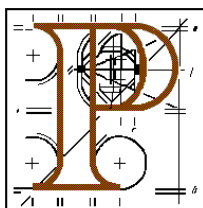


An Bord Pleanála



Inspector's Report

Development: Construct 2 no. sections of forest road, clearfelling, fallowing and replanting of existing plantation as permitted in Phase 2 of PL04.235930, on the overall site of 73.9 ha at Glenakeel West, Glenakeel South, Newmarket, Co. Cork.

Planning Application

Planning Authority: Cork County Council
Planning Authority Reg. Ref.: 14/6578
Applicant: Glentanemacelliot Windfarm Ltd.
Type of Application: Permission
Planning Authority Decision: Grant Permission

Planning Appeal

Appellant(s): Peter Sweetman & Associates
Type of Appeal: Third Party V Grant
Observers: None
Date of Site Inspection: 25th January 2015

Inspector: Kenneth Moloney

1.0 SITE DESCRIPTION

The appeal site is located in an elevated upland area which is sparsely populated. The site is located approximately 2.2km to the east of Taur, approximately 10km to the northwest of Newmarket and approximately 5km south of Rockchapel in the north-west of County Cork.

The overall size of the development site is approximately 73.9ha and there is an established wind farm, i.e. Glentanemacelligot Wind Farm, within the landownership and adjacent to the development site. Phase I of the wind farm comprised of 6 no. turbines (T2-T7) located on a site of 110ha and phase II consists of a further 5 no. turbines (T8 – T10 and T14 - T15), on an additional area of 135ha. The land has been deforested to allow for the construction of the existing wind farm.

There are established gravel roads within the existing wind farm development and also road side drainage provision. The sites identified for clear felling is generally located to the north of the overall landholding.

2.0 PROPOSED DEVELOPMENT

The proposed development is for the following;

- a. Construction of 2 no. new sections of forest road (of approximately 25m and 98m in length) along with associated turning circles to facilitate clear felling. The proposed forest road of 25m is to be situated beside Turbine no. 10 which is located to the north-west of the overall site. The proposed forest road of 98m in length is to be situated beside Turbine no. 14 which is located to the north-east of the overall site.
- b. Clearfelling, felling and replanting of existing conifer plantation within 5 no. felling coupes on an area of 62.62 ha to prevent wind turbulence. The clearfelling is located throughout the overall site and includes an area to the north-west, an area to the north-east, an area in the middle of the overall site and finally an area to the south-east of the overall site.
- c. Ancillary site works including drainage.

Additional information sought for the following;

1. A cumulative assessment of the proposed and existing developments, on-site and adjacent.
2. Chapter 5 of EIS shall be revised to allow for cumulative assessments
3. Chapter 7 of EIS shall be revised to allow for cumulative assessments
4. Chapter 9, 10, 11 & 13 of EIS shall be revised to allow for cumulative assessments
5. Chapter 15 of EIS shall be revised to allow for cumulative assessments
6. Chapter 16 of EIS shall be revised to allow for cumulative assessments
7. A draft EMP and Felling Plan should be submitted

8. Monitoring locations in the CEMP should be indicated.
9. The OCEMP shall be revised to detail monitoring sites
10. The OCEMP should be revised to outline mitigation measures as outlined in Chapter 17.
11. Mitigation measures in Chapter 17 shall be revised
12. The Appropriate Assessment is incomplete and should be addressed
13. Quantity of peat
14. Further details in relation to phosphorous eutrophication
15. Details of river crossing structures
16. Outline the status of the grid connection

3.0 PLANNING AUTHORITY'S DECISION

The Planning Authority decided to grant planning permission subject to 25 conditions. The conditions are generally standard for the nature of the development proposed.

Internal Reports: There three internal reports on the file:

- Area Engineer: No objections
- Environment Report: No objections subject to conditions.
- Archaeologist Report: No objections subject to conditions
- Ecologist Report: Additional information sought for (a) clarification of whether a cumulative impact assessment with other forestry activity includes all clearfelling required for both Phase I and II of the wind farm, and (ii) a revised cumulative impact assessment is submitted taking account of all wind farm development works within the relevant catchments (Glennacarny, Ownekaeal and Owentaraglin).

Objections: There are two third party objections on the planning file and the issues raised have been noted and considered.

Submissions: The following submissions were received;

- Irish Water: - No objections
- Inland Fisheries Ireland; - No objections in principle subject to conditions
- Health Service Executive: - No objections
- Dept. of Arts, Heritage & the Gaeltacht; - Further information required in relation to (a) the quantity of peat likely to be stockpiled, and (b) outline the logic for determining that phosphorous eutrophication is unlikely to significantly impact on 3rd order sites at Owenkeal and Owentaraglin.

4.0 PLANNING HISTORY

- L.A. Ref. 14/05023 – Erection of a permanent 80 metre high meteorological mast and ancillary site works.
- L.A. Ref. 11/4736 – Modifications to internal site tracks and site access associated with established wind farm and construction of an additional site access track and entrance from public road.
- L.A. Ref. 10/8024 – Completion of 6 no. turbines of hub height 80m and blade diameter of 90m and blade tip height of 125m, 2 no. 80m high wind monitoring masts.
- L.A. Ref. 08/10248 – Erection of 8 no. wind turbines with hub height of 80m, blade diameter of 90m and overall height from ground to blade tip of 125m, construction of four borrowpits and internal side tracks and associated works granted.
- L.A. Ref. 06/4077 – Modifications to permitted development 02/4283 to include 6 no. turbines, hub height of 80m and blade diameter of 90m and blade height of 125m, 2 no. 80m high wind monitoring masts, ESB substation compound with control building.
- L.A. Ref. 02/4283 – Windfarm to include 6 no. wind turbines, 2 no. 50m meteorological masts, substation / control building site tracks.

5.0 DEVELOPMENT PLAN

The operational development plan is the Cork County Development Plan, 2014 – 2020.

Section 9.2 of the Plan advises in relation to wind energy.

6.0 GROUNDS OF APPEAL

Peter Sweetman of Peter Sweetman & Associates, lodged an appeal and the grounds of appeal are summarised as follows:

No EIA was carried out by the Local Authority

- It is submitted that it is evident from the information on the file that the proposed development will have an effect on fresh water pearl mussel population, having regard to the current loadings of ortho-phosphate in the River Owentaraglin.
- It is argued that the local authority decision is in contrary to CJEU Decision in Case 258/11.
- It is submitted that the Local Authority did not conduct an EIA and that all that was carried out was an assessment of the EIS.

Appropriate Assessment

- It is contended that the purported Appropriate Assessment carried out by the Heritage Officer is invalid in law.
- The entire 73.9ha development lies in the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161).
- It is contended that the Heritage Officer considers that the site is designated for nest sites rather than habitat area and has recommended mitigation measures for existing nests. Although it is a conservation objective to protect the habitat of the forest for hen harriers.
- The proposed development includes the felling of a afforested area measuring approximately 62.62ha.
- It is contended that the conversion of forestry to wind farms produces a net loss of Hen Harrier Habitat.
- It is considered that forestry is a negative impact compared to previously open terrain.
- The Board are advised to review the CJEU judgement in Case 418/04 Commission v Ireland.
- It is submitted that no EIA was carried out in appeal ref. 235930, appeal ref. 235947 and appeal ref. 235949.

Refund the cost of the appeal

- It is contended that the decision is ultra-vires to the law and as such there is an application to refund the cost of this appeal.

7.0 RESPONSES

First Party Response

The following is the summary of a response submitted by the applicant's agent;

No EIA carried out

- It is contended that the local authority carried out an EIA.
- The appellant's assertion that the Local Authority failed to carry out an EIA was based on the comment on page 5 of the Senior Executives Report, dated 22nd September 2015, which stated that the information in the EIS accorded with Schedule 94 of the Planning & Development Regulations, 2001.
- It is submitted that the EIA was included in the report of the Area Planner (dated 21.09.15).
- It is contended that the local authority are in compliant with Section 171A (1) of the Planning and Development Act, 2000 (as amended).
- The Local Authority EIA included reports from Area Planner, Senior Executive Planner and Senior Planner. The EIA is set out in the Area Planner's report dated 30th January 2015, 21st September 2015.
- The local authority requested additional information regarding points to be addressed in the EIS.

- The Area Planners report included identification of the likely significant direct and indirect effects of the proposal on the environment, a description of the likely effects identified within the EIS, and assessment of likely significant effects having regard to mitigation measures.
- There is nothing in Section 171A(1) of the Act to suggest that the approach undertaken by the Local Authority in respect of this application is incorrect or deficient in any way.
- It is considered that the Local Authority approach is consistent with Section 171A (1G) of the Act.
- It is considered unreasonable that the local authority shall carry out an EIA without having regard to the EIS prepared as part of the application.
- It also contended that that EIA carried out by the Local Authority is in accordance with the provisions of Directive 2014/52/EU.

Appropriate Assessment Invalid

- The appellant claims that there is a doubt that the proposed development would have no impacts on the juvenile freshwater pearl mussel population, having regard to current loadings of ortho-phosphate in the Owentaraglin, which might impede dilution.
- The appellant submits that the Local Authority has incorrectly concluded that the purpose of the SPA designation is for Hen Harrier nest sites rather than habitat area.
- It is submitted that the Local Authority ecologist report contains the Council's AA and draws on the consultation with the DoAHG.
- The general obligations of the Consenting Authority is controlled under XAB (Sections 177R – 177AE). Section 177V sets out the approach to 'AA'.
- It is submitted that the local authority's approach is consistent with Sections 177 (v) (1) (2) and (3) of the Act.

Potential Impacts on Pearl Mussel

- It is submitted that it is inaccurate of the appellant to conclude that there would be an affect on freshwater pearl mussel within the meaning of Article 177V (3). This section of the Act allows the competent authority grant consent only after having determined that the proposed development would not adversely affect the integrity of a European Site.
- The argument that there is an affect on the freshwater pearl mussel is not supported by the DoAHG.
- The concentration levels of ortho-phosphate are in dispute.
- The reports note that there is no juvenile or breeding freshwater pearl mussel populations in both areas and any temporary impact arising from increased loading associated with the currently proposed clearfelling will be confined to adult freshwater pearl mussels and other fish more tolerant of P loading.
- The reports from the Ecologists and the DoAHG both concluded that the impact on freshwater pearl mussel would only be temporary, i.e. 3

- 4 years, and subject to mitigation would not give rise to any adverse effects on the integrity of the either the Lower Shannon SAC or the Blackwater River.
- This above conclusion is important as it determines that the proposed development would not adversely impact on the SAC.
- The report by the DoAHG outlines mitigation measures required to be undertaken to avoid adverse effects.
- The project may therefore proceed in accordance with the ruling in CJEU258/11 and in accordance with Section 177V (3) of the Act.
- There is nothing invalid about the approach of the Local Authority in concluding that there are no adverse effects.
- The precautionary principle has been correctly applied and required mitigation measure that there is no adverse effects on the integrity of the site.

SPA Designation

- The SPA site is for the designated protection of the hen harrier.
- It is contended that the site is designated for the conservation of hen harrier and not the habitat present therein.
- Surveys of the site have been conducted over a 10 year period (2005 – 2014) and there is no history of hen harrier nesting within 5km of the site.
- However foraging and passing birds were recorded within the area of the wind farm during the same period.
- The forests proposed for clear felling are now a closed canopy stage and are not suitable habitat for hunting or breeding birds and this is accepted by the local authority's ecologist.
- The proposed development would only impact on nesting hen harrier of which there are none recorded within 5km of the site.
- The Local Authority's ecologist concluded that the proposed development would not affect the integrity of the SPA site.
- The Local Authority's ecologist requires the precautionary principle that monitoring is undertaken prior to the commencement of works and that any works are stopped where there are occurring within 500m of a nest.

Other Issues Raised in the Appeal

- It is submitted that none of the findings in Case C-215/06 are relevant to the proposed development.
- The following key points are noted;
 - the development has not commenced
 - EIS was prepared and lodged with the planning application
 - The Local authority has carried out an EIA and AA
 - There was no failure to carry out an EIA in advance of the project
- The proposed felling requires an EIS and as such an EIA. The key legislative requirement is that it should be accompanied by an EIS.

- The appellant has submitted that planning permission in relation to three previous applications should be reversed. However there is no argument supporting this statement.
- The appellant argues that landscape alterations will impact on the hen harrier. However the proposed replanting will be beneficial to the hen harrier as it will provide additional foraging areas.

8.0 ASSESSMENT

The main issues to be considered in this case are: -

- Principle of Development
- Environmental Impact
- Environmental Assessment
- Appropriate Assessment

Principle of Development

The appeal site is located in a rural upland area and in accordance with the provisions of the Cork County Development Plan, 2014 – 2020, there is no statutory zoning provision for the area. However there is an established land-use on the site and the immediate area which comprises of commercial forestation and an existing wind farm.

The proposed development as described in Section 2.0 above is essentially to facilitate an established use, i.e. the clear felling of existing forest to eliminate wind turbulence which can have an adverse impact on the efficiency of the existing wind farm. It is also intended that the forested land will lay fallow for a period of two-years and will then be replanted with Lodgepole Pine which grows to a lower height than the existing Sitka Spruce thus allowing for better wind efficiency.

Generally speaking the objectives of the use zoning in a statutory plan is to serve as a guideline for the control of development so as to achieve the goals set out in this plan. Usually where no specific use zoning is indicated, the primary use can be assumed to be that already existing in the area. In this particular instance the primary use is forestation and wind farm.

The proposed development will essentially facilitate an established use and therefore in my view the principle of the proposed development is acceptable provided the proposal protects amenities of the area including any designated sites.

Environmental Impact Assessment

The application is accompanied by an environmental impact statement and there is a non-technical summary document.

In relation to the adequacy of the E.I.S, I submit that it contains the information specified in Schedule 6 of the Planning and Development Regulations 2001, as amended. In general the information provided is considered to be relatively clear and precise. I would suggest that the statement be seen as a contribution towards the process of making available to the relevant decision maker and the competent authority, in this case the Board, the information necessary to enable the decision to be made. The information flowing from this process also includes information submitted with the application.

In accordance with the requirements of Article 3 of the European Directive 85/337/EEC, as amended by Council Directives 97/11/EC and 2003/35/EC and Section 171A of the Planning and Development Act, 2000 – 2010, the environmental impact statement submitted by the applicant is required to be assessed by the competent authority, at this juncture the Board. In this assessment the direct and indirect effects of the proposed development need to be identified, described and assessed in an appropriate manner, in accordance with Articles 4 to 11 of the Directive.

Human Beings, fauna and flora

In relation to direct and indirect impacts to **human beings** the proposed development will result in employment opportunities during the construction stage however this will be temporary in nature. This employment creation during the construction stage may have spin-off implications for the local economy.

The construction phase of the proposed development will directly impact on the local road network which will have an indirect impact on human beings. The proposed development will also result in the creation of dust, noise, and air pollution during construction stage which will also indirectly impact on human beings. Construction noise will occur during excavation and earth moving, laying of roads and clear felling. Additionally given the possibility of a construction site for the proposed development the proposal will have health and safety implications for human beings, such as construction workers.

The removal of the existing forestry will also have a visual impact which will have an impact on the landscape and may impact on tourism. The construction period may have implications for local watercourses, given the scale of activity, and thus in turn may also impact leisure activities such as fishing.

In relation to **flora and fauna** the appeal site is located within a designated SPA, i.e. Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (Site Code 04161). This SPA covers a large area in the counties of Cork, Limerick and Kerry and supports one of the largest populations of hen harriers (qualifying interest) in the Country. Table 6.1 of the EIS identifies other Bird Species recorded within the five forests designated for clearance. This survey was carried out in August 2014. The

EIS outlines that most of the bird species are recorded on the margins of the forests. It is also stated that the closed canopy forest plantations within the five coupes support a limited mammalian fauna and the EIS concludes that the proposed felling of the trees is not expected to have any significant adverse impacts on the populations of mammal species in the area. In terms of flora the EIS concludes that the development site is of limited conservation significance.

The appeal site is located approximately 5.5km outside the boundary of the Lower River Shannon SAC however part of the development site drains to a tributary of this cSAC. The southern part of the wind farm is approximately 2km outside the Blackwater River (Cork / Waterford) SAC and drains into a tributary of this SAC. There is therefore potential for surface water run-off from the appeal site to adversely impact on the water quality of SAC's outside the boundary of the appeal site.

Soil, water, air, climate and the landscape

In relation to **soil** a direct impact of the proposed development would be the removal of soil as part of the site clearance for the proposed road construction. The roads will be used to facilitate machinery gaining access to carry out initial clear felling operations and the ground preparation for future plantations. The clear felling operation will also possibly require spur roads which may result in soil compaction due to the movement of construction machinery and implication of this is that it will result in greater amounts of surface water run-off. The proposed felling will disturb soil, but this will mainly be topsoil, which will require drainage and silt management measures. However disturbance to soils for felling will be a temporary issue as it is proposed to replant these cleared areas within two years of clearance.

In relation to **hydrology** I would note that surface water from Coupe A, some of Coupe B and a portion of Coupe C drains to a small stream to the north which is a tributary of the River Feale. A portion of Coupe B is drained into a stream which feeds into the Owentaraglin River. Coupes D and E and the remaining portions of B and C lie in the Blackwater (Munster) catchment. The proposed development could potentially cause flood risk and pollution impacts on receiving waters during the construction stage.

In relation to **air** the construction of the roads and the deforestation is likely to result in dust generation. Construction activities such as stone importation, excavation, earth moving and backfilling may generate quantities of dust airborne and this is dependent on meteorological conditions such as wind and precipitation. Dust generation may occur at the proposed development site due to the removal of the overburden, excavation, the loading of the aggregates and the re-suspension of dust during the movement of vehicles on-site. There is potential for air pollution from non-road mobile plant, such as excavators, in the form of NO_x and CO.

In relation to impacts on **climate** the vehicle movement to and from the site will give rise to CO2 emissions which is a harmful gas contributing to global warming.

In relation to **landscape** the local area is generally defined by its upland character as it forms part of the southern foothills of the Mullaghareirk Mountain range in the north-west County Cork. The appeal site and its immediate environs is situated within a commercial forest and there is a recently constructed wind farm on the site. The proposed clear felling would change the character of the landscape and given the scale of the proposed clear felling this may have a visual impact. The main receptors of any such impact would be local residents or farmers working locally. The proposed road construction may also have a visual impact on the immediate area however the impact would be less significant having regard to established and proposed forestations which can screen any visual impact.

Materials assets and cultural heritage

In relation to **material assets** the proposed development will result in traffic generation mainly during the construction stage. This will have an impact on the local road network.

In relation to **cultural heritage** there are no recorded archaeological sites, architectural heritage or cultural heritage within the proposed development site. However there is the potential to impact on unknown archaeological sites as the proposed development will involve some level of excavation or below ground works for the construction of the road.

The interaction between the factors mentioned in the first, second and third indents

In my opinion the following interactions are relevant;

Human beings / landscape – the proposal will be visible from adjoining areas.

Human beings / noise and traffic – the proposed development will generate additional traffic and noise due to excavations.

Human beings / air quality – the proposal will have air implications during the excavation period.

Flora & fauna / landscape – the proposed development in terms of the works will result in a material alteration to the landscape.

Hydrology / Flora & Fauna – the proposal in terms of works may impact on protected sites.

10.4 Environmental Assessment

Human Beings, fauna and flora

In relation to **human beings** I would consider the most significant impacts of the proposed development would be noise generation. Table 9.8 outlines the worst-case predicted noise levels from road construction and site clearance at nearest noise sensitive properties. This table outlines that for almost all properties it is predicted that a noise level of less than 52 dB will be audible. However there is a single property, i.e. H20, where the predicted noise level is expected to be 57 dB. The EIS outlines that the noise audible at property H20 is likely to be less having regards to terrain and the degree of absorption of sound energy and that the noise generating activities will be located in the interior of the coupes at a distance from the outer site boundary of all the five coupes, from which distances to the nearest noise sensitive properties are calculated. I would note that Table 9.10 outlines worse-case predicted noise levels from clear felling at nearest noise sensitive properties. This Table indicates that the expected noise levels will be below 55 dB at all properties. The applicant intends to use best practice measures for construction machinery and examples are outlined in British Standard BS5228:2009. I would consider that a significant issue when considering noise implications is the temporary nature of the works and overall I would consider the EIS has demonstrated that noise will not unduly impact on established residential amenities.

In relation to **flora and fauna** the most significant concern having regard to the proposed development is the impact on the qualifying interest the hen harrier. The submitted EIS argues the existing commercial forest to be clear felled is a closed canopy forest which would not normally support nesting hen harriers. In addition to this argument the EIS cites a number of surveys conducted over the last 10 years and none of these surveys identify any hen harrier nests with 5km of the subject site. The surveys identified that hen harriers were foraging or passing the wind farms in 2012, 2013 and 2014. However the present forests proposed for removal are in closed canopy stage and not suitable for foraging. Therefore the loss by felling of the present forest zones will not have any adverse impacts on hen harriers which frequent the wider area. The EIS outlines that the planting of a new forest will offer foraging opportunities for hen harriers and this could last for approximately 10 years. The EIS outlines the concerns that foraging birds attracted to the new forest plantations may collide with existing wind farms however it is stated that the lower tip of the turbine are 35m above the ground level whereas the hen harrier is likely to forage at around 20m above ground level thus avoiding any potential collision. As such overall the proposed development offers a positive outcome for the hen harrier.

I would note that mitigation measures include avoiding certain areas which are habitats of interest, and measures to protect the hen harriers including precautionary principle that monitoring is undertaken prior to the

commencement of works and that any works are stopped where the works are occurring within 500m of a nest. Overall, on the basis of the information in the EIS and having regard to the submissions on the file I would be satisfied that the proposed development would not adversely impact on the hen harrier which are a protected species within the SPA.

The proposed development will have no significant implications for flora having regard to the established environment. This conclusion is consistent with the view of the local authority Ecologist, in her report, dated 30th January 2015.

The Local Authority Ecologist, in her report, concludes that the proposed development, based on the mitigation measures, would have no adverse implications terrestrial habitats of ecological value and birds. Overall, based on the information available in the EIS, I would consider that the proposed development will not result in any residual impacts that would adversely impact on any fauna or birds.

I have considered the implications of the proposed activities on the conservation significance within the River Shannon SAC and the Blackwater River (Cork / Waterford) SAC in the Appropriate Assessment that follows.

Soil, water, air, climate and the landscape

In relation to **soil** a direct impact of the proposed development would be the removal of soil as part of the excavation. I would note that the Environment Report from the Local Authority has no objections to the proposed development. Mitigation measures are set out in Section 8.5 of the EIS and overall I would consider that these measures would ensure no residual impacts.

In relation to **hydrology** and **hydrogeology** I have outlined the surface water and ground catchment above. The proposed road construction may impact on drainage and hydrology increasing run-off from the site and reducing infiltration to the groundwater. This in turn may impact on local streams thus having a flood risk. The soils will be compacted due to the use of heavy machinery and soil compaction can increase surface water run-off resulting in increased flood risk. Section 7.4.2.1 of the EIS carried out a flood risk assessment having regard to the expected run-off from the proposed road construction. It was concluded that the calculated run-off rates would be imperceptible. I would acknowledge that there is potential for surface water pollution due to unmanaged erosion / sediment deposition and suspended solids. There is also potential for adverse impacts on surface water due to accidental spillage of oil / fuel pollution and potential for alteration to the subsurface hydro-geological patterns. Following clearance there is increased potential for the increase in run-off until vegetation becomes re-established on the bare ground. During the construction phase there is potential for leaching of nutrients to the surface water. Phosphorous loss can occur during site preparation while nitrate

and ammonia can be lost during initial site drainage, thinning and harvesting stages.

Section 7.5.1 outlines the mitigation measures during construction stage and this includes construction will be restricted by exclusion / buffer zones thus avoiding sloping terrain. It is also intended that construction will be carried out in dry periods. The access road will be constructed of granular fill material and this will allow infiltration. The road profile will be designed to allow run-off to drainage ditches rather than running along the road. A surface water management plan is set out in the submitted 'Outline Construction and Environment Management Plan' and this will be developed prior to construction and its purpose is to maintain the existing flow regime. Mitigation measures also include a variety of drainage proposals and measures to address compaction of soil by heavy vehicles. In addition a number of measures are proposed to prevent contamination of the surface water. During the operational phase herbicides and pesticides, although not proposed, however should they be required there is potential for contamination of surface water. Section 7.5.2 sets out mitigation measures during the operation stage. I would generally concur with the EIS that should the mitigation measures be implemented the residual impacts will be minimal.

In relation to implications that the proposed development will have on **air quality** I would note that a significant issue is the separation distance of the proposed development from any nearby receptors. The proposed road construction site is located some 400 metres to the nearest sensitive receptor, i.e. residential property. Furthermore the proposed deforestation is located approximately 200 metres from the nearest sensitive receptor, i.e. residential dwelling. These, in my view, are significant separation distances given the temporary nature of the proposed works. The proposal also involves construction traffic which will be subject to the requirements of the Construction Traffic Management Plan (CTMP). Construction dust mitigation measures are set out in Section 10.5 of the EIS and overall I would consider, having regard to the temporary nature of construction works and the distances of nearest receptors to the site, that the proposed development would not adversely impact on air quality.

In terms of **climate** implications I would consider, given that the proposed development will involve clearfelling and replanting it will largely have a neutral impact as trees are essentially a carbon sink. However the existing forests proposed for clear felling is Sitka Spruce and these have a higher carbon in-take than the proposed trees for replanting which are Lodgepole Pine. Table 10.6 of the EIS estimates that the total greenhouse emissions for the construction phase is 8,036 tonnes of CO_{2eq}. This overall output is considered negligible in relation to Ireland's overall reduction target for 2020. I would concur with the conclusions of the EIS with regard to the implications of the proposed development on climate.

The **landscape** character of the appeal site is mountainous with planted forestation. The local landscape character is also now defined by wind

turbines which were recently permitted and constructed in the local area. The County Development Plan has carried out landscape assessment of the County. In accordance with the provisions of the Cork County Development Plan, 2014 – 2020, the appeal site nor its environs is not located within a designated 'High Value Landscape'. However there are several designated 'Scenic Routes' within the wider area of the appeal site. One of these designated 'Scenic Routes' is reference no. S16 'Road at Taur'. This designated Scenic Route is located approximately 2 – 3 km west of the appeal site. The EIS has completed a visual impact assessment and I would note that the EIS has identified that the proposed development will have a partial visual impact (View 1b) on this designated view, i.e. S16. Volume Two 'Heritage and Amenity' of the Cork County Development Plan, 2014 – 2020, describes this specific Scenic Route, i.e. S16. This view is described in the Plan as '*local road at Taur views of rolling upland landscape*' and the overall landscape value is described as medium. However overall I would consider that the visual impact would be temporary in nature as the land will be replanted thus returning to its original character. The proposed road is also identified as partially visible from the designated scenic route, however this will be screened in the medium term.

The EIS also outlines a visual impact assessment from three other viewpoints and it is concluded that the visual impact from these three locations will be neutral. I would note that the report from the Senior Executive Planner of Cork County Council concludes that the proposed development having regard to the rural area would not seriously detract from the visual amenities or landscape character of the area. Section 12.7 of the EIS outlines mitigation measures and I would conclude that having regard to the receiving landscape that the proposed development will have a slight to moderate visual impact on sensitive receptors locally.

Materials assets and cultural heritage

In relation to **material assets** the proposed development will result in traffic generation. The EIS anticipates that the construction of the new roads will generate approximately 6 – 7 daily truck movements which equates to less than one trip per hour over a 10 - 12 hour day. The road construction period is anticipated take one month. The traffic generated by the clearfelling is estimated as 7 no. two-way lorry movements per day and it is anticipated that the clearfelling will take a period of 2 - 3 months per felling coupe. Overall I would consider that this is not significant traffic generation having regard to the road capacity in the wider and the temporary nature of the proposal. However the EIS outlines a number mitigation measures to protect the road infrastructure from heavy vehicles that shall be used during the road construction and the clear felling.

In relation to **cultural heritage** the EIS survey, which involved a desk-top study and a field inspection, identified no features that would be of architectural or cultural heritage. The EIS also concluded that there are no known archaeological sites of interest within the proposed development

site. However I would concur with the EIS that there is potential for the presence of unrecorded, sub-surface archaeological deposits and artefacts. The EIS therefore recommends archaeological monitoring for any works that involve below ground works. I would concur with this conclusion and recommendation and I note that this conclusion is consistent with the report by the Archaeologist of Cork County Council, in her report dated 22nd January 2015.

The interaction between the factors mentioned in the first, second and third indents

I have outlined the interaction between environmental factors above and I would consider, and would be in concurrence with the E.I.S., that the interaction of the impacts does not lead to significant environmental impacts beyond those identified for each of the individual environmental topics.

I would not concur, based my EIA outlined above, with the appellant's argument that an EIA was not carried out by the local authority. Therefore I would not consider that the effect of the local authority decision is contrary to CJEU Decision in Case 258/11.

Appropriate Assessment

The appeal site is located within an SPA, i.e. Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle (Site code 04161). This SPA covers a large area in the counties of Cork, Limerick and Kerry and supports one of the largest populations of hen harriers in the Country. The hen harrier is a qualifying interest in this SPA.

The submitted Appropriate Assessment screening argues that the existing commercial forest to be clear felled is a closed canopy which would not normally support nesting hen harriers. In addition to this the Appropriate Assessment screening refers to a number of surveys conducted over the last 10 years and none of these surveys identify any hen harrier nests within 5km of the development site. The surveys identified that hen harriers foraging or passing the wind farms in 2012, 2013 and 2014. However the present forests proposed for removal are in closed canopy stage and not suitable for foraging. Therefore it is concluded that the loss by felling of the present forest zones will not have any adverse impacts on hen harriers which frequent the wider area. The Appropriate Assessment screening outlines that the planting of a new forest will offer foraging opportunities for hen harrier and this could last for approximately 10 years. The Appropriate Assessment screening outlines the concerns that foraging birds attracted to the new forest may collide with existing wind turbines however it is stated that the lower tip of the turbine is 35m above the ground level whereas the hen harrier is likely to forage at around 20m above ground level thus avoiding any potential collision.

I would note that mitigation measures include avoiding certain areas which are habitats of interest, and measures to protect the hen harrier including the precautionary principle that monitoring is undertaken prior to the commencement of works and that any works are stopped where they are occurring within 500m of a nest. On this basis the Appropriate Assessment Screening concludes that the proposed project will not contribute to any in-combination effect leading to adverse impacts on the special conservation interests of the SPA and recommends that a Natura Impact Statement is not required. I would note that the local authority ecologist concurs with these conclusions. On the basis of the information available, the nature of the proposed development and the absence of any identified nest within the development area I would conclude that a Stage 2 Appropriate Assessment is not required for the SPA.

I acknowledge the submission from the appellant who argues that the AA carried out by the local authority is invalid. The appellant appears to reach this conclusion on the basis that the conversion of forestry to wind farms produces a net loss of hen harrier habitat and that forestry is a negative impact compared to previously open terrain. Although open terrain rather than forests may offer a more suitable habitat for hen harriers the proposed development which involves clear felling, fallow and replanting will have no impact on any of the existing open terrain lands. The proposal simply involves replacing existing forest with new plantations. However as the existing forests are at closed canopy stage they currently offer limited foraging opportunities for hen harriers and the proposed replanting will offer foraging opportunities for hen harriers for approximately 10 years after replanting. The proposed development, contrary to the appellant's argument, offers a net benefit for hen harriers.

The appeal site is located approximately 5.5km outside the boundary of the Lower River Shannon SAC (Site Code 002165) however part of the area drains to a tributary of the cSAC. The River Feale forms part of the Lower River Shannon cSAC and is designated at the point where the tributary confluences near Glenacarne Bridge, west of Rockchapel. This is a distance of approximately 6km downstream of the proposed felling coupes A and B, and approximately 5.5km downstream of the northern part of felling couple C.

The proposed development could potentially cause flood risk and pollution impacts on receiving waters during the construction stage and operational stage. The proposed development runs the risk of causing increased siltation and pollution impacts affecting the receiving surface waters. I would note from the AA screening that forestry activities can result in negative pressures on aquatic ecosystems and these include the following;

- Eutrophication (nutrient enrichment)
- Sedimentation
- Acidification

Acidification is largely linked to closed canopy nature of forest cover on poor soils and rocks. Whereas the first two pressures above is largely linked to forest activities such as harvesting, road construction and replanting. In the absence of mitigation measures the tree-felling activities are likely to result in soil disturbance resulting in suspended solids to tributaries of sensitive surface waters. These activities will have potential for significant downstream impacts most particular to Annex II species salmon and freshwater pearl mussel, which is sensitive to siltation.

There is therefore potential for surface water run-off from the appeal site to adversely impact on the water quality of SAC's outside the boundary of the appeal site which may impact on the ecological significance of the SAC. Accordingly I would concur with the conclusion in the AA screening that a Stage 2 Appropriate Assessment would be required to assess the impact of the proposed development on the Lower River Shannon SAC.

The southern part of the development site is approximately 2km outside of the drains into, a tributary of the Blackwater River (Cork / Waterford) SAC (site code 0021700). Couple D and most of C drain to the Owenkeal River which forms part of the Blackwater River SAC. This designation begins at Clashykinleen Bridge approximately 5km downstream of the proposed felling areas C and D. Coupe E drains via Stream E to the Owenkeal River which forms part of the Blackwater River SAC. The designation begins at on the River Owentaraglin near Garrisons Bridge, just over 2km downstream of the proposed felling area E.

The proposed development is also likely to result in activities that potentially will adversely impact on designated species in the River Blackwater SAC and this includes Atlantic salmon, lampreys and freshwater pear mussel. On this basis the Appropriate Assessment Screening concluded that a Stage 2 Appropriate Assessment was required and I would concur with this conclusion.

The applicant submitted a NIS in relation to the impacts affecting the Lower River Shannon SAC and the Blackwater River SAC. In relation to freshwater pearl mussel the NIS submits that records of freshwater pear mussel indicate that populations of species are a significant distance from the proposed works in each sub-catchment and the proposed development is not expected to have any significant impacts on this qualifying interest in either cSAC. In addition the NIS concludes that the impacts with regard to sedimentation and eutrophication that may affect salmon, could give rise to negative effects on lamprey recruitment in the upper reaches of the sub-catchment of the Blackwater River. The NIS also concludes that there is potential for a temporary slight negative localised impacts arising from cumulative forestry activities.

I have reviewed Section 4.3 of the NIS which sets out mitigation measures and I would acknowledge that the NIS concludes that, having regard to the separation distances of the qualifying interests from the development sites and the proposed mitigation measures no impacts identified would have

the potential to adversely affect the conservation objectives for freshwater pearl mussel and Atlantic salmon in the case of the Lower River Shannon cSAC (Site Code 002165). Having regard to mitigation measures and separation distances the NIS concluded that proposed development would not adversely impact on Atlantic Salmon, Sea, River and Brook Lamprey and freshwater pear mussel in the River Blackwater SAC. I would also note that the applicant has included a comprehensive range of measures in the submitted a draft Construction Environmental Management Plan, Surface Water Management Plan and felling plan and these set out measures which are to be implemented to prevent release of sediments and to minimise release of nutrients to watercourse.

I would note that the submission from the DoAHG which requires an explanation within the NIS that the phosphorous eutrophication, in combination with other sources, could occur in the 1st and 2nd order streams, but is unlikely to significantly impact on 3rd order sites on the Owenkeal and Owentaraglin and far less likely to impact in larger main channels such as the Feale or the River Blackwater further downstream. The DoAGH outlines it is necessary to understand the in-combination phosphorous loading on the downstream populations.

In the response the applicant submitted a report from Aquatic Services Unit of UCC which focuses in particular on potential for nutrient inputs to affect the freshwater pear mussel population in the lower reaches of reaches of the Ownentaraglin and in the main channel of the River Blackwater. The report includes monitoring results which indicate that total P loading are within levels required to achieve good-moderate water quality status for the vast majority of sampling points monitored. The DoAHG casts doubt on the conclusions of this report mainly in connection with the background levels of ortho-phosphates recorded. However the DoAGH concludes that given that impacts due to the proposed development are temporary in nature, approximately 3 – 4 years in length, and also that the impact will be on non-reproducing population of Pearl Mussels and host fish which are more tolerate of P loading and that overall the proposed development is acceptable.

The local authority ecologist is satisfied that the proposed development including mitigation measures that there is no potential for adverse effects on the integrity of the Lower River Shannon SAC (Site Code 002165) and the Blackwater River (Cork / Waterford) SAC (site code 0021700).

I would consider that having regard to the documentation on the file and the nature and scale of the proposed development including the drainage management proposals, and mitigation measures and the separation distance from the qualifying interests, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European sites no. 002165 and site no. 0021700, or any other European site, in view of the site's conservation objectives.

9.0 RECOMMENDATION

I have read the submissions on the file, visited the site, had due regard to the development plan and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

REASONS AND CONSIDERATIONS

Having regard to the nature of the proposed development, to the planning history of the site and the established uses, to the location of the site, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential amenities of the area, would be acceptable in terms of traffic safety and convenience, would not have an adverse impact on the environment and would, otherwise, 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, documents and particulars lodged with the application, as amended by further plans submitted on the 30th day of July 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The environmental mitigation measures set out in the Environmental Impact Statement received by the planning authority on the 2nd day of December, 2014, and the revised Environmental Impact Statement received by the Planning Authority on the 30th day of July 2015 shall be implemented in full.

Reason: In the interest of environmental protection and to protect the amenities of the area.

3. Prior to the commencement of development the developer shall submit a final draft of a Construction and Environmental Management Plan to the Local Authority. The full details and contents of the CEMP shall be agreed, in writing, with the Local Authority prior to submission.

Reason: In the interest of environmental protection and to protect the amenities of the area.

4. A revised soil stability management plan shall be submitted for agreement to the local authority prior to the commencement of development. The plan shall take account of the construction and operational phase of the development. **Reason:** In the interest of protecting the environment.
5. Monitoring of the construction phase shall be carried out by a suitably qualified environmental scientist / engineer to ensure that all Environmental mitigation measures contained in the EIS and the draft CEMP are implemented. In implementing the CEMP the scientist / engineer shall audit the construction process in accordance with the audit protocols outlined in the CEMP on a monthly basis during the earthworks programme and quarterly thereafter. Within three months of the completion of construction report containing the results of monitoring shall be submitted to the Planning Authority.

Reason: To ensure full implementation of mitigation measures and provide protection to natura sites.

6. (a) Activities at the site shall not give rise to noise levels off-site, at noise sensitive locations, which exceed the following sound pressure limits (Leq,T):

Day 55dB(A) $L_{Aeq(30\text{ minutes})}$ (08:00 hours to 22:00 hours).

Night 45dB(A) $L_{Aeq(30\text{ minutes})}$ (22:00 hours to 08:00 hours).

Noise levels shall be measured at the noise monitoring locations. Monitoring results shall be submitted to the Planning Authority on a quarterly basis per year.

- (b) There shall be no tonal or impulsive noise at noise sensitive receptors during night-time hours due to activities carried out on site.

Reason: To control emissions from the facility and provide for the protection of the environment.

7. Prior to commencement of development the developer shall agree in writing with the planning authority the details of the haul route within the county. Details of the monitoring the structural integrity of local roads and bridges and methods to assess the impact of the proposed development on these roads and bridges shall be agreed between the developer and the planning authority.

Reason: In the interest of road safety.

8. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate annual breeding and wintering bird surveys of this site. Details of the surveys to be undertaken and associated reporting requirements shall be developed in consultation with the Department of Arts, Heritage and the Gaeltacht,

and shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. These reports shall be submitted on an agreed date annually for five years, save with the prior written agreement of the planning authority. Copies of the reports shall be sent to the Department of Arts, Heritage and the Gaeltacht.

Reason: To ensure appropriate monitoring of the impact of the development on the avifauna of the area.

9. Prior to commencement of development, a Construction Management Plan shall be submitted to and agreed in writing with the planning authority. The plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, offsite disposal of construction/demolition waste.

Reason: In the interest of amenities, environmental protection and public safety.

10. Archaeological Monitoring shall consist of the following;

- (a) The Developer shall engage the services of a suitably qualified Archaeologist to monitor all topsoil stripping associated with the development.

- (b) Should archaeological material be found during the course of monitoring, the Archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The Developer shall be prepared to be advised by the Local Authority with regard to any necessary mitigating action (e.g. preservation *in situ*, and/or excavation). The Developer shall facilitate the archaeologist in recording any material found.

- (c) The Planning Authority shall be furnished with a report describing the results of the monitoring.

Reason: To ensure the continued preservation (either *in situ* or by record) of places, caves, sites, features or other objects of archaeological interest.

11. Throughout the construction phase of the proposed development, appropriate advance warning signs shall be erected and maintained. The locations and design of these warning signs shall be submitted for the written agreement of the planning authority.

Reason: In the interest of traffic safety

12. All drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

13. During the development works, the developer shall not permit any material from the site to be spread or deposited along the public roadway. The developer shall be responsible for maintaining the roadway in a neat, tidy and safe condition to the satisfaction of the planning authority.

Reason: In the interest of traffic and public safety.

14. No polluting matter shall be allowed to drain from the site and enter any waters on, adjacent to or around the site.

Reason: To safeguard the amenities of the area.

15. All operations shall be carried out in such a manner as to ensure that no odour or dust nuisance occurs beyond the site boundary because of such operations.

Reason: To safeguard the amenities of the area.

16. All waste generated on the site shall be disposed through appropriately licensed collection and disposal contractors.

Reason: To safeguard the amenities of the area.

17. Prior to the commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the satisfactory reinstatement of the public road in the vicinity of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road in the vicinity of the site. The form and amount of the security shall be agreed between the planning authority and the developer, and in default of such agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the public road in the vicinity of the site.⁶

18. 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.

Kenneth Moloney
Planning Inspector
8th February 2016