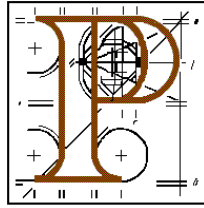

An Bord Pleanála



Inspector's Report

Board Reference : RP04.2121

Details of Reference : Point of detail regarding condition 12 attached to PL04.217191

Location : Foiladaun, Glennaknockane, Rockchapel, Co. Cork

Referred By : Four Seasons Energy Ltd.

Owner/Occupier : Four Seasons Energy Ltd.

Planning Authority : Cork County Council

Date of Site Inspection : 12/01/16

Inspector : Pauline Fitzpatrick

1. INTRODUCTION

This is a referral under Section 34(5) of the Planning and Development Act, 2000 requesting a determination on the appropriate implementation of points of detail relating to condition 12 attached to permission PL04.217191.

2. SITE LOCATION AND DESCRIPTION

The windfarm site extending over an approximate area of 40 hectares is as described in the Inspector's report on PL04.217191. It is situated at Foiladaun, 3kms to the south of Rockchapel. Access to the site is via a network of minor rural roads to the south of the R576 regional road from Newmarket in the south east, through Rockchapel to Counties Kerry and Limerick to the west.

The site is located in a remote upland area with the proposed turbines situated between 275m and 370m above sea level. The open landscape character of this upland area is undergoing considerable change following the carrying out of extensive afforestation in addition to further windfarm schemes including Taurbeg windfarm to the south and Knockacummer windfarm to the east.

3. PLANNING PERMISSION

Permission was granted on appeal in December 2006 under reference number PL04.217191 for 6 no wind turbines (hub height 80 metres, blade diameter 82 metres); electrical control building; construction of new and extension of existing internal site tracks; storage compound, and associated works. Condition 2 attached to the permission reduced the number of turbines permitted to 5.

26 conditions are attached to the permission.

The condition subject of this referral is condition 12 which requires:

Prior to commencement of development, the developer shall submit to and agree in writing with the planning authority proposals in relation to vehicle types and the use of public roads in the area during the construction phase. The R576 shall be used as the primary access road, then onto the LS5005 and then onto the LS5006. Construction operations involving heavy goods vehicles supplying

the site shall be restricted to between 0800 hours and 2000 hours Monday to Friday and 0800 hours and 1800 hours on Saturdays.

Reason: *In the interest of orderly development and residential amenities.*

The appropriate period of the permission was extended under reference **11/04361** until 17/12/16.

4. THE REFERRAL

The submission by the owner/occupier is accompanied by supporting detail and documentation including copies of correspondence with the Planning Authority (PA) regarding compliance with the requirements of condition 12. In summary it is considered that:

- (i) Condition 1 attached to the permission is relevant in that it requires the development to be carried out in accordance with the plans and particulars lodged with the PA on the 21/02/06 and 14/03/06 except as may be required to comply with other conditions attached.
- (ii) The route specified in condition 12 is the same as that proposed in the EIS that accompanied the application. Chapter 4 of the said EIS relates to traffic impact, haul route analysis and impact on roads and mitigation. Section 4.2.8 detailed mitigation measures including:
 - Approach and access roads should be upgraded, where necessary, to ensure a minimum horizontal curve radius of 35 metres with no obstacles within a 50 metre radius.
 - Where necessary, road signs should be temporarily taken down and roadside trees and hedges should be cut back.
 - The access road to the site should be widened by approx. 1 metre on either side and the crossroads at the proposed wind farm should be widened to allow a right turn access to turbines 1-5 and left turn access to turbine 6.
- (iii) The proposed route was analysed to check the geometry of the road and to identify any areas in need of widening. All aspects of delivery of the turbines was considered including:
 - Ground truthing
 - Necessary road pavement width

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- Road margin over sail and
 - Road pavement grade
- (iv) 7 no. pinch points were identified.
- Junction of R576 and LS5005 (pinch point A)
 - Temporary road widening along LS5005 (pinch point B)
 - Crossroads of LS5005 and LS5006 (pinch point C)
 - Entrance to site (Turbine 5) from LS5006 (pinch point D)
 - Entrance to site (Turbines 1, 2 & 3) from LS5006 (pinch point E)
 - Local Road from Pinch Point C to T6
 - Local Road from Pinch Point C to Pinch Point E

The works entail:

- Temporary road pavement repair and widening in the form of gravel strips between the existing pavement and the adjacent drainage ditch. A width of 4.5 metres is proposed for delivery.
 - There are locations where the roadside earthen embankment will be lowered to a maximum height of 0.35m to allow for over-sail.
- (v) AA –Screening Report (dated April 2015) was prepared to identify the potential for any impacts on the qualifying interests of the adjacent Hen Harrier SPA and proximal aquatic SACs. Of the 7 no. locations pinch point D is within the SPA and Pinch Point C is partially within the SPA. The AA Screening report concluded that the works will not have a significant effect either alone or in combination with other plans and projects.
- (vi) EIA Screening Report (dated May 2015) concludes that there would be no likelihood for significant impacts.
- (vii) Traffic Management Plan states that the developer agrees that construction operations involving heavy goods will be restricted to the hours prescribed with the exception of the turbine base construction. It is stated that it is necessary to commence turbine base concrete pours from 0600 due to time constraints incurred by the concrete curing process.

5. PLANNING AUTHORITY SUBMISSION

The PA does not appear to have forwarded any details it has on the issue subject of this report. In addition it did not avail of the opportunity to respond to the grounds of the referral as presented in response to the Board's Section 132 request.

Details of correspondence between the PA and the referrer on the issue of compliance have been included in the referrer's submission to the Board.

In correspondence to the referrer dated 07/09/15 (see appendix B of the referrer's submission to the Board) the PA is stated to have concerns that the proposed works and developments as outlined at pinch points A-E and the works to the local roads are outside the scope of the permission granted under 06/4439 (PL04.217191). The proposed works outlined within the site may also constitute a significant material alteration at a number of locations. The works as outlined may therefore require planning permission. The referrer was also advised that the proposed works at the stated locations were currently being reviewed by the Heritage Office of the County Council and that planning permission for the works may also be applicable having regard to the locations relative to Natura Sites.

A subsequent letter dated 15/09/15 notes that the Heritage Office states that the proposed works as outlined require permission or a Section 5 application and that any such application will be subject to screening for AA.

6. HISTORY DOCUMENTATION

D.225/11 & D.239/14 - Declarations of Exempted Development under Section 5 of the Planning and Development Act 2000 for the 20kv underground electricity connection between Foiladaun Windfarm and Knockacummer Windfarm and for the erection of a temporary meteorological mast.

7.0 ASSESSMENT

Preliminary Issue

It is my interpretation of the referral that the issue that falls to be determined is attributed to condition 12 attached to the grant of permission and that while

reference is made to condition 1 this is not the subject of the dispute and does not appear to have been referenced in that context in any of the correspondence with the PA, details of which are submitted in support of the referral. Indeed condition 1 does not require agreement with the PA.

It is my reading of condition 12, which clearly specifies the haulage route to be taken, that details regarding *vehicle types and use of public roads* are to be detailed for agreement with the PA. I would not interpret 'use of roads' as extending to road improvement works, albeit on a temporary basis to facilitate construction traffic, but more appropriately would interpret the phrase as referring to the number, type and frequency of vehicular trips on the public roads. I submit that were road improvement works to be detailed explicit reference would have been made to same. As such I would submit that the matter in dispute is not correctly attributable to condition 12 and would, therefore, suggest that the Board does not have jurisdiction in this instance. Should the Board concur it may wish to elicit submissions from the relevant parties on such a view.

Substantive Issue in Dispute

Should the Board not accept the above view and also considers that condition 1 forms part of the dispute, I submit that a key consideration is whether the conditions allows for the road improvement works as detailed in the referrer's submission.

As noted by the referrer condition 1 requires the development to be carried out in accordance with the details that accompanied the application save as otherwise required by the attached conditions. As such in this context the details as provided in the EIS that accompanied the application and any subsequent modifications to same through the assessment of the case would be applicable. In this regard Chapter 4 of the EIS and particularly Section 4.28 and Map 4.1 are relevant. The route as proposed to be used is that as detailed in Map 4.1 and is the same as that specified by the Board in condition 12. Section 4.28 sets out the proposed mitigation measures. In same specific reference is made to the need to upgrade approach and access roads, where necessary, and to widen the access road to the site by approx. 1 metre on either side. It is also necessary to widen/upgrade the crossroads at the proposed wind farm to allow a right turn access to turbines 1-5 and a left turn access to turbine 6. Specific details of the said mitigation works were not detailed in the documentation that accompanied the application. However it is reasonable to interpret that the PA in its assessment of the application and subsequently the Board in its adjudication

would have had due regard to the said mitigation measures and in granting permission would have accepted the principle for certain road improvements along the identified haul route.

Subsequent to the grant of permission examination of the specified haulage route identified 7 no. pinch points:

- Junction of R576 and LS5005 (pinch point A)
- Temporary road widening along LS5005 (pinch point B)
- Crossroads of LS5005 and LS5006 (pinch point C)
- Entrance to site (Turbine 5) from LS5006 (pinch point D)
- Entrance to site (Turbines 1, 2 & 3) from LS5006 (pinch point E)
- Local Road from Pinch Point C to T6
- Local Road from Pinch Point C to Pinch Point E

The works entail:

- Temporary road pavement repair and widening in the form of gravel strips between the existing pavement and the adjacent drainage ditch. A width of 4.5 metres is proposed for delivery with the gravel to be removed following the delivery components and the area to be allowed to re-vegetate naturally.
- There are locations where the roadside earthen embankment will be lowered to a maximum height of 0.35m to allow for over-sail.

In all instances I would submit that the works are minor in extent.

Pinch points D and E and the local road between pinch point C to T6 are within the planning permission boundary for the windfarm as shown on the site location maps accompanying the relevant application. Pinch Point C is within the site boundary and I would submit that this corresponds with the reference made in the mitigation measures detailed in the EIS to improvements at the crossroads to allow a right turn access to turbines 1-5 and a left turn access to turbine 6. Whilst pinch points A and B and the stretch of road from Pinch Point C to Pinch Point E are outside the site boundary of the windfarm site they are along the identified haul route as set out Figure 4.1 as set out in the EIS and could be considered as being covered by the reference in the mitigation measures to the widening of the access road to the site by approx. 1 metre on either side.

In conclusion I submit that in the context of the EIS and the clear requirements therein for mitigation along the identified haul route to which regard would have been had in the adjudication of the application and subsequent appeal, the subject matter of this dispute effectively provides for a level of detail as to the scope of works required which could be considered to within the parameters of what would have been reasonably anticipated in terms of the said mitigation measures. The proposed works are not considered substantial or material.

From the documentation available I would suggest that the PA's concerns appear to pertain to the nature of the proposed works relative to their location in terms of European Sites. The developer in response has prepared an AA-Screening report.

AA – Screening

I note that the 7 no. identified pinch points are either in or in proximity to the Stack's to Mullaghareirk Mountains West Limerick Hills and Mount Eagle SPA (site code 004161) the qualifying interest for same being the hen harrier. To date generic objectives apply namely to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. I note that the majority of the windfarm site and all the approved wind turbine locations are within the SPA.

Pinch point A is c. 35 metres upslope and on the opposite side of the R576 to the River Feale which forms part of the Lower River Shannon SAC (site code 002165). The qualifying interests of the designated site comprises a mix of species and habitats that would be susceptible to changes in water quality. Detailed conservation objectives and mapped interests have been prepared for the site with the overall aim to maintain or restore the favourable conservation status of habitats and species of community interest so as to contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level

In all instances the works subject of this referral entail the temporary loss of roadside vegetation and in certain instances lowering of roadside earthen embankments to allow for oversail. In terms of the SPA there is no likelihood of significant impacts occurring as the habitat loss is to be confined to roadside verges which do not form part of the key foraging and breeding habitat for the hen harrier in the SPA. In terms of the Lower River Shannon SAC the nearest

works at identified pinch point A are separated from the designated site by the Regional Road R576 with no direct connectivity to same and as such there is no likelihood of significant impacts.

In terms of cumulative impacts the development as permitted allows for 5 turbines and access road development within the SPA. I also note the existing windfarms within the SPA both to the south and east of the proposed works. In the context of the limited improvement works proposed I consider that significant in combination effects would not arise.

Having regard to the foregoing, 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 development, individually and in combination with other plans or projects would not be likely to have a significant effect on any European Site and in particular site numbers 004161 and 002165 in view of the sites' Conservation Objectives and, a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

8. RECOMMENDATION

In my opinion the dispute arising is not appropriately attributed to condition 12 and therefore I recommend that the Board has no jurisdiction in terms of the determination on the proposed road improvement works. However should the Board not concur with this view I recommend an Order in the following terms:

WHEREAS by order dated the 18th day of December, 2006, An Bord Pleanála, under appeal reference number PL04.217191, granted subject to conditions a permission to Kemar Ltd, of 3 Woods Place York Street Cork for development comprising the construction of a windfarm comprising six number wind turbines (hub height 80 metres, blade diameter 82 metres); electrical control building; construction of new, and extension of existing internal site tracks, storage compound; and associated works at Foiladaun, Rockchapel, County Cork in the townlands of Foiladaun and Glennaknockane, County Cork and that the permission to extend the permission was granted by Cork County Council on the 20th day of April 2011 under reference number 11/04361.

AND WHEREAS condition number 12 attached to the said permission required the developer to submit to and agree in writing with the planning authority

proposals in relation to vehicle types and the use of public roads in the area during the construction phase.

AND WHEREAS the developer and the planning authority failed to agree on the above details in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 6th day of November 2015 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34 (5) of the Planning and Development Act, 2000, as amended, and based on the Reasons and Considerations set out below, hereby determines that the Board agrees to the road improvement works along the proposed haul route under Conditions 1 and 12 of An Bord Pleanála reference number PL04.217191.

REASONS AND CONSIDERATIONS

The Board considered that the proposed road improvement works come within the parameters of the mitigation works as specified in Section 4.28 of the Environmental Impact Statement that accompanied the application. Regard is had to the fact that Condition number 1 of the permission granted under appeal reference number PL04.217191 requires that the development be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on the 21st day of February, 2006 and 14th day of March, 2006, except as may be otherwise be required in order to comply with the conditions attached to the order.

Pauline Fitzpatrick
Inspectorate

February, 2016