



An
Bord
Pleanála

Inspector's Report PL.26.246928

Development	Two lattice free standing type meteorological masts, new internal access roads, underground electrical cables and associated works.
Location	Graigue More, Kiltilly, Kilrush, Co. Wexford.
Planning Authority	Wexford County Council.
Planning Authority Reg. Ref.	20160462.
Applicant(s)	ABO Wind Ireland Ltd.
Type of Application	Permission.
Planning Authority Decision	Grant with conditions.
Appellant	Third Party v. Grant. <ol style="list-style-type: none">1. Lorna Moorehead.
Observer	<ol style="list-style-type: none">1. Francis Clauson.
Date of Site Inspection	18 th October 2016.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

- 1.1.** The site is located in an area to the north of County Wexford close to the Wicklow border which is characterised by a number of Wind Farm developments. Gibbet Hill Windfarm is c. 3km northeast of Bunclody in a rural area which has been the subject of extensive rural housing development. The wind farm comprises 6 turbines, 4 turbines near the summit of Gibbet Hill (315m OD) and 2 located at the sub-peak which rises to 219m OD. Access is via a road off the R746.
- 1.2.** The application site comprises two discrete areas, each of which would accommodate one meteorological mast. One is within the cluster of 4 turbines and the other is within the cluster of 2 turbines.
- 1.3.** Photographs and Maps are in the attached pouch.

2.0 Proposed Development

- 2.1.** Permission for 2 permanent lattice free standing type meteorological masts, new internal access roads, underground electrical cables and ancillary works.

The two proposed metrological masts, access tracks and underground electrical cables will be wholly contained within the original red line boundary of Planning Register Ref.: 20090266 and 20110083 (the two permissions for Gibbet Hill Wind Farm).

The main elements of the development include:

- Overall site area: 8.2 hectares.
- Mast Height: 80 metres.
- Mast Width: Top (500mm) and bottom (3100mm).

- Each mast would sit on a hard standing base of 8m x 8m (1.6m foundation).
- A crane pad area (20m x 25m) and tower assembly area (5.5m x 25m).
- Each mast would be connected by an underground power cable to the nearest wind turbine.
- A modem would be installed in order to send wind measurement data via GPRS rather than connect to the SCADA System.
- An access track for each mast (Met 1 c. 65m and Met 2 c. 160m) would extend from the existing windfarm road network.

Documentation included:

- Cover letter indicating that there is no requirement for an Environmental Impact Assessment (EIA) but including an assessment of the development by reference to a range of environmental topics.
- Letter of consent from relevant landowners.

The applicant has set out that the provision of two meteorological masts at Gibbet Hill Wind Farm is a requirement by Eirgrid for the provision of accurate meteorological data provided by dedicated meteorological masts on site.

3.0 Planning Authority Decision

Grant Permission subject to 3 conditions.

Conditions include:

No. 2:

This Permission shall expire on the 31st December 2032. At the end of which time and unless further planning permission has been granted for the proposed development, the wind measuring masts and ancillary equipment shall be removed from the site and the entire site shall be reinstated to its previous undisturbed condition to the satisfaction of the Planning Authority.

Reason: to enable the Planning Authority to review the development in the context of prevailing circumstances and in the interests of the proper planning and development of the area.

(This links the current permission to the duration of the overall permission for Gibbet Hill Wind Farm 20090266)

No. 3:

Notwithstanding the Exempted Development provision of Schedule 2 of the Planning and Development Regulations 2001 (as amended), no development shall be carried out on this site without the prior approval of the Planning Authority or An Bord Pleanála on appeal whether or not such development would otherwise constitute 'exempted development'

Reason: In the interest of visual amenity.

3.1. Planning Authority Reports

The Planner's Report forms the basis of the Planning Authority's decision and the main issues can be summarised as follows:

The principle of the development was considered acceptable. The Planning Authority concluded that there are 6 turbines in place permitted under 20090266. The proposed masts are required to provide accurate

measurements to the transmission system operator and that this permission should be tied to the duration of the parent permission.

EIA/AA screening carried out (both screening documents are dated 25/05/16). The Planning Authority concluded that the proposal did not require an EIA or Stage 2 AA.

3.2. Other Technical Reports

None.

3.3. Third Party Observations

There were 13 third party submissions to the application, the main issues are summarised below:

- Requirement for an EIA and Project splitting.
- Legal Precedent and implications.
- Non-compliance with the EIA and Habitats Directives.
- Enforcement action against the developers.
- Lack of public consultation.
- Gibbet Hill is a vulnerable ridge, located in the sensitive uplands landscape, close to landscapes of outstanding beauty. The development would be contrary to Policy Objectives L05, AH06 and CH02.
- Located close to an important aquifer that is classified as extremely vulnerable. Would be contrary to policy objective W204 and FRM12.
- Would detract from the natural and cultural heritage of the area.
- Proximity to the Slaney River SAC and no evidence of Appropriate Assessment Screening which is contrary to policy Objective SS02

- Gibbet Hill is a historical landscape.
- Detrimental impact on animals in the area.
- Turbines too close to houses.
- Noise from existing turbines.
- Light flicker from turbines.
- Localised flooding due to surface water runoff.

Included in the 13 submissions were submissions on behalf of the appellant (Lorna Moorhead) and the third party observer to this appeal (Francis Clauson). Issues raised are largely in line with the grounds of appeal and the observations on the appeal and shall be dealt with under these sections in this Report.

4.0 Planning History

There are a number of history files associated with the Wind farm at Gibbet Hill and associated developments:

Planning Authority Reference No. 20090266: Permission granted in November 2009 for 6 turbines not exceeding 80m hub height with rotor diameter not exceeding 90m and ancillary buildings and roadways. This is the permission for the Gibbet Hill Wind Farm as constructed.

Planning Authority Reference No. 20110083: Permission granted in March 2011 for the construction of a new approach road and the widening of existing forest track. This new approach road will connect to the north of the Gibbet Hill Wind Farm (20090266).

Planning Authority Reference No. EXD00574 (An Bord Pleanála Reference No. PL.26.RL.3410): Whether the development of grid connection from

Crory/Lodgewood substation to Gibbet Hill Wind Farm is or is not development or is or is not exempted development. The Board determined that it is development and is not exempted development. This decision is currently the subject of Judicial Review proceedings.

Planning Authority Reference No. 20033753: Permission granted in February 2004 to for 3 wind turbines not exceeding 80m in height with rotor diameter not exceeding 72m at Kiltilly, Kilrush. (Extension of Duration granted to August 2011). This permission was subsequently superseded by 20090266.

5.0 Policy Context

5.2 Wexford County Development Plan 2013-2019

Volume 1 Written Statement

- **Section 11.3.2 Wind Energy**

***Objective EN11** To promote and facilitate wind energy development in accordance with Guidelines for Planning Authorities on Wind Energy Development (Department of Environment, Heritage and Local Government, 2006) and the Wind Energy Strategy which forms part of this Plan, subject to compliance with normal planning and environmental criteria and the development management standards contained in Chapter 18.*

- **Section 14.4 Landscape**

***Objective L03** – To ensure that developments are not unduly obtrusive in the landscape, in particular in the Upland, River Valley and Coastal landscape units and on or in the vicinity of Landscapes of Greater Sensitivity.*

***Objective L05** – To prohibit developments which are likely to have significant adverse visual impacts, either individually or cumulatively, on the character of the Uplands, River Valley or Coastal landscape or a*

Landscape of Greater Sensitivity and where there is no overriding need for the development to be in that particular location.

The site is located in an area identified as Uplands.

Section 14.5 Archaeological Heritage

Objective AH06 *To protect historic and archaeological landscapes, including battlefields and promote access to such sites provided this does not threaten the feature.*

Volume 5. Wind Energy Strategy.

The site is located within an area where wind farms are indicated as ‘not normally permissible’.

- **5.2.6 Access Roads**
 - *Access roads within the site shall be unsurfaced and shall be located and constructed so as to minimise their visual impact. If the development is decommissioned they shall be removed, unless an alternative use for them has been agreed in advance with the Planning Authority.*
 - *Site road embankments and associated areas shall be contoured and seeded to the satisfaction of the Planning Authority after construction.*

- **5.2.7 Ancillary Structures and Equipment**
 - *All wind monitoring masts require planning permission. These are typically 40m or 50m masts required to monitor on-site wind speeds over 1-2 years. If a permanent, hub height mast is required, permission will be considered only if the developer demonstrates that it is necessary for the economical operation of the wind farm.*

5.2 Guidelines for Planning Authorities on Wind Farm Development and Wind Energy Development 2006.

In so far as the Guidelines refer to Wind Measuring masts they refer to temporary testing masts only. The current proposal is for two permanent masts within an established wind farm.

5.3 Natural Heritage Designations

- River Slaney Valley SAC (site code 000781) is c. 3.5km and c. 5km respectively from each site.

6.0 The Appeal

6.1 Grounds of Appeal

A third party appeal has been lodged by Lorna Moorehead, Corragh, Bunclody, Enniscorthy, Co. Wexford. For the purpose of this Section of this Report the appellant's numbering system shall be used for the 11 grounds of appeal as this links to the applicant's response and numbering system. The grounds of appeal can be summarised as follows:

1. Applicants assertion that an EIA was undertaken. The Board is requested to consider if a lawful EIA was carried out for Planning Application Reference 20090266.
2. Applicants assertion that an EIA is not required is not sustainable particularly in its failure to consider cumulative impacts.
3. Material Deviations in the development carried out from that permitted under 20090266 resulting in a flawed EIA.

4. Project splitting in relation to the wind farm project as a whole and failure to assess cumulative impact.
5. Lack of public consultation, and accuracy and credibility of EIS submitted with 20090266.
6. No Appropriate Assessment for Wexford Wind Energy Strategy 2007-2013.
7. Appropriate Assessment for Gibbet Hill Windfarm and the need to address the impact of the proposed development on the Conservation Objectives of the Slaney River Valley SAC.
8. Submissions by public concerned were not considered by the Planning Authority.
9. Inadequacy of the Planning Authority's EIS screening for the current application. No regard to phasing:
 - Phase 1: 20090266 (6 turbines).
 - Phase 2: 20110083 (new access route).
 - Phase 3: (grid development) (PL.26.RL3410).
10. Inadequacy of Planning Authority's Appropriate Assessment screening.
11. Relevant Statutory Consultees not consulted at planning application stage.

Reference to O’Grianna decision in the documentation submitted in that it is argued that the proposed masts should be considered “an integral part of the overall development”. Given that the proposed development cannot serve any function or purpose on its own it should be viewed as another phase of the Windfarm and the issue of project splitting arises.

The Appendix attached to the appeal includes the original submission to the Planning Authority. Reference is made to:

- The detrimental impact the proposal would have on the Natural landscape.
- The importance of Gibbet Hill to the Heritage Landscape of the area,
- No reference made to the historical importance of the Hill in the EIS submitted with 20090266, therefore it is flawed.
- Issue of localised flooding of roads in the vicinity of Gibbet Hill since the construction of the wind farm and the cumulative impact the proposed development would have on the surface water runoff from the hill.

6.2 Planning Authority Response

The Planning Authority had no further comments to make and referred to the Planner's Report for consideration.

6.3 Applicant's Response

The applicant has submitted a response to the third party appeal and is summarised below:

- Regarding Grounds No. 1, 3, 5, 7, 9 & 10: Permission for the relevant Windfarm was granted in 2009. The decision was in accordance with the law as it stood at the time. This permission is therefore valid and beyond challenge (it was not appealed nor the subject of a Judicial Review).
- Regarding Ground no. 2: The proposed development is not of a type or scale as set out in Schedule 5 of the Planning and Development

Regulations 2001 (as amended) which sets out thresholds that are specified for the purpose of Part 10.

- Regarding Ground no. 4: The issue of project splitting does not arise as the proposed development does not come under the EIA remit.
- Regarding Ground 6: This is in relation to a wider strategic issues and considered beyond the remit of this application.
- Regarding Grounds 8 and 11: This refers to procedural issues.

6.4 Observations

An Observation has been lodged by Francis Clauson, Kiltilly, Bunclody, Enniscorthy, Co. Wexford. The mains points are summarised as follows:

- Supports the appellant's grounds of appeal and all points made in the documentation submitted.
- Concern that the development may have already started/deviated from its original design.
- No cumulative assessment undertaken.
- There are a number of outstanding enforcement files for this developer.
- A failed AA or EIA can be addressed without it being a collateral attack on a previous determination.
- The lack of SEA for the underlying plans and strategies which were used to support this application.
- Reference to O'Grianna decision.

6.5 Further Responses

None Received.

7.0 Assessment

7.1 Introduction

7.1.1 Many of the issues raised in this appeal relate to previous permissions and assessments in respect of the wind farm and follow on from matters of compliance. These are matters for the Planning Authority and the Courts and shall not be dealt with in this Report.

This Assessment considers the relevant issues under the following headings:

- Nature of development.
- Landscape and Visual Impact.
- Environmental Impact Assessment.
- Appropriate Assessment.
- Consultation.
- Flooding.

7.2 Nature of development

7.2.1 The applicant has set out that the provision of two permanent meteorological masts at Gibbet Hill Wind Farm is a requirement by Eirgrid for the provision of accurate meteorological data to be provided by dedicated meteorological masts on site.

7.2.2 The principle of providing permanent meteorological masts as part of a wind farm development is considered acceptable subject to site specific criteria and compliance with the relevant plans and guidelines.

7.3 Landscape and Visual Impact

- 7.3.1 The application site is located in an area identified as 'Uplands' in the County's Landscape Character Assessment. Wind farms are normally not permissible in this area. However, it should be noted that the proposed meteorological masts would be within an existing wind farm site.
- 7.3.2 Due to their scale, colour and rotating blades, the existing turbines can be readily seen when viewed from the surrounding area. The proposed lattice type meteorological masts will appear as slim semi-transparent structures which will form a very minor component of the landscape when contrasted with the existing wind turbines and will not be immediately visible. Having regard to the location of the two masts within the visual envelope of the existing Gibbet Hill Wind Farm and the design and scale of the proposed masts in the context of the existing turbines on site, I do not consider that the two masts would give rise to any further significant visual impact on the landscape.
- 7.3.3 The proposed access tracks as part of the existing internal road network serving the wind farm would present little or no visual impact.
- 7.3.4 Gibbet Hill has been referred to as an important historical landscape by the appellant which needs to be protected from inappropriate development. The area is not identified as a 'Landscape of Greater Sensitivity' in the County Development Plan. It is my considered opinion that the proposed development, located within an established wind farm, would not have any additional adverse impact on the landscape.
- 7.3.5 The Planning Authority's condition No. 3 de-exempts any further development for reasons relating to visual amenity. Having regard to my assessment as set out above I do not consider that this condition is warranted.

7.4 Environmental Impact Assessment

7.4.1 The appellant and observer have raised the issue of project splitting and the O'Grainna case. They argue that the current application along with the existing wind farm and access roads on site should be considered as one project and that to grant permission without an EIA would be contrary to the Directive.

7.4.2 The current proposal is for additional development at an existing wind farm. It is not accepted that there is any issue of project splitting or that the phasing analogy, as construed by the appellant, is relevant. In this regard it should be noted that the O'Grainna Judgement was in respect of a new wind farm where no details of the proposed grid connection were provided. The Judgement has no implications for proposed modifications/changes/extensions to existing wind farms and which are likely to be proposed from time to time.

7.4.3 The test in relation to whether or not the proposed development requires an EIS is provided for under Article 109 and Schedules 5 and 7 of the Planning and Development Regulations 2001 (as amended).

There is a mandatory requirement for an EIS under Class 3(i), Part 2, Schedule 5 for a wind farm with more than 5 turbines or a total output greater than 5 megawatts. The proposed development is for 2 meteorological masts and therefore does not fall within this class.

Under Class 13, Part 2, Schedule 5 there is a mandatory requirement for an EIS for any change or extension of development which would

- (i) result in the development being of a class listed in Part 1 for paragraphs 1-12 of Part 2 of the schedule, and
- (ii) result in an increase in size greater than:

- 25 per cent, or

- an amount equal to 50 per cent of the appropriate threshold, whichever is greater.

The proposed development could perhaps be construed as an extension to the existing wind farm development. While it is difficult to equate a meteorological mast to a turbine, having reviewed the proposal and the legislation it is my considered opinion that 2 meteorological masts and access tracks would not equate to an increase in size greater than 25% of the original wind farm or 50% of an output greater than 5 megawatts. The proposed development therefore does not, in my view fall, within this class 13 and a mandatory EIS is not required.

7.4.4 I have also examined Article 109 (2) of the Planning and Development Regulations 2001 (as amended) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) in particular the criteria set out for 'characteristics of proposed development', 'location of proposed development' and characteristics of potential impacts'. Having regard to its small scale (2 lattice type meteorological masts, access tracks and short lengths of underground cables), its location within an existing wind farm development and the limited scope and duration of construction works which would include minimal excavation (top soil removal), no changes to the groundwater levels on site and run off from the construction works controlled and stored in bunded areas, I am satisfied that the proposed development is not likely to have significant effects on the environment. It follows that I do not consider that the development would give rise to any significant cumulative impacts. An EIS, therefore, is not required.

7.5 Appropriate Assessment

7.5.1 The closest Natura 2000 site is the Slaney River Valley SAC (site code 000781) located at a distance of c.3.5km and c.5km respectively to the southwest of the two sites.

7.5.2 The SAC comprises the freshwater stretches of the River Slaney as far as the Wicklow Mountains; a large number of tributaries, the estuary at Ferrycarrig and Wexford Harbour. Specific Conservation Objectives have been prepared for the site and include the following relevant qualifying interests:

- 1029 Freshwater Pearl Mussel *Margaritifera margaritifera*.
- 1095 Sea Lamprey *Petromyzon marinus*.
- 1096 Brook Lamprey *Lampetra planeri*.
- 1099 River Lamprey *Lampetra fluviatilis*.
- 1103 Twaite Shad *Alosa fallax*.
- 1106 Atlantic Salmon *Salmo salar* (only in fresh water).
- 1130 Estuaries.
- 1140 Mudflats and sandflats not covered by seawater at low tide.
- 1355 Otter *Lutra lutra*.
- 1365 Harbour Seal *Phoca vitulina*.
- 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation.
- 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles.
- 91E0 * Alluvia forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*).

7.5.3 The Assessment carried out at the time of the Designation of the SAC identified the highest risk threats, pressures and activities within the SAC which would have a high impact on the qualifying interest as cultivation, fertilisation, forest & plantation management/use and groundwater pollution by discharge to ground. Pollution to groundwater and surface water is identified as a threat for sites outside the SAC which may have direct connections to the SAC. Communications Antennas and Masts are not included in the list of Threats, Pressures and activities (Threat Code D01.03) listed in Table 4.3 of the Natura 2000 – Standard Data Form for the Slaney River Valley SAC.

7.5.4 Given the small scale (2 lattice type meteorological masts access tracks and short lengths of underground cables), the potential for likely significant effects arises only from the construction phase and would relate to sediment run off. The construction phase would be of short duration and limited in scope as set out in Section 7.4.4. above. There would be no changes to groundwater levels

on site and run off from the construction works is to be controlled and stored in bunded areas. The nearest identifiable watercourse is c. 680m to the southeast of site no. 1 and c.950m southwest of site no. 2. There is no obvious pathway to this watercourse. Given the separation distance of the sites to the nearest identified watercourse, there is, in effect, no significant hydrological connection to the SAC. Having regard to the small scale of the development proposed, and the limited potential for significant effects as discussed above, I am satisfied that significant cumulative impacts on the environment from the proposed and existing development on site are unlikely. Therefore, the issue of significant in-combination effects does not arise.

7.5.5 I note that the Planning Authority carried out Appropriate Assessment Screening and concluded that having regard to the limited extent of the proposed works and the substantial distance to the nearest Natura 2000 site no element of the proposed project alone or in combination is likely to give rise to any impacts on the Natura 2000 sites. It was considered that significant impacts could be ruled out and Stage 2 Appropriate Assessment was not required.

7.5.6 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000781 or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

7.6 Consultation

7.6.1 The appellant has highlighted concerns that the relevant Statutory consultees were not consulted at planning application stage. This is an issue for the Planning Authority.

7.7 Flooding

- 7.7.1 The issue of localised flooding of roads in the vicinity of Gibbet Hill since the construction of the wind farm and the cumulative impact the proposed development would have on the surface water runoff from the hill was raised at application stage. At the time of assessment, the Planning Authority noted that flooding from the River Slaney was not a concern as the site is located in a Flood Zone C area (Low probability).
- 7.7.2 Having regard to scale and nature of the proposed development within an established wind farm development and the limited interference with the existing topography, it is not considered that the proposed development would constitute a flood hazard due to a potential increase in surface runoff arising from the proposal.

8.0 Recommendation

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

9.0 Reasons and Considerations

Having regard to the location of the meteorological masts within an existing windfarm development it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area and would be satisfactory in terms of environmental impact. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out in accordance with the plans

and particular lodged with the Planning Authority except as may otherwise be require 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. Prior to the commencement of development details of the proposed colour scheme for the masts shall be submitted to the Planning Authority for agreement.

Reason: In the interest of visual amenity.

3. (a) This Permission shall expire on the 31st December 2032. At the end of this period and unless a further planning permission has been granted for the proposed development, the masts and ancillary equipment shall be removed from the site and the entire site shall be reinstated to its previous undisturbed condition to the satisfaction of the Planning Authority.

- (b) In the event of the meteorological masts becoming obsolete and being decommissioned the developers shall, at their own expense, remove the masts and ancillary equipment from the site and the entire site shall be reinstated to its previous undisturbed condition to the satisfaction of the Planning Authority

Reason: To safeguard the amenities of the area.

4. Within one month from the date of this order, 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 site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory completion of the reinstatement, including all necessary demolition and removal. The form and amount of the security shall be agreed between the planning authority and the developer or, in default of agreement, shall be referred to the Board for determination.

Reason: To ensure the satisfactory reinstatement of the site

Dáire McDevitt
Planning Inspector

20th December 2016