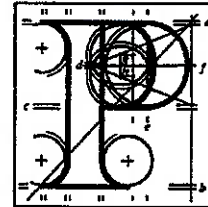


Our Case Number: ABP-314602-22



**An
Bord
Pleanála**

Peter Sweetman & Associates
Shangri La
Newtown
Bantry
Co. Cork

Date: 18th November 2022

Re: Wind farm development of 14 turbines with 110kV electrical substation and all related site works and ancillary development.

The townlands of Cahernacaha, Gortnabinna, Derryfineen, Gortyrhilly, Rath West, Derree, Fuhiry, Derreenaculling and other townlands, Co. Cork and Derryreag, Cummeenavrick, Glashacormick, Clydaghroe and Cummeennabuddoge, Co. Kerry.

Dear Sir,

An Bord Pleanála has received your recent submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter.

A receipt for the fee lodged is enclosed.

The Board will revert to you in due course with regard to the matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of County Council and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in the meantime, please contact the undersigned officer of the Board.

Tel	Tel	(01) 858 8100
Glaos Áitíúil	LoCall	1890 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,



Doina Chiforescu
Executive Officer
Direct Line: 01-8737133

PA04

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03 NOV 2022

PETER SWEETMAN & ASSOCIATES

SUBMISSION RE ABP - PA04.314602

059235-22
314602-22

REG.NO.	PA04.314602
DESCRIPTION	Wind farm development of 14 turbines with 110kV electrical substation and all related site works and ancillary development.
ADDRESS	The townlands of Cahernacaha, Gortnabinna, Derryfineen, Gortyrhilly, Rath West, Derree, Fuhiry, Derreenaculling and other townlands, Co. Cork and Derryreag, Cummeenavrick, Glashacormick, Clydaghroe and Cummeennabuddoge, Co. Kerry.
APPLICANT	Gortyrhilly Wind Designated Activity Company

I wish to make a submission on the application for permission for a 14 turbine wind farm development spanning certain townlands in Co.Cork and Co. Kerry. I see from the site notice the last day to make a submission is 5.30pm on 04 November 2022.

An Bord Pleanala's Legal Functions.

An Bord Pleanala has at least 4 distinct set of legal tasks that deal with an SID application such as this one.

1. It must assess the planning merits of Application in accordance with the **Planning and Development Act 2000** (as amended) to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area. While there are many aspects of this proposal that does not accord with the Planning and Development Act one point in particular is that the developments taking place in the townlands in Co.Cork is located in "an area open for consideration" while the devepments taking place in the townlands in Co.Kerry is neither located in an area open for consideration or an area permissible for such development.
2. An Bord Pleanala is required to form and record a view as to the environmental impacts of the development, considering the **EIA Report (EIAR)** furnished by the Applicant, the views of the public concerned and applying its own expertise to screen the development for Environmental Impact Assessment. The Applicant has failed to fully consider its obligations under the EIA Directive not least in the areas of alternatives, impacts on material assets, impacts on landscape and visual amenity.
3. An Bord Pleanala is the competent authority having responsibilities under the **Habitats Directive**.
 1. *The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26.*
 26. *There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:*

"47. It follows that the possibility of there being a significant effect on the site will generate the need for an appropriate assessment for the purposes of Article 6(3). The requirement at this stage that the plan or project be likely to have a significant effect is thus a trigger for the obligation to carry out an appropriate assessment. There is no need to establish such an effect; it is, as Ireland observes, merely necessary to determine that there may be such an effect.

This point is further explained in the CJEU decision In Case C-323/17, People Over Wind and Peter Sweetman v Coillte Teoranta which states;

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.

The threshold the any decision to grant permission must pass in this context is explained in paragraph 44 of CJEU Case 258/11

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This is a strict standard and the Planning Authority does not have legal jurisdiction to give permission if it is not met.


4. The development must be assessed for compliance with the requirements of the Water Framework Directive. The Developer has provided scant reference to the Water Framework Directive and/or compliance with it's provisions.
5. This proposal does not accord with the Judgment of the High Court in the case of Peter Sweetman v An Bord Pleanala, Ireland & The Attorney General & Bord Na Móna Powergen Limited 2020 557 JR (Humphreys J.)

This development is within the Zone of Influence of the several SAC's affecting several species and habitats of national and international importance, not least the Fresh Water Pearl Mussel.

I am enclosing the standard fee of €50 and I am also requesting an oral hearing

Peter Sweetman

Peter Sweetman

Shangri La, Newtown, Bantry, Co. Cork. email; 

PLEASE RESPOND ONLY BY EMAIL