



An
Bord
Pleanála

Inspector's Report ABP-301989-18

Development	Leave to apply for Substitute consent - Croy Wind Farm,
Location	Croy Wind Farm, Co Wexford
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	EXD00574
Applicant(s)	ESB Networks Ltd
Type of Application	Application for Leave
Planning Authority Decision	n/a
Type of Appeal	n/a
Appellant(s)	ESB Networks Ltd
Observer(s)	n/a
Date of Site Inspection	30 th April 2019
Inspector	Mary Crowley

Contents

1.0 Introduction	3
2.0 Site Location and Description.....	3
3.0 Proposed Development.....	4
4.0 Planning History.....	4
5.0 Policy and Context.....	7
5.1. Development Plan.....	7
5.4. Natural Heritage Designations.....	7
5.7. EIA Screening	8
6.0 Legislative Context	9
7.0 The Application	10
8.0 Planning Authority Submission.....	12
9.0 Assessment.....	13
10.0 Recommendation.....	20

1.0 Introduction

- 1.1. This application for leave to appeal for substitute consent is being made following a determination by An Bord Pleanála in July 2016 (ABP Ref RL3408/09/11) that the provision of grid connections from the Croy 110kV substation to the Ballycadden, Gibbet Hill, Knocknalour and Ballynancoran wind farms is not exempted development. It is noted that the decision in relation to ABP Ref RL3408/09/11 is the subject of a Judicial Review. The application submits that a Substitute Consent Leave application under Section 177C of the Planning and Development Act 2000 (as amended) is being made without prejudice.
- 1.2. The wind farms (x4) are connected to the national electricity grid by a medium voltage 20kV underground grid connection cable (with a short section of OHL), which runs from the wind farms to Croy 110kV substation. The grid connection works were undertaken by the wind farm developers, ESNB and / or their agents, under the supervision of ESNB. The grid connection infrastructure is now under the operational control of ESNB. The construction and operation of the wind farms and grid connection were approved by the Commission for Energy Regulations (CER) through the issuing of Authorisation to Construct Consents and Generating Licenses.
- 1.3. The appellants have concluded that the construction of the four grid connections whether considered separately or cumulatively, is not development that required Appropriate Assessment.

2.0 Site Location and Description

- 2.1. The site is located a short distance (approx. 3-12 kms) west/north-west of Ferns in County Wexford. Comprising the routes of the grid connections it extends from the Croy 110kV/Lodgewood 220kV substation in the south to the Knocknalour and Ballynancoran windfarms in the north, a straight line distance of approx. 12 kms. A spur to the east extends to the Ballycadden wind farm and a spur to the west extends to the Gibbet Hill wind farm. The area in general is characterised by good quality arable land with a substantial amount of one-off housing. There is also a considerable amount of wind farm development in the area.

- 2.2. The majority of the grid connections are underground cables laid in the public roads. The main exceptions are; the initial connection to the substation, which crosses two fields (a distance of approx. 500 metres); the final connection to Ballycadden wind farm via a private road, a track and fields (a distance of approx. 1000 metres); the final connection to Gibbet Hill wind farm is across a private road, a track and fields (a distance of approx. 800 metres); and the link section between the Knocknalour and Ballynancoran wind farms that comprises an overhead power line across fields (a distance of approx. 2 kms).
- 2.3. In overall terms the grid connections comprise approx. 26 kms of underground cable and approx. 2kms of overhead powerline. Road and bridge markers identify the locations of the former. The latter comprises 3 no. cables on single wooden poles. All comprise 20kV circuits.
- 2.4. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the file. These serve to describe the site and location in further detail.

3.0 Proposed Development

- 3.1. Underground electricity cable connecting the Croy Windfarm Group (CWFG) in County Wexford to the National Grid.

4.0 Planning History

4.1. Planning Permission

- 4.2. The Croy wind farm Group consists of Ballycadden wind farm, Ballynancoran wind farm, Giblet Hill wind farm and Knocknalour wind farm. The four separate wind farms, consisting of a total of 21 turbines became operational at different times in 2012 and 2013 and may be summarised as follows:

1) Ballycadden Wind Farm - P.A. Ref. 20091730

April 2010 permission for wind farm, comprising 9 no. turbines. Conditions include:

7. Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the National Grid.

Reason: *In the interest of clarity and the proper planning and sustainable development of the area.*

15. *This permission shall not in any way be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.*

Reason: *In the interest of clarity and the proper planning and sustainable development of the area.*

The application included an EIS.

2) Gibbet Hill Wind Farm – P.A. Ref. 20090266

December 2009 permission for wind farm, comprising 6 no. turbines. Conditions include:

7. *Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the National Grid.*

Reason: *In the interest of clarity and the proper planning and sustainable development of the area.*

17. *This permission shall not in any way be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.*

Reason: *In the interest of clarity and the proper planning and sustainable development of the area.*

This application included an EIS.

3) Knocknalour Wind Farm – P.A. Ref. 20110504

August 2011 permission for wind farm, comprising 4 no. turbines. Conditions include:

8. *Prior to commencement of works on site, the applicant shall obtain planning permission for connection of the wind farm to the National Grid.*

Reason: *In the interest of clarity and the proper planning and sustainable development of the area.*

This application included an EIS.

4) Ballynancoran Wind Farm – P.A. Ref. 20033444

June 2004 permission for wind farm, comprising 2 no. turbines. Conditions include:

10. Prior to the commencement of development, planning permission shall be obtained for the erection of powerlines to facilitate the connection of the proposed wind turbines to the national grid.

Reason: *In the interest of the proper planning and development of the area.*

4.3. Referrals

4.4. Four separate referrals were made to the Board in relation to the CWFG grid connection **ABP Ref RL3408/09/10/11**. The common query to those referrals was if the provision of the grid connection to each of the wind farm sites constituted exempt development. Whilst processed separately for procedural reasons, the Planning Inspector prepared one report to cover all referrals as they related to four grid connections form a single substation to four wind farms in the same area, the connection routes are in part the same and the question was the same in all cases.

4.5. The conclusions in the Planning Inspector's Report can be summarised as follows:

- CWFG and ESNB qualify a Statutory Undertakers.
- The development falls within the scope of Classes 26 and 27 of the Planning and Development Regulations.
- The development does not fall within a class of development for the purposes of EIA. It cannot therefore attract a requirement for EIA.
- The issue of cumulative assessment does not arise as the development does not fall within a class of development for the purposes of EIA.
- The likelihood of significant effects on the environment can be excluded by the Board.
- There was no likelihood of significant effects on any European Site arising from the construction of the development.
- The issue of in-combination effects does not arise.
- A Stage 2 Appropriate Assessment would not have been required for the grid connection works.
- Construction of the grid connections, in the absence of a prior planning permission, contravened the relevant conditions of the respective planning

permissions for the wind farms where it was stated that planning permission shall be obtained for the connection to the national grid

- The development does not fall within the scope of Article 9(1)(a)(i) and is not exempted development by reference to this article.
- Due to the requirement for a road opening license it is reasonable to assume that construction complied with relevant health and safety and traffic management requirements.
- The works caused no interference with landscape character, views or prospects or with archaeological and other sites of interest that are the subject of preservation / conservation objectives.

4.6. Ultimately the Board determined that the provision of grid connection from the Croy 110 kV / Longwood 220kV substation to the Ballycadden, Gibbet Hill, Knocknalour and Ballynancoran wind farms is not exempted.

4.7. This was based primarily on the conclusion in the Planning Inspector's Report that construction of the grid connections, in the absence of a prior planning permission, contravened the relevant conditions of the respective planning permissions for the wind farms.

5.0 Policy and Context

5.1. Development Plan

5.2. The operative plan for the area is the **Wexford County Development Plan 2013-2019**. The site is located partly within designated "uplands" (northern areas) and partly within designated "lowlands" (southern areas).

5.3. **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.

5.4. Natural Heritage Designations

5.5. I refer to the four separate referrals made to the Board in relation to the CWFG grid connection ABP Ref RL3408/09/10/11 (see history above).

5.6. It is stated that the grid connection was screened by the Planning Authority (Ref. P.A. Planners Report). The submission included a report entitled “Review of Ecological Assessment Reports for Wexford Referrals” carried out by ESB International for the ESB. The review examined the assessments carried out for the wind farm developments and endorsed the conclusions that the potential for any significant impact on the Slaney River SAC was insignificant. The conclusion in relation to the grid connections was similar and is based on:

- The distance from the SAC.
- Where stream crossings were necessary for underground cabling this was executed either by cables being buried in the decking of road bridges or through the use of tunnelling underneath the river.
- The overhead line section consists of single wooden poles also at a distance from the SAC.

5.7. **EIA Screening**

5.8. I refer to the four separate referrals made to the Board in relation to the CWFG grid connection ABP Ref RL3408/09/10/11 (see history above).

5.9. The O’Grianna decision related only to one windfarm and its grid connection to the substation. It did not state or imply that all wind farms connecting into the same substation form a single project.

5.10. The issue of whether or not each individual windfarm and the respective grid connection should have been subject to EIA is moot as each windfarm, in fact, received planning permission without the grid connection. The grid connections were constructed later as exempted development.

5.11. Further infrastructure was constructed and has been in operation since prior to the O’Grianna judgement on 12 December, 2014. The relevant permissions are beyond challenge.

5.12. None of the grid connections is of a category of development for the purposes of Part 10, Planning and Development Act 2000, as amended. This would be true even if all of them were to be considered as one project.

5.13. By reference to Class 20, Schedule 5, Part 1 of the 2001 Regulations, as amended, the overhead line from Ballynancoran wind farm to the substation at Knocknalour wind farm is 20kV and less than 15 kilometres in length, thereby significantly below the threshold for EIA. It would also not constitute subthreshold development by reference to the criteria set down in Schedule 7. Class 13, Schedule 5, Part 2 of the Regulations is not applicable either.

6.0 Legislative Context

6.1. The basis for substitute consent is set out in Part XA (Section 177A – O) of the Planning and Development Act, 2000, as amended.

6.2. Section 177C of the Act states inter alia:

(1) A person who has carried out a development referred to in subsection

(2) may apply to the Board for leave to apply for substitute consent in respect of the development.

(2) A development in relation to which an applicant may make an application referred to in subsection (1) is a development which has been carried out where an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment, was or is required, and in respect of which –

(b) the applicant is of the opinion that exceptional circumstances exist such that it may be appropriate to permit the regularisation of the development by permitting an application for substitute consent.

6.3. Section 177D states:

(1) Subject to section 261A(21), the Board shall only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental

impact assessment is required, or an appropriate assessment, was or is required in respect of the development concerned and where it is further satisfied—

(b) that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.

6.4. In considering whether exceptional circumstances exist, Section 177D(2) sets out the following criteria to which the Board should have regard:

- a) whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;*
- b) whether the applicant had or could reasonably have had a belief that the development was not unauthorised;*
- c) whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;*
- d) the actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;*
- e) the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;*
- f) whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;*
- g) such other matters as the Board considers relevant.*

7.0 The Application

7.1.1. It is submitted that exceptional circumstances exist that would allow the Board to grant the application for leave to apply for substitute consent for the grid connection. The submission may be summarised as follows:

- Given that there was no environmental and ecological impacts arising from the grid connection works over and above those impacts properly evaluated in the EIS for each windfarm and that a remedial EIAR will be submitted at the application stage proper (if leave is granted), demonstrating the lack of any such additional environmental impacts from the grid connection works, it is submitted that there was no intention to circumvent the purpose and objectives of the EIS and / or Habitats Directive.
- Planning exemptions for the installation of underground cables and erection of 20kV overhead lines were widely utilised by both developers, considered “authorised undertakers” and ESBN, for the purposes of connecting wind farms to the national electricity grid for many years. This position was supported by the considerable number of Section 5 Declarations issued by planning authorities including ABP during previous years.
- The beliefs of the CWFG and ESBN at the time of the grid connection was constructed and commissioned during 2012 and 2013 which still remain unchanged at this time, is that the grid connections do not come within the scope of Article 9(1)(a)(i), Planning and Development Regulations 2001, as amended.
- The Boards attention is drawn to letters form Wexford County Council (Appendix 3 of the submission refers) in relation to compliance submissions from the developers of the four wind farms where the issue of compliance with the relevant conditions relating to planning. It is submitted that, having received written confirmation from WCC that they were satisfied with compliance proposals in relation to relevant planning conditions, it was reasonable for the CWFG and ESBN to proceed in the belief that all planning conditions had been discharged to the satisfaction of WCC.
- Having regard to the beliefs of the CWFG and ESBN and their subsequent actions, the parties have reasonable grounds to believe the development was not unauthorised at the time it was carried out.
- An assessment of the environmental impacts of the operational turbines and electricity infrastructure has already been carried out by the competent authority as part of the planning application process for the wind farms. The assessment process was open to public consultation in accordance with the

relevant parts of the Planning Acts and Regulations and there is evidence in terms of submissions from the public and other consultees that they participated in the planning process.

- The underground cable was installed primarily in public roads having obtained all necessary road opening licenses and does not cross any Natura 2000 site and there was no removal of or interference with habitat within any European Site. The remaining underground and overhead line sections were installed in improved grassland and / or existing tracks. Any environmental impacts during the construction phases were temporary in nature.
- The development has not caused significant impacts on the environment or the integrity of a European Site, therefore, no remedial measures are required for the completed development.
- ESNB is not aware of any unauthorised development carried out by or on its behalf in relation to the subject matter of this application
- ESNB and the CWFG are unaware of any other matters that the Board would need to consider in determining this application for leave to apply for substitute consent.
- At this point in time (over 5 years since completion of the grid connection) it is apparent that the environment has re-established to its pre-existing condition prior to the construction of the grid connection. This is consistent with the findings of the ABP Planning Inspector's Report prepared for the referrals.
- In the event that the Board grants leave for an application for substitute consent ESNB request clarity on the scope and content of the application and in particular of any EIAR if required.

8.0 Planning Authority Submission

- 8.1.1. The Planning Authority have provided no direct comment in relation to the matter save for an appendix of applications adjacent to the lands to review and requests the Board to advise if it requires documentation in relation to same. In addition they advise that there are no enforcement files on the lands but again provide a list of enforcement files adjacent to the land. An outline of all enforcement files held by Wexford County Council Planning Authority regarding the applicant, ESB Networks Ltd is also provided.

9.0 Assessment

- 9.1. The basis for substitute consent is set out in Part XA (Section 177A – O) of the Planning and Development Act 2000 (as amended). Section 177D(1)(b) specifies that the Board can only grant leave to apply for substitute consent in respect of an application under section 177C where it is satisfied that an environmental impact assessment, a determination as to whether an environmental impact assessment is required, or an appropriate assessment was or is required in respect of the development concerned and where it is further satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of the development by permitting an application for substitute consent.
- 9.2. Section 177D(1)(b) provides that the Board may grant leave to apply for substitute consent where exceptional circumstances apply. These exceptional circumstances are set out in Section 177D (2) and I consider the provisions of Section 177D(2) as follows (the criteria set out in the section is in bold):
- 9.3. **Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;**
- 9.3.1. The purposes of the EIA and Habitats Directive are to determine if a proposed development is likely to have significant effects on the environment or on a European site designated under the Habitats Directive.
- 9.3.2. ***Environmental Impact Assessment Directive***
- 9.3.3. Schedule 5 of the Planning and Development Regulations 2001, as amended, refers to development for the purposes of Part 10, i.e. development for which Environmental Impact Assessment is required. I refer to the four separate referrals that were made to the Board in relation to the CWFG grid connection ABP Ref RL3408/09/10/11 refers (summary provided in Section 4.3 Referral above). The development falls within the scope of Classes 26 and 27 of the Planning and Development Regulations. However the development does not fall within a class of development for the purposes of EIA and it cannot therefore attract a requirement for EIA. Further the issue of cumulative

assessment does not arise as the development does not fall within a class of development for the purposes of EIA.

9.3.4. However as pointed out by the referrer, following two recent High Court rulings (Daly vs Kilronan Windfarm Ltd 2017 IEHC 308 and O’Grianna vs An Bord Pleanála 2014 IEHC 632) it has been established that the grid connection must go through a similar process, so as to allow for the entire project to be assessed in the context of the EIA Directive.

9.3.5. The existing turbines at each of the wind farms have already gone through the EIA process. It is noted that the grid connection subject of this case was constructed in 2012 and 2013 and the permission for the wind farms were originally granted between 2004 and 2011; all predating the judgement in O’Grianna vs An Bord Pleanála. I agree with the applicant that the planning permissions relating to the wind farms are valid and beyond challenge under the Planning and Development Acts. I also agree that as the wind farms and grid connection have been constructed and operational for over five years there is a significant body of information available to the competent authority to determine whether the works which have already taken place in relation to the grid connection have had a significant impact on the environment. A remedial EIAR will be required with any substitute consent application (if leave is granted). I am satisfied that this will provide assessment of the project in accordance with the EIA Directive.

9.3.6. **Habitats Directive**

9.3.7. The grid connection works are located primarily in public roads and does not cross any Natura 2000 site. It is stated that there was no removal of or interference with habitat within any European Site and that there is no known rare or protected flora or habitat along the route of the grid connection.

9.3.8. It is stated that an ecological impact assessment undertaken between 2009 and 2011 for Gibbet Hill, Knocknalour and Ballycadden wind farms together with the AA Screenings undertaken for Knocknalour and Ballycadden wind farms concluded that the wind farm developments would not have significant effects on the Slaney River Valley SAC. Further, whilst there does not appear to have been an ecological assessment undertaken for Ballynancoran wind farm (permission granted in 2004), given the scale of this two turbine development, the absence of any significant watercourses on the wind farm site and the distance from the SAC boundary (8.5km)

it may be concluded, having regard to the source-pathway-receptor model that it is unlikely that this wind farm would have resulted in significant adverse effects on the Slaney River Valley SAC.

- 9.3.9. Notwithstanding the foregoing a specific ecological assessment was carried out on the as constructed grid connection in 2016. Appendix 2 – Review of Ecological Assessment Reports for Wexford Referrals (prepared by ESBI in January 2016) refers. This report provides an assessment of the actual effects on the environment arising from the grid connection. The report concludes as follows:

Based on selected underground cable routes for each of the wind farm connections, which utilise the existing road network, and the methods adopted at watercourse crossings, it is reasonable to conclude that the installation of the UGCs could not have been considered prior to their construction (nor can they now be considered) to be likely to have significant effects on the Slaney River Valley SAC; this is based solely on the information provided in the planning application for the respective developments. It can therefore be concluded that the construction of the four grid connections whether considered separately or cumulatively, were not developments that required Appropriate Assessment.

- 9.3.10. Given that there is no evidence of any environmental and / or ecological impacts arising from the grid connection works over and above those impacts evaluated in the EIS for each windfarm and that a remedial EIAR will be submitted at the application stage proper (if leave is granted), I am satisfied that there was no intention by the applicant to circumvent the purpose and objectives of the EIS and / or Habitats Directive.

9.4. Whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

- 9.4.1. I note the applicant's position that planning exemptions for the installation of underground cables and erection of 20kV overhead lines for the purposes of connecting wind farms to the national electricity grid were widely utilised for many years and that this position was supported by numerous Section 5 Declarations issued by both planning authorities and An Bord Pleanála.

- 9.4.2. I refer to the planning history and relevant conditions pertaining to these site (summary provided in Section 4.0 Planning History above) together with the four separate referrals made to the Board in relation to the grid connection; ABP Ref RL3408/09/10/11 refers (summary provided in Section 4.3 Referral above).
- 9.4.3. In relation to the planning history for the area I refer to correspondence from Wexford County Council (Appendix 3 of the applicants submission refers) where the issue of compliance with the relevant conditions relating to planning permission for the grid connection is confirmed (summarised as follows):
- 1) WCC20033444 (Ballynancoran Wind Farm) – WCC letter dated 19th February 2013 confirms Condition No 10 is considered to be in compliance with the permission granted.
 - 2) WCC20110504 (Knocknalour Wind Farm) – WCC letter dated 31st December 2012 confirms Condition No 8 is considered to be in compliance with the permission granted.
 - 3) WCC20091730 (Ballycadden Wind Farm) – WCC letter dated 18th August 2011 confirms Condition No 7 is considered to be in compliance with the permission granted.
 - 4) WCC20090266 (Gibbet Hill Wind Farm) – WCC email dated 12th June 2012 confirms compliance with Condition No 7.
- 9.4.4. The applicant submits that, having received written confirmation from WCC that they were satisfied with compliance proposals in relation to relevant planning conditions that it was reasonable to proceed in the belief that all planning conditions had been discharged to the satisfaction of WCC. The applicant states that the purposes of these conditions was to explicitly state that planning permission must be obtained for such works if they were not already exempted development, having regard to the Planning Acts and Regulations and that this view is supported by the willingness of the planning authority to issue written confirmation to the developers stating that compliance with planning conditions had been achieved. The applicant also submits that the said conditions exceed the limitations of the legislation as the conditions are not related to land which is under the control of any specific wind farm and is not, as such, connected with the development permitted on the land to which the relevant planning application relates.

9.4.5. However, notwithstanding the foregoing I refer to the Referral Cases (ABP Ref RL3408/09/10/11 refers) where the Board determined that the subject works (namely the construction of grid connections) did not constitute exempt works under Classes 26 (underground cables) and 27 (20 kV overhead lines) of the Planning and Development Regulations 2001 (as amended) as;

The said grid connections come within the scope of the Article 9(1)(a)(i) Planning and Development Regulations, 2001, as amended, as their construction contravened conditions 7, 7, 8 and 10 of planning permission PA Refs 20091730; 20090266; 20110504 and 20033444 respectively, being the planning permission for the relevant wind farms (Ballycadden; Gibbet Hill; Knocknalour; Ballynancoran).

9.4.6. Having regard to the foregoing and the stated position of the applicant, together with their subsequent actions and in particular correspondence from Wexford County Council I consider that the applicant had reasonable grounds to believe that the development was not unauthorised at the time it was carried out. On balance, it is concluded that the applicant could reasonably have had the belief that the development was permissible based on the correspondence from Wexford County Council and therefore refusing leave to appeal on this matter would be unreasonable.

9.5. Whether the ability to carry out an assessment of the environmental impacts of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired;

9.5.1. It is noted that an assessment of the environmental impacts of the permitted and now operational turbines and electricity infrastructure has already been carried out by the competent authority as part of the planning application process for the wind farms. The wind farms assessment process was open to public consultation and it is pointed out by the applicant *that there is evidence in terms of submissions from the public and other consultees that they participated in the planning process.*

9.5.2. It is my view that the provision of information to allow the competent authority to undertake an assessment of the environmental impacts of the development or an appropriate assessment has not been substantially impaired. I acknowledge the ecological assessment presented with this application for leave to apply for substitute

consent. I consider that the submission of an application that includes the relevant level of information to allow the Board to undertake environmental impact assessment or an appropriate assessment can be provided to determine whether there were effects on the integrity of the European sites at this location. Furthermore, I am satisfied that the making of an application for substitute consent will permit public participation in the assessment process. It is further notable that the planning authority has no objection to the making of such an application.

9.6. The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development;

9.6.1. It is stated that the underground cable was installed primarily in public roads having obtained all necessary road opening licenses and does not cross any Natura 2000 site and there was no removal of, or interference, with habitat within any European Site. The remaining underground and overhead line sections were installed in improved grassland and / or existing tracks. Any environmental impacts during the construction phases were temporary in nature. It is also stated that construction works took place under the terms of the road opening license and were managed accordingly. The applicant states that *based on the information available to date it is very likely that the remedial EIAR will be in a position to demonstrate that no such significant effects have arisen.*

9.6.2. In relation to the impacts that resulted from the carrying out of the development on the European Sites, I again acknowledge the Review of Ecological Assessment Reports for Wexford Referrals prepared by ESBI in January 2016 refers (Appendix 2 of the applicants submission refers) submitted with the current application and the conclusion *that the installation of the UGCs could not have been considered prior to their construction (nor can they now be considered) to be likely to have significant effects on the Slaney River Valley SAC.* I am satisfied to conclude that the making of an application for substitute consent would allow for adequate detail to be submitted as part of that application to allow the public to be informed of the likely effects that have arisen, to allow comment thereon, and for the Board to be in a position to adequately address the likely impacts that may have resulted and, arising therefrom, to undertake an Appropriate Assessment. At this time, there is no reason to conclude

that the grid connection works caused actual or likely significant effects on the environment or adverse effects on the integrity of a European site.

9.7. The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated;

9.7.1. The applicant states that the development has not caused significant impacts on the environment or the integrity of a European Site therefore no remedial measures are required for the completed development.

9.7.2. There is no evidence that the construction of the grid connection works caused disturbance, disruption or damage to the habitats and/or species for which the European sites proximate to this location have been designated or caused notable effects on the environment. The potential for 'significant' effects having occurred are not regarded as likely to have arisen. The need for specific remediation is not reasonably quantifiable at this time in light of the information at hand which suggests that there has been no effect on the integrity of any European site. The making of any application for substitute consent would examine the need for any such remediation.

9.8. Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

9.8.1. The applicant states that an Enforcement Notice (dated 29th November 2017 WCC Ref 0103/2017) was served on Gibbet Hill wind farm in relation to alleged non-compliance with the noise limits. Gibbet Hill wind farm has contested and continues to contest the grounds on which the Enforcement Notice was served. It is stated that the remaining three wind farms are in substantial compliance with the planning permissions granted.

9.8.2. I refer to Section 4.0 Planning History above. There are no other known previous planning applications associated with the land on which the grid connection works have been constructed. There are no other unauthorised developments which the applicant is known to have carried out. The circumstances in which the works were constructed have already been referred to.

9.9. Such other matters as the Board considers relevant

9.9.1. I consider that no further matters need to be considered by the Board in this case.

10.0 Recommendation

10.1. Having regard to Section 177 D(1)(b), which provides that the Board shall only grant leave to apply for substitute consent where AA is required and that it is satisfied that exceptional circumstances exist such that the Board considers it appropriate to permit the opportunity for regularisation of development by permitting an application for substitute consent, I am satisfied that such exceptional circumstances exist in the instant case, and therefore recommend that consent for leave to apply for substitute consent be permitted in accordance with the following:

DECISION

GRANT leave to apply for substitute consent under section 177D (4) of the Planning and Development Act, 2000, as inserted by section 57 of the Planning and Development (Amendment) Act 2010 based on the reasons and considerations set out below.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

Having regard to Section 177D, Planning and Development Act, 2000, as inserted by Section 57, Planning and Development (Amendment) Act, 2010, the Board is satisfied that an appropriate assessment is required, and the Board concluded such that exceptional circumstances exist by reference, in particular, to the following:

- the fact that the regularisation of the development would not circumvent the purpose and objectives of the Habitats Directive,
- the applicant could reasonably have had a belief that the development was not unauthorised,
- the nature and limited scale of the development,
- that the ability to carry out an Appropriate Assessment and provide for public participation has not been substantially impaired,
- the limited nature of the actual/likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the development, and
- the extent to which such significant effects, if any, on the environment can be remediated,

and, therefore, concluded that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

Mary Crowley
Senior Planning Inspector
12th June 2019