

File With _____

SECTION 131 FORM

Appeal NO: PL04.248/53

Defer Re O/H

☐

TO: SEO

Having considered the contents of the submission dated/ received 4/8/17
from Observer SarahHutchinson & Otker recommend that section 131 of the Planning and Development Act, 2000be not be invoked at this stage for the following reason(s): in the interests of justice
as per Board's DirectionE.O.: [Signature]Date: 18/10/17

To EO: _____

Section 131 not to be invoked at this stage.

☐

Section 131 to be invoked – allow 2/4 weeks for reply.

☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M S. CollinsPlease prepare BP 70 - Section 131 notice enclosing a copy of the attached submissionto: Applicant & PAAllow 2/3/4 weeks – BP 4 weeksEO: [Signature]Date: 18/10/17AA: R [Signature]Date: 20.10.17

CORRESPONDENCE FORM

Appeal No: PL 04.248/53

Ms. Collins

Please treat correspondence received on 4th August, 2017 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP 23

3. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐

3. Keep Copy of Board's letter ☐

Amendments/Comments Response to S-131 received from Sarah Hodgkinson & others

4. Attach to file

(a) R/S ☐

(d) Screening ☐

(b) GIS Processing ☐

(e) Inspectorate ☐

(c) Processing ☒

RETURN TO EO ☐

EO: Rob Shy

Plans Date Stamped ☐

Date Stamped Filled in ☐

AA: Roshan Celip

Date: 8/8/17

Date: 9/8/17

Sarah Hodgkinson
Moneylea
Dunmanway
Co Cork

Tony Miller
Toreen
Dunmanway
Co Cork

Daphne Babbington
Moneylea
Dunmanway
Co Cork



An Bord Pleanála
64 Marlborough Street
Dublin 1

Re planning ref PL04.248152 & PL04.248153 request for further comments

To whom it may concern,

Please find our comments on the above planning applications below:

WIND FARM APPEAL

Excerpt from the RFI from Cork Planning Authority to Fehily Timoney *'the background noise environment and the impact of existing turbines on background noise levels needs to be clearly demonstrated and quantified. Further additional noise monitoring needs to be conducted in this regard in order to evaluate the existing environment and its sensitivity'*.

Cork Planning Authority also asked to have all the noise data supplied by Fehily Timoney to be peer reviewed.

Cork Planning Authority has not, in our opinion, properly carried out its duty in respect of, 1) the process it employed in the carrying out of a peer review, 2) its tacit acceptance of the findings of that peer review which lacked any critical appraisal and 3) its decision to revoke part of its own RFI re: further additional noise monitoring.

The response from Awn Consulting that further monitoring would only achieve the same results is perplexing and strikes us as very unusual. As they did not carry out further research in the field, then their decisions were based on the data that the Planning Authority was already querying, the same data which was the cause of the Planning Authority's reason to request further noise monitoring in the first place. So Awn Consulting's evidence for their decisions is to be found in the data that was already available to the Planning Authority to examine, the very same data the Planning Authority were not entirely happy with. Where is the reasoned, rational, considered and traceable logic to

their extraordinary decision to decide not to carry part of the work which they were contracted to do?

The reason proffered by Awn Consulting that there was no point in carrying out further noise survey work as the results would be the same is a ludicrously unscientific point of argument. Testing of scientific data is all about either getting the same or different results, whether the results are affirmative or negative is irrelevant to the process. We do not concur with their approach. We are certain that it is a major flaw in the entire project that the relevant planning authority accepted Awn Consulting's reasoning in this matter and do not hesitate to conclude that it is strong grounds for seeking judicial review. I ask the Bord to reconsider these facts now.

We are not at all happy with this course of events and think it lacks accountability and transparency. We also think that it is not best practice to seek a peer review within the Republic in such a specialised industry. There could be a potential conflict of interest and at the very least, it is not truly independent. The relevant authority should we believe have gone outside Ireland to the U.K. or Europe for the peer review. In this respect, we are critical of the relevant planning authority in the manner in which it conducted this peer review process.

Neither Fehily Timoney nor Awn Consulting have provided any actual real and verifiable proof of the impact of existing background turbine noise levels in either of their submissions and we do not concur with their conclusions. Suffice it to say that they have taken the easiest approach and the one most prone to error. Therefore we respectfully ask the Bord to reactivate Cork Planning Authority's request for further noise monitoring.

PROJECT SPLITTING

The Bord submits that it can reach a balanced decision on the Barnadivane Wind Farm Project because it had the wind farm appeal and the substation appeal before it at the Bord.

However, did the Bord consider the Road (planning ref. 14/06803) part of the project, which the applicant had so conveniently calved off the rest of the project? As it happens, there is no proper EIS associated with the Road application.

Therefore, we ask, how could the Bord fully assess the entire project, the full ramifications, the cumulative effects, in other words, the project as a whole?

Consequently, we are not satisfied that the EIS of the Barnadivane Wind Farm Project is adequate and consequently, the subsequent EIA performed by the Bord.

We would like to see the Bord provide an explicit account of their decision making process with regard to these issues, one that extends to more than a few lines or merely vacuous platitudes.

IMPLICATIONS TO PUBLIC OF FINANCIAL BURDENS IMPOSED BY PROJECT SPLITTING

The Barnadivane Wind Farm Project has been split by the applicant into three separate applications, the effect of which predetermines an enormous cost to any individual wishing to lawfully engage with the planning system.

The Bord surely cannot disagree with us when we say that, the Six Turbines, the Substation and Road applications constitute The Barnadivane Wind Farm Project (or one version of it). Consequently, the

citizen wishing to make submissions etc. relating to The Barnadivane Wind Farm Project can multiply their costs and efforts by a factor of three. This sorry injustice to the ordinary citizen even extends to the spectre of having to bring, three High Court challenges in order to make a full and comprehensive challenge to single project. The splitting of The Barnadivane Wind Farm Project into three applications has been solely to suit the applicant and has not been in the interest of fairness and justice. It does not facilitate proper public participation with the planning process.

There is a point at which an ordinary citizen, no matter how resourceful, is effectively removed from the process entirely or is forced through financial constraints, to participate at a reduced level. We believe, and having studied relevant court cases, that this does not represent natural justice for the ordinary citizen.

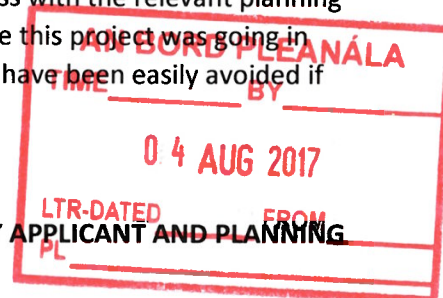
In this particular case the planning applications were divided between the 2 planning offices in Co Cork – Cork city and Skibbereen. Why would the applicant do this? It certainly has the effect of making access to the information more difficult for anyone who has to travel to the offices. So in my opinion the project is not just split in legal terms but the actual physical files are also split between locations to create difficulty.

This point can be further emphasised when you think about getting the information and tracking the responses to the RFI's and FI's. Each response to an RFI and an FI, and even unsolicited further information!, must be tracked. One single application means one planning file with all the further documentation stored chronologically and contained therein. It is a basic point, one that perhaps the Bord may think trivial, but our time does not permit us to devote ourselves singly to the task of engaging with these proposed developments. We are all busy earning a living. We believe anyone could see the inherent unfairness and injustice in the splitting up of projects into multiple planning applications, the developer is after all a business man, are we to believe he had no plan, no vision, no outcome in mind at the outset when he had his discussions with Cork County Council? It means a coherent response from someone who is entitled to engage with the planning systems is hampered severely. We also consider this to be a failure of the pre-planning process with the relevant planning authority. The relevant planning authority should have flagged up where this project was going in the best interests of the public. The planning mess we are now in could have been easily avoided if they had done so.

HYDROLOGICAL CONNECTION TO GEARAGH SAC/SPA SCOPED OUT BY APPLICANT AND PLANNING AUTHORITY ECOLOGIST

It has now (finally) been established and accepted by all parties, that THERE IS a hydrological connection to The Gearagh SAC/SPA via the Cummer River, hence to Carrigadrohid Reservoir. The Gearagh SAC/SPA is a zoned part of the reservoir. The contention that the Cummer River enters the reservoir downstream of The Gearagh is merely semantics on the part of the applicant. Many of the aquatic organisms within the reservoir migrate within the entire reservoir and beyond, as do many of the birds for which The Gearagh SPA was created.

In fact the location at Lissarda where the Cummer enters the reservoir is an extremely important habitat for birds, especially migratory ones, as there are very rich mud banks exposed here. A simple desktop survey of this location will reveal an extraordinary array of species for such a small site. The annual Cork bird reports from BirdWatchIreland will attest to this and there isn't a Cork birder who doesn't know the site and its potential to pull in rare waders and ducks.



The birds using this site move between it and The Gearagh SPA as water levels in the reservoir fluctuate and between feeding and roosting. Our concerns here are that, for example, a chemical spill could contaminate The Cumber River and be in The Carrigadrohid Reservoir very quickly before any mitigating actions could be taken.

One possibility would be a turbine collapse (131 mt) which could bypass currently proposed mitigation measures, and could for instance, leak petrochemical lubricants from the nacelle into The Cumber River, thereby resulting in a toxic contamination of The Reservoir. Basically an oil spill that would have deadly consequences for the previously mentioned muddy habitat etc. at Lissarda Bridge.

We believe the application has conveniently scoped this sort of scenario out because it was the best way they could think of to avoid what would be a serious headache for them.

Inland Fisheries Ireland produced an executive summary in 2011 on field surveys done in the Lee River catchment including The Cumber River. They report a $>1/m^2$ density of river lamprey in The Cumber River. We recommend that the Bord make themselves familiar with this document if they are to make an informed decision.

However, the Habitats Directive clearly states that "Worst Case Scenarios" must be demonstrated by the applicant. We contend that he has not done this at all right throughout the EIS.

Below is an excerpt from with regard to the procurement of relevant information from the public..

ENVIRONMENTAL MANAGEMENT INSTRUMENTS FOR PORT AREAS
LIEN VERBEECK, LUC HENS
Human Ecology Department, Free University Brussels, Laarbeeklaan 103, 1090 Brussels, Belgium
E-mail: Lien.Verbeeck@vub.ac.be

Environmental Management Instruments for Port Areas (PDF Download Available).

Available from:

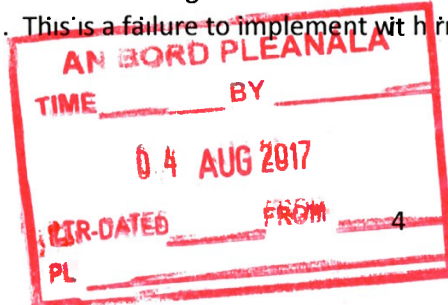
https://www.researchgate.net/publication/228404563_Environmental_Management_Instruments_for_Port_Areas [accessed Aug 2, 2017].

As indicated in Figure 1 public involvement is required at two stages of the project. Critical environmental data may be gathered from the public based on their local experience. This is in accordance with the Aarhus convention on public participation in decision-making and access to justice in environmental matters.

Environmental Management Instruments for Port Areas (PDF Download Available).

Available from:

We do not believe that the applicant, Cork planning Authority or the Bord have listened to the public in respect of local environmental information that they possess, as they are required to. Information has been provided about breeding birds and bat roosts but has not been acted on by any authority to my knowledge. This is a failure to implement with rigour the EIS Directive.



EIA Directive

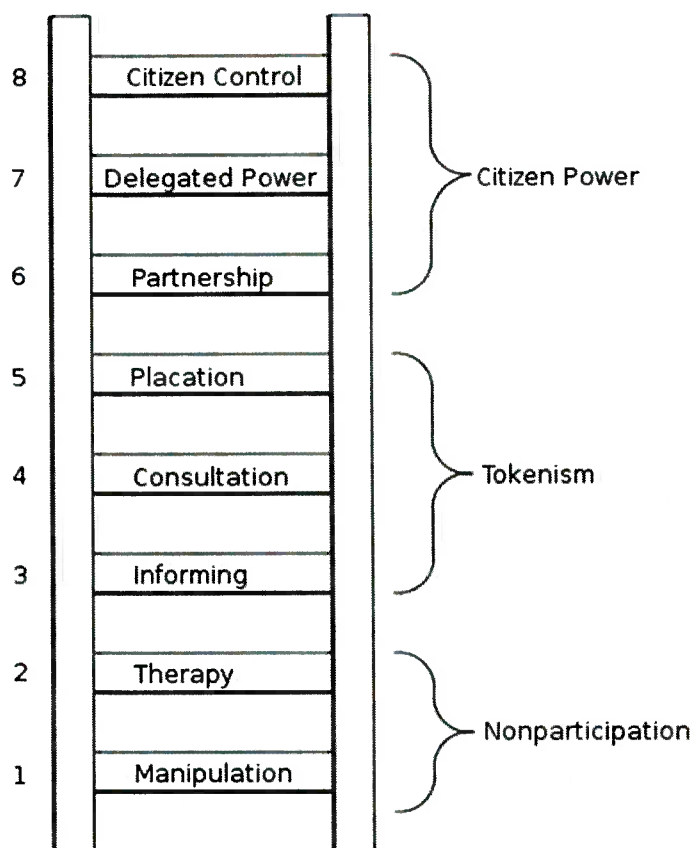
Excerpt from EIA Directive '*effects on the environment to be taken into account at the earliest possible stage in all the technical planning and decision-making processes*'. Because the Planning Authority allowed the applicant to split the Barnadivane Wind Farm Project into 3 discrete applications we believe this goes against the above cited excerpt from the EIA Directive. The Cork Planning Authority in our opinion, through either the pre planning process or subsequent applications, have not been able to assess the environmental implications at 'the earliest possible stage' of the Barnadivane Wind Farm Project.

The applicant initially framed the new substation application in terms of simply replacing the original permitted substation and connecting the original permitted wind farm. The applicant did not follow through on this plan as we see 3 months later he subsequently applied for a revised layout of the wind farm. We believe there has been a failure in the pre planning process as the Planning Authority should not have accepted applications that were premature in nature and should have sought for a more complete picture of what the applicant was trying to achieve. As it turns out the applicant was later forced to admit that his initial contention that the substation would serve only the Barnadivane wind farm was incorrect but that it would also service Shehymore wind farm, Carrigariern wind farm and other possible developments. The Cork Planning Authority was at no point privy to this information and so based their decision on a different set of environmental effects. This piecemeal approach to the planning process has meant that environmental implications are changing, incremental and cumulative in effect. Cork Planning Authority was never in a position to see the final configuration of the Barnadivane Wind Farm Project. This was only possible at the Bord level. Because the Bord's decision is the very final act in the planning process, it should not be the point at which environmental implications are adjudicated for the first time. Environmental implications are best dealt with at the Planning Authority stage as implied in the EIA directive. I believe that considerations made at An Bord Pleanála level cannot be construed as 'earliest possible stage' as stated in the directive.

EVIDENCE OF AARHUS CONVENTION NOT BEING IMPLEMENTED BY CORK PLANNING AUTHORITY, THE APPLICANT AND THE BORD.

Below is a famous figure from Sherry R. Arnstein's Ladder of Citizen Participation from The American Journal of Planners. It's sad to say that in Ireland, the public are lucky if they can get to the level of Tokenism on the ladder despite the European Union addressing these issues and mandating new levels of public participation in the Aarhus Convention and in Maastricht (2014).



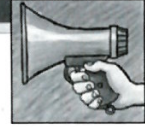




Aarhus Convention: key requirements for public participation

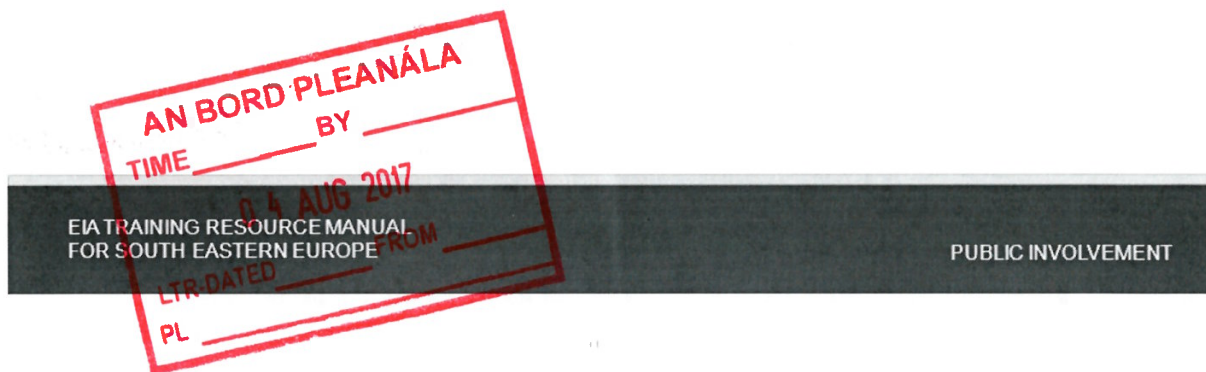
- early notification in a timely and effective manner, plus elements of the notification document (Art. 6.2.)
- reasonable timeframes for effective participation (Art. 6.3)
- early public participation, when all options are open and effective participation can take place (Art. 6.4)
- free access to information as soon as it becomes available (Art. 6.6)
- public participation procedures allowing the public to submit comments in writing, or at public hearing or inquiry (Art. 6.8)





Key objectives of public involvement

- Take account of views and concerns of key stakeholders.
- Ensure that important impacts are not overlooked.
- Reduce conflicts through the early identification of contentious issues.
- Improve transparency and increase public confidence in the EIA process.
- Obtain local input into the design of alternatives and mitigation measures.



A key and fundamental element of The Aarhus Convention is the “Zero Position”, which is an opportunity for public participation when all options are still on the table and where meaningful participation can take place. We are however, faced with a fait accompli by the applicant where there are no alternatives. We therefore have had no part to play whatsoever in the application as presented to the planning authority. The result of this is that the public have had absolutely no input into the design of alternatives and mitigation measures. All of the control and power over these applications rests with the applicant, the Cork Planning Authority and ABP. None or even any part of the many concerns made in huge number of public objections has made its way into the final makeup of the applications. This represents a critical failure of the system.

There has been absolutely no attempt by either the applicant or any relevant authorities to reduce conflicts through involvement at an early stage. Suffice it to say that 259 objections lodged by a small rural community is a resounding and damning reflection on the Cork Planning Authority who quite clearly, have dismissed out of hand, overwhelming local opposition. Local effects cannot be obviated by the implementation of government policies, often performed in an overly zealous fashion to the detriment of the local community, as is this case. The Bord has even been willing to go against its own inspector in their myopic pursuit of such policies.

The use of the term ‘stakeholder’ in the EIS accompanying these planning applications demonstrates perfectly how the developer and applicant in this particular case has been allowed to and enabled by the Planning Authority and ABP to flagrantly and repeatedly make a mockery of all the above points from the Aarhus Convention. His use of it solely relates to the financial and land owner

Stakeholders. It does not at any point refer to 'key stakeholders' as is defined within the Aarhus Convention to include the local community.

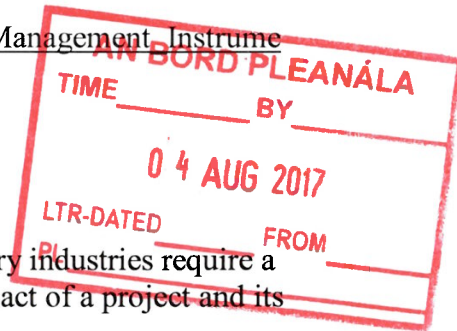
CUMMULATIVE EFEE CTS

Below is an excerpt which demonstrates that the responsibility of assessing cumulative effects lies not with the applicant, but rather, with the relevant authorities.

Environmental Management Instruments for Port Areas (PDF Download Available).

Available from:

https://www.researchgate.net/publication/228404563_Environmental_Management_Instruments_for_Port_Areas [accessed Aug 2, 2017].



Projects resulting in development of an entire region in terms of ancillary industries require a Regional EIA. It involves evaluating the cumulative environmental impact of a project and its associated developments.

Sectoral EIA is a sector-wide environmental analysis and supports integration of environmental concerns into long term development planning. It can also be effective by incorporating regulatory mechanisms in the design. It is done when a nation or state plans to develop different projects in a particular sector.

Strategic Environmental Impact assessment (SEA) is a process for evaluating the environmental consequences of a policy, plan or programme. SEA has to address alternatives and has to predict and evaluate environmental consequences.

We believe that there has not been a competent and comprehensive demonstration of the overall cumulative effects of The Barnadivane Wind Farm Project including Shehy More Wind Farm (13/551, PL04.243486), Carrigariern Wind Farm (15/730, PL04.246353), the Shehy More Grid Connection Cable to Barnadivane (16/256, PL) and all other associated works including the newly proposed substation and cable route at Carrigariern (17/431) to which the applicants suggest Barnadivane Wind Farm could be connected. The applicant has merely cobbled together a patchwork quilt of extant EIS documents and presented that to the Bord as a legitimate cumulative impact assessment. If the Bord has assessed the overall environmental effects of wind farms in the Upper Lee Valley, then we have not seen any evidence for it. The well known Lee Valley ecologist, Kevin Corcoran has had to take the matter to The European Parliament in the absence of any positive action from the Irish State.

For all the above reasons we request that you refuse the above planning applications.

Yours sincerely,

Sarah Hodgkinson, Tony Miller and Daphne Babbington

