



An
Bord
Pleanála

Inspector's Report PL05.246851

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| Development | A 10-year permission for 2.3 kilometre of three phase underground electrical cables and all associated works to connect the permitted Clogheravaddy Wind Farm to the national grid at Binbane, Clogheravaddy and Meenacahan, Donegal |
| Planning Authority | Donegal County Council |
| Planning Authority Reg. Ref. | 16/50473 |
| Applicant(s) | Clogheravaddy Windfarm Ltd |
| Type of Application | Permission |
| Planning Authority Decision | Refuse |
| Appellant(s) | Clogheravaddy Windfarm Ltd |
| Observer(s) | Joseph Brennan |
| Date of Site Inspection | 15 th September 2016 |
| Inspector | Lorraine Dockery |

1.0 Site Location and Description

1.1 The subject site is located within the townlands Clogheravaddy, Meenagranoge and Meenachan, south-west County Donegal, approximately 12km northwest of Donegal town and 10km south of Glenties. The following is an extract from Inspector's Report, PL05E.244417:

'This is a sparsely populated area of lowlying peatlands, dotted with lakes. The dominant land uses are low intensity agricultural pastureland, cut over bog and forestry plantations. The area is characterised by scattered residential development, particularly at various elevations along the R262...'. The report continues by stating 'There are no Natura 2000 sites within the site boundary. However, Lough Nilan Bog SPA, SAC and pNHA is located nearby to the north and includes Tamur Lough. There are no National Monuments within the site or in its immediate vicinity. The 'Bluestack Way' walking route passes 4.5 km to the north east of the site behind Binbane Mountain. The 'Bluestack Way Alternative Route' passes along part of the R262 in front of the site'.

2.0 Proposed Development

2.1. The proposal as per the submitted public notices comprises:

- Approximately 2.3km of three phase underground electrical cables laid in ducts, with communications cable, draw pits, jointing bays and associated works.
- The underground cable will connect the permitted Clogheravaddy Wind Farm to the national grid at ESB Binbane Station.

2.2 The cable route runs from the site electrical substation alongside the line of the windfarm access track to the site entrance where it joins the L5667 public road and then continues within the road verge. The cable route continues in third party lands

running parallel to the R262 until it reaches Binbane Station. The cable route does not cross into any ecologically designated sites and there are no recorded archaeological, architectural or cultural heritage features along the proposed route.

2.3 The proposed cable route layout is comprised of the following elements

- **Either** 4 x 110mm diameter HDPE ducts (three power and one communications) laid in a trench excavated to typically 1.2m deep x 0.6m wide
- **Or** two HDPE ducts (one power and one communications) laid in a trench excavated to typically 1.2m deep x 0.6m wide
- Approximately 2.3km of three phase electrical cables
- Approximately 2.3km of optical fibre
- Draw pits and cable jointing bays (adjustments may be needed at detailed design stage)
- Four water crossings- option to directional drill underneath L5795 bridge with use of inception and reception pits, trench across minor streams/drainage ditches
- Directional drill underneath R262- inception and reception pits
- Extension of existing 38kV busbar within the existing permitted Binbane substation compound to include two new 38kV feeder bays and associated works including cabling

3.0 **Planning Authority Decision**

3.1. **Decision**

Permission REFUSED for 2 no. reasons

The first reason stated that in the absence of an EIS, the planning authority were not satisfied that the proposed development does not constitute project splitting or that the development would not result in significant environmental effects. The second reason related to the absence of a NIS and concerns regarding adverse impacts on the integrity of the Lough Nillan Bog Special Protection Area. It was therefore considered that the proposal would materially contravene the Policy NH-P-2 of the operative County Development Plan and would be contrary to the proper planning and sustainable development of the area.

3.2. **Planning Authority Reports**

The report of the area planner reflects the decision of the planning authority.

In terms of EIA, the reports states that it is the opinion of the planning authority that the cumulative environmental effects of the unsevered project as a whole, that is the grid connection together with the parent wind farm, must be assessed in the determination of this application and therefore as there is no legislative provision to seek or request an EIS in these circumstances it is considered necessary to recommend that planning permission be refused on the basis of the information submitted.

An Appropriate Assessment Screening for the purposes of Article 6 of the Habitats Directive was undertaken.

3.3. **Other Technical Reports**

3.4. Department of Arts, Heritage and the Gaeltacht

Conditions attached

3.5. **Third Party Observations**

3.6. Two observations were received by the planning authority

4.0 **Planning History**

4.1. PL05E.244417

Permission GRANTED by An Bord Pleanála on appeal for a wind energy project up to 7 wind turbines, new internal access tracks, upgrade existing tracks, underground cabling and electrical substation at Clogheravaddy, Meenagranoge and Meenacahan, Co. Donegal- stated that this permission was replace previously permitted PL05E.226520

PL05E.226520

Permission GRANTED for 4 no. turbines and associated works

5.0 **Policy Context**

5.1 DoEHLG Wind Energy Guidelines 2006

5.2 Border Regional Authority Regional Planning Guidelines (BRA) 2010-2022

(Please see Inspector's Report PL05E.244417 where a comprehensive summary of the above documents is available)

6.0 **Development Plan**

The Donegal County Development Plan 2012-2018 applies

Section 7.2.1 applies to wind energy policies

Policy NH-P-1; NH-P-2; NH-P-5; NH-P-10; NH-P-14 and NH-P-15 relate to natural and built heritage policies

(Please see Inspector's Report PL05E.244417 where a comprehensive summary of the above document is available)

7.0 Natural Heritage Designations

The development site does not lie within or adjacent to any European sites.

There are a number of designated sites within 10km radius of the proposed development with the nearest designated site is the Lough Nillan SPA (Site Code 004110).

8.0 The Appeal

8.1. Grounds of Appeal

The grounds of the first party appeal can be summarised as follows:

- Permission was granted for Clogheravaddy Windfarm in February 2016 under Reg. Ref. PL05E.244417- an addendum to the EIS and NIS was prepared and submitted with the first party appeal in order to assess the cumulative impact of the windfarm's grid connection in compliance with High Court Judgement, referred to as O'Grianna case
- This was a de novo assessment by ABP- considers that having regard to Board's assessment, the proposed grid connection was clearly and explicitly assessed cumulatively with the wind farm as part of that application
- There was no omission in the application to other works necessary to implement
- Considers that proposal does not require an EIA in accordance with the provisions of Schedule 5 or a sub-threshold EIS in accordance with Schedule 7 of the Planning and Development Regulations 2001, as amended- subject applications is accompanied by an Environmental Report that assesses the proposed development on its own merits

- Proposed grid connection assessed both on its own merits and cumulatively as part of the permitted windfarm- cites conclusions from Environmental Report in this regard
- Considers the refusal of permission on the basis of 'project splitting' by the planning authority to be unsubstantiated
- ABP was satisfied that the windfarm and associated grid connection were assessed appropriately thus granting permission for same
- With regards second reason for refusal, notes that addendum NIS was submitted for windfarm development (PL05E.244417)
- Having regard to the Inspector's report and the Bord Order, it is their opinion that the it has also been established that the wind farm and the proposed grid connection would not have any significant adverse impacts on the integrity of the Lough Nillan Bog SPA- they have been assessed in combination in relation to Appropriate Assessment as part of the application PL05E.244417
- A Screening for Appropriate Assessment for the proposed development was enclosed with the subject application- concludes that there will be no significant impacts on the designated Natura 2000 sites associated with the grid connection- therefore a Stage Two Appropriate Assessment is not required
- Has been established by ABP in its assessment of the scheme that the wind farm and the proposed grid connection either individually or cumulatively would not have any significant adverse impacts on the integrity of the Lough Nillan Bog SPA
- Considers that to grant permission for proposal would be in accordance with Policy NH-P-2 of the operative County Development Plan

8.2. Planning Authority Response

No further comment

8.3. Other Party Responses

None

8.4. Observations

8.5. The submitted observation may be summarised as follows:

- Supports planning authority's decision
- Concerns regarding precedent for other windfarm developments in vicinity by the opening up of the track/lands to this development
- Contends that grid route was not referred to in PL05E.244417
- Concerns regarding project splitting
- Raises issues in relation to application for windfarm PL05E.244417
- Raises issues in relation to land ownership
- Considers that project should be reviewed in its entirety

8.6. Further Responses

8.7. None

9.0 Assessment

9.1. I consider the key issues in determining this appeal are as follows:

- Project splitting and Environmental Assessment
- Appropriate Assessment
- Other issues including material contravention

9.2 Project Splitting and Environmental Assessment

9.3 The first reason for refusal which issued from the planning authority raised concerns in relation to project splitting and they were not satisfied that the proposed development would not result in significant environmental effects. The Planner's report stated that in terms of EIA, it is the opinion of the planning authority that the cumulative environmental effects of the unsevered project as a whole, that is the grid connection together with the parent wind farm, must be assessed in the determination of this application and therefore as there is no legislative provision to seek or request an EIS in these circumstances it is considered necessary to recommend that planning permission be refused on the basis of the information submitted.

9.4 I do not agree with the above assertion. I would concur with the explanation of project splitting put forward by the first party appellants in their submission, namely a development which is made in a piece-meal manner over a period of time in order to avoid subjecting the entire project to an Environmental Impact Assessment. I do not consider this to be the case in this instance. Permission was granted by the competent authority, An Bord Pleanála under Reg. Ref. PL05E.244417 for up to 7 turbines, underground cabling and associated works. With the O'Grianna case, it is now acknowledged that the wind farm and its grid connection are in reality one project and should be assessed as such. As a result of this Judgement, an addendum EIS and NIS were submitted with the first party appeal of PL05E.244417 in order to allow the assessment of the cumulative impact of the windfarm and its

grid connection. Both the windfarm connection and its grid connection were considered cumulatively at that time and the Inspector's Report stated explicitly that the 'proposed grid connection is sufficiently well developed to allow for consideration of the development'. It was considered by the Inspector that the information contained within the EIS and addendum EIS accorded with the provisions of Article 94 and Schedule 6 of the Planning and Development Regulations 2001. This was confirmed by the Board in their direction, which stated that the EIS and revised EIS submitted with the application and other submissions on file was adequate in identifying and describing the direct effects, indirect effects and cumulative effects in combination with other projects of the proposed development, including grid connection. Based on the information before me, in particular the reports, Direction and Order of PL05E.244417, I would concur with the first party appellants that the proposed grid connection was, in this instance, explicitly assessed cumulatively as part of the wind farm application and that this current proposal cannot be considered to be project splitting.

- 9.5 The proposed development, the subject of this appeal namely the grid connection to serve a permitted windfarm development, in itself is not a class of development, as set out in Schedule 5 of the Planning and Development Regulations 2001 and therefore EIA is not required. The issue of sub-threshold development does not apply. The proposal has not been described in the public notices as an amendment to a previously permitted windfarm development. However, if the Bord decided to assess it as such, it is recognised that a windfarm development of the size permitted is a class of development within the Planning and Development Regulations 2001 (Class 3(a)(i)). In this regard an EIS and addendum EIS were submitted with the application for PL05E.244417 and a copy of this was submitted with the first party appeal in this current file. To that extent, it could perhaps be argued that Class 13, Part 2, Schedule 5 of the Planning and Development Regulations 2001, as amended should be considered. This class refers to extensions to developments, including those that would already have been subject to EIA. While it is very difficult to place or

measure the proposed grid connection within the terms of this class as would apply in this case, it is clear, in my view, that by any interpretation it would represent only a very minor extension/alteration and would be far removed from any trigger for EIA. It then follows as to whether the likelihood of significant effects on the environment be excluded. By reference to Article 109(2) of the Planning and Development Regulations 2001 it is considered that the subject alterations to the previously assessed development, namely an increase of 200 metres, alterations to cabling and new feeder bay structures are so limited in nature and scope that they are not likely to have significant effects on the environment over and above what has previously been assessed. Therefore, I consider the likelihood of significant effects on the environment can be excluded and the submission of an EIS is not required in this instance.

- 9.6 The nature, scale and scope of the alterations proposed to the grid connection in this current application, over and above that initially assessed are considered relatively minor. It is stated that the proposed cabling route is substantially the same as that included in PL05E.244417 apart from an additional length of 200 metres, changes to the internal cabling and new 38kV feeder bay structures within Binbane sub-station. This is evident from the drawings submitted. I therefore would conclude that the alterations proposed are not so significant as to fall outside of the assessment that was undertaken in this regard under PL05E.244417. I also note that an Ecological Report, which follows the same structure as the EIS, was submitted with the application. This report concludes that without mitigation, there could be possible impacts on fauna, soils and surface water quality, residential from construction noise, unrecorded archaeology and disruption to local residents from construction traffic. However, applying construction best practice as mitigation for the impacts, there will be no significant adverse residual environmental effects.
- 9.7 To conclude I consider that the issue of project splitting does not arise in this instance due to the comprehensive assessment of the environmental matters that was undertaken under PL05E.244417 for both the windfarm and its associated grid

connection. This development was permitted in February 2016 by An Bord Pleanála and I have no information before me to believe that there have been any changes in circumstances that would render the previous cumulative assessment invalid or out of date. Having regard to the decision of An Bord Pleanála, that included for a comprehensive assessment of the environmental impacts of the subject grid connection, I am satisfied that the proposed grid connection, which is altered only very minor from that previously assessed would be likely not to have significant effects on the environment and the proposed development is considered to be consistent with the proper planning and sustainable development of the area.

9.8 Appropriate Assessment

9.9 The second reason for refusal which issued by the planning authority raised concerns in relation to the impacts of the proposed development on the Lough Nillan Bog SPA (Site Code 004110), in particular due to the absence of a NIS for the purposes of Appropriate Assessment. The Planning Authority were not satisfied that the proposed development, by itself, or cumulatively as an un-severed whole taken together with the permitted parent wind farm development would not have an adverse impact on the integrity of the said Natura 2000 site and they considered that to permit the development would materially contravene Policy NH-P-2 of the operative County Development Plan.

9.10 A copy of the consolidated EIS and NIS, pertaining to PL05E.244417, has been submitted with the first party appeal in this current case. A Screening for Appropriate Assessment for the proposed development was submitted with this current application, which concluded that there will be no significant impacts on the designated Natura 2000 sites associated with the grid connection from Clogheravaddy substation to the ESB Binbane substation, Co. Donegal. Again, I note that the issue of Appropriate Assessment was dealt with under PL05E.244417 for both the windfarm and its associated grid connection. As was stated above, an

addendum NIS was submitted with the first party appeal in that application which dealt with the issue of the grid connection.

- 9.11 The Inspector's Report pertaining to PL05E.244417 stated, as quoted above, that the 'it is considered that the proposed grid connection is sufficiently well developed to allow for consideration of the development'. It continues by stating that the 'NIS addendum can likewise be considered as part of the Board's AA. The applicant's grid connection proposals are considered acceptable on this basis'. The report explicitly states that 'To conclude...it is considered that the proposed development would not have any significant adverse impacts on the integrity of the Lough Nillan SPA with regard to its conservation objectives'. A Stage II Assessment of the Lough Nillan SPA was undertaken by the Bord and this assessment concluded in the Order that 'the Board was satisfied that it could conclude beyond reasonable scientific doubt that the proposed development **including grid connection**, either individually or in combination with other plans and projects would not adversely effect the integrity of the European site Lough Nillan Bog Special Protection Area (Site Code 004110) in view of the site's conservation objectives, during either the construction or operation phase of the wind farm development' (my highlighting).
- 9.12 As I have stated, the details of the proposed grid connection are substantially the same as those assessed under PL05E.244417, with the exception of the relatively minor amendments outlined above. I consider that based on the information before me, that the difference between the grid connection details submitted with PL05E.244417 and the grid connection details contained within this current appeal are minor in nature, and therefore I conclude that there would be no greater impacts on any Natura 2000 site than has been previously assessed. I also note that the Bord decision relation to PL05E.244417 is relatively recent, with permission granted in February 2016. I have no information before me to believe that any circumstances have changed in the interim. The windfarm and the grid connection have been assessed in combination as part of PL05E.244417 in relation to Appropriate

Assessment. I am satisfied that this issue has been comprehensively dealt with previously under PL05E.244417.

9.13 Other Issues

The Planning Authority in their second reason for refusal consider that that to permit the development would materially contravene Policy NH-P-2 of the operative County Development Plan. Policy NH-P-2 states that 'It is the policy of the Council to ensure the protection of Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, qualifying interests and threats to the integrity of these Natura 2000 sites'. Under the Planning and Development Act 2000, the Bord is precluded from granting permission for development that is considered to be a material contravention, except in four circumstances. These circumstances, outlined in Section 37(2)(b), are in the national, strategic interest; conflict with national/regional policy; ambitious policy within the development plan and the pattern of permissions in the vicinity since the adoption of the development plan. The subject development aims to connect a permitted windfarm development to the national grid. Development of energy from wind sources is supported in both national and regional guidance, with Government policy largely set out in the DoEHLG Wind Energy Guidelines 2006. The subject development as an integral part of the permitted windfarm development could be considered to be in the national, strategic interests providing energy to the community. Policies in the operative County Development Plan are generally considered reasonable and clearly set out. I also consider that the policies relating to wind energy in the operative County Development Plan to be clear and concise and lack ambiguity. The operative Development Plan is relatively recent, was adopted in 2012 and there have been no pattern of developments for reference in the area since its adoption. Having regard to the above, I consider that the proposal cannot be considered to be a material contravention of the Donegal County Development Plan 2012.

9.14 The assessment of the windfarm development was undertaken under PL05E.244417. The issues raised in the observation in relation to the merits of this case are outside the remit of this appeal.

9.15 Issues raised in the observation in relation to land ownership and legal title are outside the remit of this planning appeal.

10.0 Recommendation

10.1. I recommend that planning permission should be granted, subject to conditions, as set out below.

11.0 Reasons and Considerations/ Reasons

Having regard to the nature and scale of the proposed development, the Board considers that subject to compliance with the conditions set out below the proposed development would accord with National and County policies in respect of wind energy, would not have significant environmental effects and would not effect the integrity of the European site Lough Nillan Bog SPA in view of that site's conservation objectives. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

12.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the appeal documentation submitted on the 4th day of July, 2016, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. The mitigation measures identified in the Consolidated Environmental Impact Statement and Consolidated Natura Impact Statement, submitted with the appeal submission on July 4th 2016 shall be implemented in full by the developer. Where the conditions below 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.

3. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this Order.

Reason: Having regard to the nature of the development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.

4. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on the 19th day of February 2016 under An Bord Pleanála reference number PL05E.244417, planning register reference 14/51305, and any agreements entered into thereunder

Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission.

Lorraine Dockery
Planning Inspector

05th September 2016