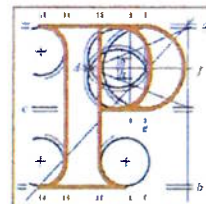


**Our Case Number:** ABP-317809-23



An  
Bord  
Pleanála

Edel McHugh  
19 The Crescent  
Ballylinan  
Co. Laois

**Date:** 12 October 2023

**Re:** Proposed Coolglass windfarm and related works  
In the townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill,  
Monamantry, Coolglass, Crissard and Kylenebehy, Co. Laois.

Dear Sir / Madam,

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. Please accept this letter as a receipt for the fee of €50 that you have paid.

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 the local authority 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](http://www.pleanala.ie).

If you have any queries in the meantime, please contact the undersigned officer of the Board or email [sids@pleanala.ie](mailto:sids@pleanala.ie) quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

Yours faithfully,

*PP EGM*

Evan McGuigan  
Executive Officer  
Direct Line:

PA04

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Glao Áitiúil  
**Facs**  
Láithreán Gréasáin  
Ríomhphost

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64 Sráid Maoilbhríde  
Baile Átha Cliath 1  
D01 V902

64 Marlborough Street  
Dublin 1  
D01 V902

**An Bord Pleanála  
64 Marlborough Street  
Rotunda  
Dublin 1  
D01 V902**

**1st October 2023**

**Case Reference: PA11.317809**

**Development address; In the townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill, Monamanry, Coolglass, Crissard and Kylenabehy, Co. Laois.**

**Proposed Coolglass Windfarm and related works.**

Dear Sir/Madam,

I, **Edel McHugh**, write in connection with the above listed planning application. As a specialist in Human Rights Law, I wish to object to the proposed development by Statkraft. Listed below are some of my summarised observations and concerns in particular regarding non-compliance with community engagement and human rights of the community in the area proposed.

**1. Non Compliance with Community Engagement Requirement under the Aarhus Convention**

The shift to renewable energy is exacerbating social injustice issues, particularly affecting indigenous communities and disadvantaged populations. Despite the need for a 'just transition', infrastructural inequalities, high costs, and a lack of proper

consultation often hamper these communities. Experts recommend increased involvement of local communities, securing their consent for projects, and increased government regulations to ensure non-discriminatory decisions.

The European Union founded guarantees of fundamental rights. The Charter of Fundamental Human Rights, the Treaty on the Functioning of the EU, and the Lisbon Treaty, included rights to protect the environment and give citizens the right to participate in environmental decision making, and have their contribution taken into account by decision makers with reason given for decisions. The EU signed the Aarhus Convention, which ensures the right to participate is provided for by the SEA Directive 2001/42/EC and in particular Article 6 and 7 thereof.

The Aarhus Convention grants the public rights, and imposes on Parties and public authorities obligation regarding access to information and public participation. In fact, the preamble directly links environmental protection to human rights norms, and expressly recognises that every person has the right to live in an environment adequate to his or her health and well-being.

The preamble connects the concept that adequate protection of the environment is essential to the enjoyment of basic human rights, with the concept that every person has the right to live in a healthy environment and the obligation to protect the environment. It concludes that to assert this right and meet this obligation, citizens must have access to information, be entitled to participate in decision-making, and have access to justice in environmental matters.

### **Public participation in decision-making**

The public participation pillar of the convention is divided into three parts. The first part concerns the participation of the public that may be affected by or is otherwise interested in decision-making on a specific activity, and is covered by article 6. The second part concerns the participation of the public in the development of plans, programmes and policies relating to the environment.

### **When is public participation required?**

Public Participation is required from the 'concerned public' when activities affecting specific groups or individuals are being carried out, such as plans for construction (Article 6 of the Aarhus Convention).

Public participation is required from 'the public' for the development of plans, programmes and policies relating to the environment. This includes issues such as climate policy (Article 7 of the Aarhus Convention).

Public participation is required for the development of legal acts relating to the environment (Article 8 of the Aarhus Convention).

### **What is public participation?**

Under the Convention, the public has a right to participate in decision-making regarding environmental matters. Public authorities should enable the public to comment on, for example, proposals for projects affecting the environment. The outcome of the public participation process should be taken into consideration in the decision-making process.

According to the SLR Planning Report submitted Case Reference: PA11.317809, in Section 2.6, *a pre application request was made to ABP under reference ABP-313375-22 by the Applicant for a determination that an application of this scale would be considered to be SID. In ABP's letter dated 11th May 2023, ABP confirmed that the Proposed Development falls within the scope of paragraphs 37A(2)(a), (b) and (c) of the Act. Accordingly, ABP have decided that the Proposed Development would be SID within the meaning of Section 37A of the Planning and Development Act, 2000, as amended.*

It appears that An Bord Pleanála failed in its duty to participate in effective community engagement before making its final decision that this application was an SID, and in doing so, failed to apply its due diligence regarding the relevant EU law, thus preventing the community at large the opportunity to gain a realistic understanding of what to expect from a proposed wind energy development.

## **2. Irish Government Guidelines on Community Engagement - dialogue and communication**

The Irish Government Guidelines set out that to achieve community and public acceptance of wind energy developments, an important building block is proper consultation with and participation by the community in progressing wind energy proposals from concept to approval and ultimately development.

*Community consultation is the process through which a developer (in this case a wind energy developer) interacts with the local community enabling them to inform the decision-making processes of a wind energy development project, for example, at the siting and design stage.*

The Guidelines set out to enable planning authorities to take into account the degree to which the applicants of wind energy projects *have meaningfully and properly consulted with the local community and facilitated public participation in developing their proposals.*

These guidelines are a starting point when attempting to engage with the community at large, and while the Irish Government Guideline initiative endeavours to make sure that community consultation is carried out, it also fails to implement the EU standardised legislation as set out in the Aarhus Convention regarding public participation.

It would appear that Statkraft used the Irish guidelines to some extent, however, it can be argued that their venture to engage with the community at large was not to a considerable performance.

The SLR Report in the application, Section 3.6 sets out that door to door engagement took place in both January 2023 and again in May 2023. Many members of the community never spoke directly to any members of the door to door groups, and many in the community merely received a brochure left at their door, thus Statkraft has not effectively conducted meetings with all households to inform them of the project.

It should also be noted, that it is unreasonable for Statkraft to justify launching a website in 2022, which was set up to provide key information to householders, when there had been no communication or dialogue publicly at this point, and in general local householders in the community had zero awareness of the proposed plan until January 2023 when the door to door brochures were issued. The

government guidelines state that *a fair and transparent process should be employed to identify the appropriate groups to consult, and individual groups must not be cherry-picked.*

The guidelines set out that *it is essential that local communities are properly involved in the planning process, as early inclusion improves confidence in the openness and fairness of the planning process.* Statkraft have failed in their due diligence according to the guidelines to involve the local community early in the planning process.

Addendum 3, Consultation with An Bord Pleanála of the application sets out that *a pre-application consultation meeting was held with An Bord Pleanála via web conference on the 16th of June 2022. The meeting discussion was centred around the following key points:*

- *Introduction to the Project Team*
- *Background to the Coolglass Windfarm Project*
- *Project Proposals*
- *Legislative and Planning Policy Context*
- *Public Consultation*
- *Project Scoping*
- *EIA Studies*
- *Key Environmental Considerations*
- *Project Deliverables and Timelines*

It also states that *a second meeting was held with An Bord Pleanála via web conference on the 16th of November 2022,* which shows that two meetings were conducted very early in the process with the planning board, again however in was

2023 before any interaction or general public awareness was raised, and no public meetings for the community were ever facilitated by Statkard at any point in the planning process.

The guidelines state that planning authorities should require developers to engage in active public consultation with the local community in advance of and in addition to the statutory public consultation required as part of the planning application process.

It also sets out possible methods of providing information to include Public meetings/community drop-in sessions or a presence at local community events, to which Statkraft never attended any of the public meetings arranged by the community.

Renewable companies should aspire to fulfil the highest standard of international human rights law rather than only complying with local laws, and in this case Statkard have failed to complete their basic human rights due diligence in correct community engagement under the Aarhus Convention.

### **3. The Maastricht Principles on the Human Rights of Future Generations**

The Aarhus Convention links environmental rights and human rights, and acknowledges that there is an obligation to future generations which establishes that sustainable development can be achieved only through the involvement of all stakeholders.

The Aarhus Convention was the first international treaty to recognize the rights of both present and future generations to an environment adequate to their health and



well-being. The rights of future generations have long been neglected in the analysis and application of human rights. Yet, human rights law does not limit itself to present generations.

The *Maastricht Principles on the Human Rights of Future Generations* seek to clarify the present state of international law as it applies to the human rights of future generations. The *Principles* consolidate the developing legal framework and affirm binding obligations of States and other actors as prescribed under international and human rights law. They also provide a progressive interpretation and development of existing human rights standards in the context of the human rights of future generations. They further recognise that States may incur additional obligations as human rights law continues to evolve.

These *Principles* provide examples of how realising rights of future generations requires attention to the distinct rights of particular groups and peoples. The *Principles* were adopted in Maastricht on 3 February 2023. Signatories include experts located in all regions of the world and include current and former members of international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council. This initiative builds on expert legal opinions adopted in Maastricht.

The human rights of future generations form an essential dimension of humankind's duty to uphold the inherent dignity, equality, and inalienable rights of all.

Lastly, I refer to the case of *Fägerskiöld v Sweden* [2008] ECHR 37664/04 (25 March 2008) wherein the European Court of Human Rights considered a case of nuisance caused by a wind turbine, based on the right to respect for private and family life (art

8) and the right to protection of property (art 1 of Protocol No 1) of the *European Convention on Human Rights*.

Specifically, art 8, applies to severe environmental pollution which may affect individuals' well-being and prevent them from enjoying their homes in such a way as to adversely affect their private and family life.

It is important that the basic human rights set out in EU Law are not overlooked when considering this planning application and how it will affect the whole community at large.

I respectfully urge that planning permission for this development be refused.

I enclose herewith the fee of 50 Euro in respect of my objection.

All correspondence in this matter can be sent to me at my address, **19 The Crescent, Ballylinan, Co Laois.**

Yours sincerely,

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Edel McHugh

LL.B, LL.M International Human Rights Law