



An  
Bord  
Pleanála

## Inspector's Addendum Report

**ABP-314600-22**

### Development

Construction of (1) (a) one Enercon E138 wind turbine on an 81m tower with an electrical rating of 4.2MW and an overall tip height of 149.38m (b) the wind turbine foundation, hardstanding and assembly area (c) an on-site 20kV substation and underground electrical cable (2) The development of a site entrance and access track within the site (3) all associated site development and ancillary works.

### Location

Cornachan and Cunlin, Killybegs, Co. Donegal.

### Planning Authority

Donegal Co. Council

### Planning Authority Reg. Ref.

2251214

### Applicant(s)

Cathal Boyle

### Type of Application

Permission

### Planning Authority Decision

Refuse

### Type of Appeal

First Party

**Appellant(s)**

Cathal Boyle.

**Observer(s)**

Brid Murphy.

**Date of Site Inspection**

November 10<sup>th</sup> 2022

**Inspector**

Paul Caprani

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## 1.0 Introduction

- 1.1. This report is an addendum report to the Inspector's report in respect of ABP 314600then - dated 28<sup>th</sup> of November 2022.
- 1.2. On The Board decided to defer this case and to seek an addendum report from the inspector on the basis that in the interim period between the inspector discharging the report and the Board deliberations on the development, Donegal Co Council adopted a variation to the development plan in respect of the Wind Energy Policy Framework which incorporated the Ministerial Direction issued under S31 of the Planning and Development Act 2000.

## 2.0 Background

- 2.1. Planning permission is sought for a single turbine on the subject site with an overall height of 149.38m with an electrical rating of 4.2MW's together with ancillary works. My initial report dated 28<sup>th</sup> of November 2022 noted that the Planning Authority refused planning permission for a single reason relating to non-compliance with policies contained in the development plan namely policy E-P-12 (which related to suitable areas designated for windfarm development)
- 2.2. My initial report noted that, at the time of writing, local statutory policy in respect of windfarm development is currently in abeyance. I noted at the time that a Ministerial Direction in relation to the Windfarm Policy was sought from the Office of the Planning Regulator on the basis that it is considered that the then variation to the development plan as made, failed to meet the overall strategy for the proper planning and sustainable development of the area and the variation is not consistent with national policy objectives set out in either the National Planning Framework, the Regional Policy Objectives or Ministerial Guidelines set out under Section 28 of the Act.
- 2.3. I went on to argue in my initial report, in the absence of specific local policy, there is a comprehensive range of guidance and policy objectives at national and regional level generally in relation to windfarm developments and while certain aspects of the development plan have been deleted and removed, this does not imply that there is a complete vacuum or lacuna in policy which precludes the Board from determining the application before it in accordance with the proper planning and sustainable

development of the area. I argued that there was sufficient policy direction at national and regional level to enable the Board to set aside the reason for refusal issued by Donegal County Council. I argued that the wider national policy objectives in relation to promoting renewable energy was sufficient to provide a policy context to enable the Board to overturn the decision of the planning authority and grant planning permission for the proposal.

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

- 3.1. This Variation to the county development plan, which was adopted on December 21<sup>st</sup> 2022, resulted in 18 textual changes and one mapping change to the Wind Energy Guidelines in the Development Plan.
- 3.2. Of particular importance to the Board in determining the current application before it, are the changes set out in *Part A Chapter 8: Natural Resource Development Section 8.2.1*. As well as making reference to updated policy in respect of renewable energy development, it also incorporates Map 8.2.1 A Wind Energy Map which replaces that which was previously quashed on foot of the High Court Order made in November 2018.
- 3.3. The newly adopted map by way of the variation, Map 8.2.1 entitled 'Wind Energy', designates areas considered suitable or unsuitable for new wind energy development in the County. These areas have been identified using a step-by-step sieve mapping analysis as a basis for constructing the map, by carrying out a comprehensive analysis of the environmental sensitivities and the wind energy potential of the County (in accordance with the Draft Wind Energy Development Guidelines 2019) subject to amendments made by resolution of the Council (refer to Section 28 Statement). In the event of a discrepancy occurring between Map 8.2.1 and the written objectives and policies contained in the Plan, the written text shall be the key material consideration and take precedence over Map 8.2.1.
- 3.4. Arising from this process and in accordance with Policy E-P-12 and Map 8.2.1 the Plan identifies the following policy area designations as the means of determining

the principle of the acceptability or otherwise of proposed new wind farm developments,

(a) Acceptable In Principle: Wind farm developments shall be generally acceptable in principle in these areas.

(b) Open to Consideration: Wind farm developments shall be generally open to consideration in these areas.

(c) Not Normally Permissible: Like the other two designations, these areas were identified on foot of a comprehensive analysis of the environmental sensitivities and the wind energy potential of the County. On foot of this determination, and in-line with national guidelines, it follows that most windfarm developments will not normally be permissible. This should apply in particular to such proposals on previously undeveloped sites, inclusive of sites with a lapsed unimplemented permission (and where substantive works have not been undertaken). Notwithstanding, and having regard to previous planning assessments and decisions and the subsequent investment incurred, it is the position of Donegal County Council that a more balanced approach is required when dealing with windfarm proposals in these areas where, crucially, there is an already existing strong planning history. This refers to the following categories: Existing Windfarms; Developments Under Construction; Developments where permissions have lapsed but where substantial works have been completed; and sites with a live permission but not yet started. For such sites, it is considered reasonable to allow for the consideration of proposals for the augmentation, upgrade and improvement of such developments in accordance with the details set out in Policy E-P-12 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. Having examined the file in the context of the material change in circumstances, regarding the status of the development and the adoption of the variation of the development plan in relation to wind energy policy framework incorporating the Ministerial Direction, I am of the opinion that my initial recommendation to grant planning permission should be changed to a refusal of planning permission. My previous recommendation was predicated on there being a lacuna in windfarm policy at development plan level. **Having consulted Map 8.21, I note that the subject site is located in an area where windfarm development is not normally permissible.**
- 4.2. 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. While there is a small windfarm c.400m to the south of the site, the standalone proposal in this instance does not constitute the augmentation, upgrade, improvement or completion of an existing windfarm and therefore would not fall under the criteria set out in policy E-P-12 (1)(c) (ii) which may render some developments to be open to consideration.
- 4.3. Finally in relation to this matter I would 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 29<sup>th</sup> 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.

- 4.4. My initial recommendation to overturn the decision of the planning authority was primarily based on the fact that, when writing my original report, there was no overall adopted policy in relation to windfarms at local level. I relied heavily on the *Element Power versus An Bord Pleanála 2016/920JR* (IEHC550) where the Court held that there no provision within the Planning and Development Act which empowered the Board to reject the proposed development on the basis it would be premature pending the adoption of national or local strategies. The Courts therefore ruled in relation to that application that, while there was no wind energy strategies at local level (for Kildare and Meath), there was no such policy vacuum at national level from precluding the Board from granting planning permission and it was not a relevant consideration and not a valid reason for declining permission. With the adoption of the variation in the development plan referred to above, both national and local guidance exists in relation to renewable energy, and it is clear from the case law referred to, policies in the development plan should take precedent.
- 4.5. Therefore, on the basis of the above, it is my considered opinion that planning permission for the proposed turbine should be refused, based on the reasons and considerations set out below.

## **Decision**

Refuse planning permission for the proposed development based on the reasons and considerations set out below.

## **5.0 Reasons and Considerations**

The proposed wind turbine 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 and would 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.

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Paul Caprani  
Assistant Director of Planning

14<sup>th</sup> September 2023