



An
Bord
Pleanála

Inspector's Addendum Report

ABP-314662-22

Development

Construction of a wind turbine with an operational lifespan of 30 years from commissioning, with a tip height of approximately 150 metres, control building, upgrading of site entrance, site access road (approximately 195 metres), hardstand areas, underground cabling and all associated site works

Location

Multins, Bruckless, Killybegs, Co. Donegal.

Planning Authority

Donegal Co. Council

Planning Authority Reg. Ref.

2251213

Applicant(s)

Protricity Limited

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Protricity Limited.

Observer(s)

None.

Date of Site Inspection

November 10th 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 314662- dated 28th 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 150m to link in with an existing 38kV substation at Killybegs. My initial report dated 28th of November 2022 noted that the Planning Authority refused planning permission for two reasons both of which related to the non-compliance with policies contained in the development plan namely policy E-P-12 (which related to suitable areas designated for windfarm development) and policy NH-P-7 (which related to landscape and amenity designation).
- 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 or 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 on national, regional and local 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 in relation to the contravention of the policies and provisions contained in the development plan and grant planning permission on this basis.

- 2.4. In relation to the second reason for refusal issued by the planning authority, I argued that the visual impacts may not be as significant or profound as that suggested in the planning authority's reason for refusal and that the proposed turbine is located on lands designated as being least sensitive in landscape terms. I also stated that there is an urgent need to provide such important renewable energy infrastructure in the context of growing concerns regarding climate change and on this basis, the Board therefore in my view, could also consider setting aside the second reason for refusal issued by the planning authority.
- 2.5. On the basis of my initial assessment, I recommended that the Board overturn the decision of the planning authority and grant planning permission for the proposed development.

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 which was adopted on December 21st 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 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 omitted on foot of the High Court Order made in November 2018.

3.3. 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.
- 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 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.
- 4.4. 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 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 former case law referred to, policies in the development plan should take precedent.
- 4.5. My arguments set out regarding my visual amenity assessment remain unchanged.

- 4.6. 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 turbine 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.

Paul Caprani
Assistant Director of Planning

14th September 2023