



An
Bord
Pleanála

Inspector's Report ABP-312385-22

Development	A 10 year permission for an amended wind farm development PL05B.237656. An Environmental Impact Assessment report (EIAR) and Natura Impact Statement (NIS) accompanies this application.
Location	Graffy, Meenamanragh, Dalraghan More, Glenties, Meenagrubby, Tievebrack Banganboy, Stracashel, Drumconcoose, Drumnalough, Lugaveen, Glenties, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2151990
Applicant(s)	Cuilfeach Teoranta
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Cuilfeach Teoranta
Inspector	Rachel Gleave O'Connor

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1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP-312385-22 dated 28th July 2022.
- 1.2. The Board decided to defer this case and seek an addendum report on changes to the statutory development plan policy and objectives relating to wind energy, in the interim period between the Inspector discharging the report and the Board deliberations on the appeal. This was on the basis of variation no.2 of the Donegal County Development Plan 2018-2024 incorporating Ministerial Direction in the matter of section 31 of the Planning and Development Act 2000 (as amended), dated 21st December 2022 and therefore post-dated the Inspector's report of the 28th July 2022.

2.0 Background

- 2.1. In September 2010, Donegal County Council granted planning permission (PA Ref. 09/30520) to PJ Molloy for a wind park in the townlands of Graffy, Meenaleenaghan, Dalraghan More, Meenamanragh, Meenavale, Greenans, Stralinchy & Mully for the development of 19 turbines, a control building, ESB substation and compound and associated site roads and works. The decision was appealed and by its decision dated 11th February 2011 (PL 05B.237656), An Bord Pleanála granted the development of 13 turbines and associated works. The planning permission was acquired by Cuilfeach Teoranta, although the permission had expired in February 2021. To take account of newer and more efficient wind turbine technologies, which have become available since the original development was granted, it is now proposed to develop and repower the wind park by reduction the number of turbines to eight (8) larger and more efficient turbines.
- 2.2. In the current application subject to appeal ABP-312385-22 and the focus of this addendum report, planning permission is sought for a 10 year consent, as well as a 30 year operational life for the development from the date of commissioning, for 8 no. wind turbines.
- 2.3. As noted in the original Inspector report dated 28th July 2022, the Planning Authority refused planning permission for 5no. reasons. The first reason relates to the absence of current Development Plan policy and National Guidelines for wind energy, noting that the Development Plan variation process had commenced at the

time of the decision. The second reason related to the location of the proposed development on lands designated as ‘Especially High Scenic Amenity’ contrary to Policy NH-P-6. The third reason related to insufficient detail with respect to potential impact upon the Qualifying Interests of European sites, contrary to Policy NH-P-1. The fourth reason related to deficiencies with respect to information submitted as part of the EIAR and NIS for the application and associated potential impact upon Merlin populations in European sites, contrary to Policy NH-P-1. The fifth and final reason for refusal concerned potential risk to Annex 1 species not being adequately addressed, contrary to Policy NH-P-1. An Advice Note was also attached to the Notification of Decision to Refuse highlighting that the Roads Section does not intend to facilitate proposals for installing HV cables in the local roads network.

2.4. The application was subsequently appealed to An Bord Pleanála. The original Inspector’s report recommended that permission be refused for the following reasons:

1. The proposed development is located on a site, which lies within an area designated for Especially High Scenic Amenity, as outlined under Policy NH-P-6 of the County Donegal Development Plan, 2018-2024 (as varied) *‘it is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: ‘Scenic Amenity’. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered’*. Notwithstanding the potential contribution this proposed renewable energy project would have in meeting National renewable energy targets, it is considered that the proposal would result in a considerable and unacceptable adverse visual impact upon this upland environment designated as an Especially High Scenic Amenity area. It is considered that the proposed development sited at this location would constitute a highly obtrusive development that would detract from the existing natural character of the area, would undermine the setting of this unspoilt valley and would erode the landscape and visual quality of this rural area and compromise the scenic amenities of this visually sensitive and vulnerable area. The proposed wind turbines would, thereby, be excessively dominant features and a visually obtrusive form of development in this landscape, would materially conflict with policy NH-P-6 as set out in the Donegal County Development Plan 2018-2024 (as varied), and would seriously injure the landscape and visual amenities of the

area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The appeal site is located in a non-designated however regionally-important area for Merlin, the identified pair of Merlin confirmed to be breeding in the area are considered to be of national/international importance and the appeal site is identified as an important foraging habitat for Merlin, which is afforded protection under Annex I of the EU Birds Directive (2009/147/EEC). The Board is not satisfied, based on the details submitted with the application and appeal, notwithstanding the mitigation measures set out to address the impacts on Merlin, that the proposed development would not have a significant adverse impact on Merlin. It is considered that the proposed development would be contrary to objectives NH-O-1 and NH-O-10, as well as policy NH-P-5, of the Donegal County Development Plan 2018-2024 (as varied), and, therefore, would be contrary to the proper planning and sustainable development of the area. In addition, given the close proximity of the proposed development to the Lough Nillan Bog SPA (004110) the Board is not satisfied, on the basis of the information provided with the application, that the proposed development would not adversely affect the integrity of this European site in view of the site's Conservation Objectives in relation to Merlin. In such circumstances the Board is precluded from granting permission.

3. The site of the proposed development is located within an area of significant ornithological value, as evidenced by the applicant's bird surveys in support of the application. It is considered that the siting, height, scale and operation of the proposed turbines would result in a significant risk of collision for the Annex I bird species Golden Eagle and White-tailed Eagles, as well as loss of habitat and displacement for raptors prevalent at this location. On the basis of the information submitted in support of the application and specifically within the submitted Environmental Impact Assessment Report in respect of the Golden Eagle and the White Tailed Eagle, both of which are classed as 'high sensitivity to wind farm developments', it is considered that potential risks to the aforementioned Annex I species have not been adequately addressed in the form of scientific evidence and conclusions. The proposed development would, thus, have significant adverse impacts on the ornithological importance of the area by way of disturbance and displacement of protected bird species and potential for bird strikes and would,

therefore, be contrary to the proper planning and sustainable development of the area.

2.5. In the interim period between the Inspector discharging the report and the Board deliberations on the appeal, variation no.2 of the Donegal County Development Plan 2018-2024 incorporating Ministerial Direction in the matter of section 31 of the Planning and Development Act 2000 (as amended), was adopted on 21st December 2022.

3.0 Variation to the County Donegal Development Plan 2018-2024 (As Varied) In Respect of the Wind Energy Policy Framework (Variation No.2) dated 21st December 2022, Incorporating Ministerial Direction Issued Under Section 31 of the Planning and Development Act, 2000 (As Amended) dated 20th December 2022.

3.1. Proposed Variation No. 2 to the Donegal County Development Plan 2018-2024 was on public display from 29th April 2022 to 3rd June 2022. The variation comprised amendments to the wind energy policy framework of the current Donegal County Development Plan 2018-2024. The variation introduced a number of key elements including:

- New policy framework stipulating a setback distance requirement of 10 times the tip height of the wind turbine from residential properties (Policy E-P-23 and Policy E-P24);
- A wind energy map (Map 8.2.1) which identifies areas of the county designated as “Acceptable in Principle”, “Open for Consideration” and “Not Normally Permissible” for wind energy;
- New policies relating to the three designated areas;
- Background and contextual updates to the legislative framework and guidelines in which windfarm developments must be considered.

3.2. The Office of the Planning Regulator made a submission to the proposed variation containing two (2) recommendations and one (1) observation on 3rd June 2022 as follows:

- Recommendation 1 – Compliance with statutory guidelines: i) To provide targets for wind energy development in the county in accordance with SPPR(2) of the Interim Guidelines; ii) To omit Policy E-P-23 and Policy E-P-24 that introduce a mandatory setback distance of 10 times the tip height of the wind turbine from residential properties.
- Recommendation 2 – Sieve Mapping Analysis: To omit Lifford-Stranorlar Municipal District Areas at Risk of Landslides and Associated Environmental and Ecological Concerns”, and all “moderately High” and “Moderately Low” landslide susceptibility areas from “Not Normally Permissible” designation.

3.3. No material amendments were made to the proposed variation on foot of public consultation and the elected members of Donegal County Council resolved to make variation No. 2 to the Donegal County Development Plan 2018-2024 at its Plenary Council Meeting on 18th July 2022.

3.4. In accordance with Section 13 of the Planning and Development Act 2000 (as amended) and on 20th December 2022, the Minister for Housing, Local Government and Heritage issued a Direction to the Council under the provisions of Section 31 of the Act directing the Authority to take certain steps with regards to the variation. Members of the Council considered the making of the variation in accordance with the provisions of Section 13 of the Planning and Development Act, 2000 (As Amended), inclusive of the conclusion of the Ministerial Direction process and the conclusions of the Strategic Environmental Assessment and Appropriate Assessment procedures respectively, at the Plenary Council meeting on 30th January 2023.

3.5. The variation was adopted on December 21st 2022.

3.6. Of particular note to the Board with reference to the original Inspector’s assessment presented for this application, are amendments to Policy NH-P-6 (amended text in italics):

Policy NH-P-6: “It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered. *Without prejudice to the generality of the aforementioned, windfarm developments will not be acceptable in Especially High Scenic Amenity Areas save for: (i.) the limited*

circumstances set out under the section headed: 'Wind Energy-Context' (para. commencing: 'Map 8.2.1 entitled Wind Energy designates....'), contained within Amendment No.4 above; and (ii.) the possible exceptions set out in Policy E-P-12(1)(c)(ii.)"

- 3.7. Map 8.2.1 entitled 'Wind Energy' designates areas considered suitable or unsuitable for new wind energy development in the County. Policy E-P-12 is extracted below:

E-P-12: It is a policy of the Council that the principle of the acceptability or otherwise of proposed wind farm developments shall be generally determined in accordance with the three areas identified in Map 8.2.1 'Wind Energy' and the specific biodiversity related requirements detailed below:

1. Areas in Map 8.2.1 Wind Energy:

(a) Acceptable In Principle Wind energy development shall be generally acceptable in these areas.

(b) Open to Consideration Wind energy development shall be generally open to consideration in these areas.

(c) Not Normally Permissible

(i) Windfarm development proposals on previously undeveloped sites, inclusive of sites with a lapsed un-implemented permission (and where substantive works have not been undertaken) will not normally be permissible.

(ii) The augmentation, upgrade and improvements of existing windfarms; windfarm developments under construction; developments where permission has lapsed but substantial works have been completed, or on sites with an extant planning permission will be open to consideration where such proposals shall be generally confined to the planning unit of the existing development.

4.0 **Assessment**

- 4.1. The original Inspector's report recommended that the application be refused for three reasons. Firstly with reference to Policy NH-P-6 of the County Development Plan (as varied) and the location of the subject site in an area designated for Especially High Scenic Amenity; secondly with reference to potential adverse impact upon Merlin, an Annex I species under the EU Birds Directive (2009/147/EEC) and a QI of the Lough Nillan Bog SPA (004110) contrary to objectives NH-O-1 and NH-O-10, as well as

policy NH-P-5; and lastly with reference to the significant risk of collision for Annex I bird species Golden Eagle and White-tailed Eagles, as well as loss of habitat and displacement for raptors at the location.

- 4.2. The original Inspectors report dated 28th July 2022 included reference to the then proposed Variation no.2 in its policy section. Subsequently, Variation no.2 was adopted on 21st December 2022, Incorporating Ministerial Direction Issued Under Section 31 of the Planning and Development Act, 2000 (As Amended) dated 20th December 2022. This has varied the Development Plan as described in section 3 above. With reference to variation no.2, I have consulted Map 8.21 and note that the subject site is located in an area where windfarm development is not normally permissible.
- 4.3. The revised adopted windfarm policy in the development plan is clear and unambiguous in stating that permission for windfarm developments should generally not be granted in areas designated as not normally permissible. There are no exceptional or extenuating circumstances in the case which would prompt the Board to reach a different conclusion.
- 4.4. I also refer the Board to relevant case law which would support the view that the policies and provisions of the development plan would take precedent over national policy. In the case of *Brophy v. An Bord Pleanála* [2015 IEHC 433] Baker J rejected the argument that where there is a conflict between the development plan and national policy, expressed in the Ministerial Guidelines, the latter should prevail. A similar view was held in *Murtagh v An Bord Pleanála* (unreported High Court March 29th 2023), it notes that the primacy of the development plan extends to cases where there is a conflict between its provisions and a policy of the NPF.
- 4.5. The Inspector's original report concluded with respect to recommended reason for refusal no.1 that notwithstanding the potential contribution that the proposed renewable energy project would have in meeting National renewable energy targets, it was considered that the proposal would result in considerable and unacceptable adverse visual impact upon this upland environment designated as an Especially High Scenic Amenity area. In addition, and in light of the now adopted variation no.2 and the location of the site in an area where windfarm development is not normally permissible, the proposed development would also materially contravene the provisions of the development plan in this regard.

5.0 Recommendation

- 5.1. With regard to the original Inspector's assessment, with which I concur, and in light of the subsequently adopted variation to the County Donegal Development Plan 2018-2024 (As Varied) in respect of a Wind Energy Policy Framework (Variation No. 2), I recommend that planning permission be REFUSED in accordance with the following reasons and considerations.

6.0 Reasons and Considerations

1. The proposed development is located on a site, which lies within an area designated for Especially High Scenic Amenity, as outlined under Policy NH-P-6 of the County Donegal Development Plan, 2018-2024 (as varied) *'it is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered'*. Notwithstanding the potential contribution this proposed renewable energy project would have in meeting National renewable energy targets, it is considered that the proposal would result in a considerable and unacceptable adverse visual impact upon this upland environment designated as an Especially High Scenic Amenity area. It is considered that the proposed development sited at this location would constitute a highly obtrusive development that would detract from the existing natural character of the area, would undermine the setting of this unspoilt valley and would erode the landscape and visual quality of this rural area and compromise the scenic amenities of this visually sensitive and vulnerable area. The proposed wind turbines would, thereby, be excessively dominant features and a visually obtrusive form of development in this landscape, would materially conflict with policy NH-P-6 as set out in the Donegal County Development Plan 2018-2024 (as varied), and would seriously injure the landscape and visual amenities of the area. **In addition, the proposed wind farm development is located on a site designated in an area where wind energy development is not normally permissible as defined in Map 8.2.1 of the County Donegal Development Plan 2018-2024 (as varied). The proposed development would therefore materially contravene the provisions of the development plan.** The proposed development

would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The appeal site is located in a non-designated however regionally-important area for Merlin, the identified pair of Merlin confirmed to be breeding in the area are considered to be of national/international importance and the appeal site is identified as an important foraging habitat for Merlin, which is afforded protection under Annex I of the EU Birds Directive (2009/147/EEC). The Board is not satisfied, based on the details submitted with the application and appeal, notwithstanding the mitigation measures set out to address the impacts on Merlin, that the proposed development would not have a significant adverse impact on Merlin. It is considered that the proposed development would be contrary to objectives NH-O-1 and NH-O-10, as well as policy NH-P-5, of the Donegal County Development Plan 2018-2024 (as varied), and, therefore, would be contrary to the proper planning and sustainable development of the area. In addition, given the close proximity of the proposed development to the Lough Nillan Bog SPA (004110) the Board is not satisfied, on the basis of the information provided with the application, that the proposed development would not adversely affect the integrity of this European site in view of the site's Conservation Objectives in relation to Merlin. In such circumstances the Board is precluded from granting permission.

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displacement of protected bird species and potential for bird strikes and would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Rachel Gleave O'Connor
Senior Planning Inspector

23 October 2023