



An
Bord
Pleanála

Inspector's Report ABP-303569-19

Development	Wind Farm
Location	Barranafaddock, County Waterford.
Planning Authority	Waterford City and County Council.
Applicant(s)	Barranafaddock, Sustainable Electricity Ltd.
Type of Application	Application for leave to apply for substitute consent under Section 177C(2)(b) of the Planning and Development Act as amended
Date of Site Inspection	21 st May 2019.
Inspector	Susan McHugh

1.0 Introduction

- 1.1. This is an application for leave to apply for substitute consent pursuant to section 177C(2)(b) of the Planning and Development Act, 2000, as inserted by Section 57 Planning and Development (Amendment) Act 2010, for changes in turbine type at Barranafaddock, Wind Farm, Co. Waterford.

2.0 Site Location and Wind Farm Development

- 2.1. The Inspector's report for File No. ABP-301738-18 gives a description of the site and surrounding area, and below is an extract from this description, with which I generally concur:

'The subject site is located in the north western area of Co. Waterford, close to the border with Counties Cork and Tipperary. The closest village to the site is Araglin, approximately 1.5km to the north of the existing windfarm, with the towns of Kilworth, 10km and Fermoy 14km to the west, all located in Co. Cork. Ballyduff, Co. Waterford, is located approximately 3km to the south east of the wider windfarm site. There is an existing windfarm erected on the site, comprising 12 turbines. These turbines were permitted with 9 permitted under PD11/400 and 3 permitted under PD13/32.

The permissions provided for 11 turbines with hub heights of 80m and with rotor diameter of 90m – an overall tip height of 125m and 3 turbines with hub heights of 80m and with rotor diameter of 103m – overall tip height of 130.5m'.

- 2.2. The subject application refers to 9 no. turbines which comprise turbines T8, T9, T10, T11, T15, T18, T20, T21, and T32. (See map and photos attached)
- 2.3. The revised turbine design from the permitted design as constructed have a hub height of 73.5m with rotor diameter of 103m. This represents a difference from the permitted development of the 9 no. turbines of a decrease of hub height by 6.5m and increase of blade length by 6.5m. The overall turbine height is however within the permitted parameters. The turbines are also all in the permitted locations.

3.0 Planning History

3.1. *Original Parent Permission*

P.A. Reg. Ref. 04/1559 ABP Ref. PL24.213290: Permission was sought for 12 turbines (80m hub height and 80m blade diameter), a 40m wind measuring anemometer pole, 110kV sub-station including control building, construction and upgrading of site entrances, site tracks and associated works.

ABP upheld the decision of WC&CC to grant permission (November 2005) for the development which was altered, whereby one of the turbines (no. 12) was omitted. The height of 3 no. turbines (T10, T11 and T15) was reduced to 60m hub heights and rotor diameter of 80m giving an overall height of 100m.

Condition no. 3 of this permission required that '*details of the proposed turbines and associated structures including design, height and colour*' to be submitted to and agreed in writing with the planning authority.

The application was accompanied by an EIS.

3.1.1. *Extension of Duration Permission*

P.A. Reg. Ref. 10/371: Permission **granted** (November 2010) for a 5 year extension of duration of PD04/1559, to construct 11 turbines.

3.2. *Amending Permissions*

P.A. Reg. Ref. 11/400: Permission **granted** (November 2011) for modifications to the permitted Wind Farm (P.A. Ref. 04/1559 and ABP Ref. No. PL24.24.213290). The modifications included the extension of the operational period of the permitted wind farm from 20 years to 25 years, and a proposed increase in turbine hub height to 80m of three permitted turbines (T10, T11 and T15), and an increase in rotor diameter of all turbines to 90m (from 80) and the micro-siting of ten of the permitted turbines.

The application was accompanied by an AA screening report which concluded that a Stage 2 NIS was not required. The requirement for EIA was screened out and an Environmental Report was submitted.

P.A. Reg. Ref. 13/430: Permission **granted** (December 2013) for amendments to Planning Condition No. 3 of planning reference PD: 13/32 (Extension to Barranafaddock Wind Farm) and Planning Condition Condition No. 2 of planning reference PD: 11/400 (Modifications to Barranafaddock Wind Farm) which relate to the operational period of the permitted wind farm. It is proposed to modify the operational period of the wind farm from 20 years to 25 years. (File attached).

3.3. *Extension to Wind Farm Permission*

P.A. Reg. Ref. 13/32: Permission **granted** (March 2013) for extension to the permitted Barranafaddock Wind Farm, comprising 3 no. turbines with a tip height of up to 130.5m and associated site access tracks and site works. Condition no. 7 required that the maximum blade tip height of the proposed wind turbines shall be 130.5m.

The application was accompanied by an EIS and an AA screening report. The AA screening report concluded that a Stage 2 NIS was not required.

The application was appealed to the Board, ABP-PL24.241887, but was dismissed.

3.4. *Section 5 Determination*

P.A. PD11/400 ABP-301738-18: WC&CC made a Section 5 Referral to ABP. The question related to the 'whether the deviation from the permitted blade length of 45m (90m diameter) to the constructed blade length of 51.5m (103m diameter) is or is not exempted development as relating to planning permission PD11/400.

The Board decided (December 2018) that under Article 6 of the Planning and Development Regulations 2001 (as amended), that the works constituted development and the relocation and alterations to the turbines, including modifications to the overall height of the turbines and the length of the rotor arms/blades do not come within the scope of the permission granted and therefore not exempted development.

3.4.1. *Grid Connection*

In September 2013, BESL lodged separate requests for a declaration of exemption under section 5 of the Planning and Development Act to WC&CC and Cork County Council (CCC). Responses from both (December 2013) confirmed that the proposed underground cable was development and was exempt development by virtue of Part 1, Schedule 2, Class 25 of the Planning and Development Regulations 2001 (as amended). These applications were accompanied by Appropriate Assessment screening reports which concluded that a stage 2 Natura Impact Statement was not required, this conclusion was accepted by the competent authority for each request.

3.5. *Enforcement*

Ref. 2885 Warning Letter issued under Section 152 of the Planning and Development Act (December 2018) in relation to the deviation from the permitted heights and blade lengths. (See file attached).

4.0 **Policy and Context**

4.1. **Development Plan**

The Waterford County Development Plan 2011-2017, as extended, is the overarching policy document in relation to planning in the County area. The subject site is located in an area zoned for 'Agriculture' where it is the objective 'to provide for the development of agriculture and to protect and improve rural amenity'. The site is also located within a preferred area for wind energy developments.

4.2. **Natural Heritage Designations**

The following European sites are within the vicinity of the subject site.

Site Name	Designation	Site Code	Distance
Blackwater River (Cork/Waterford)	SAC	002170	1.3km N 1.8km S
Blackwater Callows	SPA	004094	2.3km S

Lower River Suir	SAC	002137	8.8km N
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5.0 The Appeal

5.1. Grounds of Appeal

- 5.1.1. Fehily Timoney and Company, (Consultants in Engineering and Environmental Sciences) the agent acting on behalf of the operator Barranafaddock Sustainable Electricity Ltd. (BSEL) submitted a report setting out the application material.
- 5.1.2. After outlining the past planning history of the site, the applicant sets out a detailed set of reasons why it is considered that substitute consent should be granted, on the basis of the questions set out in S.177D of the Act.
- 5.1.3. The report also includes the following reports included as appendices;
- 1: Comparative environmental analysis of different turbine specifications installed at the wind farm (June 2018)
 - 2: Operational noise survey report for the wind farm (February 2018)
 - 3: Stage 1 screening for Appropriate Assessment (January 2019)
- 5.1.4. The report can be summarised as follows;
- Longer turbine blade lengths have been installed than those for which planning permission was originally obtained, although the overall turbine height is within the permitted parameters.
 - All turbines as constructed have a hub height of 73.5m and rotor diameter of 103m (blade length 51m) to give a total tip height of 125m.
 - WC&CC made a Section 5 Referral to ABP (ABP Ref. 301739-18) asking for a declaration as to whether the deviation from the permitted to the 'as constructed' blade length was development and or exempt development.
 - As the Board determined that the extension of the rotor diameter of the 9 no. constructed turbines under PD 11/400 was not within the scope of the grant of permission, the applicant now seeks leave to apply for substitute consent under section 177c(b) of the Planning and Development Act 200 (as amended).

- The exceptional circumstances in this case arise from the applicants reasonable understanding that consent for the constructed turbines with the longer blade length was in place on the basis that WC&CC had accepted the applicants' planning compliance submission of November 2013 prior to the construction of the windfarm.
- It is noted that this application is dealing with a component part only of a development which is otherwise permitted. It is the component part of the development, being a change in rotor diameter, that has been determined to be development.

5.2. Exceptional Circumstances

5.2.1. *'whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive'*

The applicant has undertaken a preliminary analysis of the potential significant effects, which concludes that there are no significant changes in environmental impacts arising as a result of the increased rotor diameter, and that the EIA Directive will not be circumvented by regularisation for the subject development.

5.2.2. *'whether the applicant had or could reasonably have had a belief that the development was not unauthorised'*

The applicant notes that they were advised by WCC in the compliance notification dated 13th December 2013 that the installation of a turbine which would have a hub height of 73.5m, an overall tip height not exceeding 125m and a rotor diameter of 103m was in compliance with condition no. 3 of the 2011 permission. It is submitted that that WC&CC in approving the detailed design of the turbines in 2013, did not consider the increase in rotor diameter to material in planning terms.

5.2.3. *'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 as assessment has been substantially impaired'*

The applicant contends that the ability to carry out an assessment of the environmental impacts of the development for EIA purposes has not been impaired. As part of the developer's compliance with planning conditions associated with the construction and operation of the wind farm, records of protection measures and monitoring activities are available to inform the preparation of a comprehensive rEiAR, which enable the competent authority to undertake an EIA and allow public participation in the process.

The applicant also contends that the ability to carry out an assessment of the development for appropriate assessment purposes has not been impaired. As noted above AA screening was carried out on the project components in 2011 and 2013 planning applications and the Section 5 Declaration for the Grid Connection. As part of this submission a Stage 1 AA screening report is submitted in Appendix C. The applicant submits that given the scale and nature of the development, it is considered that there is no impairment to enable ABP to undertake AA of the development and for public participation in this process.

5.2.4. *'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'*

The applicant submits that no such effects have resulted or are likely to result from the retention of the longer turbines blades and reduced hub height. The screening report submitted with this application found no direct, indirect or cumulative significant impacts and concluded the competent authority is enabled to conduct a Stage 1 screening for AA.

5.2.5. *'the extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated'*

The applicant refers to the comparative analysis of environmental impacts in Appendix A and the Stage 1 Screening report in Appendix C, and note that the proposed development has not caused significant impacts on the environment or the integrity of a European site and therefore no remedial measures are required for the works to date.

5.2.6. *'whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development'*

The applicant submits that they have complied with previous permission and has not carried out unauthorised development.

5.3. Planning Authority Response

5.4. The planning authority responded to the application. In summary, it states;

- The P.A. is of the opinion that 'exceptional circumstances' apply to this case.
- The 'unauthorised nature' of the works relate solely to the physical alteration of the new turbines while still remaining within the parameters of the permitted development.
- From the submitted information by the applicants' consultants, it is concluded there is no material impact on the environment caused by the physical alteration to the turbines. It is the opinion of the P.A. that the regularisation of the development concerned would not circumvent the purpose and objectives of the Environmental Impact Assessment Directive of the Habitats Directive.
- The Planning Authority cannot require the turbines to be taken down through the 'Enforcement' process but simply require the developer to proceed in accordance with the permission granted i.e. reduce the blade length from 103.5 to 90 meters but also to increase the hub height from 73.5 meters to 80 meters.
- The overall tip height is currently the same as what was permitted – 125 meters. Any enforcement proceedings will not result in a decrease of the overall height of the turbines or result in the applicant being required to take the turbines down and clear the site.
- If the Planning Authority were to proceed with Enforcement, the development would have to be carried out as permitted-therefore while the blade length would be reduced the hub height would have to be increased to 80 meters (currently 73.5m).
- Additional turbines under a subsequent application have been granted to the developer on the site.

- If the Board is mindful to allow an application for 'substitute consent' the appropriate documents/process should include retention of the 'as constructed' hub height.

6.0 Assessment

The Board is asked by the applicant to confirm that the works carried out should or should not have been subject to Appropriate Assessment, and therefore, whether or not a remedial Natura Impact Statement is required, or not and therefore, to confirm that an application for Substitute Consent can be sought.

6.1. Scope for Application

- 6.1.1. It is noted that the application in this instance includes a permitted development in addition to the various retention elements as set out. As an application for substitute consent can only be made in respect of development that has already been carried out, the Board's determination in this case, whether or not to grant leave to make such an application, must be confined solely to the retention elements of the development.

6.2. Tests for Leave

- 6.2.1. Section 177D(1) of the Act 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.
- 6.2.2. Section 177D (2) provides that in considering whether exceptional circumstances exist the Board must have regard to the following:

'(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.'

6.3. Observations

None.

6.4. Requirement for EIA

6.4.1. The subject turbines which have a revised turbine design consists of 9 no. turbines.

6.4.2. Schedule 5, Part 2 of the Planning and Development Regulations, 2001 as amended requires a mandatory EIA for wind farms in excess of 5 turbines with a capacity of 5 MW. The development therefore requires an EIA and the applicant also accepts that this is an EIA project.

6.4.3. The agent on behalf of the applicant notes that an Environmental Impact Assessment was required to be submitted for both the original permission and for the

wind farm extension under the 2013 permission. The agent further confirms that it will prepare and submit a remedial EIAR with a future application for substitute consent if required by ABP.

- 6.4.4. The agent has submitted a comparative environmental analysis of the different turbine specifications installed which concludes that there are no significant changes relating to the environmental impacts based on the 2011 Environmental Report submitted as part of the planning application for the permitted development.
- 6.4.5. Having regard to the above considerations, I am of the opinion that the likelihood of significant effects on the environment cannot be excluded by the Board and that an *environmental impact assessment or a determination as to whether an environmental impact assessment is required*, is necessary in this case for all areas seeking retention. The Board's determination must be confined solely to the retention elements of the development.

6.5. **Appropriate Assessment (AA)**

- 6.5.1. As noted above, the site is within 1.3km of the Blackwater River SAC (Site Code 002170) within 2.3km of the Blackwater Callows SPA (Site Code 004094), and within 8.8km of the Lower River Suir SAC (Site Code 002137). I have reviewed the Site Conservation Objectives for these sites.
- 6.5.2. An Appropriate Assessment Screening report was submitted under P.A. Reg. Ref. 11/400 (2011), P.A. Reg. Ref. 13/32 (2013) for the turbines and Section 5 referrals (2013) for the Grid Connection route. In each instance it was concluded that a Stage 2 Natura Impact Statement (NIS) was not required. This conclusion was confirmed by the relevant competent authorities.
- 6.5.3. The applicant submitted a Stage 1 Screening Report for the subject development included in Appendix C.
- 6.5.4. The Blackwater River includes two Natura 2000 sites; the Blackwater River SAC (Site Code 002170) and the Blackwater Callows SPA (Site Code 004094). The Blackwater River SAC is a candidate for SAC selected for alluvial wet woodlands and Yew wood, for floating river vegetation, estuaries, tidal mudflats, Salicornia

mudflats, Atlantic salt meadows. Mediterranean salt meadows, perennial vegetation of stony banks and Old woodlands, listed as Annex I of the EU Habitats Directive.

- 6.5.5. The site is also selected for the following species listed as Annex II habitats – Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Crayfish, Twaité Shad, Atlantic Salmon, Otter and the plant, Killarney Fern. The River Blackwater is of considerable conservation significance for the occurrence of good examples of habitats and of populations of plant and animal species, and of high conservation value for the populations of bird species that use it.
- 6.5.6. The Lower River Suir SAC (002137) is a candidate SAC selected for the presence of the priority habitats on Annex I of the E.U. Habitats Directive, alluvial wetlands and Yew wood. It is also selected as a candidate SAC for floating river vegetation, Atlantic salt meadows, Mediterranean salt meadows, old oak woodlands and eutrophic tall herbs, all habitats listed on Annex 1 of the E.U. Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Crayfish, Twaité Shad, Atlantic Salmon and Otter. The Lower River Suir also contains examples of a number of Annex I habitats including the habitat Alluvial Forest.
- 6.5.7. The report concludes beyond reasonable doubt that there are not likely to be significant effects from the Barranafaddock Wind Farm on the Lower River Suir SAC (Site Code 002137), Blackwater Callows SPA (Site Code 004094) or Blackwater River (Cork/Waterford) SAC (Site Code 002170) as a result of the change in rotor diameter for 9 of the 12 permitted turbines. These European sites have therefore been 'screened out' by the applicant within the Stage 1 Appropriate Assessment Report and do not require further assessment within a Stage 2 NIS.
- 6.5.8. Having regard to the contents of the Screening Report, I consider that it is required as it cannot be excluded on the basis of objective information that the development would have had or would have a likely significant effect on the SAC's, having regard to the qualifying criteria of each designated site, the Conservation Objectives for each site and having regard to a potential pathway between the facility and the designated sites.
- 6.5.9. The applicant further confirms that it will prepare and submit a remedial NIS with a future application for substitute consent if required by ABP.

6.6. Conclusions

The development, therefore, does qualify for consideration for leave to apply for substitute consent being a development in respect of which an environmental impact assessment or a determination as to whether an environmental impact assessment is required and an Appropriate Assessment is required.

6.7. Exceptional Circumstances

Section 177D(2) of the Planning and Development Act provides that in considering whether exceptional circumstances exist, the Board shall have regard to the matters as listed in Section 6.2 above.

My consideration on each of these are as follows:

(a) Whether the regularisation of the development concerned would circumvent the purposes and objectives of the Environmental Impact Assessment Directive or the Habitats Directive;

The wind farm is an EIA project as set out in Part 2 of Schedule 5 of the 2001 Regulations. As I have noted above the main planning/environmental concern relating to the windfarm would be visual impacts and direct impacts on adjoining properties. I do not consider that the regularisation of the development concerned would circumvent the purpose and objectives of either the EIA Directive or the Habitats Directive.

The prospective applicants have noted that AA screening was carried out in previous applications, and in all such cases it was considered that the development would not have a significant impact on the conservation objectives of the SAC, therefore a Stage 2 assessment is not required. I do not consider that there has been any material change of circumstances which would likely alter such a conclusion if a new application was submitted. As I have noted above, the separation distance to the SAC is such that there is no likelihood of adverse impacts on the SAC so there is no requirement for a Stage 2 NIS.

The applicant has prepared a preliminary comparative EIS and AA in accordance with the Directives and statements would be evaluated and determined on their merit in any subsequent substitute consent application.

(b) Whether the applicant had or could reasonably have had a belief that the development was not unauthorised;

The applicant was in receipt of planning permission for the wind farm under PD11/400 which clearly included conditions stating requirements in relation to the overall height of the turbines. Compliance conditions were agreed with the planning authority.

It would appear from the planning history of the site that there was a genuine belief by the applicant that the upgrading of the size of the turbines was in accordance with the original permission – this is certainly the view of the planning authority as expressed in their letter to the Board.

While it is not possible to make a definitive judgement on the applicants 'belief' concerning what could be built on site, there is no evidence on file that there was a deliberate or concerted attempt to circumvent planning laws. I would therefore be inclined to give the benefit of any doubt in this matter to the developer.

(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;

Having regard to the planning history of the site and the fact that the applicant has applied for leave to apply for substitute consent, I do not consider that the provision of public participation in such an assessment has been substantially impaired. If leave to apply for substitute consent is permitted in this case a remedial EIS (if required following determination) and remedial NIS would be submitted with the application that would follow. This application would allow for public participation within the process.

I note that the previous AA assessments concluded that a Stage 2 AA (NIS) would not be required. I also see no evidence from either file information or from my site visit that any damage (reversible or not) has been done to a European site, or that there have been any reversible impacts on the environment. As such, I do not

consider that there has been any impairment of the ability of the applicant or competent authority to carry out an EIS or NIS of the wind farm.

I note from enforcement file evidence that there was some disquiet among local residents about noise and drainage aspects of the turbines (in particular between T21 and T32). While any past amenity impacts cannot be reversed, I do not consider that there has been a substantial impairment to provide for public participation in the EIA or AA process.

(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;

From the details available to date, there is no indication that the (revised turbine design), that would be subject to the substitute consent application, have resulted in any significant direct or indirect effects on the environment (or continue to have such effects) or would have affected the Conservation Objectives of the features for which any European Site in the vicinity has been designated.

While noting the concerns of some members of the local community, a decision by the Board to permit an application for substitute consent does not of course pre-judge the final decision on the application. Such a decision would be based on additional, objective information which would be required in order to assess if there were, or would continue to be, significant impacts on the environment from the turbines.

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

From the details available to date, there is no indication that the (revised turbine design) have had any significant effects on the environment or adverse effects on a European Site.

I note the comparative analysis of environmental impacts and the Stage 1 screening reports submitted with the application.

The application for substitute consent and the Board's determination on such an application, which would include a remedial EIA and remedial NIS, would allow for definitive conclusions to be drawn.

I would also note that in general that in contrast to other developments which have been subject to substitute consent in the past (most notably of course quarries), windfarms can be altered or removed altogether if it decided by the Board that on-going impacts are not acceptable. As such, I would conclude that as many adverse effects can be remediated, such developments are appropriate for substitute consent applications.

(f) Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development;

The applicant has been in receipt of planning permission for a windfarm at this location with conditions in relation to the no. design and height of the turbines. The revised turbine design as constructed on site are not in accordance with the permissions granted in terms of their height and design. They are however located in the areas identified in the permissions.

It would appear that there is no reason to believe that the applicant has a history of breaching planning or other regulatory controls.

(g) Such other matters as the Board considers relevant

I consider the issuing of compliances on the parent permission even though as transpired a revised turbine design was constructed on site, effectively meant that the applicant was excluded from applying for substitute consent sooner.

Having regard to the significance of the difference between the permitted and as constructed turbines, I consider that this should be considered by the Board in determining whether to grant leave to apply for substitute consent.

7.0 Recommendation

7.1. Having regard to Section 177 D(1)(a), which provides that the Board shall only grant leave to apply for substitute consent 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, I am satisfied to conclude that an EIA, a determination as to whether EIA is required, and AA is required in this instance. I consider that exceptional circumstances exist that would permit the making of an application for substitute consent.

8.0 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:

- a) the development is one where an EIA or a determination as to whether EIA is required, and an appropriate assessment is required, and
- b) that exceptional circumstances exist by reference, in particular to the following:
 - the planning history of the site with particular reference to the (revised design of the turbines) from the previously permitted design,
 - the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment or Habitats Directive;
 - that the ability to carry out EIA and AA and provide for public participation has not been substantially impaired;
 - the applicant's reasonable expectation, following approval of a compliance submission in respect to condition no. 3 of the grant of the 2011 permission that the development had a reasonable belief that the development was authorised.

- the actual/likely significant effects on the integrity of a European site resulting from the development (subject to the outcome of a substitute consent application) are likely to be relatively minor.

The Notice to the applicants advising of the decision should also direct that:

- a) the application be made within 12 weeks of the giving of the notice or such longer period as the Board may, on request, consider appropriate, and
- b) the application includes a remedial EIS if determined as necessary, and a remedial NIS. This may include reference to proposed mitigation measures where appropriate.

Susan McHugh
Planning Inspectorate

28th May 2019

Decision Quashed