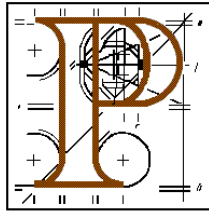


# An Bord Pleanála



## Inspector's Report

<b>Referral No:</b>	PL05E.RL.3419
<b>Details of Reference:</b>	Whether the erection of 2 no. wind monitoring masts is or is not exempted development.
<b>Location:</b>	(a) Lismulladuff, Killygordon; and (b) Ballyarrell Mountain, Killygordan, Co. Donegal.
<b>Referred By:</b>	Donegal County Council
<b>Owner/ occupier:</b>	Coillte Teoranta
<b>Planning Authority:</b>	Donegal County Council
<b>Planning Authority Reference:</b>	PS5/ 15/01
<b>Inspector:</b>	Donal Donnelly
<b>Date of Site Inspection:</b>	22 <sup>nd</sup> January 2016
<b>Appendices:</b>	Photos, maps, etc.

## **1.0 INTRODUCTION**

- 1.1 This is a referral by the Planning Authority, under Section 5(4) of the 2000 Act, for a determination by the Board on whether or not the subject development is or is not exempted development.

## **2.0 DEVELOPMENT PLAN**

- 2.1 Within the Donegal County Development Plan, 2012 the subject site is located within a “stronger rural area”.
- 2.2 Under the Development Plan – Draft Landscape Character Plan, both masts lie within the Cashelnaven Uplands. The site to the east is within Atlantic blanket bog and the western site is in forest.
- 2.3 The site is within an area “open for consideration” for wind energy.

## **3.0 SITE LOCATION AND DESCRIPTION**

- 3.1 The subject site comprises two separate locations approximately 4.33km apart in the townlands of Ballyarrell Mountain or Cornashesk and Lismullyduff in south-eastern Co. Donegal. The site is to the south-east of Ballybofey/Stranorlar and to the north-west of Castlederg, Co. Tyrone.
- 3.2 The site to the west at Lismullyduff is in a forested area at an elevation of approximately 235m OD on the south-eastern side of Lismullyduff Mountain. Access to the site is via a local road. There are electricity lines in the vicinity at a distance in excess of 154m from the mast.
- 3.3 The eastern site is accessed from a forestry road to an area of cleared forest. This site sits at an elevation of approximately 170m OD. The mast is set back from the forestry road a distance of approximately 170m. There is a strip of forestry plantation between the road and the location of the site.

## **4.0 PLANNING HISTORY**

### *An Bord Pleanála Ref: PL05E.PA0040*

- 4.1 Planree Ltd. applied for permission under Section 37E of the Planning and Development Act, 2000 (as amended) for the provision of up to 49 no. wind turbines, two permanent meteorological masts, two 110kv electrical substations and all associated works at Meenbog and other townlands, County Donegal.
- 4.2 This application was lodged on 3rd February 2015 and a proposed decision date is not available at this time.

- 4.3 There is a previous enforcement case (Ref: UD 14260) and a current enforcement case (Ref: UD 15113) relating to both masts.

## **5.0 BACKGROUND**

- 5.1 This referral relates to 2 no. wind monitoring masts which were erected at locations different to those proposed within the abovementioned Strategic Infrastructure case. However, both locations are within the red line boundary of this site.
- 5.2 The Council investigated the alleged unauthorised erection of 2 no. mast under Ref. UD14 260 and following a site inspection, only 1 no. mast was identified at Lismullyduff (site to west). A digital survey of the mast was carried out and the height of the structure was recorded at 81.334m. The nearest ESB overhead lines are in excess of 154m from the mast.
- 5.3 It was concluded that the mast largely adheres to the exemptions under Class 19 of Part 3 of Schedule 2 of the Regulations save for a minor increase in height above the 80m threshold. It was considered that this did not have a material impact on the overall context of the mast and therefore it was decided on 29<sup>th</sup> April 2015 not to pursue any enforcement procedures.
- 5.4 A second complaint was received by the Council regarding the mast to the east of the site at Cornashesk/ Ballyarrel Mountain (Ref: UD15 113). This mast was measured by the Council to be 80.2m in height and it was found that there are no nearby powerlines or roads.
- 5.5 The referral has now come about as a result of both masts and following the Council's earlier decision that no Enforcement Notice should be issued in respect of 1 no. mast.

## **6.0 REFERER'S SUBMISSION**

- 6.1 The Planning Authority's case, as per its letter of 29<sup>th</sup> September 2015, refers the question to the Board in accordance with Part 1 of Section 5(4) of the Planning and Development Act, 2000 (as amended), as to whether or not the erection of multiple meteorological masts is or is not exempted development.
- 6.2 It is noted under Condition and Limitation No. 4 listed under Column 2 of both Class 19 of Part 3 of Schedule 2 and Class 20(a) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) that "*not more than one such mast shall be erected within the site*".
- 6.3 The question referred to the Board is whether the location of the masts at geographically separate locations (and indeed separate townlands) but within the red boundary lines forming the "site" as defined by the current Strategic Infrastructure Development planning application (Ref: PL05.PA0040) is or is not exempted development within the meaning of the conditions and

limitations detailed under Class 20(a) of Part 1 and Class 19 of Part 3 of Schedule 2 of the Regulations.

- 6.4 The Planning Authority accepts that the mast in question comes within the scope of exempted development under Classes 20(a) and 19 save for limitation No. 4, and is unclear as to what constitutes a “site” within the meaning of the aforementioned conditions and limitations.

## 7.0 RESPONSES

- 7.1 A response to the referral was received by the consultants acting on behalf of Planree Ltd. The main points raised in this submission are summarised as follows:

- Neither of the temporary met masts have been in place for a period exceeding 15 months in the last 24;
- Neither of the masts exceed 80m in height;
- Neither of the masts are within the buffer distances of any party boundary, overhead lines or distribution lines, airport/ aerodrome, and IAA communications/ navigation or surveillance facilities or warning light.
- Each mast is erected in its own site, with separate settings and townlands and they are located approximately 4.2km apart.
- All mast components and materials are compliant with the requirements of the conditions and limitations.
- No signs, adverts, etc. are attached/ exhibited.

- 7.2 With respect to Condition and Limitation No. 4 of Classes 19 and 20(a), the following is stated:

- Regulations do not provide any formal definition of “site”.
- Planning application boundaries do not have a bearing on the determination of exempted development unless the exempted development would contravene the conditions of a previously granted planning permission. Classes of exempted development and their conditions and limitations stand apart from the planning application process.
- Planning application and enforcement processes are kept segregated under the Regulations.
- Total area of the SID application is 1,707 hectares and the site extends over a distance of 26m from east to west – it is therefore necessary to erect more than one temporary met mast.

- In the absence of the current SID application, the question as to whether both these temporary masts were on the same site would not arise due to lack of connectivity between the masts and the significant separation distance.
- Reasonable interpretation of a site should range from a single field to an individual farm holding and up to a single geographical feature such as a single hillside or plateau/ highland.
- Masts are significantly separate from one another to not be read within the same view-shed nor to give an impression of proliferation.
- Met masts are temporary features that do not form part of the infrastructure associated with the wind farm – intention is to remove the masts once they have been in place for a maximum of 15 months.
- In the context of the current referral it would be inappropriate to consider the scale and size of a SID site to form the context of a “site” as provided for in the exempted development conditions for the erection of temporary met masts.

## 9.0 RELEVANT LEGISLATION

- 8.1 In order to assess whether or not the works to be carried out constitute exempted development, regard must be had to the following items of legislation:

### Planning and Development Act, 2000

- 8.2 Under Section 2, the following is the interpretation of ‘works’:

*“...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”*

- 8.3 Section 3 (1) states as follows:

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

- 8.4 Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act. Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

### Planning and Development Regulations, 2001

- 8.5 Article 6 (1) states as follows:

*“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”*

8.6 Under Class 20 (a) of Part 1 of Schedule 2 (temporary structures and uses), development described in Column 1 as *'the erection of a mast for mapping meteorological conditions'* is exempted development where it complies with the following conditions and limitations specified in Column 2:

1. *No such mast shall be erected for a period exceeding 15 months in any 24 month period.*
2. *The total mast height shall not exceed 80 metres.*
3. *The mast shall be a distance of not less than:*
  - (a) *the total structure height plus:*
    - (i) *5 metres from any party boundary,*
    - (ii) *20 metres from any non-electrical overhead cables,*
    - (iii) *20 metres from any 38kV electricity distribution lines,*
    - (iv) *30 metres from the centreline of any electricity transmission line of 110kV or more.*
  - (b) *5 kilometres from the nearest airport or aerodrome, or any communication, navigation and surveillance facilities designated by the Irish Aviation Authority, save with the consent in writing of the Authority and compliance with any condition relating to the provision of aviation obstacle warning lighting.*
4. *Not more than one such mast shall be erected within the site.*
5. *All mast components shall have a matt, non-reflective finish and the blade shall be made of material that does not deflect telecommunications signals.*
6. *No sign, advertisement or object, not required for the functioning or safety of the mast shall be attached to or exhibited on the mast.*

8.7 Article 6 (3) states that *“subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 3 opposite the mention of that class in the said column 1.”*

- 8.8 Under Class 19 of Part 3 of Schedule 2 (temporary structures and uses), development also described in Column 1 as *'the erection of a mast for mapping meteorological conditions'* is exempted development where it complies with the conditions and limitations specified in Column 2. These conditions and limitations are the same as Class 20 (a) of Part 1 of Schedule 2.

## 10.0 ASSESSMENT

- 9.1 Donegal County Council has referred this case to the Board for review as to whether the erection of 2 no. wind monitoring masts at Lismullaghduff townland and Ballyarrell Mountain townland is or is not exempted development.
- 9.2 The masts in question are at two separate locations approximately 4km apart. Both masts are also within the site boundary of SIDS case Ref: PL05E.PA0040, which seeks permission for the provision of up to 49 no. wind turbines, two permanent meteorological masts, two 110kv electrical substations and all associated works at Meenbog and other townlands, County Donegal. The mast locations are different than the proposed locations for the two proposed permanent meteorological mast under Ref: PL05E.PA0040. However, the masts were erected by the same applicant for the purposes of monitoring wind conditions for the proposed wind farm in question.
- 9.3 Donegal County Council issued an Enforcement Decision on 29<sup>th</sup> April 2015 that an Enforcement Notice should not be issued in respect of 1 no. mast at Lismullaghduff (Ref: UD 14260). This mast was deemed to be exempt under the provisions of both Class 20(a) of Part 1 and Class 19 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended).
- 9.4 The referral has arisen following complaints regarding the second mast at Ballyarrell Mountain. The question put to the Board is whether or not the erection of more than one mast at geographically separate locations but positioned within the red boundary lines forming the "site" as defined by the current SID planning application Ref: PL05E.PA0040 is exempted development or is not exempted development within the meaning of the conditions and limitations detailed under Class 20(a) of Part 1 and Class 19 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended). It is accepted by the Planning Authority that the masts are exempted development under Class 20(a) and Class 19 save for Condition and Limitation No. 4 which states that *"not more than one such mast shall be erected within the site"*.
- 9.5 I would be in agreement that the masts appear to be in compliance with all other conditions and limitations detailed under Class 20(a) of Part 1 and Class 19 of Part 3 of Schedule 2 relating to the period of erection; mast height; separation distances; finishes and signage. The issue therefore is what

constitutes “site” within the meaning of the Condition and Limitation No. 4 of the said classes.

- 9.6 The erection of a mast for mapping meteorological conditions is exempted under Class 20(a) of Part 1 (exempted development – general) and Class 19 of Part 3 (exempted development – rural) of Schedule 2 under temporary structures and uses. These structures were included as exempted development under the Planning and Development Regulations, 2008 (S.I. No. 235 of 2008), which came into effect from 2nd July 2008. In advance of these Regulations, the Department released a consultation paper on proposed planning exemptions for certain renewable energy technologies. An amendment to the Regulations was proposed within this Paper for the purposes of exempting temporary met masts (for wind mapping in advance of the erection of turbines) from planning permission requirements, subject to certain conditions. The Draft Amendments to the Planning and Development Regulations contained in this Consultation Paper proposed exemptions for development described as *“the erection, in advance of future development for the purposes of harnessing wind power for energy production, of a mast [structure] for mapping meteorological conditions.”* One of the draft conditions and limitations was that *“not more than one such mast shall be erected.”*
- 9.7 The adopted Regulations differ from the draft proposals in that they are less specific as to the purpose of the temporary masts but do specify that only one mast *per site* would be exempted. Notwithstanding, I consider that the intention remains that the purpose of this exemption is for a single mast to be exempt to monitor conditions prior to the wind farm development. I would be of the view that this exemption is in effect ancillary to a proposed development. It appears that whilst the reference to *“..future development..”* was omitted from the adopted Regulations, the inclusion of the *“site”* essentially ties the exemption to a specified future wind farm development. Therefore, I consider that a firm proposal must be in place for this exemption to be availed of and any such proposal will have certain limitations in terms of area. It is the case with the current development that a proposal for a wind farm development exists and that proposal has a defined site boundary. Thus, I would take the view that only one mast can be exempt within this site regardless of its area.
- 9.8 An alternative interpretation of Condition and Limitation No. 4 would be a site defined as land ancillary to the mast development itself including the mast compound and ancillary equipment, the extent of support guys, access track, etc. This would allow for masts to be erected at any location subject to compliance with the remaining Conditions and Limitations under Class 20(a) of Part 1 and Class 19 of Part 3 of Schedule 2. The effect of this would be the potential for a high proliferation of masts throughout areas designated as being suitable for wind farm development and in my opinion this was not the intention of the amendment to the Regulations.
- 9.9 The consultants for the wind farm applicant (Planree Ltd.) submit that a reasonable interpretation of a site should range from a single field to an individual farm holding and up to a single geographical feature such as a single hillside or plateau/ highland. However, it is also pointed out that the



Regulations do not provide any formal definition of “site” and therefore the only interpretation of a site within the context of a wind monitoring mast must be the site of the proposed wind farm for which wind mapping is taken place notwithstanding its scale or extent. The Regulations provide for one mast to be exempt per wind farm site and any additional masts would therefore require planning permission.

## **RECOMMENDATION**

Having regard to the above, I would consider that the erection of a mast for mapping meteorological conditions is exempted development under Class 20(a) of Part 1 of Schedule 2 and Class 19 of Part 3 of Schedule 2 where, *inter alia*, not more than one such mast shall be erected within the site. The site for the purposes of these classes of development is the site of the future wind farm development for which the mast in question is mapping meteorological conditions. Therefore, it is considered that the erection of multiple masts within a single site is not exempted development. Accordingly, I recommend an Order in the following terms:

**WHEREAS** a question has arisen as to whether the erection of two separate meteorological masts at Lismullaghduff townland and Ballyarrell townland, Killygordan, Co. Donegal is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Donegal County Council under Section 5(4) of the Planning and Development Act, 2000 (as amended) on the 30th day of September 2015:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Section 4 of the Planning and Development Act, 2000 (as amended);
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001 (as amended);
- (c) Class 20(a) of Part 1 of Schedule 2 to the said Regulations; and
- (d) Class 19 of Part 3 of Schedule 2 to the said Regulations:

**AND WHEREAS** An Bord Pleanála has concluded that-

- (a) The erection of a mast for mapping meteorological conditions is exempted development subject to the Conditions and Limitations specified under Column 2 of Class 20(a) of Part 1 of Schedule 2 and Class 19 of Part 3 of Schedule 2;

- (b) Condition and Limitation 4 of said Classes states that *“not more than one such mast shall be erected within the site”*; and
- (c) The site for the purposes of these classes of development is the boundary of the future wind farm development for which the mast in question is mapping meteorological conditions.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the said erection of multiple masts for mapping meteorological conditions in a site is not exempted development.

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**Donal Donnelly**  
**Inspector**

28<sup>th</sup> January 2016