



An
Bord
Pleanála

Inspector's Addendum Report

ABP 313007

Development	10-year permission and 35 year operational life of a windfarm consisting of 7 turbines, meteorological mast and ancillary works and equipment.
Location	Ballynagare, Dysert Marches and associated townlands to the north of Lixnaw, Co. Kerry.
Planning Authority	Kerry Co Council.
Planning Authority Reg. Ref.	211441
Applicant(s)	Ballynagare Windfarm Ltd.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Ballynagare Windfarm Ltd
Observer(s)	(i) Lixnaw Wind Aware Group, (ii) An Taisce (iii) Steve Edwards (iv) Thomas Dillon

Date of Site Inspection

5th and 6th September 2022

Inspector

Paul Caprani

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1.0 Introduction

- 1.1. This report is an addendum report to my original report in respect of ABP-313007-22 dated September 22nd 2022.
- 1.2. On 29/09/2022 the Board met to consider the proposal before it. As per the Direction dated 06/10/2022 the Board requested the Inspector to elaborate the concerns set out in his report particularly in relation to flooding, biodiversity and ornithology. I provided an additional memorandum dated 24th October 2022 outlining and elaborating upon my concerns in respect of these issues.
- 1.3. The Board held another meeting on 29th November 2022 where it decided to defer consideration of the case and issue a S132 notice to the applicant in respect of the following issues:
 - The Board have concerns in relation to flooding particularly if a large-scale flood event were to coincide with the construction phase. The Board are concerned that any mitigation measures set out in the EIAR for protection water quality could be largely made redundant should a major flood event occur during the construction phase of the development. Therefore, the applicant is requested to submit a detailed CEMP setting out specific mitigation measures which would be employed to prohibit large-scale pollution and contamination of surface water during a flood event during the construction phase.
 - The Board requests that the applicant provide further information and studies which clearly demonstrate that the siting of the turbines in question do not pose a significant and potential threat to the feeding and foraging grounds of the Whooper Swan by way of potential disturbance through noise or represent a significant potential collision risk by interfering with Whooper Swan flight paths.
 - The Board also requested that the applicant provide details of the cumulative impact noise assessment which was undertaken for the Ballyhorgan Windfarm (permitted but not yet constructed) but was not present in the EIAR submitted. Finally the applicant was requested to comment to what extent the proposed windfarm development would comply with the noise standards set out in the Draft Revised Wind Energy Development Guidelines (2019).

2.0 Response of The Applicant to the Board's Direction (Dated 29/11/2022)

2.1. The response on behalf of the applicant was submitted by MKO Planning and Environmental Consultants on January 24th 2023. The main salient points are summarised below:

2.2. Flooding

It is note that the EIAR was accompanied by a Flood Risk Assessment. It identified two major risks (a) in a very extreme (catastrophic) scenario where the existing coastal flood defenses might fail the site would be submerged by up to 2m of estuarine/sea water. (b) Pluvial/surface water flooding some a heavy rainfall event combined with high water levels in adjacent rivers or high tides. Fortunately, the flood risk assessment undertaken to date has ensured that flooding risks at the wind farm site is well understood and predictable. Appendix 2 of the submission provides an updated Construction and Environmental Management Plan. It provides very detailed measures in respect of water quality protection, cable trench drainage, peat stability management, and a host of mitigation measures for waste management and the refueling and storage of fuel and hazardous materials. The report also sets out in details the roles and responsibilities environmental management protocols to be implemented by staff during the construction phase. As suite of environmental response measures are also set out. All work will be supervised by a hydrologist who will report to an Environmental Clerk of Works.

Specifically in response to extreme weather and tidal events which could potentially have a catastrophic impact during the construction phase it is stated that the tracking of storm surges within the Atlantic coupled with the forecast of tidal height and heavy rainfall will be tracked and observed closely. They can be identified 3-4 days in advance. If necessary, a managed retreat from the flood prone areas can be fully executed within 24hrs. Measures to be incorporated include the compacting and covering of peat storage areas, the back-filling and compaction of all open trenches. The removal of all potentially contaminated materials from the site. The removal of all sediment control measures on site. The removal of all machinery off site. All access roads and tracks will be scraped to ensure the removal of all soft debris which could be washed off site.

The incorporation of the above measures should address the Board's concerns.

Whooper Swan Concerns

It is noted that the nearest turbine is located over 750 m from the key foraging and roosting sites in Ballyouneen, the main area where foraging and roosting occurs. The grasslands in the vicinity of turbines T5 & T7 continue to host foraging and roosting birds also. Further winter bird surveys have been on-going this winter in accordance with SNH guidance for the winter of 2022/23. They have not shown markedly different results than those which were undertaken between April 2019 and March 2021. To ensure that any operational identified impacts in the vicinity of T5 and T7 would not result in significant impacts, enhancement measures identified in Appendix 7-7 of the EIAR are again referred to.

In relation to collision risk, appendix 7-5 of the EIAR recorded flight activity in the vicinity of the turbines the 500 meter buffer of the turbines what's considered to be the risk window within the rotor swept height as determined in the collision risk modeling. The modelling undertaken as indicated in Table 7-5-5 and appendix 7-5 of the EIAR indicate a very high rate of avoidance (99.5%). Additional survey results for the winter of 2022/23 reflected a similar rate of collision, namely 1 collision every 2/3 year or a reduction in the population of the Whooper Swan by 0.4% to 0.6% annually. This is determined as being negligible.

Noise

The cumulative noise predictions for both the proposed development and the Ballyhorgan Wind Farm have been presented in a technical note along with a figure illustrating the omni direction noise contour (worse-case theoretical scenario where all receiver locations are downwind of the turbines at the same time). Appendix 3 presents the cumulative noise predictions for both the Ballynagare and Ballyhorgan developments and compares the predicted noise levels against the relevant day and night noise criteria curves. In no instance are the day-time or night-time criteria exceeded at the noise sensitive receptors which could potentially be impacted upon through cumulative impacts.

With regard to the 2019 Draft Wind Guidelines AWN, the consultants who undertook the noise assessment on behalf of the applicant expressed concerns regarding the robustness of these guidelines. For this reason the EIAR continues to rely on ETSU-

R-97 and the Good Practice Guidelines (GPG) methodologies as set out in Section 13.4.2.1 of EIAR. It is argued therefore that the EIAR is fully in accordance with the latest best practice methods. If updated Wind Energy Guidelines are published during the application process for the proposed development, it is anticipated that any relevant changes affecting the noise assessment will be addressed through an appropriate planning condition or if necessary through additional information.

Notwithstanding these concerns the additional information submitted stated that the modelling undertaken shows that overall daytime periods show 100% compliance with the requirements of the guidelines. Evening periods show compliance between 96% and 100% depending on wind speed and nighttime periods show between 92.7% and 100% compliance depending on wind speed.

It is therefore contended that if national guidelines on the assessment of wind turbine noise were changed in advance of ABP making a decision in relation to this specific project it would be possible to curtail site emissions through implementation of low noise modes on specific turbines in specific wind/directions / wind speed to satisfy the interpretation of the Draft Revised Wind Energy Guidelines 2019 if required.

3.0 Further Submissions

- 3.1. The Applicants response was circulated to the planning authority and the observers. A response was from one observer (on behalf of the Lixnaw Wind Aware Group) and from Kerry Co Council. These are summarised below:

Submission from Kerry Co Council

Kerry Co Council wish to draw the Boards attention that the Co County Development Plan came into effect on August 15th 2022 and incorporates the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022, signed by the Minister 2022. The Kerry Co Development Plan is aligned, in so far as practicable, with National and Regional Policy. Notwithstanding the potential benefits of renewable energy proposals, such proposals are required to be environmentally sustainable and plan led. It is reiterated that the proposed development is neither located in an area which is 'open for consideration' nor is it located in a 're-power area' and therefore is not considered suitable for such a wind farm development. Reference is made to Development Objective KCDP 12-20 which seeks to:

Ensure that commercial wind energy projects will not be considered in areas outside of 'Open-to-Consideration' and 'Repower Areas'.

The council is of the view that this policy should be taken into consideration by the Board in determining the application before it.

Submission from Linda Edwards Lixnaw Wind Aware Group

It is stated that the Minister has agreed the new development plan and the proposed development remains located outside a designated area which is deemed suitable for windfarm development. Kerry is already shouldering more than its fair share of renewable energy development.

There appears to be some discrepancies regarding the length of access roads as indicated in the original submission and the additional information submitted. The laying of new access roads and the widening of existing access roads will result in the removal of drainage ditches which will also have a significant environmental impact. It is noted that detailed drainage measures have not been set out in the CEMP, thus it is difficult to ascertain the exact impact arising from the works. The draining of peat bogs will result in the release of more carbon and could have implications for peat stability. It is suggested that in the absence of detail regarding peat removal the climate impact cannot be realistically be calculated and as such an accurate climate impact assessment cannot be compiled. Constructing windfarms on peatlands has a profound adverse impact on biodiversity.

All persons who made submissions to the planning authority should be offered the opportunity to comment on this further information submitted to the applicant.

Details of historic flood events in the area are set out in the submission. Newspaper cuttings and pictures of the flood events are contained in the submission. Climate change will see sea levels rise which will exacerbate flooding in the area. It is likely that large parts of county could be flooded by rising sea levels by 2050.

The pollution that could occur as a result of the pouring of concrete etc as part of the construction of foundations etc could result in the contravention of the WFD with the pollution of surface and groundwaters.

The proposal could also adversely affect the bird populations in the area, studies at the Environmental Research Institute at UCC concluded that there is 10% decline in

bird populations in areas surrounding windfarms. Birds that nest in the bogland areas are also important prey for other bird species such as hen harriers.

Concerns are expressed that settlement ponds and silt fences, if not constructed properly could result in water pollution in surrounding areas. Potential disadvantages of silt fences in peatlands are set out in the submission.

The Board are therefore requested to uphold the decision of Kerry Co Council and refuse planning permission on the basis that the development will have an unacceptable impact on habitats and biodiversity of the area and would be contrary to a number of EU Directives.

4.0 Further Assessment

4.1. I have considered the additional information submitted by the applicant and the further responses received from observers and the planning authority.

Having examined the submissions I would comment as follows in relation to each of the issues raised.

Flooding

I am satisfied that the detailed measures set out in appendix two of the applicants response set out additional detailed measures in respect of water quality protection, cable trench drainage and Pete stability management. The fact that a potential catastrophic impact during the construction phase can be identified three to four days in advance means that in the event where a catastrophic storm event could potentially occur, this can be tracked and managed to ensure that appropriate mitigation measures can be implemented in advance to mitigate against any major pollution event. Having regard to the relatively short construction phase of the development (c. 18 months) And the infrequent likelihood of numerous large scale catastrophic storm events occurring during the period together with the fact that such storms can be tracked well in advance means that appropriate measures can be taken to ensure that any flooding event would not result in any large scale pollution episode in the vicinity of the site.

Impact on the Whooper Swan

- 4.1.1. Notwithstanding the additional information submitted with the applicant, I would still have concerns regarding the proximity of the Whooper Swan flight paths, which do traverse the area in and around the subject site particularly the grasslands in the vicinity of T5 and T7. I reiterate that the flightpaths are depicted in the various survey maps contained in Appendix 7.4 It is also clear from Fig 7-4-21 that the Whooper Swan also frequents the to the immediate north of the site, the marshlands to the immediate north of the River Feale, adjacent to the north eastern boundary of the site. The further information submitted by the applicant does little to allay or address the concerns in my original report concerning the proximity of the Whooper Swans flight paths and feeding grounds to the turbines as proposed
- 4.1.2. Again, issues such as that raised in the reason for refusal no.5 should in my view feed into studies indicating the preferred location for windfarm developments on a strategic county level. This in my view would support the conclusion that the proposal may be considered premature pending the formal adoption of preferred wind deployment areas within the county and windfarms in this lowland location in proximity to estuaries and marshes could impact on migratory paths and roosting and foraging habitats for wetland birds.

Noise

Having regard to the further information submitted by the applicant in relation to noise impact. I am satisfied that the cumulative noise predictions for both the proposed development and the Ballyhorgan Wind Farm, have been appropriately assessed and that the applicant has taken cognisance of the 2019 Draft Guidelines in the noise assessment undertaken in the EIAR. The applicant has in my view demonstrated that it would be possible to curtail site emissions through implementation of low noise modes on specific turbines in specific wind/directions / wind speed to satisfy the interpretation of the Draft Revised Wind Energy Guidelines 2019 if required.

Compliance with Development Plan

- 4.1.3. Although not specifically raised by the Board in its further information request, Kerry County Council has, in its response to the further information submission, highlighted the fact, that the Minister has concluded, on foot of a Draft Direction from the OPR, that the Kerry Co Development Plan is aligned, in so far as practicable, with National and Regional Policy. And as such there is no requirement to Reinstate Map 12.4 of Volume 1 and Map 5 of Volume 4 of the Draft Development Plan. There is no requirement on Kerry Co Council therefore to change the designation of all areas identified as “open to consideration” to “permitted in principle”.
- 4.1.4. It is reiterated that the proposed development is neither located in an area which is ‘open for consideration’ nor is it located in a ‘re-power area’ and therefore is not considered suitable for such a wind farm development. Thus contrary to my concerns outlined in my initial report that the proposal may be deemed to be premature, pending the outcome of the Draft Ministerial Direction, it now appears on the basis of the outcome of the Ministerial Direction, the proposal may in fact materially contravene the objectives of the Kerry Co Development. And this in my view is a very important and material consideration in determining the application.

5.0 Recommendation

- 5.1. On the basis of my assessment in this addendum report, the additional information submitted has allayed and addressed my initial concerns in relation to flooding and noise. Nevertheless concerns in respect of the proximity of the proposed turbines to the flight paths and feeding grounds of the Whooper Swan remain. Concerns in relation to the prematurity of the development pending the resolution of windfarm policy in the current Kerry Development Plan have been exacerbated, as windfarm policy issues have been resolved and the proposed development is located outside an area designated as being as either a re-power area or an area which is ‘open for consideration’ under the final adopted plan.
- 5.2. On foot of the above therefore my recommendation to the Board regard the application before it remains the same, that planning permission be refused for the proposed development.

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.

Paul Caprani
Planning Inspector

24th July 2023