



An
Bord
Pleanála

Inspector's Report ABP-306736-20

Question	Whether the removal of trees along the side of the road is or is not development and is or is not exempted development
Location	Glenduff, Ballaugh, County Limertick
Planning Authority	Limerick City & County Council
Planning Authority Ref.	EC11/20
Referral	
Referred by	Liam Lenihan
Owner	Margaret Breen
Occupier	Mauricetown Windfarm Ltd.
Date of Inspection	3 rd June, 2020
Inspector	Kevin Moore

1.0 Introduction

- 1.1 On 24th February 2020, Liam Lenihan made a submission to the Board, under section 5 of the Planning and Development Act, seeking a review of Limerick City & County Council's decision that the cutting of a tree line at Glenduff, County Limerick was development and was authorised development under PL 13.240910. The Referrer sets out details contained within the planning application documentation associated with PL 13.240910 in support of the submission that the removal of the tree line constitutes development that is not exempted development.

2.0 Site Location / Description

- 2.1 The location relating to the tree line the subject of the referral is a section of local road frontage of a field whose tree line and hedgerow has been cleared recently at Glenduff, Ballaugh in County Limerick. It is a linear section running westwards from the east at a junction with another local road. It lies immediately north of a detached house occupied by the referrer. The land behind the former tree line is elevated over the local road and the referrer's house is located on lower land below the public road on its opposite side. The land to the rear of the location of the former tree line is being developed as a wind farm.

3.0 The Question

- 3.1 The question before the Board is:

Whether the removal of trees along the side of the roadway at Glenduff, Ballaugh, County Limerick is development and is permitted development under Planning Permission reference 12/379 (An Bord Pleanála reference PL 13.240910).

4.0 The Referrer's Submission

4.1 The following is submitted from Liam Lenihan:

- It is disputed that that the cutting of the tree line was authorised development on the grounds that the function of the tree line was as a visual and noise barrier from the nearest wind turbine from the referrer's residence referred to in the An Bord Pleanála Inspector's report with Planning Appeal Ref. PL 13.240910 and that an exclusion zone was indicated in the maps accompanying the planning application (Maps ASHF d003.7.2 & ASHF d011.8).
- Condition 1 of the grant of permission requires the development to be carried out and completed in accordance with the plans and particulars lodged with the application and the Environmental Impact Statement, as amended by further plans and particulars received by the Board.
- Condition 4 of the grant of permission requires all mitigation and management proposals in the EIS and subsequent revisions to be implemented in full.
- In the documents received by the planning authority in relation to Condition 5 of the grant of permission relating to a Construction Drainage and Management Plan there is no mention of tree felling within the exclusion zone and the condition does not permit tree felling.
- Condition 12 of the grant of permission relating to the requirement to submit details on the road network to be used by construction traffic was not complied with.
- The referrer makes reference to Sections 2.8.4 and 6.4 of the EIS, pages 20 and 23 of the Ecological Impact Statement, and page 16 of the Inspector's report to indicate the intention and understanding that the tree line was to be retained.
- The Forest Service has not recorded a felling licence for the trees.

- It is disputed that the tree line removal was development permitted under the grant of planning permission and it is submitted that it is unauthorised development that requires full reinstatement of the tree line.

5.0 The Planning Authority's Considerations

- 5.1 Following the receipt of a report from the Development Inspector, the planning authority issued a Section 5 Declaration that the removal of trees along the side of the roadway at Glenduff, Ballaugh, County Limerick is development and is permitted development under Planning Permission reference 12/379 An Bord Pleanála reference PL13.240910.
- 5.2 The Development Officer noted planning permission issued by the Board in 2013 and details submitted with the planning application. It was submitted that in Section 2-4 of the EIS it was stated that some hedgerows and trees may need to be removed in order to facilitate the development, that the extent of the removal is highly limited and only occurs where absolutely necessary, and where possible hedgerows and trees along the public carriageway are reinstated after construction is completed. It was also noted that Section 2-8 of the EIS notes that there will be need for some road modifications to accommodate abnormal loads over the last 1.5km to the site from the R515 onto the local third class roads and will be carried out after consultation and agreement with the Roads Engineer. It is further noted that there is reference to the second corner to access the site from the third class road accessed from the R515 being a right hand turn and requiring the removal of existing field hedgerows to make available the necessary space for abnormal loads to traverse the corner. The Development Officer states that these upgrades are identified on drawing Ash#d003.7.12 submitted with the application. The Development Officer concludes that he is satisfied that the removal of trees the subject of the declaration was in accordance with the planning permission issued by the Board.

6.0 Response from Mauricetown Wind Farm

6.1 The response may be synthesised as follows

- Declaration Ref. EC11/20 is simply a restatement of Declaration Ref. EC58/19. The relevant facts or circumstances have not changed. It is understood that the Declaration determining that this is development and is permitted development is valid and can be relied upon.
- Without prejudice to the above, the following comments are provided:
 - The referrer has made reference to an “exclusion zone” at the indicated location on a number of occasions which is not correct. The series of drawings ref. d003.7.XX are the “key map” and “block plans” for the overall development. The “exclusion zone” is an area outlined in blue and hatched in blue that is clearly visible on drawing ref. ASHF d003.7.2 and ASHF d003.7.3. This exclusion is to clearly indicate an area that is “excluded” from the statutory blue line boundary indicating lands owned by the landowners involved in the planning application.
 - At the location that is the subject of the referral, the area within the red line boundary is outlined in cyan and reference to the legend illustrates that this is “proposed access tracks”. This can also be seen elsewhere within the drawing series.
 - This information was available to the local authority in the course of making its decision on the matter and there is no change to the facts or circumstances.

6.2 The respondent attaches Drawing Refs. ASHF d003.7.2, ASHF d003.7.3, ASHF d003.7.12 and ASHF d003.7.13, which formed part of the original planning application, for reference.

7.0 Statutory Provisions

7.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

In this Act, except where the context otherwise requires—

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

3.—(1) In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

PART III – Control of Development

Section 32

32.—(1) Subject to the other provisions of this Act, permission shall be required under this Part –

- (a) in respect of any development of land, not being exempted development, and
- (b) in the case of development which is unauthorised, for the retention of that unauthorised development.

(2) A person shall not carry out any development in respect of which permission is required by *subsection (1)*, except under and in accordance with a permission granted under this Part.

8.0 Planning History

8.1 I note the following planning history relating to the site:

ABP Ref. PL 13.240910 (P.A. Ref. 12/379)

A 10 year planning permission was granted by the Board for retention and completion of the construction, operation and decommissioning of up to six number wind turbine generators, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, in Ballagh, County Limerick.

9.0 Assessment

9.1 Introduction

9.1.1 I note at the outset what is available to allow consideration of this referral. This includes the Board Order and the associated Inspector's report relating to ABP Ref. PL 13.240910. Furthermore, it includes the referral file containing the submissions by the parties to the referral and the box contents associated with the planning application relating to ABP Ref. PL 13.240910. This box contains the Environmental Impact Statement, the photomontages, and the following drawings:

ASHF d003.7.1A – *Site Location Map Sheet 1 of 2*

ASHF d003.7.1B – *Site Location Map Sheet 2 of 2*

ASHF d003.7.3 – *Site Layout Block Plan Site Entrance*
ASHF d003.7.4 – *Site Layout Block Plan T2*
ASHF d003.7.5 – *Site Layout Block Plan T1*
ASHF d003.7.6 – *Site Layout Block Plan T4 Access Track*
ASHF d003.7.7 – *Site Layout Block Plan T4*
ASHF d003.7.8 – *Site Layout Block Plan T3*
ASHF d003.7.9 – *Site Layout Block Plan T5*
ASHF d003.7.10 – *Site Layout Block Plan T6 Access Track*
ASHF d003.7.11 – *Site Layout Block Plan T6*
ASHF d003.7.12 – *Site Layout Block Plan Approach Corner – South East*
ASHF d003.7.13 – *Site Layout Block Plan Approach Corner – North East*
ASHF d003.7.14 – *Site Layout Block Plan Borrow Pit*
ASHF d011.8 – *Site Layout Land Owner Map*
ASHF d012.1.2 – *IPP & ESB 38kV Substation Building Switchgear House – GA*
ASHF d012.2.1 – *Substation Compound Layout*
ASHF d013.1 – *Wind Turbine Elevation*
ASHF d014.1 – *Turbine Foundation and Crane Hardstanding Details*
ASHF d014.2 – *Typical Road Construction Details*
ASHF d020.1 – *85m Met Mast Elevation*

9.1.2 I note for the Board that the drawings, EIS, Board Order and Inspector's report contain all relevant matters for consideration of the referral that relate to the permitted development referenced in the submissions to the Board. The appeal file itself is not available at this time. This assessment is undertaken having due regard to the above referenced available documentation.

9.2 The Question of Development

9.2.1 The question before the Board relates to the removal of a tree line along a section of road frontage associated with the development of a wind farm. In undertaking the removal of the tree line, such works would include acts of

excavation and demolition of the roadside boundary in accordance with the definition of 'works' as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, over and under land and would, therefore, constitute 'development' in accordance with the meaning of 'development' as set out in section 3 of the Planning and Development Act.

9.2 The Question of Exempted Development

9.2.1 Section 32 of the Planning and Development Act 2000, as amended, requires permission to be obtained in respect of any development of land not being exempted development. The development of a wind farm requires planning permission under the Act. Under ABP Ref. PL 13.240910, An Bord Pleanála granted permission for the retention and completion of the construction, operation and decommissioning of up to six number wind turbine generators, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, in Ballagh, County Limerick. This permission was subject to 25 conditions. Condition 1 of the permission required the development to be carried out and completed in accordance with the plans and particulars lodged with the application and the Environmental Impact Statement, as amended by the further plans and particulars received by An Bord Pleanála on the 31st day July 2012

9.2.2 In addressing the question raised by the referrer it is required to consider this decision and some of the details submitted as part of the planning application.

9.2.3 I note the following from the decision and the application details and I comment as follows:

Board Order

As well as Condition 1, the conditions attached with the Board's decision to grant permission included the following:

4. *All mitigation and management proposals contained in the Environmental Impact Statement and subsequent revisions submitted to the planning authority and An Bord Pleanála shall be implemented in full.*

Reason: *In the interest of clarity.*

5. *Prior to the commencement of development, the developer shall submit a comprehensive Construction-Stage Drainage Report and Construction Management Plan for the written agreement of the planning authority which shall include:*

- (a) *a pre-construction ecological assessment of all watercourses in the vicinity according to criteria to be set out in consultation with Fisheries Ireland,*
- (b) *full details of all the control of drainage during and after construction (including tree-felling prior to construction), including the use of settlement ponds and silt traps,*
- (c) *full details for the control of run-off from temporary spoil storage areas,*
- (d) *details of the nature of all materials used in constructing temporary and permanent access tracks to the turbines and borrow pits,*
- (e) *full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction, and*
- (f) *details of the timing of works to ensure no works impacting on watercourses takes place during the bird breeding season or the fish spawning season.*

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

12. *Details of the road network to be used by construction traffic and by the long-term maintenance traffic shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.*

Reason: *In the interest of traffic safety.*

It is apparent from the above that neither Condition 5 nor Condition 12 directly related to the question before the Board. Neither condition sought nor required the retention of established roadside boundaries. The former was primarily focused on control of drainage and impacts on watercourses, while the latter solely sought details of the road network to be used by construction and maintenance traffic. I acknowledge that Condition 4 is pertinent to the question at hand.

Environmental Impact Statement

Condition 4 required all mitigation and management proposals contained in the Environmental Impact Statement (EIS) to be implemented in full. The following is noted from this EIS:

2.8 Access to Site

2.8.2 *There will be need for some road modifications to accommodate abnormal loads over the last 1.5km to the site, from the R515 onto the local third class roads. The environmental impacts of these upgrades are included in this EIAS. All modifications to public roads which are required will only be carried out after consultation and agreement with the relevant county roads engineer ...*

2.8.4 *The second corner is to access the site from the local third class road accessed from the R515. It will be a right hand turn and will require the removal of existing field hedgerows to make available the necessary space for abnormal loads to traverse the corner.*

2.8.5 *Both corners will be used for turbine components and other large loads to access the site and will be reinstated at the completion of the construction phase. Both corners will need to be available for the operational phase for the unforeseen possibility that abnormal load deliveries will be required. The corners will also be needed for the decommissioning phase to remove abnormal loads from the site. Both corners will be reinstated after any use during operational and decommissioning phases and such works will be notified to and agreed with the Limerick County Roads Engineer.*

6.4 **Mitigation Measures** (Section 6: Landscape and Visual Assessment)

A number of general mitigation measures are also included below: ...

- *The number and extent of new access tracks will be kept to a minimum and properly landscaped immediately following completion of works. Such landscaping will include reinstating original vegetation along verges and repairing any wheel ruts.*
- *Special care will be taken to preserve any features which contribute to the landscape character of the study area.*

It is very clear from the EIS that it was acknowledged that there were constraints relating to access to the site to accommodate delivery of materials at the construction phase. It was expressly acknowledged that some road modifications were required to accommodate abnormal loads over the last 1.5km to the site and that the second corner to access the site from the local third class road accessed from the R515 would require the removal of existing field hedgerows to make available the necessary space for abnormal loads to traverse the corner. This directly applies to the location the subject of the question to the Board. The development is at the construction phase. In accordance with Section 2.8.5 of the EIS the corner would be reinstated at the completion of the construction phase.

Drawings

The drawings submitted with the application included:

ASHF d003.7.1B – *Site Location Map Sheet 2 of 2*

ASHF d003.7.12 – *Site Layout Block Plan Approach Corner – South East*

ASHF d011.8 – *Site Layout Land Owner Map*

Drawing ASHF d003.7.12 clearly shows the approach corner and the area outlined in red where the established tree line has now been removed. The other two drawings also indicate this detail.

9.2.4 Having regard to the above, it is my submission to the Board that it was clearly intended as part of the development of the proposed wind farm to remove the existing tree line which formed part of the hedgerow at the location the subject of the question before the Board. This was definitively detailed in the submitted EIS in Section 2.8. There was no prohibition on the removal of hedgerow or the tree line as part of the decision by the Board. Condition 4 of the Board decision required all mitigation and management proposals contained in the Environmental Impact Statement to be implemented. It is evident that the management proposals at the construction stage included some road modifications to accommodate abnormal loads over the last 1.5km to the site. As part of this access management, the second corner to access the site required the removal of existing field hedgerows to make available the necessary space for abnormal loads to traverse the corner. The mitigation measures included the reinstatement of the corner at the completion of the construction phase.

9.2.5 I can find no reason to conclude that the removal of the tree line the subject of the referral to the Board runs contrary to the planning permission issued.

10.0 CONCLUSION AND RECOMMENDATION

WHEREAS a question has arisen as to whether the removal of trees along the side of the roadway at Glendaff, Ballaugh, County Limerick is development and is permitted development under Planning Permission reference 12/379 (An Bord Pleanála reference PL 13.240910):

AND WHEREAS the said question was referred to An Bord Pleanála by Liam Lenihan on the 24th day of February, 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2, 3 and 32 of the Planning and Development Act 2000 (as amended),
- (b) the planning history of the site relating to ABP Ref. PL 13.240190, inclusive of the Board Order and the Inspector's report,
- (c) the applicant's Environmental Impact Statement relating to ABP Ref. PL 13.240190,
- (d) the associated drawings relating to ABP Ref. PL 13.240190, in particular Drawings ASHF d003.7.1B, ASHF d003.7.12, and ASHF d011.8, and
- (e) the submissions of the parties to the referral,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the removal of trees along the side of the roadway constitutes 'development' for the purposes of the Planning and Development Act, and

(b) the removal of trees along the side of the roadway is in accordance with planning permission granted under ABP Ref. PL 13.240910:

NOW THEREFORE the Board, in exercise of the powers conferred on it by section 5 of the 2000 Act, has decided that the removal of trees along the side of the roadway at Glendaff, Ballaugh, County Limerick constitutes development and development that is exempted development.

Kevin Moore
Senior Planning Inspector
8th July, 2020