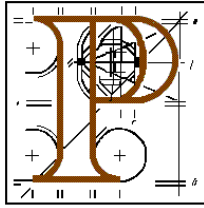

An Bord Pleanála



Inspector's Report

Development: Alterations to existing station to include extension to existing single storey control building, 110kv power transformer and ancillary works at Aughinish 110 kv electrical transformer station, Co. Limerick.

Planning Application

Planning Authority : Limerick City and County Council

Planning Authority Register Reference : 14/1237

Type of Planning Application : Permission

Applicant : Electricity Supply Board

Planning Authority Decision : Grant subject to conditions

Planning Appeal

Appellants : Aughinish Alumina Ltd.

Type of Appeal : 3rd Party v. Grant

Observers : None

Inspector : Pauline Fitzpatrick

Date of Site Inspection : 18/11/15

Appendices

1. Photographs
2. Extracts from the Limerick County Development Plan, 2010 and the Strategic Integrated Framework Plan for the Shannon Estuary.

1. SITE LOCATION AND DESCRIPTION

The existing electricity substation is located immediately to the south-east of the Aughinish Alumina factory complex which is c.4km to the north-east of Foynes and c.6.5km to the north-west of Askeaton in West Limerick. The site is accessed via the road network developed for the industrial site. A car park bounds the site to the west with the lands immediately to the north, east and south undeveloped. There is a tidal lagoon immediately to the east onto the Shannon Estuary.

The perimeter of the substation is delineated by a palisade fence with access from the south. The surface of the enclosed area is covered in coarse stone chipping save for a concrete path providing access to the control building.

2. PROPOSED DEVELOPMENT

The application was lodged with the planning authority (PA) on the **21/10/15** with further details submitted **26/03/15** and **11/08/15** following requests for further information (FI) dated 18/02/15 and 20/04/15 regarding legal interest to lodge the application.

The proposal is for alterations to the existing substation within the existing perimeter to provide for an extension to the existing single storey control building, a 110kv bundled power transformer and associated transformer bay, a single storey medium voltage switchgear building and associated drainage including a soak pit which is to accommodate a new oil interceptor.

The works are stated to be required in order to provide stability for the local grid as well as accommodating future grid connections.

The application is accompanied by an AA – Screening Report which concludes that there are no likely significant impacts on the special conservation interests of any identified SACs within 5km or SPAs within 15km and that it is not necessary to conduct AA.

Following FI and clarification of FI land registry details and the lease agreement between the applicant and the site owners were submitted.

Note: An objection to the proposal received by the PA has been forwarded to the Board for its information. The issues raised are comparable to those cited in the appeal as summarised in section 5 below.

3. TECHNICAL REPORTS

3.1 Internal Reports

The **1st Planning** report dated **16/02/15** (countersigned) considers that the issue of consent for the making of the application should be clarified. It is considered that the proposal is located within an industrial area and the development will complement the nature of activities presently taking place on the site; it would have minimal impact on the visual landscape in the area; it would not adversely impact on the SAC or SPA and would not create a nuisance in terms of traffic, noise and light spill. A request for FI is recommended. A **2nd report** dated **14/04/15** (countersigned) recommends that the lease agreement between the applicant and site be required. The **3rd report** dated **26/08/15** recommends a grant of permission subject to conditions. This follows legal advice regarding the lease which concludes that there does not appear to be any covenant contained in the lease which restricts the ESB's entitlement to apply to extend or develop the sub-station structure on the site without the prior consent of Aughinish Alumina Ltd.

An email from **T.O'Neill** agrees with the AA Screening and recommends a series of conditions to reduce the possible effects of the works.

3.2 Prescribed Bodies

The **Health and Safety Authority** in a letter dated **08/01/015** does not advise against the grant of permission in the context of Major Accident Hazards.

The **Department of Arts, Heritage and the Gaeltacht** in a report dated **19/01/15** notes that the PA must ensure the development will have no significant effect on the water quality of the nearby SAC and SPA. All mitigation measures proposed in the AA Screening report must be implemented.

The **Environmental Health Officer** in a letter dated **22/01/15** has no comment.

4. PLANNING AUTHORITY'S NOTIFICATION OF DECISION

The PA decided to grant permission for the above described development subject to 7 conditions. Of note:

Condition 3: The mitigation measures set out in the Works Method Section of the AA- Screening Report to be implemented in full.

Condition 4: Any materials that cannot be reused to be disposed of in an approved facility.

Condition 5: No permanent lighting to be installed either during construction or operation.

Condition 6: No discharges shall take place to the Estuary.

5. GROUNDS OF APPEAL

The 3rd party appeal by Aughinish Alumina Ltd. can be summarised as follows:

5.1 Applicant's Legal Interest to Lodge Application

- The existing 110kv station was financed and built by the appellant on its lands. It was not intended to serve any other purpose. The agreed design incorporated sufficient space to specifically cater for future alumina plant expansion.
- A lease agreement was put in place between the Aughinish Property Nominees and the ESB for the construction and operation of the station. The ESB only has a leasehold interest. The appellant did not give consent for the making of the application and thus the applicant does not have sufficient locus standi.
- The lease agreement does not provide for or grant rights to the ESB to summarily extend the 110kv station and requires the ESB not to cause or permit or allow anything that may be or become a nuisance or annoyance to the lessors. As the safeguarding of Aughinish Alumina is now a requirement of the County Development Plan, as varied, it is clear that this covenant of the lease is not simply a civil/legal matter and is of fundamental importance to the assessment of the application.

5.2 Construction and Operational Impacts

- The extraction of alumina from bauxite is a highly energy dependent process and since the plant operates on a 24 hour/365 day per annum basis it has a consistent and heavy demand for electricity and high pressure steam. Although the operation is a net exporter into the national grid from its CHP plant the reliability of the electricity supply consumed within the plant itself is entirely dependent on the reliability of the existing 110kv station subject of the appeal.
- The station is a switching station with the ability to switch between the Tarbert 110kv line and the Limerick Monateen 110kv line. It is not a transformer station.
- Having two independent electrical connections available at all times is a key requirement to guarantee reliability and certainty of supply. The introduction

of multiple technologies to the existing switching station will make the system inherently more complex and unstable than a simple switching station.

- The proposal would result in increased risks to the continued operation of the alumina plant both during construction and operational phases.
- Oil filled transformers are recognised as posing a significant risk of fire or explosion. Any damage caused by such an event would mean loss of both electrical power supplies.
- It is widely accepted that variable renewable/wind generation can introduce voltage sags and harmonics onto the adjacent electrical system and potential outages. Such interruptions could have serious adverse impacts on plant operations.
- The factory's CHP plant incorporates an 'islanding' system which is designed to self-supply the plant in the event of loss of grid supply. There are major concerns in relation to the adverse impact of the proposal on the reliability of this islanding system in the event of loss of grid supply.
- An increase in electrical generation in the vicinity of the plant may increase the fault level for the plant with risk of nuisance tripping and failure.

5.3 Compliance with Development Plan Provisions

- Variation No.3 of the County Development Plan incorporates the Strategic Integrated Framework Plan for the Shannon Estuary (SIFP) in which Aughinish Alumina is designated as a strategic facility and is to be safeguarded. The proposal would result in a significant nuisance and would result in significant risks to the ongoing successful operation of the plant. It therefore materially contravenes objectives MRI 1.1, MRI 1.2.9, MRI 1.2.10 and ED 04.
- The site is also a Strategic Energy Site as identified in the SIFP to be safeguarded and the proposal would contravene objectives SIFP ERG 1.2 and SIFP ERG 1.4

5.4 Need for Proposal

- As the 110kv station serves Aughinish Alumina, only, the claim that the application is so as to provide stability for the local grid as well as connecting future grid connections is questionable.
- The proposed development is not required since it is intended to serve a wind farm that does not have planning permission.

6.0 APPLICANT'S RESPONSE TO GROUNDS OF APPEAL

The applicant's response can be summarised as follows:

6.1 Applicant's Legal Interest

- The ESB has a lease on the applicant site and an agreement dated December 1981. Clause 4e of the agreement recognises the entitlement of ESB to supply other parties from the 110kv station at Aughinish.
- The validation function has been carried out by Limerick County Council and is not within the decision making remit of the Board in its determination of the appeal.
- The PA received legal opinion on this matter which concluded that the lease between the ESB and the appellant permits the ESB to make the application on foot of their legal interest in the site and the provisions of the agreed lease.

6.2 Construction and Operational Impacts

- The ESB is satisfied that the additional connection at Aughinish will not adversely affect the reliability or quality of electricity supply to the facility.
- The applicant will manage the project so that live equipment is not affected by the works.
- During the operation of the proposed connection, electrical protection and segregation devised are designed into the station so that reliability of supply is unaltered.
- The proposed development does not present any quantifiable risk in that only proven technology currently in use in other substations will be used at the site.

6.3 Compliance with Development Plan Provisions

- It is considered that the strengthening of the electrical infrastructure of this Strategic Development Location/Strategic Energy Site, coupled with the ability to receive energy from renewable energy projects in the area actually complies with the policies and objectives of the Development Plan.

6.4 Need for Proposal

- ESB is currently under contract with the windfarm referred to to complete acquisition of the relevant consents to enable connection to the 110kv station.

7. PLANNING AUTHORITY'S RESPONSE TO APPEAL SUBMISSION

The PA has no further comment

8. OBSERVATIONS

None

9. SECTION 131 NOTICES

As the Board considered that the proposal might relate to development of the electricity transmission system and might have significant effects in relation to nature conservation, certain prescribed bodies were invited by way of Section 131 to make a submission on the appeal.

The **Department of Arts, Heritage and the Gaeltacht** in its submission reiterates its comments made on the application to the PA as summarised in section 2 above.

The **Commission for Energy Regulation** has no comment.

10. RELEVANT PLANNING HISTORY

The previous planning applications on the lands owned by Aughinish Alumina Ltd. are detailed in the 1st Planning report on file.

11. DEVELOPMENT PLAN AND OTHER POLICY PROVISIONS

11.1 Limerick County Development Plan 2010

The Plan was amended in May 2015 (Variation No.3) to incorporate the Strategic Integrated Framework Plan for the Shannon Estuary (attached by way of Volume 7). In same Aughinish Island is designated as a Strategic Development Location and is prioritised for marine related industry.

Objective ED 04 – it is an objective to safeguard the Strategic Development Locations at Foynes Port, Foynes and Aughinish Island for the sustainable growth of development of marine related industry and industrial development at Askeaton. All proposed developments shall be in accordance with regional and national priorities

and the SEA Directive, Birds and Habitats Directive, Water Framework Directive, Shellfish Waters Directive, Floods Directive and EIA Directive.

Policy SE 01 - It is a Policy of Limerick City and County Council to support and implement the interjurisdictional Strategic Integrated Framework Plan (SIFP) for the Shannon Estuary in conjunction with the other relevant local authorities and agencies. All proposed developments shall be in accordance with regional and national priorities and the SEA Directive, Birds and Habitats Directive, Water Framework Directive, Shellfish Waters Directive, Floods Directive and EIA Directive. All proposed developments shall be informed by the mitigation measures for ensuring the integrity of the Natura 2000 network outlined within the Limerick County Development Plan 2010-2016 (as varied).

11.2 Strategic Integrated Framework Plan for the Shannon Estuary (SIFP)

The key objective of the SIFP is to deliver an integrated approach to facilitating economic growth and promoting environmental management within and adjacent to the Shannon Estuary.

Aughinish Island is designated as Strategic Development Location F

SIFP MRI 1.1 – to safeguard the role and function of the Strategic Development Locationsand encourage their sustainable, growth, development and appropriate diversification for economic development in accordance with regional and national priorities and subject to the requirements of environmental objectives ENV 1.1 to 1.12 where relevant.

SIFP MRI 1.2.9 – it is an objective to safeguard the role and function of Aughinish Alumina as a key driver of economic growth in the region, encouraging its sustainable growth, expansion and diversification to facilitate greater and more competitive trade potential.

SIFP MRI 1.2.10 – it is an objective to support and facilitate the sustainable development of marine related industry within the Strategic Development Location ... Other sustainable land uses may be acceptable ...and where the ability to deliver the primary use (marine related industry) is not compromised. Development will be subject to compliance with the criteria set out in Objective SIFP MRI 1.2.

Aughinish Alumina is identified as a Strategic Energy Site and is noted as making a major contribution to the diversity and security of energy supply in the region via its on-site gas-fired Combined Heat and Power Plant. Currently the CHP plant has capacity to produce 165 megawatts of electricity, the majority of which is exported to the National Grid via the 100kv transmission network.

SIFP ERG 1.2 – it is an objective to safeguard the role and function of strategic energy infrastructure existing within and adjacent to the Shannon Estuary.

SIFP ERG 1.4 – it is an objective to facilitate complementary industrial activities at existing strategy energy sites, ensuring that all such developments do not result in significant adverse effects on the strategic energy infrastructure.

SIFP ERG 1.5 – to support and facilitate the sustainable development, upgrade and expansion of the electricity network. Transmission, storage and distribution infrastructure ensuring that all such development comply with the requirements of the Habitats & Birds Directives, Water Framework Directive and all other EC Directives.

12.0 ISSUES AND ASSESSMENT

I consider that the issues arising in the case can be assessed under the following headings:

1. Applicant's Legal Interest
2. Potential Impacts on Appellant's Operations
3. Compliance with Development Plan Provisions
4. AA - Screening

12.1 Applicant's Legal Interest

This constituted the issue of material consideration by the PA in its assessment of the application. On foot of the land registry and lease agreements provided by way of further information and clarification of further information legal opinion was secured as to whether the applicant had sufficient interest to lodge the application. The said opinion concluded that there does not appear to be any covenant contained in the lease which restricted the applicant from lodging the application or developing the substation. I note that the reference made to the lease agreement in the applicant's appeal response does not appear to correspond with that provided to the PA. That provided is dated 7th day of December 1983 and not 1st December 1981 with no Clause 4e as referenced in the appeal response. In view of same I consider it appropriate to take that as submitted to the PA and dated 07/12/83 as the relevant document.

The applicant in its appeal does not accept the legal opinion and considers that other covenants to the lease, namely that which prohibits the permitting of anything which may be or become a nuisance of annoyance to it (clause 6), are applicable. The

applicant in response contends that the proposed development would not give rise to same.

On the balance of evidence before the Board I consider that the applicant has provided sufficient legal interest to meet the requirements of Article 22 of the Planning and Development Regulations, 2001, as amended, as to lodge the application and that any further disagreement on this matter is, in my view and contrary to the view held by the applicant, a legal matter for resolution between the parties.

12.2 Potential Impacts on Appellant's Operations

The nature of the operations at Aughinish Alumina Ltd. requires a continuous and secure supply of electricity and the existing 110kv station was constructed to provide for same in the first instance. From the details provided by the appellant and which do not appear to be contradicted by the applicant the existing station is a switching station providing for the ability to switch between the Tarbert 110kv line and the Limerick/Monateen 110kv line therefore allowing infeed from either line. The proposal is for the addition of a transformer station to allow for wind generated power at 20kv to be transformed to 110kv.

As noted in the Strategic Integrated Framework Plan for the Shannon Estuary Aughinish Alumina is identified as a Strategic Energy Site and is noted as making a major contribution to the diversity and security of energy supply in the region via its on-site gas-fired Combined Heat and Power Plant. Currently the CHP plant has capacity to produce 165 megawatts of electricity, the majority of which is exported to the National Grid via the 110kv transmission network.

Whilst the appellant details specific concerns regarding potential risks to power supply during both the construction and operational phases of the project I submit that the juxtaposition of such facilities, namely switching and transformers, exist in substations throughout the country, and that the applicant who has the specific expertise in this field confirms that it is to utilise proven technology to avoid the concerns as expressed. During the operation of the proposed connection, electrical protection and segregation devices are designed into the station so that reliability of supply is unaltered. I would also submit that the applicant would be obliged to ensure that the appellant's requirements are met throughout.

12.3 Compliance with Development Plan Provisions

In principle the extension of an electricity sub-station located within an area which is industrial in nature is acceptable and would not give rise to concerns in terms of compatibility in terms of land-use, visual amenity, access etc.

As noted by the applicant since the lodgement of the application with the PA the Strategic Integrated Framework Plan for the Shannon Estuary has been adopted and incorporated into the Limerick County Development Plan by way of a variation in May 2015. It is included in Volume 7 of same. The said framework plan is an inter-jurisdictional land and marine based framework plan to guide the future development and management of the Shannon Estuary. The strategy seeks to encourage, facilitate and promote a balanced approach to harnessing the Estuary's economic growth potential whilst simultaneously ensuring careful protection, management and enhancement of the natural environmental resources of the area

The applicant is of the view that the proposal materially contravenes a number of the objectives as they pertain to Auginish Island and Auginish Alumina. In the Plan Auginish Island is identified as Strategic Development Location (Area F), the objective of which is to safeguard the role and function of such locations and to encourage their sustainable growth, development and appropriate diversification for economic development and to permit other sustainable development at such locations where they would not compromise the primary marine related industrial use.

Whilst the appellant is of the view that there is the potential for the proposed works to compromise the electricity supply to the Auginish plant the applicant does not accept this would be the case and states that proven technologies would be utilised to prevent same. On this basis I submit that the proposal would not run counter to objective *SIFP ERG 1.2* of the framework plan in that the role and function of the designated strategic energy site would not be compromised. I am also of the opinion that it would allow for the strengthening of the electrical infrastructure of this Strategic Development Location which would advance both the Development Plan and Frameworks Plans objectives in terms of allowing for sustainable growth and appropriate diversification for economic development in the wider area as provided for in objectives *SIFP ERG 1.3* and *SIFG ERGI 1.5*.

I therefore consider that the proposal would accord with the relevant policies and objectives of the current County Development Plan.

AA – Screening

The site is located c. 100 metres to the west of the Lower River Shannon SAC (site code 002165) and the River Shannon and River Fergus Estuaries SPA (site code 004077). A Stage 1 – Screening Report for the proposed development prepared on behalf of the applicant accompanies the application.

The qualifying interests of the two European Sites are detailed in Tables 2.2 and 2.3 of the Screening report. To date generic conservation objectives for the two sites exist, namely to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation state of those habitats and species at a national level.

The proposed development is within the existing enclosed area of the substation with the surface already covered by concrete in part with the remainder covered by rough gravel chipping. The fact that the site is immediately adjacent to the large alumina industrial plant is also noted.

As the proposed development is not within the identified designated sites no direct impacts would arise. The potential for indirect impacts arising from the construction and operational activities have been assessed. Subject to certain measures being employed at construction stage (set out in Section 3.3 of the Screening Report) which would be considered to be normal construction and management practice, when coupled with the abundance of suitable habitat for birds should there be displacement due to disturbance, I submit that no significant effects would arise. Should the Board be disposed to a favourable decision, a condition requiring compliance with the plans and particulars accompanying the application (save where otherwise stipulated) would effectively require the said measures to be undertaken. I note that a number of the conditions attached to the PA's notification of decision effectively reiterate the points set out in section 3.3 titled *Work Methods* of the screening report.

It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans and projects would not be likely to have a significant effect on European Site Nos. 002165 and 004077, or any other European site, in view of the sites' Conservation Objectives and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

13. CONCLUSIONS AND RECOMMENDATION

Having regard to the contents of the file, the appeal submission and response thereto, a site inspection and the inspection above I recommend that permission for the above described development be granted for the following reasons and considerations subject to conditions.

REASONS AND CONSIDERATIONS

Having regard to the location of the proposed development within an existing substation in close proximity to an existing large scale factory complex on Aughinish Island it is considered that, subject to compliance with the conditions set out below the proposed development would not adversely impact on the role and function of Aughinish Island which is a designated Strategic Development Location in the current County Development Plan and therefore would not contravene materially objective ED 04 which seeks to safeguard the said Strategic Development Location. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 26th day of March 2015 and 11th day of August 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and

the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Pauline Fitzpatrick
Inspectorate

December, 2015