developer incurred more expense.

As stated in the documentation project splitting has been done in the past in order to avoid preparation of an EIS, but this has not happened here. While a case can be made for one application the proposals involve three distinct landholdings with varying impacts on the landscape, residents and environment such as noise, shadow flicker, drainage, roadways etc. Given the amount of information lodged I do not consider that these objections have any merit.

In relation to grid connection it is stated that the three applications form part of an aggregate approval to connect 40.8MW Gate 3 connection to the Dalton substation just outside Claremorris. Section 4.3 of the Wind Energy Guidelines deals with this aspect stating that where connection is not exempt, it will be necessary to submit a planning application to the planning authority. Best Practice would suggest that an integrated planning application that combines grid interconnection information together with details of the wind energy development should be submitted to the planning authority. However, if this is not possible, then the planning authority should agree in advance with the developer the information on the grid connection that they consider necessary to enable them to make a full planning assessment.

Due to various considerations including number and location of turbines plus ancillary works such as exact line of roadways most wind farm developments have not included grid connection as part of a single unified submission. However, a recent legal judgement concerning O'Grianna and others v. An Bord Pleanála specifically related to this issue (project-splitting due to omission of grid connection).

Mr. Justice Michael Peart states that 'I am satisfied that the second phase of the development in the present case, namely the connection to the national grid, is an integral part of the overall development of which the construction of the turbines is the first part'. He continues that 'the connection to the national grid is fundamental to the entire project, and in principle at least the cumulative effect of both must be assessed



in order to comply with the Directive'. He concludes that this is one project only and should not be sub-divided into separate elements.

Mr. Sweetman's submission of 10/1/2015 specifically refers to this judgement and requests the Board to refuse permission on this basis.

I would also refer to the submission received from McCarthy Keville O'Sullivan dated 12/1/2015.

In the light of the O'Grianna judgement they submitted revised information concerning the grid connection and road junction improvements in the form of an Addendum to EIS and NIS.

Section 2.12.5.2.3 of the EIS is entitled Electricity Substation and Grid Connection.

This section outlines three options the first of which involved a separate substation for each site, which was considered unnecessary replication; the second involved a substation outside any of the three sites and the third involved location at the middle site (Cloontooa). This site already has permission for a substation albeit in a different location to current proposal. The substation would serve all three sites and then connect to the substation at Dalton and the national grid. This represented the preferred choice via undergrounding, but would not form part of current application.

Section 3.4.5 also deals with Grid Connection with Figure 3.9 outlining grid connection options, but this is indicative only the intention being to run an underground cable alongside the public road.

While the information submitted is informative the proposed routing and junction works are indicative only. In other words they do not form part of the current application/appeal and would not be subject to condition in the event of a decision to grant permission by the Board.

The Board could circulate the submission of 12/1/2015 for comments by other parties, but in the circumstances it would be of limited value and could involve considerable delay. In addition to this being an indicative route problems arise as to view of the planning authority regarding ownership of land, issues of drainage/road stability, maintenance etc. Likewise, Eirgrid/ESB Networks would need to be consulted along with appellants and the public at large (new notices) together with prescribed bodies such as IFI and the Department of Arts, Heritage and the Gaeltacht.

- **EIS**

An Environmental Impact Assessment and Appropriate Assessment accompanied the application and was supplemented by further information from McCarthy Keville O'Sullivan. The EIS involves a grouped format which deals with separate descriptions of the proposed development as separate chapters and there is a non-technical summary.

The EIS outlines the location, nature and background of the proposed project and provides information on energy policy and targets. In addition to the 7 turbines (maximum height 156.5 metres) existing roads would be upgraded and new roads installed, the site access junction would be improved, an anemometry mast erected (100 metres), peat storage areas and a temporary construction compound erected.

Various constraints and alternative options were considered.

The construction period would be approximately 18 months. All site activities will be subject to an Environmental Management Plan, which would be overseen by a suitably qualified person and this plan sets out the various mitigation measures in an Audit Report. The farm would have an operational life of 25 years. Drainage will involve no direct discharges to watercourses and no features will be altered.

- **Human Beings**

This covers population density, public perceptions of wind farms (generally positive), tourism, health impacts (no adverse impacts from scientific studies), property values (no Irish studies undertaken, but devaluation is rejected citing international sources).

In relation to shadow flicker 100 houses were modelled with 29 houses exceeding the daily guideline limit of 30 minutes, but 2 belong to the participating landowners – this represents a worst-case scenario with 100% sunlight during daylight hours throughout the year. Applying cumulative impacts 31 houses would exceed the 30 minute guideline of which two are belonging to particularly landowners. The use of regional sunshine data means that only 1 house would exceed the annual guideline level of 3 hours. Cumulative Impact results in 25 houses exceeding the annual guideline, but using regional sunshine data only 1 house would exceed the figure, but mitigation measures when applied would overcome this issue. This would involve use of SCADA

technology which can ensure that turbines do not operate at certain periods.

In relation to noise it is stated that only two houses are located within 500 metres of any turbine and both are owned by contributing landowners.

- **Flora and Fauna**

Detailed surveys were undertaken and a Natura Impact Statement proposed. They acknowledge that land is intensively used with livestock, forestry and turbary being the main uses. Although there are habitats of ecological significance within the study area there are also many areas of low-medium ecological value.

No Red Grouse were recorded and only Golden Plover (Annex I) were noted and Snipe – wading birds.

Three bat species viz. Common Pipistrelle, Soprano Pipistrelle and Leisler's bat were recorded with low-moderate activity. Given the open location of the proposed turbines there is unlikely to be conflict as there would be no roosts here.

Impact on otters is considered to be limited.

No white-clawed crayfish were found, but may be in other streams downstream of proposed development.

Marsh Fritillary butterflies were discovered nearby, but no suitable sites were identified and no adults recorded on site.

- **Soils and Geology**

The geology of the site predominantly comprises peat overlying soil which in turn is underlain by limestone bedrock. The central, northern, western and eastern sections of the site are dominated by cutover peat while the slightly more elevated southern and south-eastern sections of the site are mainly agricultural grassland.

Peat depths vary from 0 to 4.1 metres with an average depth of 1.3 metres. However turbine M3 has a peat depth exceeding 7.3 metres. New access road had an average peat depth of 2 metres with some localised depths of 4-7 metres.

Construction of wind farm will require peat removal, soil and rock to competent foundation. Excavation of bedrock from off-site borrow pits will provide material for access roads, turbine bases and general hardstanding areas.

Various mitigation measures are outlined for construction phase e.g. bunding, spill kits, absorbent materials, checking of vehicles.

Peat removed during excavation works will be stored in peat disposal areas less than 1.5 metres in height. The risk of slope failure or mass movements is considered low. Drainage and erosion measures will be put in place at the peat disposal sites. Subject to compliance with mitigation measures no residual impacts on the soil and geological environment are anticipated.

- **Water**

The northern section of the site is located in the River Moy catchment whilst the southern section is located in the River Robe surface water catchment.

Protected sites downstream include the Lough Carra/Mask Complex (cSAC), River Moy (cSAC) and Lough Corrib (cSAC) which are very sensitive receivers.

Two control systems regarding drainage water would be organised the first of which would avoid disturbance to natural drainage features, and diverting clean surface water around excavations and construction areas. The second method involves collecting any drainage waters from work areas within the site that might carry silt, to allow settlement and cleaning prior to its release. A surface water monitoring system would operate during construction phase. Existing drainage will not be altered and control measures will be in place for operational phase.

Should permission be granted for all three proposals construction will be staggered in order to reduce impact on the aquatic environment.

- **Air and Climate**

It is considered that the proposed development would be unlikely to have a negative impact on local air quality.

- **Noise and Vibration**

This section identified 3 noise monitoring locations (see Figure 9.2) with background noise recorded for both day and night periods with varying wind speeds occurring. Cumulative impact was also undertaken. The conclusion was that noise generated would comply with criteria set out in the guidelines. However, monitoring is recommended after commissioning.

- **Landscape**

This has been referred to in other sections of the report. Local policies and designations are outlined and ZTV's undertaken. Photomontages have also been prepared including cumulative impacts.

Overall, the visual impact of the proposed wind farm is not considered to be significant given the level of visual screening provided by roadside hedgerows resulting in intermittent visibility and the fact that there is an outstanding permission for seven turbines. The land is relatively poor consisting of forestry, peat and poor quality pastureland within a low lying gently undulating setting.

- **Cultural Heritage**

There are no recorded monuments on the site, but there is a long settlement history. While there would be no direct impacts archaeological testing on the site of each proposed turbine and ancillary structures together with archaeological monitoring of all peat removal is recommended as mitigation.

- **Material Assets**

The turbine haul route was indicated (large vehicles), involving 70 movements in total, traffic generated by construction period analysed and operational traffic (3 employees) set out. Except for the 7 days involving turbine delivery the overall impact will be slight.

In relation to telecommunications and Aviation possible interference is acknowledged and can often be dealt with by various mitigation measures. Consultation with various operatives is advised and has been undertaken including the Irish Aviation Authority although no response was received. However, they had no objection to previous proposal as such.

- **Interaction and Foregoing**

The EIS outlines the potential for interaction of the foregoing and a matrix has been produced to identify interactions. This highlights various positive or negative impacts during construction and operational phases and where necessary, mitigation is identified.

- **Environmental Impact Assessment**

It is appropriate for the Board to carry out an Environmental Impact Assessment of the proposed development in order to determine environmental impact and whether such is satisfactory. In doing so it is appropriate to rely on the information submitted under the application including that contained within the applicant's EIS, which has been summarised above together with further information lodged. This will be carried out in accordance with the Guidelines for Planning Authorities and An Bord Pleanála for carrying out Environmental Impact Assessment (Department of Environment, Community and Local Government, March 2013).

Section 171A of the Planning and Development Act, 2000 (as amended) sets out in detail, using wording similar to the EIA Directive, what the assessment must comprise. The assessment must include an examination, analysis and evaluation and it must identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11 of the EIA Directive, the direct and indirect effects of a proposed development on the following:

- (a) human beings, flora and fauna,
- (b) soil, water, air climate and the landscape,
- (c) material assets and the cultural heritage, and
- (d) the interaction between the factors mentioned in paragraphs (a), (b) and (c).

As there is confusion between an EIA and EIS it is worth repeating that Environmental Impact Assessment is the process or method for anticipating the effects on the environment caused by a development. The baseline or existing environmental conditions are recorded and these are then compared with predicted conditions arising from the proposed development. The difference between the two is termed the impact. The result of an EIA is assembled in a document known as an EIS which looks at all the positive and negative effects or impacts of a particular project on the environment.

- **Adequacy of EIS**

The EIS lodged with the planning authority and supplemented by additional information follows a relatively standard format and the qualification/experience of the team members is outlined in Section 1.7.2. In my view the information submitted including the non-technical summary does identify the likely significant direct and indirect effects of the proposed development on the environment and is therefore acceptable in principle.

- **Human Beings**

The key issues here would involve noise, shadow flicker and devaluation of property.

The Wind Energy Guidelines refer to the need for separate noise limits for day-time and night-time. In general, noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres. A lower fixed limit of 45dB(A) or a maximum increase of 5 dB(A) above background noise at nearby noise sensitive locations is generally considered appropriate to provide protection to wind energy development neighbours.

The EIS acknowledges that construction period will involve disamenity, but various practices can be employed in mitigation. At operational stage the turbines should not infringe the figures quoted above and again this issue can be addressed by type of turbine selected and on-going monitoring which can require turbines to be closed down at certain times. In their appeal response AWN Consulting outline their technical expertise and reply to various issues raised by appellants including background noise, recording apparatus, turbine technology and provide updated measurements. They stand over EIS data and consider that this scheme would meet noise conditions used on the other similar wind farm cases.

From the information submitted I am satisfied that subject to monitoring noise is considered to be such as to not cause adverse impacts on existing residential properties.

- **Shadow Flicker**

The Wind Energy Guidelines state that this occurs where the blades of a wind turbine cast a shadow over a window in a nearby house and the

rotation of the blades causes the shadow to flick on and off. This effect lasts for only a short period and happens only in certain specific combined circumstances. It is recommended that shadow flicker at neighbouring dwellings within 500 metres should not exceed 30 hours per year or 30 minutes per day.

At distances greater than 10 rotor diameters from a turbine, the potential for shadow flicker is very low. Turbine diameter in this case would not exceed 117 metres, such that 10 rotor diameters would equate to a maximum distance of 1,170 metres. Shadow flicker is subject to many variables including amount of sunshine, wind speeds affecting rotor blades, whether rotor is directly facing the viewer and screening in place. However, modern technology permits use of software packages that would monitor and control impacts so as to meet criteria including turning off of turbine creating the flicker. Alternatively various screens or planting can be undertaken. While the impact will clearly vary depending on weather conditions the system is subject to sophisticated controls which can be enforced by way of condition.

- **Devaluation**

Loss of property value is difficult to determine. This is a relatively low density rural area that is not subject to intense development pressures. While the construction period may cause problems of disamenity and disruption once completed a wind farm does not generate significant traffic. It is also true to say that wind farms generate mixed views from the public with many considering them to be disruptive industrial style developments whilst many people regard them as being symbolic of sustainable development with a positive sculptural image. Given the low density with low attendant property sales and relatively small scheme (7 turbines) it is not considered that the Scheme would have a negative impact on property prices in the medium/long term.

- **Flora and Fauna**

The site is not within a Natura 2000 site. The nearest SAC is the River Moy at 1.9 kilometres to the north-west the qualifying interests of which are the white-clawed crayfish, sea lamprey, brook lamprey, atlantic salmon, otter, active raised bogs, degraded raised bogs still capable of natural regeneration, depression on peat substrates, alkaline ferns, old sessile oak wood with ilex and blechnum and alluvial forests. The other major catchment is Lough Corrib SAC c.9.3 kilometres to the south-east which has an extensive list of qualifying interests including those raised



above plus freshwater pearl mussel, lesser horseshoe bat, shining sickle moss, slender naiad, digotrophic waters, limestone pavements and others outlined in the NIS.

Other sites within 15 kilometres include Urlaur Lakes SAC, Balla Turlough SAC, Carrowkeel Turlough SAC, Errit Lough SAC, Carrowbehy/Caher Bog SAC and Derrinea Bog SAC which are all between 11.3 kilometres and 14.5 kilometres away.

Given the separation distances and the mitigation measures set out the proposed development should not have a negative impact on any of the SACs. The key concern would relate to the River Moy catchment as the separation distance is less than 2 kilometres. Impacts on white-clawed crayfish, salmon and trout must be avoided. In this regard the key report is probably that of the IFI who state that water quality is in need of improvement, but considers the development to be acceptable provided mitigation, monitoring and consultation is undertaken. In essence this is also the view of the planning authority's technical reports.

The Department of Arts, Heritage and the Gaeltacht have expressed concern about details of the data on wintering species, particularly in locations peripheral to the site. They stated that in pre-consultation meetings they raised the need for winter and breeding bird surveys. Their submission of the 2/9/2014 refers to the absence of bird survey data for the autumn migration period, and the general lack of consideration of cumulative effects on birds, their flight lines and migratory routes. They do not consider that additional information adequate addressed bird monitoring. They advise against conditioning as this should be done prior to decision.

They note that Annex II species Marsh Fritillary is found outside the site area.

Avoidance of any negative impacts on Moy SAC is also raised. In their submission to the Board dated 9/1/2015 they repeat the view that key concern relates to the likely significant impacts on birds.

On the other hand the planning authority consider information submitted to be adequate and that there will be no adverse impact provided mitigation is implemented.

McCarthy Keville O'Sullivan in their submission to the Board state that bird survey work was carried out from October 2012 to June 2013 on the site and work was undertaken on the other two appeal sites. The

additional information reply gave additional detail of the proposed monitoring programme.

In my report on the appeal site at Ballykinava (7 turbines) located c.5 kilometres to the south I referred to the concerns of the Department of Arts, Heritage and the Gaeltacht as a matter for which further information may be considered appropriate.

It is worth pointing out that the nearest SPA is Lough Carra which is c.20 kilometres to the west. In addition this site already enjoys permission for seven turbines granted under (Ref. 09/664), which was accompanied by an EIS. Having regard to all these facts and the information submitted in current case it is not considered that the present proposal involves a significant change in overall circumstances from the previous permission, especially having regard to the relatively recent time interval. Accordingly, I would not consider that further information is required on this particular issue.

- **Water and Drainage**

Given the nature of the land and relatively limited scale of development other impacts are considered to be relatively minor. The key environmental concern relates to water and drainage. In my view the EIS is comprehensive and has set out detailed mitigation measures including an Environmental Management Plan, use of qualified personnel to supervise the construction and a variety of measures to prevent any direct discharges. These are considered to be comprehensive and acceptable. The loss of land relates to improved grassland, wet grassland and forestry with low impact in my opinion. The IFI has no objection subject to detailed conditions being applied.

Again the land is such that bog slides and peat stability is not considered to be a factor for concern, especially having regard to the appeal response.

- **Landscape**

This has been dealt with previously and is considered to be acceptable in terms of impacts.

- **Air**

The only real concern would occur at construction stage when dust would be generated. I am satisfied that the applicant is proposing adequate mitigation measures and that this can be addressed by way of condition.

- **Material Assets**

Again the key concern would relate to traffic generated during construction period, in particular long slow moving vehicles carrying turbine parts. This will require various junction improvements and condition surveys will be undertaken. A Traffic Management Plan will be undertaken. I would conclude that given that the impacts are short term and subject to the provision of remedial measures the impact on roads and traffic is appropriately mitigated.

- **Archaeology**

A standard condition relating to monitoring would be appropriate.

- **Interactions and Cumulative Effect**

There is potential for interaction of the foregoing. However, I am satisfied that the mitigation measures proposed by the applicant for each of the various issues outlined above are sufficient to prevent adverse environmental impact in isolation or in conjunction with others.

- **Conclusion**

The Environmental Impact Statement is considered to be acceptable.

### **Appropriate Assessment Report**

The EU Habitats Directive (92/43/EEC) Article 6(3) requires that 'any plan or project not directly connected with or necessary to the management of the (European) Site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of conclusions of the assessment of the implications for the site and, subject to the provisions of paragraph 4, the competent national

authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

The proposed development as described earlier involves, inter alia, the erection of 7 wind turbines (maximum blade tip height of 156.5 metres), upgrade and extension of road system, anemometry mast (100 metres), peat disposal areas, temporary construction compound, underground cabling and ancillary works.

In the context of the appeal site there are a number of Natura 2000 sites within 15 kilometres viz.

- River Moy SAC
- Lough Corrib SAC
- Carrowkeel Turlough SAC
- Balla Turlough SAC
- Urlaur Lakes SAC
- Errit Lough SAC
- Derrinea Bog SAC
- Carrowbehy/Caher Bog SAC

The closest site is Lough Corrib SAC at 1.9 kilometres. The turloughs, lakes and bogs are between 11.3 and 14.5 kilometres away which given the separation distances involved and proposed mitigation measures it is considered that adverse impacts would be unlikely. The Lough Corrib SAC is 9.3 kilometres to the south-east and is also quite distant. The proposed development involves a construction period of 18 months with works including new roads, bases for turbines and associated drainage. Cumulative impacts are also considered to be minor. The various mitigation measures have been outlined above and are considered to be practicable.

Having examined the site synopsis information and having had regard to the mitigation measures proposed, the separation distances and the nature and extent of the proposed development, it is considered that the proposed development will not adversely impact any of the above sites in terms of integrity and conservation status.

### **3<sup>rd</sup> Party v. Conditions**

The 3<sup>rd</sup> parties have objected to various conditions arguing that they reflect an overall lack of information which should have resulted in either a refusal or in a request for further information.

The conditions imposed are in themselves relatively standard reflecting proposals set out in the application and the EIS and comments received in the various technical reports. In my view such conditions are appropriate and provide clarification as to monitoring, various time periods, production of plans, supervision by qualified personnel and reinstatement etc. Their inclusion does not mean that the information lodged is unacceptable or inadequate.

### **Turbary Rights**

The planning application was accompanied by letters of consent from landowners giving their Folio numbers and acknowledging that their property forms part of the application and subsequent development in the event of permission.

Point No. 19 of the additional information request involved submission of a single map showing all lands owned by the developer located within 500 metres of each turbine.

The map submitted (Figure 19.1) indicated all these lands in yellow and they encompass 500 metres within each turbine location. It is stated that the developer does not own any of these lands, but has a contract to lease/purchase the lands.

In their appeal response McCarthy Keville O'Sullivan state that turbary rights would be fully respected, drainage will not be interfered with and if anything the new road system will facilitate access. Any obstruction with roads or impact on turbary rights would be a civil law issue and in any event Section 34(13) of the Planning and Development Act, as amended, states that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. Rights of way will not be interfered with and no barriers will be erected on the land.

Clearly turbary rights are important and need to be respected. However, in my view, they do not preclude a landowner from applying for planning permission and then it is a matter between the parties to clarify any points of contention. The Development Management Guidelines for

Planning Authorities (DoEHLG June, 2007) states that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. They refer to Section 34(13) quoted above and I would consider that the Board has little or no jurisdiction in relation to this issue.

### **1<sup>st</sup> Party Appeal v. Four Conditions viz. Nos. 5, 42, 45 and 47**

#### **Re: No. 5 – Decommissioning**

This condition specifically includes dismantling and removal of turbine foundations and roads in addition to removal of turbines and other above ground elements.

I would sustain the appellants' arguments that removal of foundations and roads would be unnecessary and quite probably counterproductive, especially after such a lengthy time period. Clearly proper screening of turbine bases is necessary, but the roads have a certain local value and their removal could involve extensive site works which could have negative environmental impacts. I would therefore recommend that this condition could be reworded.

#### **Re: No. 42 – Noise and vibration levels to be as per Section 9 of EIS**

Again I would consider the appeal submission to be reasonable and would recommend that a condition stipulating specific noise limits be included and subject to monitoring.

#### **Re: No. 45 – Bond**

The planning authority submission has clarified the release date of the Bond and this is agreeable to developer. A revised wording would suffice.

#### **Re: No. 47 – Community Fund**

This is a contentious issue between the parties and it is fair to say that the application had been already lodged with the planning authority prior to the Policy on Community Benefit Contributions being adopted by the Council.

Nevertheless, Section 3.2.2.2 and Section 3.2.2.3 of the EIS specifically refers to community funding with figures set out potentially yielding €525,000 in local funding.

Conditions relating to community funding have been attached to other similar projects and their inclusion within the planning decision permits a comprehensive easily understandable approach for everyone concerned. I would therefore recommend that in the event of the Board granting permission condition no. 47 should be retained, but with figures set out in the EIS.

## **22.0 CONCLUSION AND RECOMMENDATION**

The case for utilisation of Wind Energy continues to grow in that it reduces reliance on fossil fuels and addresses the problem of climate change arising therefrom. It is in line with Government and EU policies for renewable energy and is in accordance with the principles of sustainable development. The site is within an area considered suitable for such a project in the Renewable Energy Strategy and is not within a sensitive landscape setting or within a Natura 2000 site. In addition it has the benefit of an outstanding planning permission for 7 wind turbines, substation, roads and ancillary works. While the present proposals involves revisions to height and layout including site area the alterations do not have a material impact, in my opinion, in terms of landscape, environmental or residential issues. I would therefore consider the proposed development to be acceptable and in accordance with the proper planning and sustainable development of the area.

However, the issue of project splitting cannot be ignored. The recent High Court Judicial Review in the case of O’Grianna and others v. An Bord Pleanála also relates to a wind farm development and concludes that the wind farm and its connection to the national grid is one project, which needs to be subject to cumulative assessment in order to ascertain environmental impact.

It is possible that this decision could be appealed to the Supreme Court, but as of now I am not aware that it has. It is also acknowledged that indicative routes have been shown in the EIS and by the developer’s agents in their submission to the Board dated 12/1/2015. This also included an EIS Addendum and a revised Natura Impact Statement.

While the information lodged is helpful the fact remains that these revisions involve indicative proposals only and are unacceptable in the light of the recent judgement in my opinion. I would therefore conclude by recommending that permission be refused.

### **REASONS AND CONSIDERATIONS**

On the basis of the information lodged and that of a recent legal ruling (O’Grianna and others v. An Bord Pleanála) it is considered that as the proposed development does not include as part of the application a proposed connection to the national grid as one project the EIS lodged is inadequate in that a cumulative assessment of the likely environmental impact cannot be undertaken. It is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

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**Robert Ryan,  
Senior Planning Inspector.**

**12<sup>th</sup> March, 2015.**

**sg**