



An
Bord
Pleanála

Inspector's Report ABP-309478-21

Development

Erection of a single wind turbine, access and reinstatement works, temporary site entrance and underground electrical cabling at Kilquilly and Cloggagh, Ballyjamesduff, temporary upgrade works at the R935/L6503 junction at Moynehall and along the L2502.

Location

Kilquilly and Cloggagh, Ballyjamesduff, Co. Cavan

Planning Authority

Cavan County Council

Planning Authority Reg. Ref.

19447

Applicant(s)

Liffey Energy Limited.

Type of Application

Permission.

Planning Authority Decision

Refuse permission

Type of Appeal

First Party

Observer(s)

Carmel Clarke,
Ballyjamesduff Community Council,
Helen Clarke,

Ronan & Rachael Flanagan,
John Clarke,
Seamus Reilly,
Padraig & Paula Campbell,
Paul Brady,
Dermot Conaty,
Oliver Reilly.

Date of Site Inspection

7th May 2021.

Inspector

Barry O'Donnell

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1.0 Site Location and Description

- 1.1. The subject site is located south of Ballyjamesduff town centre, on the Oldcastle Road, and south of the main Liffey Meats site. The Liffey Meats site consists of an abattoir and meat processing facility and there is an existing 151m tall wind turbine at the east end of the factory site, which provides energy to the factory.
- 1.2. Access to the site is taken from the Oldcastle Road, in an area which is primarily residential in nature but which contains commercial uses, in particular a large commercial premises on the west side of the road. The main part of the site is set back from the Oldcastle Road by approx. 450m, and is contained from views, with the existing turbine the only prominent means by which to identify the site on approach.
- 1.3. The meat factory site lies at the edge of the town and looks onto a rural landscape to the south and west in particular, which is characterised by agricultural usage interspersed with rural housing. The site of the proposed turbine is approx. 350m south of the factory site, on land set below the level of the factory and other lands to the north and east. It is currently laid to grass, appearing to be used for grazing.

2.0 Proposed Development

- 2.1. The application was lodged with the Planning Authority on 14th November 2019, with further information submitted on 4th December 2020, following a request for further information dated 17th January 2020. Revised public notices were also submitted on 17th December 2020.
- 2.2. Permission is sought for the erection of a single wind turbine with a maximum height of 169m and including turbine foundation, hardstanding area, site access tracks, temporary site entrance, underground electrical cabling and associated works. The proposal also incorporates temporary upgrade works to the R935/L6503 at Moneyhall (Cavan) and along the L2502 at Moher (Denn ED).
- 2.3. A ten-year permission is sought and an operational life of 30 years is proposed.
- 2.4. A specific turbine model and manufacturer has not been confirmed. The applicant states that a number of models are under consideration, all within the stated maximum overall tip height of 169m. It is suggested that, should permission be granted, a condition can be attached, to control its height, dimensions and colour.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority refused permission on 22nd January 2021, for 2 reasons as follows: -

1. *On the basis of the information submitted with regard to visual impact and shadow flicker, the Planning Authority is not satisfied that the proposed development would not seriously injure the amenities, or depreciate the value, of property in the vicinity and would therefore not be in accordance with the proper planning and sustainable development of the area.*
2. *Having regard to the information submitted regarding impacts, including cumulative impact of the development on the environment and the combined output of both turbines, the Planning Authority is not satisfied that the likelihood of significant effect on the environment can be excluded and, as such, the proposed development would be contrary to the proper planning and sustainable of the area.*

3.2. Planning Authority Reports

3.2.1. Two Planning Reports were prepared, dated 17th January 2020 and 21st January 2021.

3.2.2. The first report outlined that the principle of a wind farm in this location was acceptable and in accordance with national and EU policies seeking the advancement of renewable energy resources. Concerns were expressed regarding potential shadow flicker impacts on residential properties in the area and the applicant's failure to submit an Environmental Impact Assessment Report. It was recommended that additional information should be sought in relation to a number of aspects of the development: -

- The applicant was requested to submit an Environmental Impact Assessment Report
- The applicant was requested to clarify existing and future energy demands at the meat factory site. Maximum impact and export capacities were also requested to be confirmed, including confirmation from the ESB.
- Proposals were sought regarding compliance with Section 7.7 Windtake of the Wind Energy Guidelines (2006) and Circular Letter PD 6/06.

- A map was requested, identifying all dwellings and other structures within 500m of the proposed turbine.
- The applicant was requested to provide details of public consultation undertaken.
- A map was requested, identifying all houses within the 1.27km range and the 44 houses predicted to exceed 30 minutes per day or 30 hours per year of shadow flicker. Details of the dates and times that technical mitigation may be required were requested, together details of such mitigation.
- The applicant was requested to confirm that all noise assessments were undertaken at worst case scenario.
- A revised site layout was requested, demonstrating the proposed surface water drainage system.
- A surface water management plan was requested, including details of infrastructure and mitigation, to include details of details of receiving waters and any point of discharge from the surface water management system.
- The applicant was requested to confirm the height and floor level of the existing turbine and to confirm that the height of the proposed turbine would not exceed it.

3.2.3. The second report followed receipt of the additional information response and followed the submission of revised public notices. The report summarised and responded to the responses to each of the further information request items and expressed ongoing concerns regarding the impact of the development on the amenities of the area, in particular visual amenity, and the impact of shadow flicker on residential properties. It was also stated that, with regard to cumulative impacts, significant effects on the environment could not be excluded. The report recommended that permission be refused for 2 reasons, which were generally in accordance with the Planning Authority's decision to refuse permission.

3.2.4. Other Technical Reports

Environment reports dated 15th January 2020 and 20th January 2021. The first report advised of the likelihood of a requirement for EIA, but also advised that this was a matter for the Planning Department. Further information was requested in relation to surface water management for the site, including details of receiving waters and points of discharge, and construction and operational monitoring in relation to dust, noise,

water quality and shadow flicker. The second report recommended a number of planning conditions, should permission be granted.

Municipal District Engineer handwritten report dated 13th December 2019, which advised that the temporary site access should be reinstated as soon as possible following completion of the development and that reinstatement works should be signed off by the Municipal District Engineer.

3.3. Prescribed Bodies

- 3.3.1. Department of Culture, Heritage and Gaeltacht submission dated 18th December 2019, which recommended that archaeological monitoring of works should be undertaken.

3.4. Third Party Observations

- 3.4.1. A number of third party letters of observation were received, the issues raised within which can be summarised as follows: -
- The development was considered to constitute EIA development.
 - The need for the proposed development was questioned. One observer requested that information regarding the success of the applicant's commitment to use all energy provided from the existing turbine to reduce energy costs within the meat factory should be provided.
 - Concerns were expressed regarding the absence of community engagement in relation to the development.
 - The development was considered to be premature, pending publication of the new Wind Energy Guidelines which are available in draft form.
 - Concerns were expressed regarding potential shadow flicker and noise impacts. The existing turbine was stated to have noise and shadow flicker impacts for residents in the area. One observer provided details of recorded shadow flicker incidents at their property.
 - It was questioned whether the existing turbine exceeds shadow flicker limits and it was requested that a cumulative shadow flicker assessment should be provided.

The adequacy of existing controls in relation to mitigation of shadow flicker was also questioned.

- Concerns were expressed regarding the cumulative impacts of noise from the meat factory and existing and proposed turbines.
- The level of separation of the proposed turbine from residential properties was questioned.
- Noise standards within the 2006 Wind Energy Guidelines were considered not fit for purpose, with reference to WHO guidelines and revisions contained within the new Wind Energy Guidelines.
- Concerns were expressed regarding the visual impact of the development, including cumulative impacts.
- Concerns were expressed regarding devaluation of property in the area.
- One observer noted that the Planning Officer and Planning Inspector had recommended refusal of the previous application, but both recommendations were overruled.
- The accuracy of the photomontage images provided with the application was questioned.
- The Appropriate Assessment Screening Report was considered to have failed to adequately assess impacts on qualifying interests within Lough Sheelin. It was also claimed that the assessment did not consider cumulative impacts.
- Concerns were expressed over whether more additional turbines would be proposed in the future.

3.4.2. A number of additional observations were received following the submission of revised public notices, the issues raised within which can be summarised as follows:

- The development was considered to constitute EIA development.
- The proposed 10-year lifespan of the permission was considered unreasonable.
- Concerns were expressed regarding the absence of community engagement in relation to the development.

- It was considered that the noise assessment provided did not depict the impact of 2 turbines.
- Concerns were expressed regarding potential shadow flicker impact and it was questioned why a year-round assessment had not been provided. The Planning Authority was requested to enforce recommended minimum separation distances from residential properties.
- Concerns were expressed regarding noise impacts. It was requested that a cumulative assessment should be provided, including permitted expansion of the meat factory.
- Concerns were expressed regarding the visual impact of the development, including cumulative impacts.
- Concerns were expressed regarding the impact of the development on biodiversity.
- The adequacy of the photomontage images provided was questioned.
- The development was considered contrary to the development plan.
- Concerns were expressed regarding devaluation of property in the area.

4.0 Planning History

- 4.1. The meat factory site has an extensive planning history, including the following recent applications: -

Planning applications for existing wind turbine

11296 - ABP Ref. 02.LV.3147: Permission granted on 24th April 2012 for the erection of a single turbine with a hub height of 100m and rotor diameter of 103m, overall height not exceeding 152m, together with associated works including foundations, hardstanding, access track, underground cabling and 20kV switchroom.

Condition No. 4 required that noise levels at housing facing the turbine should not exceed 55dB(A)(L_{aeq})(1h) between the hours of 08.00-20.00 and 45 dB(A)(L_{aeq})(1h) between the hours of 20.00-08.00 and that a noise monitoring shall be implemented, if required by the Planning Authority.

An application for leave to appeal was refused by the Board on 17th April 2012.

- 14103 - ABP Ref. PL02.243776: Permission granted on 16th January 2015 for amendments to the development approved under Reg. Ref. 11296, including re-siting the turbine by 130m SSE of the approved location and associated alterations to the layout.

Condition No. 2 required that the turbine shall be fitted with a device that would cause it to shutdown to avoid shadow flicker at nearby sensitive receptors, and that a comprehensive site drainage plan shall be prepared, which shall denote all off-site surface water connections.

Condition No. 3 required that noise levels should not exceed 40 dB(A) LA90 10 min and a fixed limit of 43 dB(A), measured externally at the nearest houses and that a noise monitoring programme should be submitted for the agreement of the Planning Authority.

Condition No. 5 limited the lifetime of the permission to 25 years.

Planning applications related to the Liffey Meats factory

- 2176 - Permission granted on 14th April 2021 for retention of dispatch bay and tray washing area extensions.
- 19238 - Permission granted for demolition of agricultural store and construction of a storage building.
- 18501 - Permission granted on 19th March 2019 for demolition of 1 loading bay and construction of a new facility occupying an area of 5,864sqm.
- 16173 - Permission granted on 19th July 2016 for extension to boning hall and marshalling area.
- 12178 - Permission granted on 14th September 2012 for burger room extension. Permission was granted amendments to the development, under Reg. Ref. 12234.

5.0 Policy Context

5.1. Ministerial Guidelines

Wind Energy Guidelines (2006)

- 5.1.1. The Guidelines are intended to ensure consistency of approach in the identification of suitable locations for wind energy developments and acknowledge that the siting of developments is an important consideration.
- 5.1.2. Section 5.6 addresses noise impacts, which should be assessed by reference to the nature and character of noise sensitive locations i.e., any occupied house, hostel, health building or place of worship and may include areas of particular scenic quality or special recreational importance. In general noise is unlikely to be a significant problem where the distance from the nearest noise sensitive property is more than 500m.
- 5.1.3. Section 5.12 notes that careful site selection, design and planning and good use of relevant software can help to reduce the possibility of shadow flicker in the first instance. It is recommended that shadow flicker at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. The potential for shadow flicker is very low at distances greater than 10 rotor diameters from a turbine.
- 5.1.4. Chapter 6 relates to aesthetic considerations in siting and design. Regard should be had to profile, numbers, spacing and visual impact and the landscape character. Account should be taken of inter-visibility of sites and the cumulative impact of developments.

Draft Wind Energy Development Guidelines 2019

- 5.1.5. The guidelines remain in draft form at the time of writing, however; their content has been noted. Chapter 5 provides guidance for considering an application for wind energy development. Notable proposed changes within the draft guidelines relate to community engagement, noise and separation distance.

5.2. National and Regional Policy

National Planning Framework

5.3. The NPF outlines that Ireland's national energy policy is focused on three pillars: (1) sustainability, (2) security of supply and (3) competitiveness. A transition to low carbon energy requires the following:

- A shift from predominantly fossil fuels to predominantly renewable energy sources;
- Decisions around development and deployment of new technologies relating to areas such as wind, smartgrids, electric vehicles, buildings, ocean energy and bio-energy;
- Legal and regulatory frameworks to meet demands and challenges in transitioning to a low carbon society.

5.3.1. For the energy sector, transition to a low carbon economy from renewable sources of energy is an integral part of Ireland's climate change strategy and renewable energies are a means of reducing our reliance on fossil fuels.

National Policy Objective 55: *'Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.'*

Ireland's Transition to a Low Carbon Energy Future 2015-2030

5.3.2. This document is a complete energy policy update, which sets out a framework to guide policy up to 2030. Its objective is to guide a transition, which sets out a vision for transforming Ireland's fossil fuel-based energy sector into a clean, low carbon system. It states that under Directive 2009/28/EC the government is legally obliged to ensure that by 2020, at least 16% of all energy consumed in the state is from renewable sources, with a sub-target of 40% in the electricity generation sector. It notes that onshore wind will continue to make a significant contribution but that the next phase of Ireland's energy transition will see the deployment of additional technologies as solar, offshore wind and ocean technologies mature and become more cost-effective.

Climate Action Plan 2019

5.3.3. Ireland aims to increase electricity generated from renewable sources to 70%, with up to 8.2 GW generated from onshore wind energy by 2030. Section 4 advises that *'in the power generation sector, increasing onshore and offshore wind capacity are the most economical options from the MACC for electricity production'*.

Regional Spatial and Economic Strategy for the Northern and Western Region

- 5.3.4. Section 4.4 states that *‘there are rich renewable energy resources through wind, solar and wave (to mention but a few) along and throughout the region. The former has manifested itself already and wind turbines are a new feature in our landscapes. There is still significant potential for all new outputs to the grid’*. It is acknowledged that there are challenges to overcome, including a new regulatory environment in the guise of new Wind Energy Guidelines to replace those from 2006, and secondly, a fit for purpose transmission network able to accept, convert and transmit power to those areas of the country where demand exists.

5.4. Development Plan

- 5.4.1. The subject site lies outside of the Ballyjamesduff development boundary, as identified under the Cavan County Development Plan 2014-2020. The Liffey Meats site is contained within the development boundary, identified as being zoned for ‘Industry/Enterprise/Employment’.
- 5.4.2. Development plan policy in relation to Renewable Energy is contained at Section 4.7.3 where it is outlined that *‘It is an objective of the Planning Authority to encourage and facilitate renewable forms of energy production.’*
- 5.4.3. Regarding wind energy, the Section states *‘It is the policy of the Planning Authority to adopt a favourable approach to wind energy developments provided they are sited so as not to cause a serious negative impact on the special character and appearance of designated conservation areas, protected structures or sites of archaeological importance.’* The Section goes on to state that *‘The challenge is to achieve a reasonable balance between responding to government policy on renewable energy and enabling the wind energy resources of the County to be harnessed in an environmentally sustainable manner.’*
- 5.4.4. Regarding proposals for wind turbines in urban and or industrial locations, the Section states *‘There is potential within the County for wind energy developments within urban and industrial areas, and for small community proposals. These will be assessed in terms of location, spatial extent, cumulative effect, spacing, layout and height.’*
- 5.4.5. The following Objectives are relevant to the appeal: -

PIO115 New advances in wind turbine design in relation to lower heights and shrouding are encouraged and should be considered in proposals for new turbines in order to reduce visual impacts.

PIO116 Proof of good acoustical design of turbines should be submitted with planning applications for such structures.

PIO117 The following issues will be considered in the assessment of a wind energy development:

1. Planning applications for new wind energy development and extensions to existing developments shall include details of full compliance with the DECLG 'Wind Energy Development,' 2006 guidelines or any future amendments. This shall include but is not limited to details of; ground conditions/ a geology assessment, archaeology, architectural heritage, noise, safety aspects, proximity to roads and power lines, interference with communications systems, aircraft safety, shadow flicker and windtake. An assessment of siting and design impacts shall also be submitted, as well as a layout.
2. The importance of wind energy and its contribution to the achievement of targets set out in the 'National Climate Change Strategy'.
3. Impact of the development on habitats, by direct loss, degradation or fragmentation and the impact on habitats outside the site.
4. Impact of the development on birds through disturbance during construction and operation phase, collision mortality, barrier to movement and loss or degradation of habitats.
5. Ground conditions/geology assessment, archaeology, architectural heritage, noise, safety aspects, proximity to roads and power lines, interference with communications systems, aircraft safety, shadow flicker and windtake, as per, 'Wind Energy Guidelines'.
6. Planning applications should indicate proposals for restoration of the site in the event of the removal of the turbines.
7. Cables connecting windfarms to the national grid should be located underground, where appropriate.

8. Identify existing public rights of way and established walking routes and maintain free from development and preserve them as public rights of way or walking routes.
9. All applications for new wind farms or additional turbines to existing wind farms shall submit an assessment of the cumulative impacts of the proposal in combination with existing wind farms in the area.
10. Proposed developments which would be in close proximity shall be carried out in accordance with any fisheries guidelines issued. Consultation with fisheries bodies should commence early in the planning project.

5.5. Natural Heritage Designations

- 5.5.1. The site is not located within or adjacent to any designated European Site. The nearest Natura 2000 site is the Lough Sheelin SPA (Site Code 004065), 5.9km south-west. The River Boyne and River Blackwater SPA (Site Code 004232) and SAC (Site Code 002299) are located approx. 12.1km south-east.

5.6. EIA Screening

- 5.6.1. The proposed development falls within the category '*Energy Industry*' under Schedule 5, Part 2 of the Planning and Development Regulations 2001-2020, where mandatory EIA is required in the following circumstances:
 - (i) *Installations for the harnessing of wind power for energy production (wind farms) with more than 5 turbines or having a total output greater than 5 megawatts.*
- 5.6.2. The proposal is for 1 wind turbine, which the applicant has stated will have an output of c 4MW. This falls below the development threshold.
- 5.6.3. Consideration must also be given to the cumulative impact of existing and proposed development at the site. Category 13 of Schedule 5, Part 2 provides a category for '*any change or extension of development already authorised, executed or in the process of being executed (not being a change or extension referred to in Part 1) which would: -*

- (i) *result in the development being of a class listed in Part 1 or paragraphs 1 to 12 of Part 2 of this Schedule, and*
- (ii) *result in an increase in size greater than –*
 - *25 per cent, or*
 - *an amount equal to 50 per cent of the appropriate threshold,**whichever is the greater.'*

5.6.4. There is an existing turbine in place with a stated output of 3.05MW. With reference to the sub-categories within the category: -

- (i) The cumulative output from the existing and proposed turbines would be c.7.05MW, resulting in the development being of a class listed in paragraphs 1 to 12 of Part 2 of the Schedule, and
- (ii) The proposed development represents an increase of 133.3% on the existing situation and amounts to 80% of the appropriate threshold.

5.6.5. The grounds of appeal state that the provisions of Category 13 of Schedule 5, Part 2 do not apply as the development does not constitute a change or extension but no additional information has been advanced, to substantiate this argument.

5.6.6. Notwithstanding the applicant's statement, I consider Category 13 is applicable in this instance, where the existing and proposed turbines are within the same landholding, are in the same ownership and, importantly, they are functionally connected, where they are both identified as providing electricity to meet the energy needs of the Liffey Meats factory. The proposed turbine is akin to an extension of an existing energy source at the site and, taken together with the existing turbine, results in the thresholds at Category 13 of Schedule 5, Part 2 being exceeded. I therefore conclude that the requirement for Environmental Impact Assessment is mandatory in this instance.

5.6.7. I note that the Planning Authority's assessment of the application similarly outlined that the development on its own falls below the mandatory threshold for the requirement of an EIAR but, in combination with existing and proposed developments on the site and in the area of the Planning Authority, the likelihood of significant environmental effects could not be excluded. The applicant was requested to submit an EIAR, as part of the request for further information and, having not done so, the Planning Authority's decision to refuse permission included refusal reason No. 2.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of appeal can be summarised as follows:-

- The Notification of Decision issued by the Planning Authority is contradictory and cannot be considered an adequate, reasoned decision.
 - Reference is made to contradictory statements within Schedules 1 and 2 of the Decision Notice.
 - The Planning Officer's report is also considered inadequate as it contained a reprise of planning policy, a collation of third party issues and a summary of the application and the appellant's further information response.
 - The stated reasons for refusal are considered unfounded, unreasonable and unwarranted.
- Refusal reason No. 1.
 - Regarding the contention of property value depreciation, this is extraneous to the proper planning and sustainable development criteria which the Planning Authority is required to have regard to, under the Planning and Development Act, 2000, as amended. An Bord Pleanála has considered the issue on a number of occasions, for wind energy developments, and has consistently concluded that the 2006 Wind Energy Guidelines do not refer to an impact on property values but instead set standards in relation to, inter alia, noise and shadow flicker impacts at residential properties. Subject to compliance with required standards, the issue of a material impact on property values does not arise. It has been accepted by the Board that there is no evidence that wind energy developments depreciate property values.
 - Regarding shadow flicker, the assessment submitted with the application was carried out in accordance with statutory guidelines and using best-practice techniques. It concluded, on a worst-case basis, that 44 houses of a total of 209 analysed were predicted to exceed the 30 minutes per day criterion set out in the 2006 Guidelines. Applying de-rating criteria, it is expected that only 1 house would experience shadow flicker in excess of the 30 hours per year criterion set

out in the 2006 Guidelines. Given the protean nature of weather conditions, the expected shadow flicker prediction can only be done so on a conservative basis, so the prediction will not be representative of the actual development. The applicant has proposed technical mitigation measures, to ensure that no dwelling would experience shadow flicker above the prescribed limits and, as part of the further information response, provided modelled results of the dates and times that mitigation would be required. There is no basis for the Planning Authority's conclusions, in respect of shadow flicker and it is contended that a refusal of permission on this basis is unreasonable and unwarranted.

- Regarding visual impact, a landscape and visual impact assessment and photomontages were provided with the application, with photomontages provided from viewpoints concentrated within 2km and 5km of the site and the significant of impacts at these locations is assessed as ranging between imperceptible and moderate-slight. It is difficult to understand, in the light of the information provided, the Planning Authority's decision that the development, by reason of visual impact, would injure the residential amenity of local properties. The Planning Authority has not identified or substantiated any specific adverse visual impacts other than a vague and general statement of concern. It is contended that a refusal of permission on this basis is unreasonable and unwarranted.
- Refusal reason No. 2
 - The development comprises a single turbine with an output of less than 5MW. It does not exceed either of the thresholds set out at Schedule 2, Part 1, Paragraph 3(i) of the Planning and Development Regulations 2001-2021, so mandatory EIA is not required.
 - It is contended that there is a misunderstanding of the threshold requirements of the EIA Directive. The electrical output of the existing turbine is irrelevant to whether an EIAR is required to be submitted as part of the proposed development.
 - Only having made a formal screening determination, per the criteria set out in Schedule 7 and/or 7A of the Regulations can the Planning Authority request the submission of an EIAR. This approach was not taken by the Planning Authority.

- The development is a standalone development and is not a change of extension of development already authorised or executed, in which case Schedule 5, Part 2, Class 13 of the Regulations would apply. The Planning Authority has also not advanced this argument.
- It is acknowledged that the Planning Authority may legitimately conclude that a sub-threshold EIA and EIAR are required, but this must be based on a screening undertaken in accordance with the criteria outlined in Article 103/103A and Schedule 7/7A of the Regulations. All of the information required by virtue of Schedule 7/7A was provided with the application and this was satisfactory to address all factors required to be considered by the EIA Directive, as they relate to the development. Each of the assessments also included a cumulative assessment, including the nearby turbine. The assessments each concluded that there was no likelihood of significant effects on the environment from the construction, operational or decommissioning phases.
- The applicant considered the further information-stage request to submit an EIAR to be unreasonable, erroneous and unfounded. Instead, a further EIA screening assessment was provided, using information already provided to the Planning Authority, which evaluated the development against the criteria set out in Schedule 7/7A, as is required, and it was reaffirmed that there is no likelihood of significant effects on the environment, including in-combination.
- At no time has the Planning Authority identified substantive grounds for the submission of an EIAR. The applicant contends that this reason for refusal is erroneous.
- The applicant is a very large energy consumer and the proposed development would allow for the meat plant to use 100% renewable energy, whilst also reducing costs and maintaining long-term viability. The urgency of transitioning to low-carbon, renewable energy sources is acknowledged at national, European and international levels and a number of Government policy supports for renewable energy sources are referenced. It is argued that there should be a presumption in favour of wind energy developments, where criteria related to

proper planning and sustainable development of an area can be achieved, as is the case in this instance.

- The decision to refuse permission was unreasonable and unwarranted and the Board is requested to overturn the Planning Authority's decision.

6.2. Planning Authority Response

6.2.1. A submission was received from the Planning Authority on 16th March 2021, the contents of which can be summarised as follows: -

- Regarding shadow flicker, the issue was raised in many of the third party submissions on the application and, whilst the applicant is proposing a turbine shutdown programme to curtail the operation of the turbine, there were ongoing concerns that the development would have an adverse impact on houses in the vicinity, having regard to the number of affected houses identified.
- It is considered that, taken cumulatively with the existing turbine, the development would have an adverse impact on the amenities of the adjoining area, including the town. On the basis of the information submitted, the Planning Authority is not satisfied that the development would not seriously affect the visual amenity of the area.
- Regarding issues raised within the appeal, they have been addressed as part of the Planning Authority's assessment of the application.
- The Board is requested to uphold the Planning Authority's decision on the application.

6.3. Observations

6.3.1. A number of observations have been received, the issues contained within which can be summarised as follows: -

- The Planning Authority's decision to refuse permission is supported.
- The development cannot be viewed as a standalone development. The applicant's approach amounts to project splitting and an Environmental Impact Assessment is requested.

- The applicant has failed to engage with the local community in relation to wind energy developments at the site.
- Noise and shadow flicker effects from the existing turbine are an issue, in spite of the applicant's claim that there are technical solutions available to address the problem.
- Shadow flicker impacts are considered to be greatest in Summer months, lasting over 40 minutes, and this period has not been covered by the applicant's assessment. Shadow flicker is stated as causing human health impacts.
- The proposed turbine is closer to residential properties than the existing and concerns are expressed that shadow flicker impacts will be magnified.
- There is evidence that wind turbines generate excessive noise, from generators and an aerodynamic 'whump' as air is compressed by each blade as it passes the support column. A number of complaints have been lodged with the Planning Authority regarding the matter, copies of email correspondence with the Planning Authority have been provided.
- The noise assessment relates to 1 turbine only. Consideration should be given to the cumulative impacts of noise, from the existing turbine and from further expansion of the meat factory.
- The technological solutions claimed to be available to address shadow flicker do not prevent shadow flicker on adjacent houses.
- The level of set back from the turbine to housing is questioned.
- The existing turbine is considered to have a significant visual impact.
- Cumulative impacts of the operation of two turbines have not been addressed, with reference to noise, shadow flicker and environmental impact.
- It is contended that such proposals should be based on up to date guidelines and technology.
- The development will lead to devaluation of property in the area.
- One observer submitted a CD containing a video to demonstrate shadow flicker impacts from the existing turbine.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, the main planning issues in the assessment of the proposed development are as follows:

- Preliminary matter
- Principle of development;
- Landscape and visual impact;
- Noise;
- Shadow flicker;
- Other issues
- Appropriate assessment.

7.2. Preliminary Matter

7.2.1. Concerns have raised by the observers regarding the issue of prematurity, where updated wind energy guidelines have been published in draft form. It has been suggested that decision-making should be on the basis of the most up-to-date guidelines.

7.2.2. I am aware that new draft wind energy guidelines were published in 2019 but, they remain in draft form at the time of writing and, according to the www.gov.ie¹ consultation portal (most recently updated on 18th February 2021), the results of the public consultation remain under review. As the Guidelines have not been published as final, they remain open to change and, ultimately, can be given little weight in this appeal. The 2006 Wind Energy Guidelines therefore remain the appropriate Ministerial Guidelines with respect to wind energy developments.

7.3. Principle of Development

7.3.1. The site of the proposed turbine is located outside of the development boundary for Ballyjamesduff. Although greenfield in nature, the site is in close proximity to and

¹ <https://www.gov.ie/en/consultation/8f3c71-public-consultation-on-the-revised-wind-energy-development-guideline/>

associated with the Liffey Meats factory and an existing turbine, which is sited approx. 370m to the north and which provides energy to the meat factory.

- 7.3.2. There is a positive presumption toward renewable energy at National, Regional and Local levels, which is reflected in the National Planning Framework, Regional Spatial and Economic Strategy and the Cavan County Development Plan 2014-2020. I consider the principle of the proposed development is consistent with supports provided by these policy documents and is in keeping with the pattern of development at the site, provided it does not adversely impact on the environment, the amenities of the local area or local residents.

7.4. Landscape and Visual Impact

- 7.4.1. Section 8.7 of the county development plan states that a landscape character assessment of the county has not been undertaken and whilst a broad assessment of the landscape character types is outlined, mapping has not been developed to identify these areas. Development plan Map 8 'High Landscape Areas and Major Lakes' identifies landscapes of importance within the county and I note that the subject site is not contained within any identified high landscape area.
- 7.4.2. I consider the site and wider area to be in the '*hilly and flat farmland*' landscape character type, in accordance with guidance provided at Section 6.9.2 of the Wind Energy Guidelines. The Section provides advice on the siting and location of turbines in this landscape type and although it is applicable to wind farms more generally, some aspects are applicable to single turbine developments. In particular, regarding height it is advised that '*Turbines should relate in terms of scale to landscape elements and will therefore tend not to be tall.*'
- 7.4.3. A landscape and visual impact assessment (LVIA) was submitted as part of the application, including zone of theoretical visibility (ZTV) mapping of the existing and proposed turbines and including in-combination visibility. The assessment characterised the local landscape thus: -
- 'the site itself is located within an undulating drumlin landscape at the north-western extent of an expansive lowland plain associated with Lough Sheelin, towards which all of the land in the vicinity drains...on the much broader scale of the wider study area, it is clear that the area to the west and southwest is flatter and slightly more low-lying than the other parts.*

- 7.4.4. The proposed turbine site is approx. 350m south of the Liffey Meats factory, on land set below it. As an example of the change in levels within the landholding, the finished floor level of the turbine would be 99m AOD, 17m below the stated finished floor level of the existing turbine.
- 7.4.5. The ZTV mapping identifies theoretical visibility at 5km intervals from the site, extending out to a 20km study zone. It can be seen from the mapping that there is significant visibility within the 5km zone, but that visibility progressively reduces at more remote distances, with available views generally concentrated to the south and west. The LVIA states that the visibility pattern disintegrates as a result of the undulating drumlin landscape and terrain screening, which limits potential visibility from many parts of the northern half of the study area.
- 7.4.6. Photomontage images have been provided, using 14 viewpoint locations within the 20km search zone. I visited a number of the viewpoint locations and I am satisfied that they provide a representative variety of short, medium and long-range views of the development. I am also satisfied that the photomontages are representative of the baseline conditions (in particular the appearance and impact of the existing turbine) and adequately depict the appearance and impact of the proposed turbine.
- 7.4.7. I would generally concur with the assessment within the LVIA, that the landscape impact of the development is slight, within the central study area, reducing to imperceptible at more remote distances. Whilst the site itself is greenfield, at the edge of the built-up extent of the town, it is set against a backdrop of commercial and industrial development within the town, including the existing turbine, which is a landmark feature in the local landscape. The development would have a small on the ground footprint and in my opinion, set against the backdrop of an existing turbine in particular, would not have a significant impact on the landscape.
- 7.4.8. Regarding visual impact, the visual assessment undertaken as part of the LVIA considered the sensitivity of each of the viewpoint locations to visual change and determined that 10 of the locations have a 'low' or 'medium-low' sensitivity and that 3 of the locations have a 'high-medium' sensitivity. 1 location, viewpoint 14, was determined to have a 'very high' sensitivity. The assessment went on to conclude that the development would have an 'imperceptible' impact on 8 of the analysed views, these views generally being more than 8km distant from the site, and the other 6

viewpoints, which are each within 2km of the site, were considered to give rise to 'slight' or 'moderate-slight' impacts.

- 7.4.9. I would generally concur with the assessment's conclusions in respect of medium and long range views. The proposed turbine would be read as an addition to the existing turbine on the landholding, and its visual impact would not be significant.
- 7.4.10. Regarding close-range visual impacts, I consider the key issues are the impact of the proposed turbine on views within the town centre and its impact on views nearby houses.
- 7.4.11. Section 6.9.2 of the Guidelines advises that '*Turbines perceived as being in close proximity to, or overlapping other landscape elements, such as buildings, roads and power or telegraph poles and lines may result in visual clutter and confusion.*' The existing turbine, which is of a comparable overall height to the proposed turbine, dominates the skyline view as one travels away from the centre of Ballyjamesduff, on the Oldcastle Road. It is also a significant feature in other close-range views. The proposed turbine is comparable height to the existing and, as it is set further away from the town, it may be slightly less prominent in views. Nevertheless, I have concerns regarding the cumulative visual impact of turbines in views from the town. I note that the Inspector on appeal Ref. PL02.243776 recommended that the turbine should be reduced in height, to a maximum height of 101m to the tip of the rotor blade, in order to reduce its visual impact. This would have shortened the range of view of the turbine from the town, given its topographical layout. In effectively maintaining the blade tip height across the skyline, I consider the development will intensify the dominance of turbines in the available views, also cluttering these views, contrary to the advice of the Guidelines.
- 7.4.12. The Wind Energy Guidelines advise of the need to ensure that turbines are '*a reasonable distance from dwellings...in order to ensure that wind energy developments do not visually dominate them.*' No prescribed separation distance is outlined. At the further information stage, the applicant provided a drawing which identified all structures within 500m of the proposed turbine, highlighting the presence of farm buildings only within this zone (excluding buildings within the meat factory site). A further drawing was provided, identifying housing within 1.27km of the turbine (1.27km equates to 10-times the rotor diameter of the candidate turbine). Having

reviewed this drawing I note that the scale is incorrectly stated as being 1:1,2500, whereas it appears to be at a scale 1:5,000, however; and notwithstanding, there are a number of houses to the west, in particular, which are just outside of the 500m exclusion zone, which would have close range views of the turbine (it is stated elsewhere within the application documents that the closest house to the turbine is 509m north-west). I consider that, as can be seen from photomontage image 8, by reason of its substantial height and proximity to adjacent houses, the turbine would be visually dominant in the views from these houses, contrary to the advice of the Guidelines.

- 7.4.13. In conclusion regarding visual impact, I have concerns regarding the visual impact of the development, in close-range views from the town and in close-range views from residential properties to the west. Should the Board be minded to grant permission, I would recommend that a condition be attached requiring the height of the turbine to be reduced by a third, to no more than 111m in height. Such a reduction would reduce the cumulative impact of turbines on views from the town and would also reduce its visual dominance in views from the nearby houses.

7.5. Noise

- 7.5.1. Noise was a key issue for a number of the observers, including cumulative noise from the meat factory site.
- 7.5.2. Section 5.6 of the Wind Energy Guidelines advises that the noise impact of developments should be assessed by reference to the nature and character of noise sensitive locations. Houses, hostels, health buildings, places of worship and areas of particular scenic quality or special recreational amenity importance are identified as examples of noise sensitive locations. Acceptable noise levels at such locations are stated to be 45dB(A) or a maximum increase of 5dB(A) above background noise and a fixed limit of 43dB(A) is stated to protect sleep inside properties during the night. The Guidelines also state that noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500m.
- 7.5.3. A cumulative noise impact assessment was provided as part of the application, based on the existing and proposed turbines, which modelled noise levels at all residential properties within 1.27km of the proposed turbine and which predicted that for all houses, noise levels would not exceed 43dB(A), in accordance with the

recommendations of the Guidelines. 1 house, H2, was predicted to experience noise levels of exactly 43dB(A).

- 7.5.4. In response to concerns over cumulative noise levels from the meat factory, whilst details of ambient noise levels have not been provided, I note that the modelling exercise predicted that only 2 of the modelled locations would experience noise levels above 40dB(A); in addition to house H2, house DK was predicted to experience noise levels of 40.3dB(A). By way of comparison, the Guidelines recommend that *'in low noise environments where background noise is less than 30 dB(A), it is recommended that the daytime level of the LA90, 10min of the wind energy development noise be limited to an absolute level within the range of 35-40 dB(A).'* All but the 2 above-outlined houses were modelled locations were predicted to achieve this low level of noise.
- 7.5.5. The specific contribution of the proposed turbine to such impacts is unclear as no individual assessment of the proposal was provided, however; I am satisfied that the applicant has demonstrated that noise produced by the development, in tandem with the meat factory and existing turbine, would not be significant or unacceptable. The Planning Authority's Environment section also did not express concerns regarding noise impacts. Should the Board be minded to grant permission, I would recommend that a similar condition be attached as was attached at condition No. 3 of Ref. PL02.243776, requiring that, at houses H2 and DK, noise levels measured externally shall not exceed 40 dB(A) LA90 10 min and a fixed limit of 43 dB(A).

7.6. Shadow Flicker

- 7.6.1. A number of the observers have stated that there are shadow flicker issues with the existing turbine, which are greatest in Summer months, and concerns have been expressed regarding potential shadow flicker impact from the proposed turbine.
- 7.6.2. Section 5.12 of the Wind Energy Guidelines advises that shadow flicker at neighbouring offices and dwellings within 500m should not exceed 30 hours per year or 30 minutes per day. It is also advised that, at distances greater than 10 rotor diameters from a turbine, the potential for shadow flicker is very low.
- 7.6.3. A cumulative shadow flicker assessment was provided as part of the application, based on the existing and proposed turbines, which predicted separate 'worst case' and 'expected' shadow flicker at each house within 1.27km of the proposed turbine.

As has previously been outlined, the applicant states that there are only farm buildings only within 500m of the proposed turbine. For houses within 1.27km, the exercise predicts a 'worst case' scenario of 38 houses exceeding the recommended maximum of 30 hours per year and 44 houses exceeding the recommended maximum of 30 minutes per day. The applicant emphasises, however, that it is very unlikely that the worst case scenario conditions would prevail. The 'expected' scenario predicts 1 house, H2, exceeding the recommended maximum of 30 minutes per day. The specific contribution of the proposed turbine to such impacts is unclear as no individual assessment of the proposal was provided.

- 7.6.4. Regarding the predicted 'expected' case of exceedance of the recommended maximum shadow flicker extent, at house H2, I note that the applicant has incorporated technological mitigation (i.e., the turbine can be shut down at predetermined times when shadow flicker is predicted to occur), in line with the recommendations of the Guidelines, in order to ensure no dwelling experiences excessive shadow flicker. Should the Board be of a mind to grant permission, I would recommend a condition be attached which requires a shadow flicker monitoring program to be carried out and relevant mitigation measures imposed when necessary.
- 7.6.5. I would also note, in response to observer concerns regarding health impacts, that the Guidelines advise that *'Where shadow flicker could be a problem, developers should provide calculations to quantify the effect and where appropriate take measures to prevent or ameliorate the potential effect, such as by turning off a particular turbine at certain times.'* As has been set out, such mitigation has been incorporated.

7.7. Other Issues

- 7.7.1. Regarding the applicant's claim that the Planning Authority's decision is contradictory and cannot be considered adequate or reasoned, I agree that there appears to be a contradiction between Schedules 1 and 2 of the Decision Notice, however; I am satisfied that a decision was made to refuse permission. In any case, the Board is now the competent authority with respect to the proposal and its decision will supersede that made by the Planning Authority.
- 7.7.2. Regarding concerns over a lack of community engagement in respect of wind energy development at the site, whilst I acknowledge the concerns, there is no statutory requirement for the applicant to undertake public consultation as part of the proposed

development. It would therefore be unjustified to refuse permission on the basis of the absence of public consultation.

- 7.7.3. A number of the observers have stated that the development requires environmental impact assessment and the impact of the development on the environment has also been questioned. I have previously considered the issue of EIA at Section 5.6 and have outlined my view, that the requirement for EIA is mandatory in this instance. However, and notwithstanding, I note that an Ecological Impact Assessment Report was submitted with the application, which included the results of a field walkover survey, which outlined that the ecological impacts would be limited, consisting of the loss of agricultural grassland, planted woodland and hedgerow within the site. I consider the Report's characterisation of the site as improved grassland is accurate and whilst the development will lead to the loss of some habitat, I note that the walkover survey did not identify the presence of any rare or protected species. I note the identification that there are badger sett entrances in the area and the proposal to undertake activity surveys prior to the commencement of development.

7.8. Appropriate Assessment

- 7.8.1. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken on any plan or project not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site and accordingly screening for Appropriate Assessment was carried out.
- 7.8.2. The subject site is not located within or adjacent to any designated European Site. The nearest Natura 2000 site is the Lough Sheelin SPA (Site Code 004065), 5.9km south-west, which appears to be hydrologically connected to the site, via Office of Public Works drainage channels and the Inny River.
- 7.8.3. The River Boyne and River Blackwater SPA (Site Code 004232) and SAC (Site Code 002299) are located approx. 12.1km south-east but are not hydrologically connected to the site. Given the level of separation between the sites and the absence of a hydrological connection, I consider the potential for significant impacts on qualifying interests within the SAC & SPA is low.
- 7.8.4. Lough Sheelin SPA is of conservation interest for the following wetland bird species:

Great Crested Grebe (<i>Podiceps cristatus</i>)
Pochard (<i>Aythya ferina</i>)
Tufted Duck (<i>Aythya fuligula</i>)
Goldeneye (<i>Bucephala clangula</i>)
Wetland and Waterbirds

7.8.5. The following site- specific conservation objectives have been published for the site:-

‘To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA’.

‘To maintain or restore the favourable conservation condition of the wetland habitat at Lough Sheelin SPA as a resource for the regularly-occurring migratory waterbirds that utilise it.’

7.8.6. Regarding qualifying interests within the SPA, similar to the Appropriate Assessment Screening Report, information from Bird Watch Ireland² advises that the Great Crested Grebe, Pochard, Tufted Duck and Goldeneye are reliant on the aquatic environment as a food source and also as a breeding and wintering ground. The subject site, which is 5.9km from the Lough, does not contain aquatic habitat and does not contain suitable breeding or foraging ground. I note that the Appropriate Assessment Screening Report submitted with the application similarly outlined the reliance of qualifying interests on the aquatic environment.

7.8.7. Regarding risk to flight paths, the issue was not considered by either the Appropriate Assessment Screening Report or Ecological Impact Assessment Report; however; I consider the cumulative scale of turbine development on the site and, in particular taken together with the level of separation between the sites, does not present a significant risk to the qualifying interests of the SPA.

7.8.8. I consider the potential for significant impacts on qualifying interests within the SPA, including in-combination impacts, is low.

² <https://birdwatchireland.ie/birds>

- 7.8.9. There is also potential for sediment and pollutants to enter the surface water drainage system, via Office of Public Works drainage channels and the Inny River. I estimate that the SPA is approx. 10km separate from the subject site but, due to the level of separation between the site and the Natura 2000 site, I consider the potential for significant impacts on qualifying interests within the SPA, including in-combination impacts, is low.

8.0 Recommendation

- 8.1. I recommend that permission for the proposed development be refused, for the following reasons and considerations set out below.

9.0 Reasons and Considerations

The proposed development constitutes an '*extension of development already...executed*', in accordance with Category 13 of Schedule 5, Part 2 of the Planning and Development Regulations 2001-2021, whereby it would result in the development being of a class listed in paragraphs 1 to 12 of Part 2 of Schedule 5 and would result in an increase in size greater than an amount equal to 50 per cent of the appropriate threshold (5 turbines or output of greater than 5MW in the case of wind turbines). In accordance with 172(1B) of the Planning and Development Act, 2000, as amended, an Environmental Impact Assessment Report, prepared by experts with the competence to ensure its completeness and quality, was required to be submitted with the application. Where an Environmental Impact Assessment Report has not been submitted, the Board is required to refuse permission.

Barry O'Donnell
Planning Inspector

31st May 2021.