



An
Bord
Pleanála

Inspector's Report 08.PM0014

Development	Application under section 146B of the Planning and Development Act, 2000 (as amended), to alter the terms of a permission for Strategic Infrastructure Development.
Location	Ralappane and Kilcolgan Lower townlands, Tarbert, Co. Kerry.
Planning Authority	Kerry County Council
Applicant(s)	Shannon LNG
Type of Application	Section 146B
Date of Site Inspection	4 th December 2017
Inspector	Michael Dillon

1.0 Site Location and Description

- 1.1. The site, with a stated area of approximately 104ha, is located in a rural area on the north coast of Co. Kerry, approximately 4km west of Tarbert and 4km northeast of Ballylongford.
- 1.2. The site is irregular in shape, and follows the coastline along the Shannon Estuary for a distance of about 1.6km; rounding Knockfinglas Point. It is set out in pasture, comprising primarily improved grassland, with some wet grassland adjacent to the coastline. It is made up of a series of irregularly shaped fields separated by hedgerows. The site is undulating, but generally rises upwards in a southeasterly direction from the coastline – from approximately 3m OD at the shoreline to a maximum of 33m OD at its southeastern extremity (close to Cahergal ringfort). A small stream runs in a northwesterly direction through the site, discharging into the Shannon Estuary to the southwest of Knockfinglas Point.
- 1.3. On its northeast and southeast sides, the site adjoins agricultural lands. On its southeast side the site adjoins the coast road from Tarbert to Ballylongford – on the opposite side of which is a series of one-off houses and lands in agricultural use. On its northwest and north sides, the site adjoins the Shannon Estuary where, with the exception of the westernmost extremity of the site, much of the boundary consists of a sloping cliff base of glacial till, 3-5m in height. On its northwest side, an irregularly shaped area of land is deliberately omitted from the site. This coincides with a brackish lagoon and areas of reed beds, which have been designated as part of the Ballylongford Bay proposed Natural Heritage Area (pNHA) and also part of the Lower River Shannon candidate Special Area of Conservation (SAC) and the River Shannon and River Fergus Estuaries SPA. The reed bed areas are generally located to the northeast of the small stream, which crosses through the site on its route to the Shannon Estuary. The boundaries of the cSAC, SPA and pNHA in the vicinity of these reed beds are all slightly different.
- 1.4. Just inside the site boundary, a minor road runs for a distance of about 0.9km, to terminate in a turning/parking area. This road is tourist sign-posted “Kilcolgan Strand”. The road is in a very poor state of repair – potholed and disintegrating – gradually becoming unsuitable for car traffic. A private track leads off in a northeasterly direction just short of the termination of this road, to give access to a

farmyard complex. This farmyard complex is still in active use, but the three houses associated with it have been abandoned. A further private road leads off the coast road into the application site, about 0.5km northeast of the aforementioned cul-de-sac. This too, leads to a farmyard complex, where the houses have been abandoned.

2.0 Request Details

2.1. A request to alter Condition no. 2 of permission ref. 08.PA0002, was received by the Board on 22nd September 2017. Condition 2 states-

This permission shall, in accordance with the application, be for a period of ten years from the date of this order.

Reason: In order to allow a reasonable period for the completion of this extensive development.

The request relates to an additional five-year timeframe to construct the development – such that cond. 2 would read- “This permission shall, in accordance with the application, be for a period of fifteen years from the date of this order”.

2.2. The reason for the request to extend the permission can be summarised as follows-

- Delays in issuing Foreshore Leases & Licences – not granted until December 2010.
- Commission for Energy Regulation (CER) consultation process into the national gas transmission grid was commenced in January 2011. A final decision on the tariff costs to access the onshore national transmission grid by parties using new entry points, was not issued until June 2015.
- This period of regulatory uncertainty allowed the applicant to obtain from ABP and CER the necessary construction approvals for connecting to the national grid and to obtain planning approval for a 500MW combined heat & power plant on this site.
- Weakening in the gas market following the economic downturn of 2008.
- EU Commission established a network code on harmonised transmission tariff structures for gas – bringing regulatory certainty to the market – 2017/460.

- The EU Commission recently renewed and extended Shannon LNG's Project of Common Interest status. This provides for fast-tracking of outstanding permits, and access to lower cost European Investment Bank financing and grant aid.
- It is envisaged that the LNG terminal will be operational by 2023.
- It is noted that the Board has already consented to alterations (ref. 08.PM0002) to the previously permitted scheme.

2.3. The request is accompanied by the following two documents-

- a) Report on the Assessment of the Environmental Impacts of the Proposed Alteration – dated 18th September 2017.
- b) Report on Screening for Appropriate Assessment – dated 18th September 2017.

3.0 Planning History

Ref 08.PA0002: An application under section 37E of the Strategic Infrastructure Development provisions of the Planning and Development Act, 2000 (as amended), was granted permission by the Board (under Section 37G), on 31st March 2008, for development of a liquefied natural gas (LNG) regasification terminal on this site. No development has taken place to date on foot of this permission.

Ref. 08.PM0002: Relates to an application to the Board under section 146B of the Planning and Development Act, 2000 (as amended), to make modifications/alterations to approved development ref. 08.PA0002, as follows-

- Allow for option to construct one storage tank in phase 1, rather than 2 storage tanks.
- Slight alteration to jetty head.
- Reduction in width of trestle decking.
- Alterations to pipeline supports close to sea-water pump-house.
- Running of pipes under rather than over a section of the outer perimeter road.
- Relocation of main electrical switchyard.

- Relocation of utility area electrical substation building.
- Relocation of LNG impoundment sumps.
- Reduction in width of some service roads from 9.0m to 6.0m.
- Changes to perimeter fencing.

By order dated 4th March 2013, the Board consented to the proposed changes, and amended Condition no. 3 of permission ref. 08.PA0002. No development has been carried out to date on this site.

Ref. 08.GA0003 & 08.DA0003: Refer to a Strategic Infrastructure Development application by Shannon LNG Ltd, under section 182C(1) of the Planning and Development Act, 2000 (as amended), to construct a 26km underground pipeline to link the proposed LNG terminal at Ralappane with the national gas transmission grid near Foynes, Co. Limerick. The application was accompanied by a compulsory acquisition order application. By Order dated 17th February 2009, the Board issued permission for the gas pipeline project, and consented to the compulsory acquisition of the necessary lands. Whilst the conditions of permission did not specifically refer to a 10-year permission, I note that the Board's Inspector did address this issue in her report, and condition no. 1 of the permission requires that the development shall be carried out in accordance with the plans and particulars, including the EIS, lodged with ABP on 14th August 2008. This development has not been carried out to date.

Ref. 08.PA0028: Refers to a Strategic Infrastructure Development application by Shannon LNG Ltd, under section 37E of the Planning and Development Act, 2000 (as amended), to construct a 500MW combined heat & power plant on the site of the proposed LNG terminal. By order dated 9th July 2013, the Board granted permission subject to 27 no. conditions. Condition no. 2 indicated that the permission was for a period of ten years. There is no development to date on foot of this permission.

Ref. ABP-300417-17: Safety Before LNG made a section 5 referral to KCC, in relation to whether extension of the duration of planning permission for the Shannon LNG Terminal project is a material change or not, and whether the complete abandonment of the project by its promoter is a material change, that is or is not development and is or is not exempted development. On 10th November 2017, KCC declared that the extension of duration was not development, and that the

abandonment by a promoter would constitute neither works nor a material change of use of a permission. This declaration was referred to the Board for review on 6th December 2017, by Safety Before LNG. There is no decision to date on the referral.

4.0 Policy Context

4.1. Kerry County Development Plan 2015-2021

- Map 12.1a indicates that the site is zoned for industry.
- There are no Views or Prospects indicated for protection on Map 12.1a.
- Section 4.6 deals with the Shannon Estuary.
- Section 4.7 deals with the Tarbert/Ballylongford Land Bank of 390ha – zoned for marine-related industry, compatible or complimentary industries and enterprises which require deep water access.
- It is an objective of the Council to- “Support the implementation of the Shannon [sic] Integrated Framework Plan to facilitate the sustainable economic development of the Shannon Estuary” (ES-22).
- It is an objective to the Council to- “Promote and facilitate the sustainable development of these lands for marine related industry, utilising the presence of deep water, existing infrastructure, natural resources and waterside location to harness the potential of this strategic location” (ES-23).

4.2. Strategic Integrated Framework Plan for the Shannon Estuary 2013-2020

Kerry County Council, in association with Clare County Council, Limerick City Council, Limerick County Council, Shannon Development, and the Shannon Foynes Port Company, commissioned a land- and marine-based plan for the future development and management of marine-related industry and tourism along the estuary. Clare County Council is the lead in this inter-jurisdictional plan. The Ballylongford development lands are identified in the Plan as a ‘Strategic Development Location’. The Kerry County Development Plan references the SIFP.

5.0 Notification

By letter dated 27th September 2017, Kerry County Council was notified of the receipt by the Board of the request to amend a previously approved planning permission, under section 146B. To date there has been no comment received.

6.0 Assessment

6.1. Legislative Comment

- 6.1.1. Section 146B is laid out in such a way that it essentially provides for a two-stage process. The first stage is for the Board to consider “*whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned*” – section 146B(2)(a). If the decision is that the making of the alteration would not constitute the making of a material alteration, then the Board “*shall alter the planning permission*” – section 146B(3)(a). The second stage only arises if the Board decides that the proposed alteration “*would constitute such a material change*”. In this instance, the Board, before determining to make such a material alteration or refusing to make such a material alteration, must determine whether the proposed alteration “*would be likely to have significant effects on the environment*” – sections 146B(3) and 146B(4). This determination requires consideration of the requirement for environmental impact assessment and public consultation – sections 146B(7) and 146B(8). Clearly, if the outcome of the first stage is a decision that the proposed alteration would not constitute a material alteration, then there is no basis for addressing the matters referred to in the second stage.
- 6.1.2. It should be noted that section 146B(9) provides that the word ‘term’ has the same meaning as it has in section 146A. Section 146A(4) states- “In this section ‘term’ includes a condition”. I would be satisfied, therefore, that it is open to the Board to consider amending condition no. 2 of permission ref. 08.PA0002, as requested by the applicant. In this regard I would note the Board’s decision in relation to an alteration of the Railway Order for the Kildare Route Project (NM0004) in 2017, to allow for an extension of time to complete certain works.

6.2. Projects of Common Interest

- 6.2.1. When planning permission was originally granted by the Board for this development on 31st March 2008, the notion of Projects of Common Interest had not been introduced. Since that time, the development of the LNG Terminal and the connection to the national gas grid have been entered in the Union List of Projects of Common Interest. The latest 'Union List' (23rd November 2017) from the European Commission, includes at Item 5.3, the following entry- "Shannon LNG terminal and connecting pipeline (IE)". The 'Union List' (18th November 2015), included at Item 5.3, the following entry- "Shannon LNG terminal and connecting pipeline (IE)". The first 'Union List' of 2013, followed on from the making of the relevant Regulation at Brussels (14th October 2013), and included at Item 5.3, the following entry- "PCI Shannon LNG Terminal located between Tarbert and Ballylongford (Ireland)". When the Board previously considered a section 146B alteration request at the Shannon LNG site (ref. 08.PM0002), the project had not at that stage been included as a Project of Common Interest – the date of the Board's Order being 4th March 2013, and where the LNG terminal project and the connection to the national gas transmission network were only designated a Project of Common Interest in October 2013.
- 6.2.2. The project is now included on the Union List. The Projects of Common Interest Unit of An Bord Pleanála (as the Competent Authority for Ireland) has considered the current section 146B request. In a Memo, dated 30th November 2017, it was considered that Regulation 347/2013 made no provision to deal with amendments to a permitted Project of Common Interest. The Projects of Common Interest Unit was satisfied that the Shannon LNG Project of Common Interest avails of the transitional provisions of Article 19 of Regulation 347/2013, which states- "for projects of common interest in the permit granting process for which a project promoter has submitted an application file before 16th November 2013, the provisions of Chapter III will not apply", allowing it to forego the obligations of Chapter III of the Regulation and it is not expected to enter the permit granting process. Therefore, no Project of Common Interest permit (the Comprehensive Decision) was or will be issued in this case. No procedural steps are required to be taken by the Board (the Competent Authority) in this instance.

6.3. Environmental Impact Assessment

- 6.3.1. The request to the Board is accompanied by a Report on the Assessment of the Environmental Impacts of the Proposed Alteration – dated 18th September 2017. Council Directive 2014/52/EU includes additional requirements with regard to EIA screening which were not in place when the original application was considered by the Board. The proposed alteration will not change the nature or extent of the proposed development. The Board did consider whether changes proposed under section 146B request (ref. 08.PM0002) would result in significant impacts on the environment, and concluded that there would be no significant impacts on the environment, arising from the proposed changes.
- 6.3.2. Since permission was originally granted in 2008, and modified in 2013, there has been no significant change to the receiving environment in terms of human beings, traffic, ecology (with the exception of the SPA extension), archaeology & cultural heritage, landscape and visual environment, soils & geology, surface water and groundwater, noise or material assets. The appraisal associated with proposed alteration (ref. 08.PM0002) to the LNG Terminal permission, considered the extended River Shannon and River Fergus Estuaries SPA. At the time of consideration of the original application (ref. 08.PA0002), only parts of Tarbert Bay and Ballylongford Bay were included within the larger SPA. The appraisal concluded that the proposed alterations would not change the conclusions of the 2007 Environmental Impact Assessment, carried out for the original scheme in relation to impacts on terrestrial, freshwater, estuarine or marine ecology. This assessment included impact on bird species. Since permission was originally granted, permission has been granted by the Board for a gas-fired power station (5km distant) to replace the existing oil-fired power station at Tarbert (ref. 08.PA0017). Permission has also been granted by the Board for a 500MW combined heat and power plant on this LNG site (ref. 08.PA0028) and for the construction of a gas pipeline to link the LNG terminal with the national gas grid near Foynes, Co. Limerick (ref. 08.GA0003). Planning permission has also been granted by KCC (ref. 13/138) for a power generating plant at Kilpaddoge (2km distant). The EIS for the Kilpaddoge power station included a cumulative assessment for other plans and projects already permitted in the area. As the proposed alteration relates only to the duration of permission, there will be no significant impact on air quality or climate.

6.4. Appropriate Assessment

- 6.4.1. The request to the Board is accompanied by a Report on Screening for Appropriate Assessment – dated 18th September 2017. This document sets out the Features of Interest and Conservation Objectives for European sites in the immediate vicinity. The relevant European sites are the Lower River Shannon SAC (Site code 002165) and the River Shannon and River Fergus Estuaries SPA (Site code 004077). At the time of consideration of the original SID application (ref. 08.PA0002), only parts of Tarbert Bay and Ballylongford Bay were included within the above-mentioned wider SPA, in the vicinity of the LNG Terminal site. The SPA was subsequently expanded to encompass the entire Shannon Estuary. The entire Shannon Estuary was within the aforementioned SAC at the time of the original SID application to the Board – ref. 08.PA0002).
- 6.4.2. Conservation Objectives for the SAC were produced in August 2012, and would have been taken into consideration by the Board when assessment was made of potential impacts on the SAC during consideration of a request to vary permission ref. 08.PA0002, by way of section 146B request (ref. 08.PM0002). I note that the section of estuary immediately abutting the LNG Terminal site is indicated as ‘Critical Habitat’ for Bottlenose dolphin (*Tursiops truncatus*), and the entire shoreline of the estuary is indicated as a commuting buffer for Otter (*Lutra lutra*). The National Parks & Wildlife Service, in drawing up the Conservation Objectives for this site, would have been aware of the existence of the original permission to erect the LNG Terminal. As the request relates to an extension of time only, it will not have any impact on the Conservation Objectives set down in the August 2012 publication from the Department of Arts, Heritage and the Gaeltacht.
- 6.4.3. Conservation Objectives for the SPA were produced by the Department of Arts, Heritage and the Gaeltacht in September 2012, and would have been taken into consideration when assessment was made by the Board of potential impacts on the SPA, during consideration of a request to vary permission ref. 08.PA0002, by way of section 146B request (ref. 08.PM0002). I note that only the jetty elements of the LNG Terminal project extend into the SPA. The land boundary in the northwestern portion of the site is deliberately drawn to exclude any portion of what was to become the extended SPA. The original EIS submitted with SID application ref.

08.PA0002, referred to the potential expansion of the River Shannon and River Fergus Estuaries SPA, when considering potential impacts of the development on bird species. It was acknowledged to be the most important coastal wetland in Ireland – containing the largest numbers of birds and wintering birds. The National Parks & Wildlife Service, in drawing up the boundary of the extended SPA, would have been aware of the planning history of the LNG Terminal site.

6.4.4. The Features of Interest of the SPA are as follows-

- Cormorant (*Phalacrocorax carbo*)
- Whooper swan (*Cygnus cygnus*)
- Light-bellied Brent goose (*Branta bernicla hrota*)
- Shelduck (*Tadorna tadorna*)
- Wigeon (*Anas penelope*)
- Teal (*Anas crecca*)
- Pintail (*Anas acuta*)
- Shoveler (*Anas clypeata*)
- Scaup (*Aythya marila*)
- Ringed plover (*Charadrius hiaticula*)
- Golden plover (*Pluvialis apricaria*)
- Grey plover (*Pluvialis squatarola*)
- Lapwing (*Vanellus vanellus*)
- Knot (*Calidris canutus*)
- Dunlin (*Calidris alpina*)
- Black-tailed godwit (*Limosa limosa*)
- Bar-tailed godwit (*Limosa lapponica*)
- Curlew (*Numenius arquata*)
- Redshank (*Tringa totanus*)
- Greenshank (*Tringa nebularia*)

- Black-headed gull (*Chroicocephalus ridibundus*)
- Wetland and waterbirds.

6.4.5. The conservation objectives for the species mentioned is to maintain the favourable conservation conditions, and to maintain the favourable conservation condition of the wetland habitat as a resource for the regularly-occurring migratory waterbirds that utilise it. As the request relates to an extension of time only, it will not have any impact on the Conservation Objectives for the SPA.

6.4.6. The screening document submitted with this section 146B request, referred to potential cumulative effects. The granting of permission for a 500MW combined heat & power plant on the LNG Terminal site was identified, as was the permission for the connecting gas pipeline from the LNG Terminal site to Foynes, Co. Limerick. Permission has been granted to replace the oil-fired power station at Tarbert. The power stations at Moneypoint and Tarbert were taken into consideration when the EIS for the original LNG Terminal was compiled. The replacement power station project at Tarbert would have included consideration of the in-combination effects of the LNG Terminal project. A Natura Impact Statement accompanied the 500MW combined heat & power plant at the LNG Terminal site. This NIS considered the cumulative and in-combination impacts of the proposed plant, together with the LNG Terminal project. It was concluded that there would be no significant cumulative or indirect impacts. An NIS accompanied the application to KCC for the nearby Kilpaddoge power plant. This NIS considered the cumulative impact of the proposed replacement power station at Tarbert, the Kilpaddoge 220kV sub-station (ref. 08.VA0007) and the LNG Terminal. KCC, as the competent authority, carried out appropriate assessment of the proposed development, and concluded that there would be no significant cumulative effects on the integrity of any European site.

6.4.7. It is reasonable to conclude that, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed revision to condition no. 2 of permission ref. 08.PA0002, individually or in combination with other plans or projects would not be likely to have a significant effect on European sites 002165 or 004077, or any other European site, in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment is not, therefore, required.

7.0 Conclusion

I am satisfied that the reasons outlined by the applicant for the delay in the project coming to fruition, are acceptable. The case put forward for an extension for a further five years on a ten-year permission is reasonable. It is also noted that the Shannon LNG Terminal project is included on the European Union List of Projects of Common Interest – the latest such List being produced as recently as November 2017. The extension of permission for a further five years would not constitute the making of a material alteration to the terms of the development. I am satisfied that no Environmental Impact or Appropriate Assessment issues arise in the extension of the permission. In arriving at this conclusion, I have taken into consideration the extension to the River Shannon and River Fergus Estuaries SPA. There is no basis to proceed to the second stage assessment provided for in section 146 of the Planning and Development Act, 2000 (as amended). Section 146B(2)(b) provides that the Board, prior to making a decision as to whether the making of the alteration to the permission (as sought by the applicant) would constitute the making of a material alteration to the terms of the development, may invite submissions in relation to the matter by such persons or class of persons, and which may include the public as the Board considers appropriate. Kerry County Council was notified of the receipt by the Board of the request to amend the previously approved planning permission, and no comment was received from the PA.

8.0 Recommendation

- 8.1. I recommend that the Board should alter permission ref. 08.PA0002 as requested, and in accordance with the following draft order-

REQUEST: received by An Bord Pleanála on 22nd September 2017, from Shannon LNG, under section 146B of the Planning and Development Act, 2000 (as amended), in respect of a Strategic Infrastructure Development described as the proposed liquefied natural gas (LNG) regasification terminal on the southern shore of the Shannon Estuary in the townlands of Ralappane and Kilcolgan Lower, Co. Kerry.

PROPOSED ALTERATION: Alteration to Condition number 2 of Board Order 08.PA0002, for permission to construct the Shannon LNG Regasification Terminal, which reads as follows-

2. This permission shall, in accordance with the application, be for a period of ten years from the date of this order.

Reason: In order to allow a reasonable period for the completion of this extensive development.

WHEREAS the Board made a decision to grant permission for the LNG Terminal project (ref. 08.PA0002), subject to conditions, by Order dated 31st March 2008:

AND WHEREAS the Board previously consented to an amendment to condition no. 3 of this permission, under the provisions of section 146B of the Planning and Development Act, 2000 (as amended) – ref. 08.PM0002, by Order dated 4th March 2013:

AND WHEREAS the Board noted that no development has taken place to date on this site, on foot of this amended permission:

AND WHEREAS the Board noted that the Shannon LNG terminal project has been included in the European Union List of Projects of Common Interest, subsequent to the original grant of planning permission ref. 08.PA0002 and the amendment to this permission ref, 08.PM0002; and the it has been included on the latest Union List of 23rd November 2017:

AND WHEREAS the Board considered that the amendment of Condition number 2 would not result in a material alteration to the terms of the development, the subject of the permission:

AND WHEREAS having regard to the nature of the issues involved, the Board decided not to invite submissions or observations in relation to the matter from persons who had made submissions or observations in relation to the application, the subject of this alteration:

NOW THEREFORE in accordance with section 146B(3)(a) of the Planning and Development Act, 2000 (as amended), the Board hereby alters the above-mentioned decision, so that condition number 2 of its order shall be as set out below:

Alteration to Condition number 2 of Permission ref. 08.PA0002

This permission shall, in accordance with the application, be for a period of fifteen years from the date of this order.

Reason: In order to allow a reasonable period for the completion of this extensive development.

The Board carried out a screening for appropriate assessment. It concluded that, on the basis of the information submitted, the proposed alteration, in itself, or in combination with other plans and projects, would not be likely to have significant effects on any European sites.

MATTERS CONSIDERED

In making its decision, the Board had regard to those matters which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included the submissions and observations received by it in accordance with statutory provisions.

REASONS AND CONSIDERATIONS

Having regard to the reason cited for Condition number 2, as originally stated, the Board considered that the amendment sought to extend the period of the planning

permission would not give rise to any significant change in the overall impact of the development on the area and, following on from this, that it would not have any significant consequences in terms of impact on the residential amenities or ecology of the area. The proposed alteration would not otherwise have material consequences, over and above those already considered under case reference number 08.PA0002 (as amended by case ref. 08.PM0002), and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Michael Dillon
Planning Inspectorate

18th December 2017