
An Bord Pleanála



Inspector's Report

Ref.: PL08.246205

Development: The construction of an underground grid connection and a short section of access track for the Cloghaneleskirt Wind Farm. This application is intended to amend a short section of the route of the underground grid connection consented under approved planning reference 2015/318. The underground grid connection is required for the construction and operational phases of the aforementioned planning reference.

Cloghboola, Glantaunyalkeen, Co. Kerry.

PLANNING APPLICATION

Planning Authority: Kerry County Council

Planning Authority Ref.: 15/1044

Applicant: Peter O'Brien

Type of Application: Permission

Planning Authority Decision: Grant subject to conditions

APPEAL

Type of Appeal: Third Party v. Decision

Appellant: Deirdre Cremins

Observers: None.

INSPECTOR: Robert Speer

Date of Site Inspection: 30th April, 2016

1.0 INTRODUCTION

1.1 The Board is advised to determine this appeal in conjunction with ABP Ref. No. PL08. 245983 on the basis that they are located on immediately contiguous sites.

2.0 SITE LOCATION AND DESCRIPTION

2.1 The proposed development site is located in the rural townlands of Cloghboola and Glantaunyalkeen, Co. Kerry, approximately 11km southwest of Abbeyfeale and 13km south-southeast of Listowel, in an elevated upland area of the Glanaruddery Mountains where the surrounding landscape is predominantly characterised by blanket bog, degraded / cutover bog and conifer plantations interspersed with intermittent instances of one-off rural housing. The site itself has a stated site area of 2.62 hectares, is irregularly shaped, and forms part of a wider landholding held in multiple ownerships which encompasses the recently constructed Cloghboola Wind Farm in addition to those lands approved for the future development of the Dromadda Beg Wind Farm. The lands in question incorporate a gradual downward slope from north to south although the wider area is primarily drained in a westwards direction by a large number of small streams and drainage channels discharging to Smearlagh River. Access to the site is presently obtained via a series of hardcore tracks which extend from the local road network to provide access to the existing wind farm development and surrounding lands.

3.0 DESCRIPTION OF PROPOSED DEVELOPMENT

3.1 The proposed development consists of the following:

- The amendment of a section of the route of the underground grid connection previously approved under PA Ref. No. 15/318 in order to allow the Cloghaneleskirt Wind Farm to connect to the 110kV electrical substation in the townlands of Cloghboola & Glantaunyalkeen as detailed in PA Ref. No. 15/318.
- The construction of a section of access track approximately 141m in length to link a permitted forestry track with an existing access track in the townland of Cloghboola.

4.0 RELEVANT PLANNING HISTORY

4.1 On Site:

PA Ref. No. 004099. Was granted on 10th June, 2002 permitting Saorgus Energy Ltd. permission to construct a wind farm comprising 24 no. wind turbines, service roadways, switchgear / transformer compound, borrow pit, control house and meteorological mast.

PA Ref. No. 012719. Was granted on 19th June, 2002 permitting Peter O'Brien and Helen Brosnan permission to erect 3 No. 1MW wind turbines, services roadways and a control house.

- PA Ref. No. 0192719. Was granted on 9th September, 2007 permitting Peter O'Brien and Helen Brosnan an 'Extension of Duration' of PA Ref. No. 012719.
- PA Ref. No. 01992719. Was granted on 20th July, 2012 permitting Peter O'Brien and Helen Brosnan an 'Extension of Duration' of PA Ref. No. 012719 until 18th June, 2017.

PA Ref. No. 081454. Was refused on 1st July, 2009 refusing Knocknagoshel Windfarm Ltd. permission to erect 20 No. wind turbine generators of 125m overall height, extension of existing site roads and construction of a wind farm control buildings as an amendment to PA Ref. No. 00/4099.

PA Ref. No. 10616. Was granted on 30th May, 2011 permitting Knocknagashel Windfarm Ltd. permission to erect 20 No. wind turbines of 125m overall height, 110kV substation / compound and control buildings, extension of existing site roads, associated drainage and site works as an amendment to PA Ref. No. 00/4099.

PA Ref. No. 13544 / ABP Ref. No. PL08.243573. Was granted on appeal on 8th December, 2014 permitting Dromadda Beg Wind Farm Limited permission for the erection of 3 No. electricity generating wind turbines of hub height up to 94.5 metres and rotor diameter up to 101 metres, hardstandings, a control building, associated site roads, drainage and site works as an amendment to planning register reference number 01/2719. The development is located in the townlands of Dromadda Beg, Glantaunyalkeen and Cloghboola, Lyracrumpane, Listowel, Co. Kerry, as amended by the revised public notice received by the planning authority on the 17th day of April, 2014.

PA Ref. No. 15318. Was granted on 16th July, 2015 permitting Peter O'Brien permission to construct an underground grid connection for the Cloghaneleskirt Windfarm consented under approved Planning Ref. 2003/1264. The underground connection is required for the construction and operational phases of the aforementioned planning reference. All at Cloghaneleskirt, Lyracrumpane, Glantaunyalkeen, Dromadda Beg & Cloghboola, Co. Kerry.

PA Ref. No. 15874 / ABP Ref. No. PL08.245983. Was granted by the Planning Authority on 1st December, 2015 permitting Dromadda Beg Windfarm Ltd. permission to construct 51m of 5m wide access road from the consented Dromadda Beg Wind Farm site boundary to link to the access road on the neighbouring Cloghboola Wind Farm site. There will also be upgrade works to 101m of access road from 4m to 5m of existing road at the Cloghboola Wind Farm. The works will also include the laying of a 1.4km long cable along the road verges from the Dromadda Beg Wind Farm Substation to the Cloghboola Wind Farm substation to enable connection to the national grid. All at Dromadda Beg, Cloghboola and Glantaunyalkeen, Listowel, Co. Kerry. This decision has since been appealed and a final decision is pending with the Board.

4.2 On Sites in the Immediate Vicinity:

PA Ref. No. 031264. Was granted on 15th December, 2003 permitting Peter O'Brien permission to construct 5 No. 2MW wind turbines, 1 No. 60m wind monitoring mast (temporary), services roadways and control house at Cloghaneleskirt, Tralee, Co. Kerry.

PA Ref. No. 11671. Was granted on 1st November, 2011 permitting Knocknagashel Windfarm Ltd. permission to upgrade and extend existing farm track, consisting of the widening of existing section of farm track to 4.5m width and the construction of a new section of track of 4.5m width, between the existing track end point and the wind farm internal site road network, to serve as an alternative entrance for emergency vehicles to the Cloghboola Wind Farm during the construction and operational periods of the wind farm. The track may also be used by the existing landowners for servicing their respective farms. All at Muingwee, Knocknagoshel, Co. Kerry.

PA Ref. No. 13414. Was granted on 21st May, 2014 permitting Peter O'Brien permission to construct a new section of access track, a borrow pit and an electrical substation building for the construction and operation of the Cloghaneleskirt Wind Farm consented under Planning Reference 03/1264. The access track is required for the construction and operational phases of the

aforementioned planning reference. The access track will be required for the lifetime of the wind farm at this site. All at Cloghaneleskirt, Lyracrumpane, Listowel, Co Kerry.

PA Ref. No. 13234. Was granted on 16th July, 2013 permitting Knocknagoshel Windfarm Ltd. permission to develop a 110kV substation / compound and associated single control building and ancillary works as an amendment to the 110kV substation / compound and two control buildings which were granted planning permission under PA Ref. No. 10616. All at Cloghboola, Knocknagoshel, Co. Kerry.

5.0 PLANNING AUTHORITY CONSIDERATIONS AND DECISION

5.1 Decision:

On 27th January, 2016 the Planning Authority issued a notification of a decision to grant permission for the proposed development subject to 5 No. conditions which can be summarised as follows:

- Condition No. 1 – Refers to the submitted plans and particulars.
- Condition No. 2 – Requires the archaeological monitoring of all ground works.
- Condition No. 3 – Refers to the implementation of the mitigation measures set out in the Natura Impact Statement and the appointment of an on-site environmental manager / ecological clerk of works to supervise compliance with the said mitigation measures, particularly in relation to water quality control and management.
- Condition No. 4 - Prohibits the proposed development from adversely affecting existing land or road drainage in the area.
- Condition No. 5 – Refers to the reinstatement of any road damage to the satisfaction of the Planning Authority

5.2 Objections / Observations:

A single submission was received from the appellant and the principle grounds of objection contained therein can be summarised as follows:

- The likely loss of ecological habitats
- The proposal will be contrary to the proper planning and sustainable development of the area.
- The proposal is in conflict with the aims and objectives of the County Development Plan.

5.3 Internal Reports:

County Archaeologist: States that whilst there are no recorded monuments in the immediate area of the proposed development, as with the previous planning application lodged under PA Ref. No. 15318, all ground works should be subject to archaeological monitoring.

Biodiversity Officer: States that a Stage 2 Appropriate Assessment was required as significant effects on two Natura 2000 sites could not be ruled out and that, subject to the mitigation measures proposed in the NIS, adverse effects on the integrity of Natura 2000 sites are considered unlikely. The report proceeds to state that, in the event of a grant of permission, consideration should be given to the imposition of a condition which will require the engagement of the services of an on-site environmental manager / ecological clerk of works in order to supervise compliance with the mitigation measures set out in the Natura Impact Statement. This clerk of works should be empowered to ensure compliance with the mitigation measures and / or to halt construction works if a pollution event is deemed to be likely.

5.4 Prescribed Bodies / Other Consultees:

Health Service Executive (Senior Environmental Health Officer): No objection provided the proposed development is carried out in accordance with best practice and that measures such as runoff and sediment control, fuel and oil management plans, and waste control etc. are strictly adhered to.

Department of Arts, Heritage and the Gaeltacht: States that it concurs with the recommendation of the County Archaeologist and recommends that archaeological monitoring is required as a condition of any grant of permission.

6.0 GROUNDS OF APPEAL

The grounds of appeal are summarised as follows:

- Inadequate information has been submitted to allow the Planning Authority to effectively assess the potential impact of the proposed development on the surrounding area, particularly as the proposal will result in the linking of the (permitted) Dromadda Beg, Cloghboola & Cloghaneleskirt wind farms.
- No information has been provided as regards the cumulative environmental impact of the wider wind farm developments in the area.

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- The Natura Impact Statement submitted with the application restricted its assessment to the proposed development and although it subsequently recommended the implementation of a series of mitigation measures, the specific details of these mitigation measures have not been provided nor are they required to be submitted as a condition of the grant of planning permission.
 - In the case of *O’Grianna v. An Bord Pleanala and Others*, it was held that the development of a wind farm and the connection to the national grid could not be severed and that any attempt to separate the two phases amounted to ‘project-splitting’ in contravention of the EIA Directive.
 - The Dromadda Beg and Cloghboola wind farms are located in close proximity to one another and will effectively be linked to form a single overall wind farm development under PA Ref No. 15/874 (presently on appeal to the Board pursuant to ABP Ref. No. PL08.245983). The subject proposal will effectively serve to link the Dromadda Beg, Cloghboola & Cloghaneleskirt wind farms into a single overall scheme. Although the aforementioned 3 No. wind farms were previously the subject of individual environmental impact assessments, it is submitted that the original underground grid connection for the development of the Cloghaneleskirt wind farm (PA Ref. No. 15/318) was not subjected to any environmental impact assessment.
 - An Environmental Impact Assessment pursuant to the requirements of the Planning and Development Regulations, 2001, as amended, will examine the detail, nature and extent of any mitigation required in order to adequately address the cumulative impacts associated with the Dromadda Beg, Cloghboola & Cloghaneleskirt wind farms in addition to the underground grid connection. This level of detailed assessment is considered critical in light of recent changes to environmental legislation and environmental impact assessment practices in addition to the need to implement EU Directives relevant to protected sites, which have all changed significantly since permission was granted for the original 3 No. wind farm developments.
 - A requirement has been identified for a ‘sub-threshold’ environmental impact assessment.
 - Whilst the Natura Impact Statement has detailed that the proposed cabling will be located underground, it is considered that the associated constructional impacts will extend beyond the excavation of the trench width.
 - Insufficient detail has been provided of the excavation plant as well as the proposed ‘stockpiling’ of excavated material prior to the backfilling of same

whilst there has been no assessment of the location for the proposed deposition and subsequent treatment (if required) of the excavated material. These construction works will have a significantly wider impact on the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area than the trench width referenced in the Natura Impact Statement.

- A detailed environmental impact assessment would have confirmed the detail, nature and extent of any mitigation required in terms of visual impact.
- The proposed construction of a new roadway and associated upgrading works could have a significant visual impact on being viewed from within the surrounding landscape.
- In the case of *O'Grianna v. An Bord Pleanala and Others*, it was held that the construction of wind turbines was only the first stage in the development of a wind farm and that a connection to the national grid was a necessary second phase with any attempts to separate the two phases amounting to 'project-splitting' in contravention of the EIA Directive. In this respect the Courts have therefore rejected the previous practice employed by the developers of wind farms whereby planning applications for wind farm developments were submitted in advance of a planning application for the grid connection works. Accordingly, in order to comply with the EIA Directive, the developers of wind farms should not submit a planning application until such time as the environmental impact of the necessary grid connection works have also been fully assessed. Therefore, it is submitted that the subject proposal involves a scenario whereby project-splitting would appear to have occurred in the absence of any assessment of the cumulative impact of the overall wind farm developments planned at this location.

7.0 RESPONSE TO GROUNDS OF APPEAL

7.1 Response of the Planning Authority:

None.

7.2 Response of the Applicant:

None.

8.0 NATIONAL AND REGIONAL POLICY

8.1 Wind Energy Development Guidelines, Guidelines for Planning Authorities:

The guidelines pertaining to wind farm development in Ireland are set out in the publication "Wind Energy Development Guidelines, Guidelines for Planning Authorities" by the Department of the Environment, Heritage and Local Government in June 2006. The presumption is in favour of wind farm development in suitable circumstances.

The Guidelines indicate:

- The need for a plan led approach.
- In section 4.3 there is reference to access to the electricity grid and that best practice would suggest having in applications for windfarms information on grid connection including indicative or feasible options but this may not always be possible.
- Noise is another important consideration and is referred to in paragraph 5.6 and account should be taken of the nature and character of nearby surroundings and developments in assessing noise levels and guidance on levels for different locations are outlined.
- Chapter 6 relates to aesthetic considerations in siting and design.
- Regard should be had to profile, numbers, spacing and visual impact and the landscape character.
- Account should be taken of intervisibility of sites and the cumulative impact of developments.

The Guidelines consider that the following influence visual impact:

- Form and characteristics of the landscape;
- Design and colour;
- The existing skyline;
- Layout of turbines, and
- The number and size of turbines and intervisibility of sites.

9.0 DEVELOPMENT PLAN

Kerry County Development Plan, 2015-2021:-

Chapter 7: Transport & Infrastructure

Section 7.6: Energy/Power Provision:

EP-1: Support and facilitate the sustainable provision of a reliable energy supply in the County, with emphasis on increasing energy supplies derived from renewable resources whilst seeking to protect and maintain biodiversity, archaeological and built heritage, the landscape and residential amenity.

EP-3: Facilitate sustainable energy infrastructure provision, so as to provide for the further physical and economic development of the County.

EP-7: Facilitate the sustainable development of additional electricity generation capacity throughout the region/county and to support the sustainable expansion of the network. National grid expansion is important in terms of ensuring adequacy of regional connectivity as well as facilitating the development and connectivity of sustainable renewable energy resources.

EP-8: Ensure that the siting of electricity power lines is managed in terms of the physical and visual impact of these lines on both the natural and built environment, the conservation value of Natura 2000 sites and especially in sensitive landscape areas. When considering the siting of powerlines in these areas the main technical alternatives considered should be set out, with particular emphasis on the undergrounding of lines, and the identification of alternative routes at appropriate locations. It should be demonstrated that the development will not have significant, permanent, adverse effects on the environment including sensitive landscape areas and the ecological integrity of Natura 2000 sites.

Section 7.6.3: *Renewable Energy:*

EP-11: Implement the Renewable Energy Strategy for County Kerry (KCC 2012).

Chapter 10: Natural Environment & Flood Risk Management:

Section 10.2: *Environmental Designations:*

NE-11: Ensure that all projects likely to have a significant effect on a Natura 2000 / European site will be subject to Habitats Directive Assessment prior to approval.

NE-12: Ensure that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites having regard to their conservation objectives, shall be permitted on the basis of this Plan (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions.

NE-13: Maintain the nature conservation value and integrity of all Natural Heritage Areas (NHAs), proposed Natural Heritage Areas (pNHAs), Nature Reserves and Killarney National Park. This shall include any other sites that may be designated at national level during the lifetime of the plan in co-operation with relevant state agencies.

Section 10.14: *Environmental Impact Assessment*

Chapter 12: Zoning & Landscape:

Landscape Protection:

ZL-1: Protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to the quality of people's lives.

Section 12.3.1: *Zoning Designations:*

Rural General:

Rural landscapes within this designation generally have a higher capacity to absorb development than the previous rural designations. It is important that development in these areas be integrated into their surroundings in order to minimise the effect on the landscape and to maximise the potential for development.

Proposed developments in areas zoned Rural General, should in their designs take account of the topography, vegetation, existing boundaries and features of the area as set out in the Building a House in Rural Kerry Design Guidelines (Kerry County Council 2009). Permission will not be granted for development which cannot be integrated into its surroundings.

N.B. From a review of Map 12.1(c) of the Development Plan it is apparent that the proposed development site is located within an area which has been designated as '*Rural General*'.

10.0 ASSESSMENT

From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development
- Environmental Impact Assessment
- Appropriate Assessment
- Other issues

These are assessed as follows:

10.1 The Principle of the Proposed Development:

10.1.1. From a review of the available information, it is apparent that there has been a multiplicity of individual planning applications granted permission over the years both on site and in the immediate vicinity of same with regard to the development of wind energy and that the gradual and continued evolution / revision of these individual projects has effectively culminated in a scenario whereby what were originally envisaged as a number (3 No.) of separate 'wind farms' have since sought to integrate certain elements of their infrastructure in order to connect to the national grid. In my opinion, the subject proposal, which is essentially limited to certain identified infrastructural and servicing works located (in part) within the confines of the approved wind farms and cable routes, can be considered to represent a further revision / modification of the already approved developments and thus it would be entirely reasonable to have regard to those extant grants of permission in addition to those works already undertaken (i.e. the construction of several wind turbines and associated infrastructure) within the Cloghboola Wind Farm.

10.1.2 In support of the foregoing, I would advise the Board that the subject proposal involves the amendment of the route of a section of the grid connection previously approved under PA Ref. No. 15318 between the Cloghaneleskirt Wind Farm and the 110kV substation in the townlands of Glantaunyalkeen and

Cloghboola in addition to the construction of a new section of access road approximately 141m in length which will serve to link an approved forestry track with an existing access roadway within the Cloghboola wind farm. The specifics of this revised cable routing are detailed in the documentation which has accompanied the planning application and in this regard it should be noted that the proposal will actually result in a slightly shorter grid connection route than was previously approved.

10.1.3 Accordingly, on the basis of the foregoing, I am satisfied that the subject proposal is intrinsically related to the extant grants of permission on site and beyond and that there is no need to revisit the wider merits or overall principle of the wind energy developments already permitted.

10.2 Environmental Impact Assessment:

10.2.1 Concerns have been raised in the grounds of appeal that inadequate information has been submitted with the subject application to permit an effective assessment of the potential cumulative and in-combination impacts of the proposed works when taken in conjunction with other existing, permitted and planned wind energy-related developments in the area. In this respect particular reference has been made to the fact that the proposed development will result in the linking of the Dromadda Beg, Cloghboola & Cloghaneleskirt wind farms. Furthermore, it has been suggested that notwithstanding any individual environmental impact assessments which were previously conducted in respect of the aforementioned 3 No. wind farms, no such environmental impact assessment was undertaken of the underground grid connection for the Cloghaneleskirt wind farm approved under PA Ref. No. 15318 and thus there is a requirement for a collective 'sub-threshold' environmental impact assessment of all those wind farm and grid connection developments in the area.

10.2.2 Having reviewed the available information, in my opinion, it is of particular relevance in the first instance to note that the subject proposal effectively involves the revision of the underground grid connection previously permitted under PA Ref. No. 15318 and that those works were not deemed by the Planning Authority to involve a class of development which is prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, and thus there was no requirement for that planning application to be accompanied by an Environmental Impact Statement. It is also notable that PA Ref. No. 15318 was screened for the purposes of 'sub-threshold' environmental impact assessment and that the Planning Authority further determined that the works in question were unlikely to have any significant effects on the environment having regard to the criteria set out under Schedule 7 of Regulations and thus did not

necessitate the submission of an EIS. Accordingly, given that the subject works are considerably less significant in terms of their overall scale when compared to the approved grid connection, it would seem somewhat disproportionate to necessitate the submission of an EIS with regard to same.

10.2.3 Notwithstanding the foregoing, it is clearly apparent in any event that given the nature and scale of the works proposed, the subject proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the preparation of an Environmental Impact Statement. Similarly, having regard to the site location, the context of the proposed development site, and the nature and limited scale of the works proposed, it is my opinion that the said works would be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of Regulations and thus do not necessitate the submission of an EIS. In this regard it is of particular relevance to note that the majority of the amended route of the grid connection as proposed (save for that section along the new length of access road) will follow the line of a forestry track which has already received the approval of the Department of Agriculture, Food and the Marine, subject to conditions (the proposed new section of access track is described as crossing approximately 85m of conifer forestry, c. 10m of blanket bog, c. 41m of cutover bog and 5m of wet heath).

10.2.4 With regard to the specific suggestion in the grounds of appeal that inadequate information has been submitted with the subject application to permit an effective assessment of the potential cumulative and in-combination impacts of the proposed works when taken in conjunction with other existing, permitted and planned wind-related energy developments in the area, I would again reiterate that the subject works do not necessitate the submission of an EIS and that having screened same I am also satisfied that they would be unlikely to have significant effects on the environment. Furthermore, it is clear that the potential cumulative and in-combination impacts of the Dromadda Beg Wind Farm and the Cloghboola Wind Farm were already addressed as part of the Environmental Impact Statement which accompanied PA Ref. No. 13/544 / ABP Ref. No. PL08.243573 and in this respect the Board is referred to its determination of that appeal and, more particularly, to the contents of its order wherein it is stated that the Board adopted *'the Inspector's report on the Environmental Impact Statement and concurred with its conclusions'* and that it considered that *'the Environmental Impact Statement submitted with the planning application, and other submissions*

*on file, was adequate in identifying and describing the direct and indirect effects of the proposed development'. Notably, in his analysis of the Environmental Impact Statement in that instance the reporting inspector recorded that 'the overall cumulative and indirect impacts are quite minor' and that 'as the proposed development can 'piggyback' on infrastructure provided with the 20 turbine windfarm [i.e. the Cloghboola Wind Farm] (in particular, maintenance access roads, electricity connection and construction access), many potential impacts are significantly less than for a stand-alone windfarm facility'. In view of the foregoing, I am similarly inclined to form the opinion that any overall cumulative impact arising as a result of the proposed development would be minor and potentially of less significance than that associated with the alignment of the grid connection as already approved under PA Ref. No. 15318. Therefore, given that the subject proposal is essentially limited to revisions of a permitted development and does not require the wider project to be assessed from first principles, in my opinion, the submission of an EIS is not required in this instance (N.B. In this respect the Board may wish to consider if parallels may be drawn between the subject application and the judgement of the High Court with regard to 2015 No. 282JR *South-West Regional Shopping Centre Promotion Association Ltd. & Stapleside Company v. An Bord Pleanala*).*

10.2.5 Accordingly, having regard to the site location, the context of the proposed development site, the planning history of the application site and adjacent lands, and the nature and scale of the works proposed, in my opinion, the subject proposal does not involve a class of development prescribed for the purposes of Section 176 of the Planning and Development Act, 2000, as amended, as set out in Parts 1 & 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and, therefore, it does not necessitate the preparation of an Environmental Impact Statement. Furthermore, it is my opinion that the works in question would be unlikely to have significant effects on the environment having regard to the criteria set out under Schedule 7 of the Regulations.

10.3 Appropriate Assessment:

10.3.1 From a review of the available mapping, including Map Nos. 10.1(a) & 10.2(a) of the Kerry County Development Plan, 2015 and the data maps available from the website of the National Parks and Wildlife Service, it is apparent that the proposed development site is located within the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (Site Code: 004161) and that it also drains towards the Lower River Shannon Special Area of Conservation (Site Code: 002165). In this respect it is of relevance to note that it is the policy of the planning authority, as set out in Chapter 10 of the Kerry County Development Plan, 2015, to conserve, manage

and, where possible, enhance the County's natural heritage including all habitats, species, landscapes and geological heritage of conservation interest and to promote increased understanding and awareness of the natural heritage of the County. Furthermore, Objective NE 12 of the Plan states that no projects which will be reasonably likely to give rise to significant adverse direct, indirect or secondary impacts on the integrity of any Natura 2000 sites, having regard to their conservation objectives, will be permitted (either individually or in combination with other plans or projects) unless imperative reasons of overriding public interest can be established and there are no feasible alternative solutions. In effect, a proposed development may only be authorised after it has been established that the development will not have a negative impact on the fauna, flora or habitat being protected through an Appropriate Assessment pursuant to Article 6 of the Habitats Directive. Accordingly, it is necessary to screen the subject proposal for the purposes of 'appropriate assessment'.

10.3.2 Having reviewed the available information in light of the nature and scale of the proposed development, the specifics of the site location relative to certain Natura 2000 sites, and having regard to the prevailing site topography, in my opinion, by employing the source/pathway/receptor principle of risk assessment, it can be determined that particular consideration needs to be given to the likelihood of the proposed development to have a significant effect on the conservation objectives of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area and the Lower River Shannon Special Area of Conservation. At this point it is of relevance to note that the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area has been designated as being of special conservation interest on the basis that it supports the Hen Harrier. Most notably, the site is considered to be a stronghold for the Hen Harrier and supports the largest concentration of the species in the country. With regard to the Lower River Shannon Special Area of Conservation, on the basis that the lands in question are upstream of this Natura 2000 site and thus drain towards same, it will be necessary to consider the potential for water-based / pollution / contamination impacts.

10.3.3 In screening the subject proposal for the purposes of appropriate assessment, I would refer the Board to the screening exercise undertaken by the applicant wherein it is stated that the following elements of the proposed works would have the potential to give rise to significant effects:

- Excavation of cable trench in areas of semi-natural habitat which would give rise to temporary habitat disturbance (although the

trench is proposed to be located within an access track throughout its length)

- Habitat loss (conifer forestry, cutover and blanket bog, wet heath) from the construction of a new road for a length of approximately 141m
- The operation of machinery and personnel potentially disturbing sensitive fauna resident in the area by way of noise, vibration, light etc.
- The movement, management and storage of unconsolidated material that could potentially give rise to pollution events in surrounding aquatic receptors (this could occur in the event material were to become entrained by surface water runoff during the site works).
- Accidental spillages of cementitious material, fuels or other substances thereby impacting on sensitive aquatic ecosystems.

10.3.4 This report subsequently considers the qualifying interests and the conservation requirements of each of the identified Natura 2000 sites together with the characteristics of the proposed development and concludes that the following impacts will require further consideration:

- *Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area:*
 - Loss of suitable Hen Harrier habitat due to new road construction
 - Potential disturbance of breeding Hen Harrier during the construction phase.
- *Lower River Shannon Special Area of Conservation:*
 - Deterioration of water quality within the aquatic habitats of the cSAC.

10.3.5 With regard to the Moanveanlugh Bog Special Area of Conservation which is located 12.5km from the proposed development site, the screening exercise has concluded that in view of the qualifying interests of the cSAC and the scale of the proposed works, there is no potential for the subject proposal to give rise to any adverse impacts on that particular European Site.

10.3.6 Having reviewed the available information, including the screening exercises conducted by the applicant and the Planning Authority in respect of the

subject proposal, and following consideration of the ‘source-pathway-receptor’ model, it is my opinion that, in accordance with the precautionary principle, it is not possible to rule out the likelihood of the proposed development significantly impacting on Natura 2000 sites and that particular consideration needs to be given to the likelihood of the proposal to have a significant effect on the conservation objectives of the Stack’s to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area given the potentially significant impacts on a protected bird species (i.e. the Hen Harrier) as a result of disturbance and a loss of foraging habitat thereby threatening the qualifying interests of the site and undermining the relevant conservation objectives which seek to:

- Maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:
 - Hen Harrier (*Circus cyaneus*)

10.3.7 Similarly, I would concur with the applicant’s screening conclusions as regards the need to consider the likelihood of the proposal to have a significant effect on the conservation objectives of the Lower River Shannon Special Area of Conservation given the potentially significant impacts on water quality which could arise from any runoff of sediment and / or pollutants into the SAC during the construction of the proposed development.

10.3.8 Accordingly, it is reasonable to conclude on the basis of the information available, which I consider adequate in order to issue a screening determination, that the likelihood of the proposed development significantly and negatively affecting the aforementioned Natura 2000 sites cannot be objectively ruled out and therefore it is necessary to proceed to ‘Appropriate Assessment (Stage 2)’.

10.3.9 The subject application has been accompanied by a Natura Impact Statement and I would refer the Board to this document as a basis on which to assess the likely impact of the proposed development.

10.3.10 With regard to the Stage 2 Appropriate Assessment as set out in the submitted Natura Impact Statement, I am generally satisfied that it has adequately identified the key characteristics of the potential impacts arising as a result of the proposed development which would be likely to undermine the stated conservation objectives of the identified designated sites. These include the possibility that the proposed development could give rise to a loss of foraging habitat and the displacement of hen harrier in addition to the direct disturbance of

breeding hen harrier during construction works within the SPA, and also the potential for contaminated ground and surface waters to impact on the integrity of the SAC and its qualifying interests. This NIS subsequently concludes that, subject to adherence to a series of specified mitigation measures (Section 4.4), there would be no significant adverse effects on the integrity of the identified sites as a result of the proposed development.

10.3.11 Therefore, I consider it reasonable to conclude, on the basis of the information available, including the conclusions of the appropriate assessment previously undertaken with regard to ABP Ref. No. PL08.243573, and noting the conclusions of the Local Authority Biodiversity Officer, that the proposed development, when taken individually and in combination with other plans or projects, will not adversely affect the integrity of the Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area or the Lower River Shannon Special Area of Conservation (or any other Natura 2000 site) in view of the respective sites' conservation objectives.

10.4 Other Issues:

10.4.1 Visual Impact:

Considering the nature and limited scale of the proposed works, particularly in the context of the wider wind energy developments already approved on site, in my opinion, the visual impact of the submitted proposal will be negligible.

10.4.2 Constructional Impacts:

Concerns with regard to the mitigation of constructional impacts can be satisfactorily addressed by way of an appropriate condition in the event of a grant of permission.

11.0 RECOMMENDATION

Having regard to the foregoing I recommend that the decision of the Planning Authority be upheld in this instance and that permission be granted for the proposed development for the reasons and considerations and subject to the conditions set out below:

Reasons and Considerations:

Having regard to:

- a) the national policy with regard to the development of sustainable energy sources;

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- b) the 'Wind Energy Development Guidelines – Guidelines for Planning Authorities', issued by the Department of the Environment, Heritage and Local Government in June, 2006;
 - c) the policies of the planning authority as set out in the Kerry County Development Plan 2015-2021;
 - d) the general topography and landscape features of the site and the general area;
 - e) the nature and limited scale of the proposed development;
 - f) the planning history of the site, and
 - g) the submissions made in connection with the planning application and the appeal.

The Board considered that the NIS submitted with the application and other submissions on file, was adequate in identifying and describing the direct and indirect effects of the proposed development. It is considered therefore, that notwithstanding the location of the proposed development within a Special Protection Area, with the mitigation measures set out in the NIS the proposed development would not have a significant impact on the conservation objectives of the SPA and would otherwise be in accordance with the proper planning and 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, 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 mitigation measures identified in the Natura impact statement, and other particulars submitted with the planning application, shall be implemented in full by the developer, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity and the protection of the environment during the construction and operational phases of the development.

3. The construction of the development shall be managed in accordance with a comprehensive Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall include:
 - a) the appointment of a suitably qualified person to act as Environmental Manager for the project on a full time basis. This person shall be responsible for ensuring that all environmental control measures, shall be fully implemented and maintained,
 - b) proposals for the protection of watercourses in the vicinity according to criteria to be set out in consultation with Fisheries Ireland,
 - c) full details of all measures for the control of drainage during and after construction, including the use of settlement ponds and silt traps,
 - d) full details for the control of run-off from temporary spoil storage areas,
 - e) details of the nature of all materials used in constructing all temporary and permanent access tracks, and
 - f) full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction.

For the avoidance of doubt, this management plan shall include all mitigation and management proposals contained in the Natura impact statement, submitted to the planning authority and An Bord Pleanála.

Reason: In the interest of protecting watercourses and natural habitats and the prevention of environmental pollution.

4. Prior to any construction works being carried out between mid-March and mid-August, a survey for breeding hen harriers shall be carried out by a competent, experienced ornithologist. The survey shall cover the area within a boundary of 500 metres of the works to be carried out during the above period. It shall be the responsibility of the ornithologist, based on his/her experience and/or professional opinion, to ensure that the survey methodology (location of vantage points, length and timing of observations) is sufficient to ensure that a hen harrier breeding site will not be overlooked. Taking into account the results of this survey, no construction works shall be carried out during the above period within 500

metres of a pre-nesting breeding site and/or nest of a hen harrier, except with the written approval of the National Parks and Wildlife Service of the Department of Arts, Heritage and the Gaeltacht.

Reason: To avoid significant disturbance to protected species.

5. Mitigation measures recommended in the Natura Impact Statement for the protection of water quality shall be implemented in full and in accordance with best practice guidelines (CIRIA guidelines). Wherever possible, clean water shall be drained separately from water affected by construction works. Works with a potential to result in pollution or siltation of watercourses shall be supervised by an on-site-clerk-of-works who shall report on compliance with the relevant mitigation measures. The clerk-of-works shall be empowered to halt works where he/she considers that the continuation of works would be likely to result in a significant pollution or siltation incident. In the event of a water pollution incident, or damage to a river candidate Special Area of Conservation, these reports shall be made available to the planning authority and on-site works shall cease until authorised to continue by the planning authority.

Reason: To avoid deterioration of habitat in the Lower River Shannon candidate Special Area of Conservation.

6. Any excess peat excavated to create the access road and other infrastructure shall, where feasible without creating a significant risk of slippage, be formed into linear banks, but not side cast over existing heath, bog or rough grass within hen harrier foraging habitat. These linear banks shall be revegetated and/or replanted in such a manner and time to avoid excessive siltation of the drainage from the site and to provide areas of low scrub and heather cover in the medium term.

Reason: To avoid deterioration of habitat within the Special Protection Area.

7. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –

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- a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
 - b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
 - c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

Signed: _____

Robert Speer
Inspectorate

Date: _____