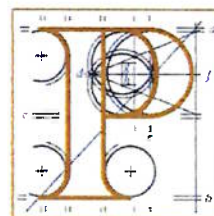


Our Case Number: ABP-320300-24



**An
Bord
Pleanála**

Safety Before LNG and Communities for Environment First
c/o John McElligott
Island View
Convent Street
Listowel
Co. Kerry
V31 PW61

Date: 30 September 2024

Re: Proposed development of a Gas Insulated Switchgear (GIS) substation compound
In the townlands of Carhoona, Carhoonakilla, Carhoonakineely, Cockhill, Coolnagoonagh,
Farranawana, Kilcolgan Lower, Kilcolgan Upper, Kilpaddoge and Ralappane, County Kerry
(www.STEP220kVConnection.com)

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.

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

Yours faithfully,

Ellen Moss
Executive Officer
Direct Line: 01-8737285

VA05

Tel	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 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



Safety before LNG

Protecting the Shannon Estuary and its people

Safety Before LNG
Island View
Convent Street
Listowel
County Kerry
V31 PW61

Telephone: +353-87-2804474
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safetybeforelng@hotmail.com
Web: www.SafetyBeforeLNG.ie

24 September 2024

Objection to Shannon LNG Gas Insulated Switchgear Substation application 320300¹ in the townlands of Carhoona, Carhoonakilla, Carhoonakineely, Cockhill, Coolnagoonagh, Farranawana, Kilcolgan Lower, Kilcolgan Upper, Kilpaddoge and Ralappane, County Kerry. Joint Submission by 'Safety Before LNG' and 'Communities for Environment First'

'Safety Before LNG'

% John McElligott

Island View,

Convent Street,

Listowel,

County Kerry

V31 PW61

www.SafetyBeforeLNG.ie

Email: SafetyBeforeLNG@hotmail.com

'Communities for Environment First'

% Eddie Mitchell,

Foxfield,

Manorhamilton,

Co. Leitrim

F91 KX79

Email: eddiejmitchell@gmail.com

'Safety Before LNG' and 'Communities for Environment First' object to the entirety of the Shannon LNG planning application (An Bord Pleanála reference 320300) for two substations, a reactor, grid connection, 5 kilometres of 220 KV underground cables and fibreoptic cables and associated ancillary works, in Tarbert, County Kerry.

Shannon LNG states clearly in this planning application that the main objective of the proposed development is to connect its proposed Power Plant to the national grid. We have already objected to the proposed Shannon LNG Power Plant application 319566² at Kilcolgan, Tarbert,

¹ <https://www.pleanala.ie/en-ie/case/320300>

² <https://www.pleanala.ie/en-ie/case/319566>

County Kerry and hereby submit that the grounds for our objection to the proposed Shannon LNG Power plant equally apply to this planning application. We therefore resubmit those grounds with this submission. These grounds were outlined under the following headings:

1. Alternative Locations and cumulative impacts
2. Energy Security Strategy to 2030
3. Application already Refused
4. Confusion on flow direction of pipeline
5. Pipeline planning Permission has expired
6. Controversial payments of €3.5 million by Shannon LNG to EirGrid for 373 MW of Auction Capacity
7. The Climate Impact of the Explosive Growth of Data Centres in the State and US Fracked gas imports
8. Ownership of the site, and
9. Kerry County Development Plan support for Shannon LNG undermined by millions of euros paid by Shannon LNG to Kerry County Council.

The proposed Shannon LNG project is now clearly being split into separate but interdependent subprojects, which we feel strongly should be assessed as one project as obliged under EU and Irish law. We note that Shannon LNG pays An Bord Pleanála €100,000 for each individual planning application and we ask how many more sub planning applications will take place for what to us seems to be, in reality, one large development?

We are deeply concerned about the importance Shannon LNG puts on the capacity contract it was awarded by EirGrid on March 28th, 2023, conditional on delivering a power station at the site by no later than 1st October 2026 - but which it then admits may be subject to any subsequent date extension approved by the Regulator. The issue of the controversial payments of €3.5 million made by Shannon LNG to EirGrid for the 373 MW of Auction Capacity we raised in our submission to the Shannon LNG Power Plant application [319566](#) need to be addressed.

It must be remembered that we assert that Shannon LNG has now no development consent for any part of its proposed US fracked gas import terminal , power station or pipeline and ask that this planning be rejected due to the fact that it cannot be completed if no power station or LNG fracked gas import terminal is built.



Safety before LNG

Protecting the Shannon Estuary and its people

Safety Before LNG
Island View
Convent Street
Listowel
County Kerry
V31 PW61

Email: [REDACTED]

Web: www.SafetyBeforeLNG.ie

17th June 2024

Objection to Shannon LNG Power Plant application 319566 at Kilcolgan, Tarbert, County Kerry.
Joint Submission by 'Safety Before LNG' and 'Communities for Environment First'

<p>'Safety Before LNG' % John McElligott Island View, Convent Street, Listowel, County Kerry V31 PW61 www.SafetyBeforeLNG.ie Email: SafetyBeforeLNG@hotmail.com</p>	<p>'Communities for Environment First' % Eddie Mitchell, Foxfield, Manorhamilton, Co. Leitrim F91 KX79 Email: eddiejmitchell@gmail.com</p>
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'Safety Before LNG' and 'Communities for Environment First' object to the the Shannon LNG planning application (An Bord Pleanála reference 319566¹) for a standalone 600MW power plant, 120MW battery storage system, above-ground installation and associated ancillary works, in Tarbert, County Kerry on the following grounds:

1. Alternative Locations and cumulative impacts

The applicant has not assessed any alternative locations for the power plant, only the green field farmland that it now owns. Annex IV of the EIA Directive states that the information provided in an EIAR should include a "*description of the reasonable alternatives (for example in terms of project design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.*" Article 13 of the Seveso III Directive² states:

¹ <https://www.pleanala.ie/en-ie/case/319566>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0018>

“Member States shall ensure that their land-use or other relevant policies and the procedures for implementing those policies take account of the need, in the long term a) to maintain appropriate safety distances between establishments covered by this Directive and residential areas, buildings and areas of public use, recreational areas, and, as far as possible, major transport routes b) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through appropriate safety distances or other relevant measures”.

The applicant clearly states throughout the application that this power plant is part of an overall masterplan it has for the site, which includes an LNG import terminal and Data Centres and export of gas (which would be US Fracked Gas) to the national transmission network via an expired 26 kilometre pipeline to Foynes in County Limerick. This is a developer-led LNG terminal master plan project and there has been no assessment of the strategic and cumulative environmental impacts of the large-scale development of data centres throughout the country as obliged under the SEA Directive. For example, the Tarbert power station approximately 3 miles from the site is currently being expanded and there are plans to convert the fuel source of Moneypoint power station in County Clare also .

2. Energy Security Strategy to 2030

Account must be taken of the November 2023 Department of Environment, Climate and Communications publication³ of its Energy Security Strategy to 2030. Annex 2⁴ to this Energy Strategy’s ‘Fracked Gas Policy’ section 8.26 states:

“In May 2021, the Government approved the ‘Policy Statement on the Importation of Fracked Gas’ which states “pending the outcome of the review of the security of energy supply of Ireland’s electricity and natural gas systems, it would not be appropriate for the development of any LNG terminals in Ireland to be permitted or proceeded with”. The statement remains in place until the review of Energy Security has been completed following consideration by Government on the optimal approach to deliver a Strategic Gas Emergency Reserve in the first half of 2024”.

The same document states in section 7.43:

“There would need to be a change in policy for any LNG facilities to be developed in Ireland”.

³ <https://www.gov.ie/en/publication/5c499-energy-security-in-ireland-to-2030/>

⁴ <https://assets.gov.ie/276795/c7ca6839-05f5-4d7f-8db9-bbf12f4eba67.pdf>

3. Application already Refused

A standalone power station by Shannon LNG on the same site was already decided upon and refused⁵ development consent by An Bord Pleanála in 2023 (reference 311233⁶) on the grounds that it would not be in accordance with the proper planning and sustainable development of the area and nothing has changed overall that would give grounds to An Bord Pleanála to effectively revisit its own decision. This is effectively an appeal of a decision that is already being appealed in the High Court and would seem to be an abuse of process by the applicant by paying another €100,000 to An Bord Pleanála to revisit its decision. The same privilege is not open to objectors to a development consent..

The Board decided that the development of an LNG terminal at the site “*would be contrary to current government policy*” pending the “Review of the Security of Energy Supply of Ireland’s Electricity and Natural Gas Systems”. The reasons⁷ for refusing permission for a standalone power plant included

- a. That the standalone power plant elements of the LNG terminal and power plant application “*constitute integral components of the overall proposal as set out in the application document, and would be primarily served and enable for use by the specific functioning of the core Liquefied Natural Gas terminal elements*”,
- b. That it was not consistent, or assessed for consistency, with the Strategic Integrated Framework Plan for the Shannon Estuary (SIFP) goal 1.2.13 which seeks “*to promote the sustainable development of these lands for marine related industry, utilising the presence of deep water and the waterside location to harness the potential of this Strategic location*”, and
- c. “*Broader matters of necessary environmental assessment such as the consideration of alternatives*”.

We also submit that the issues raised⁸ by ‘Communities for Environment First’ to the refused planning application 311233 need to be reassessed by An Bord Pleanála as this is essentially the same planning application

4. Confusion on flow direction of Pipeline

Shannon LNG’s planning application form and the advertisement it posted in the papers for this proposed development state: “*The AGI will facilitate the import of natural gas to the national gas transmission network via the already consented 26 km Shannon Pipeline (ABP Reg. Ref. PL08.GA0003 and PL08.DA0003).*”

⁵

<http://safetybeforelng.ie/pressreleases/pressrelease20230915-Shannon-LNG-Refused-Planning-Permission.html>

⁶ <https://www.pleanala.ie/en-ie/case/311233>

⁷ <https://www.pleanala.ie/anbordpleanala/media/abp/cases/orders/311/d311233.pdf?r=290885154139>

⁸ https://drive.google.com/file/d/1K_sWDAtdqT-i0rHZ1yXnVbUCDFeXxCyiw/view?usp=drive_link

This clearly indicates that the development proposes to send gas out **to** the national gas network and not to receive gas **from** the national gas transmission network via a pipeline. This is not what is proposed elsewhere in the planning document where it is stated that the pipeline *"will facilitate transport of gas to the site from the national gas network at Foynes"* and that *"low sulphur gas oil is proposed as the secondary fuel supply"*.

The original EIA for the Shannon LNG pipeline application in 2008 stated: *"The Shannon Pipeline is required to provide access to the Irish gas network for the Shannon LNG terminal. It will allow Shannon LNG to supply gas from additional diverse sources to the Irish market"*. If this applicant is proposing to use the pipeline gas, rather than an LNG terminal, to fuel the power station, this would represent a change in direction of the gas flow on that pipeline, which has not been considered in the original EIA for the Gas pipeline, nor in this planning application. The original pipeline EIA is therefore outdated - especially as there has been no assessment in the current EIA of the environmental impact of the importation of fracked gas by the applicant.

The Planning Report submitted with this application states *"A recent SID application for an LNG Terminal, Power Plant, Battery Energy Storage System (BESS) and AGI was refused planning permission by An Bord Pleanála and is currently the subject of a Judicial Review. A request for pre-application consultation was also recently issued for a proposed strategic gas emergency reserve facility at the proposed development site"*. It is not normal that the applicant can be both challenging a previous decision while simultaneously lodging a new application for the same project?

5. Pipeline Planning Permission has Expired

Shannon LNG claims that it has consent for a 26 kilometre gas pipeline to the proposed development from Foynes but it seems that the pipeline consent [GA0003](https://archive.pleanala.ie/en-ie/case/GA0003)⁹ which was granted¹⁰ on 17th February 2009 expired in 2019 at the latest. Planning permission expires after 5 years by default¹¹ for applications lodged under Part III or Part XXI of the Planning and Development Act 2000 as amended, if not otherwise mentioned in one of the conditions of a grant for development consent. The Pipeline Application was lodged under Section 182C of Part XI. However, Condition 1 of the pipeline consent states that *"the development shall be carried out in accordance with the plans and particulars, including the environmental impact statement, lodged with An Bord Pleanála on the 14th day of August 2008"*. Condition 2 states that *"prior to the commencement of development, details of the phasing of the proposed development, in conjunction with the construction of the permitted liquefied natural gas terminal at Ralappane and Kilcolgan Lower, County Kerry, shall be submitted to, and agreed in writing with, the relevant local authorities"*. Condition 1 cannot be complied with because in its planning

⁹ <https://archive.pleanala.ie/en-ie/case/GA0003>

¹⁰ http://www.safetybeforeing.ie/licensing/lngpipeline/complete_decision_on_lng_pipeline.pdf

¹¹ <https://revisedacts.lawreform.ie/eli/2000/act/30/section/40/revised/en/html>

application lodged on August 14th, 2008, Shannon LNG stated to An Bord Pleanála that it was only "seeking planning permission for this development for a period of 10 years"¹². Condition 2 cannot be complied with because planning permission for the LNG terminal is no longer "permitted" since development consent for the LNG Terminal PA0002¹³ expired in 2018.

6. Controversial payments of €3.5 by Shannon LNG to Eirgrid for 373 MW of Auction Capacity

Shannon LNG confirmed to the Board during its now-completed pre-application process¹⁴ that it would lose¹⁵ the €3.5 million deposit it paid Eirgrid for 373MW of the auction capacity¹⁶ it was awarded in April 2023¹⁷ if the power station does not get planning permission by the 4th of November 2024. That should not be a concern of An Bord Pleanála or grounds for giving development consent. On April 5th, 2023, the State's national grid operator EirGrid published¹⁸ the provisional results of the latest capacity auction for the Single Electricity Market which indicated that Shannon LNG had won a provisional agreement for two gas-fired generators capable of generating 353 megawatts (MW) of electricity in total from EirGrid.

However, on June 8th, 2023, Mr. John Melvin, Director of Security of Supply and Wholesale at the Commission for Regulation of Utilities (CRU), explained the logic behind this provisional agreement with Shannon LNG when he confirmed¹⁹ very controversially that "*The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction*".

¹²

http://safetybeforelng.ie/licensing/lngpipeline/Planning%20Application%20Document_ABP_C1767-10.pdf

¹³ <https://archive.pleanala.ie/en-ie/case/PA0002>

¹⁴ <https://www.pleanala.ie/en-ie/case/316518>

¹⁵ <https://www.pleanala.ie/anbordpleanala/media/abp/cases/records/316/p316518.pdf?r=883758844944>

¹⁶ <https://www.radiokerry.ie/news/shannon-lng-awarded-state-funding-to-provide-electricity-to-the-grid-pending-planning-approval-325518>

¹⁷ <https://www.eirgrid.ie/news/eirgrid-group-publishes-t-4-capacity-auction-results>

¹⁸ <https://www.eirgrid.ie/news/eirgrid-group-publishes-t-4-capacity-auction-results>

¹⁹ <https://drive.google.com/file/d/1oFc8myQcwI0BgGEx79kWgiYvhOgEzmYq/view>

We question how the Energy Regulator could accept assurances from the developer that it would build a stand alone power station should they be successful in the auction, when the company had not even applied for such a development.

Secondly, it was not for the CRU to accept any "*concerns relating to the processes associated gas pipeline*" from the project developer alone, if that is indeed the case. The question of the Shannon LNG pipeline expiry was referred²⁰ to An Bord Pleanála (reference 317419²¹) after it was discovered that Shannon LNG had only applied for a 10-year development consent for the pipeline in 2008. This would seem to indicate that permission for the pipeline would have expired on February 17th, 2019. The Board refused to rule on the referral on the grounds that it was beyond the jurisdiction of the Board to make a declaration on whether the pipeline planning permission had expired under a Section 5 of the Planning and Development Act 2000, as amended. This question of the pipeline expiry and the issues raised in the entire 317419 file (included in Annex to this submission) must now be addressed and examined by An Bord Pleanála as they seriously undermine the entire premise under which this application is being lodged by Shannon LNG. The appropriateness of how the Regulator could allow 373 MW of electricity to be assigned to Shannon LNG in the way that it did so needs to be extensively addressed by An Bord Pleanála to ensure that the auction process has not been undermined in an inappropriate manner.

7. The Climate Impact of the Explosive Growth of Data Centres in the State and US Fracked Gas Imports

The An Bord Pleanála planning decision 314474²² giving development consent to 6 data centres in Ennis and which is now being appealed to the High Court in Judicial Review proceedings is relevant to this planning application. The Irish Times Newspaper reported²³ on June 12th 2024 that the decision is being appealed following

"concerns about the recent "explosive growth" of data centres in the State and their heavy consumption of electricity and water resources. There were 82 data centres operating in the Republic as of one year ago, consulting firm Bitpower has said, while the Central Statistics Office reported that these used as much electricity as all urban households during 2022. The court applicants say their case raises important issues of public policy related to climate justice and whether some parts of the economy are "off-limits" when assessing compliance with the Climate Action and Low Carbon Development Act 2015, as amended in 2021, while other parts of society are "expected to shoulder the burden of

²⁰

<http://safetybeforeing.ie/pressreleases/pressrelease20230729-ShannonLNGPipelineReferredToAnBordPleanala.html>

²¹ <https://www.pleanala.ie/en-ie/case/317419>

²² <https://www.pleanala.ie/en-ie/case/314474>

²³ <https://www.irishtimes.com/business/2024/06/12/environmentalists-bring-high-court-challenge-over-plans-for-12-billion-data-centre/>

emissions reductions". The lawsuit alleges there is no legal basis for such an approach".

The article continues:

"This single data centre will take up a very significant proportion of the allowable budget of national greenhouse emissions," [...] the Oireachtas has recently legislated to place an increased obligation on An Bord Pleanála when it comes to environmental considerations. He said it must perform its functions, in so far as it is practicable, in a manner consistent with the latest Climate Action Plan of the Government. The Climate Action Plan aims to achieve a 51 per cent reduction in greenhouse gas emissions by 2030 on 2018 levels, but recent reports show Ireland is "completely off achieving that target". The case alleges that permitting data centres without demonstrating how they advance achievement of the national climate objective is not permitted under the 2015 Act, as amended."

We submit that these same arguments apply to this planning application. CEO of New Fortress Energy, Wes Edens, owner of Shannon LNG directly addressed the issue of his data centre master plan for the Shannon LNG site with no concern for the climate impacts when he stated in an Earnings call in August 2019²⁴:

"I can't emphasize enough, I think the downstream assets we develop around these terminals are, in many respects, our most important projects. We basically end up creating our own demand. We're, essentially, negotiating with ourselves, so we know the guy who owns the data centers if we're building data centers."

This application has not taken account of the full lifecycle emissions of the source of the fuel ultimately to be used for this proposed power station, which is US fracked gas imports via an LNG terminal. This is not acceptable because it gives a distorted assessment of the climate impacts of this proposed project on the Shannon Estuary, which is currently a green field site being actively farmed.

8. Ownership of the Site

In the oral hearings²⁵ into the planning application PA.0002 for the now-expired Shannon LNG terminal in 2008 there were controversial claims that Shannon LNG did not own the entire site - particularly the 1.88 acres of Steve Lynch's land. There were also claims of Rights of Way through the site to this land as well as rights on the foreshore. The applicant needs to address if and how all these issues were resolved. It has also been reported in the media that the entire 600-acre site of the proposed Shannon LNG

²⁴

<https://www.fool.com/earnings/call-transcripts/2019/08/13/new-fortress-energy-llc-nfe-q2-2019-earnings-call.aspx>

²⁵ <http://safetybeforelng.ie/licensing/lngterminal/transcriptsterminalhearing.htm>

terminal strategic public land in North Kerry (under the control of Shannon Group State Body) was sold to Wes Edens' Shannon LNG for €25 million²⁶ in late 2021, which would have been a date after the refused planning application²⁷ (reference 311233) for an LNG terminal was lodged in August 2021 by Shannon LNG, contrary to the official government policy on the importation of fracked gas published on May 18th, 2021 in place at the time. We are concerned that since we could not find details of the transfer of these lands on the Land Registry²⁸ website we cannot confirm ownership of these lands by Shannon LNG, the date of transfer, or whether or not these lands were appropriately transferred given that the published policy stated that "*pending the outcome of the review of the security of energy supply of Ireland's electricity and natural gas systems, it would not be appropriate for the development of any LNG terminals in Ireland to be permitted or proceeded with*". As one example, Folio 2356F, attached in Annex 2 has not been updated since 2017. All these issues should be addressed by the applicant in the interest of transparency and good governance.

9. **Kerry County Development Plan support for Shannon LNG undermined by millions of euros paid by Shannon LNG to Kerry County Council**

The irregular payments²⁹ of millions of euros paid by Shannon LNG to Kerry County Council raise very serious ethical questions surrounding this planning application and Kerry County Council support for Shannon LNG in the County Development Plan which now need to be addressed by An Bord Pleanála in this planning application. Kerry County Council requested and was paid over €2.4 million by Shannon LNG after its planning permission for an onshore LNG terminal expired³⁰ in 2018 and before it lodged a new planning application for a floating LNG terminal and 600 MW Power Station in Tarbert in 2021. We are extremely concerned about the implications and consequences of Shannon LNG paying millions of euros to Kerry County Council at a point in time when it was not obliged to do so and before it lodged a new planning application. Kerry County Councillor Jim Finucane told the Irish Independent Newspaper that these payments were "*good faith*"³¹ contributions made by a company that was committed to the area. At the very least these facts risk undermining the basis on which Kerry County Council supported Shannon LNG, and we assert that the Kerry County Development Plan cannot and should not be relied upon in this planning application.

²⁶

<https://www.independent.ie/irish-news/state-owned-firm-sells-off-site-for-gas-project-that-is-against-official-policy-41294207.html>

²⁷ <https://www.pleanala.ie/en-ie/case/311233>

²⁸ <https://www.tailte.ie/en/registration/land-registry/>

²⁹

<http://safetybeforelng.ie/pressreleases/pressrelease20221122ControversialShannonLNGMillionsPaidToKerryCountyCouncil.html>

³⁰ <https://archive.pleanala.ie/en-ie/case/PA0002>

³¹

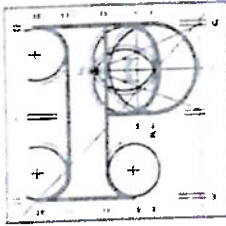
<https://www.independent.ie/irish-news/shannon-lng-paid-kerry-county-council-41m-in-relation-to-controversial-gas-project-it-may-never-build/42005737.html>

ANNEX 1

Complete File on Section 5 Referral to An Bord Pleanála Reference 317419³² which the Board refused to rule on.

Whether any works carried out on the Shannon LNG pipeline from Foynes Co. Limerick to Tarbert Co. Kerry as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 17th, 2009 carried out any time from today's date (and/or contrary to the consent conditions) is or is not development or is or is not exempted development.

³² <https://www.pleanala.ie/en-ie/case/317419>



**An
Bord
Pleanála**

**Board Order
ABP-317419-23**

Planning and Development Acts 2000 to 2022

Planning Authority: Limerick City and County Council

Planning Register Reference Number: EC/33/23

WHEREAS a question has arisen as to whether any works carried out on the Shannon LNG pipeline from Foynes, County Limerick to Tarbert, County Kerry as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 17th, 2009 carried out any time from today's date (and/or contrary to the consent conditions) at Leahy's, Foynes, County Limerick to Tarbert, County Kerry is or is not development or is or is not exempted development:

AND WHEREAS John McElligott care of Safety Before LNG of Island View, Convent Street, Listowel, County Kerry requested a declaration on the question from Limerick City and County Council and no declaration issued by the planning authority:

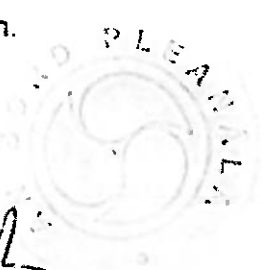
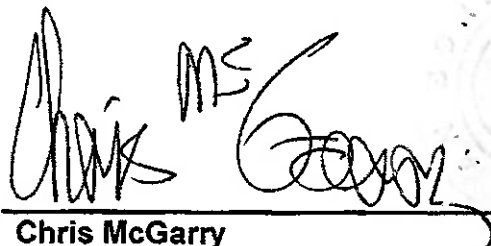
AND WHEREAS John McElligott referred the question for decision to An Bord Pleanála on the 16th day of June, 2023:

AND WHEREAS An Bord Pleanála, having considered the grounds of referral, is of the opinion that the referral should not be further considered by it:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 138 (1) of the Planning and Development Act, 2000, hereby dismisses the said referral under subsection (1) (b)(i) of section 138 of the said Act, based on the reasons and considerations set out below.

Reasons and Considerations

The Board considered the nature of the referral, which requests a declaration under section 5(1) as to whether certain works 'as described in the planning application granted by An Bord Pleanála under reference GA0003 in February 2009 carried out any time from today's date (and/or contrary to the consent conditions)' are or are not development, and are or are not exempted development. While noting that the works in question self-evidently constitute development, the Board determined, having regard to the totality of the documentation on file, that this referral on its facts clearly asks for a declaration predicated on whether these works are either permitted or not under a specified planning permission. This is not a question which falls within the scope of Section 5 of the Planning and Development Act 2000, as amended, and it is beyond the jurisdiction of the Board as provided to it under Section 5 of that Act, to make a declaration on such a question.



Chris McGarry

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board**

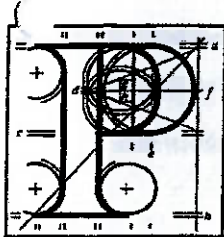
Dated this

13th

day of

October

2023



An
Bord
Pleanála

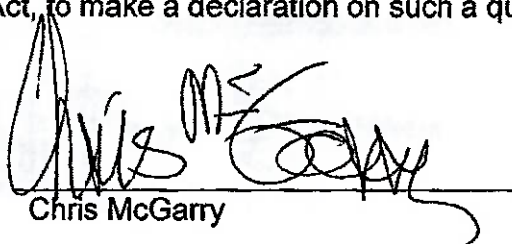
Board Direction
BD-013873-23
ABP-317419-23

The submissions on this file were considered at a Board meeting held on 25/09/2023.

The Board decided to dismiss this referral under section 138(1)(b)(i) of the Planning and Development Act, 2000, as amended, based on the following reasons and considerations.

The Board considered the nature of the referral, which requests a declaration under section 5(1) as to whether certain works '*as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 2009 carried out any time from today's date (and/or contrary to the consent conditions)*' are or are not development, and are or are not exempted development. While noting that the works in question self-evidently constitute development, the Board determined, having regard to the totality of the documentation on file, that this referral on its facts clearly asks for a declaration predicated on whether these works are either permitted or not under a specified planning permission. This is not a question which falls within the scope of Section 5 of the Planning and Development Act 2000, as amended, and it is beyond the jurisdiction of the Board as provided to it under Section 5 of the Act, to make a declaration on such a question.

Board Member:


Chris McGarry

Date: 25/09/2023



Safety before LNG

Protecting the Shannon Estuary and its people

Safety Before LNG
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Listowel
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4 August 2023.

An Bord Pleanála
64 Marlborough Street,
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bord@pleanala.ie and appeals@pleanala.ie

Cc. By Email to Limerick City & County Council, Planning and Environmental Services, City & County Council Offices, Dooradoyle Road, Limerick. planning@limerick.ie and enforcement@limerick.ie

Re: ABP-317419-23 and EC33/23 - Section 5 Declaration on Shannon LNG Pipeline.

Dear Sir / Madam,

Thank you for your July 20th request to me to make a submission, in the interest of justice, in relation to the submission¹ dated 19th July 2023 from McCann Fitzgerald LLP to An Bord Pleanála and Limerick City and County Council on behalf of New Fortress Energy and Shannon LNG.

Shannon LNG received planning permission for a 26-kilometre pipeline from Foynes, County Limerick to Tarbert, County Kerry in 2009. There was no condition of duration in the planning consent given. However, planning consent was given based on the planning application documents submitted by Shannon LNG in 2008 and in these documents - in the cover letter in fact - Shannon LNG stated that it was only "*seeking planning permission for this development for a period of 10 years*". In simple terms, Shannon LNG got what it applied for.

I initially submitted this section 5 application to Limerick City and County Council before referring it to An Bord Pleanála. The local authority informed me that "*the Planning Authority has written to An Bord Pleanála to clarify the length of permission*" of the Shannon LNG pipeline and that it was "*not in a position to make a decision on the above application until such time as written confirmation has been received from An Bord Pleanála*".

¹ https://drive.google.com/file/d/1swcQWldYQ62X2TptPy-QqtsSNq1H5D4k/view?usp=drive_link

Shannon LNG, through McCann Fitzgearld LLP, is claiming that *"the Board's jurisdiction under section 5 does not extend to determining whether a particular development is unauthorised or whether a particular permission is extant"* and that it was "surprised" that Limerick City and County Council had written to An Bord Pleanála seeking clarification on the length of the pipeline approval in order to make a decision under section 5.

I submit the following in response to McCann Fitzgerald LLP's letter to An Bord Pleanála.

The duration of the pipeline approval

1. Shannon LNG is relying on its claim that a 10-year planning application was referred to nowhere in the pipeline planning documents. This is blatantly false because Shannon LNG clearly confirmed in its 2008 [schedule](#)² of planning application documentation for the Shannon LNG pipeline that the Cover Letter itself is specifically included as one of the pipeline planning documents.

Shannon Pipeline: Schedule of Planning Application Documentation under s.181C

Document
Cover Letter
Schedule of Planning Application Documentation (this document)
Application Form
Details of Plans/Drawings submitted (as required under Item 5 of Application Form)
Letters from Landowners of AGI sites (as required under Item 7 of Application Form)
Public Newspaper Notices (as required under Item 17 of Application Form)
Site Notice (as required under Item 17 of Application Form)
Schedule of Other Pre-application Consultations (as required under Item 18 of Application Form)
Schedule of Prescribed Bodies to whom notification of the making of the application has been sent (as required under Item 18 of Application Form) plus Sample of Notice issued to Prescribed Bodies, and copy of cover letters and transmittal forms
Copy of letters to Garda Stations
Certificate from Commission for Energy Regulation (Bona Fides)
Pipeline Data Sheet
Application Fee
Planning Drawings (in separate volume)
Environmental Impact Statement (in separate volumes)

2. McCann Fitzgerald claims that *"there is no suggestion, anywhere, that the pipeline work would be completed before 2019"*. However, this is also entirely false because Shannon LNG clearly stated in the EIS Volume 1, non-technical summary, that *"the pipeline will be constructed over one summer season. It is currently intended that construction works will commence in March 2012, and be completed by November 2012"*. This completion date of November 2012 was repeated in Volume 2.
3. McCann Fitzgerald tries to argue that the request for a 10-year planning permission was general and not specific. This does not hold up to scrutiny because what was stated in the cover letter application document was very specific as it stated: **"Shannon LNG is seeking planning permission for this development for a period of 10 years"**. Shannon LNG got what it applied for. The Board did not have to put in a specific condition of duration because Shannon LNG had actually requested a specific duration. In other words, the 10-year permission request was both a specific request within one of the official planning document *"particulars"* and was a specific request to the planning authority of what duration of planning permission it was requesting.
4. McCann Fitzgerald relies heavily on Court rulings that *"there are circumstances in which the grant of a permanent authorisation may be appropriate"*. None of the cases quoted by McCann Fitzgerald, however, support an absolute right to an indefinite permission. The elephant in the room for this proposed development is that it was originally given planning permission in 2009, years before the Climate Action and Low Carbon Development Act was enacted in 2015 and before Ireland declared a Climate and Biodiversity Emergency in 2019.

The scope of Section 5

5. Brendan Slattery of McCann Fitzgerald LLP has omitted to consider that a section 5 referral not only requires the Board to assess if works are development and/or exempted development, but that **it also obliges the Board to determine if the development requires an environmental impact assessment**.
6. Subsection 7A of Section 5 of the Planning and Development Act, as amended, states:

"A planning authority or the Board, as the case may be, shall, in respect of a development or proposed development specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, specify in its declaration or decision, as the case may be, whether the development or proposed development identified in the request under subsection (1) or in the referral under subsection (3) or (4), as the case may be, would be likely to have significant effects on the environment by virtue, at the least, of the nature, size or location of such development and require an environmental impact assessment."

The types of development which require the Board to determine if an environmental impact assessment (EIA) outlined in Part 2 of Schedule 5 to the Planning and Development Regulations 2001³ include ***“Industrial installations for carrying gas, steam and hot water with a potential heat output of 300 megawatts or more”*** (3b) and ***“Gas pipelines and associated installations not included in Part 1 of this Schedule, where the design pressure would exceed 16 bar and the length of new pipeline would exceed 40 kilometres”*** (10i).

7. On April 5th, 2023, the State's national grid operator EirGrid published⁴ the provisional results of the latest capacity auction for the Single Electricity Market which indicated that Shannon LNG had won a provisional agreement for two gas-fired generators capable of generating **353** megawatts (MW) of electricity in total from EirGrid.
8. On June 8th, 2023, Mr. John Melvin, Director of Security of Supply and Wholesale Commission for Regulation of Utilities (CRU), confirmed⁵ very controversially (letter attached) that *“The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that **the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction**”*.
9. The proposed direction of the pipeline has now been changed by the developer without any public consultation on the matter but rather via private assurances given by Shannon LNG to the CRU. This would seem highly unorthodox. The original EIA for the Shannon LNG pipeline application in 2008 stated: *“The Shannon Pipeline is required to provide access to the Irish gas network for the Shannon LNG terminal. It will allow Shannon LNG to supply gas from additional diverse sources to the Irish market”*. From Director Melvin's confirmation that the developer now intends to still proceed with a power station in Tarbert even if no LNG terminal is built then the only reasonable alternative way such a power station could be supplied with gas would be through the pipeline. This is a completely different project to the one proposed in 2008. As the 26-kilometre, 98 bar pipeline and associated works would be used, not to supply gas to

³ <https://www.irishstatutebook.ie/eli/2001/si/600/made/en/print#sched5>

⁴ <https://www.eirgridgroup.com/newsroom/eirgrid-group-publishes-t/index.xml>

⁵ https://drive.google.com/file/d/1oFc8myQcwI0BgGEx79kWgjYvhOgEzmYq/view?usp=drive_link

the Irish gas market, but to be exclusively used for carrying gas from the Irish gas market to a 353 Megawatt power station in Tarbert with a heat output greater than 300 Megawatts, then the development would qualify as one which the Board “shall” determine in its decision if an environmental impact assessment is required for this project.

10. In the context of the obligations in subsection 7A of section 5, it is now quite clear that it was highly reasonable for the local authority, Limerick City and County Council, to have asked the Board to specifically address the pipeline expiry question in order to be able to give its section 5 decision.
11. I have asked a valid question in my referral. How far the Board investigates this is not a matter for the developer to limit because section 5 obliges the Board to issue “*the main reasons and considerations on which its decision is based*”.
12. The Board requested my submission in the interest of justice. The principle of sincere cooperation of Article 4 of the Treaty on European Union now obliges An Bord Pleanála to ensure that the principle of effectiveness of European law must prevail over the equivalence of procedural autonomy. McCann Fitzgerald even acknowledges that “*the Board may reformulate the question asked*”.

Other matters raised by McCann Fitzgerald

13. McCann Fitzgerald refers in its response to a “*fresh application for permission*” by Shannon LNG for a floating storage and regasification unit (refer ABP-311233-21) which remains pending at An Bord Pleanála. However, Irregular payments⁶ of millions of euros paid by Shannon LNG to Kerry County Council raise very serious ethical questions surrounding this planning application. Kerry County Council requested and was paid over €2.4 million by Shannon LNG after its planning permission for an onshore LNG terminal expired⁷ in 2018 and before it lodged a new planning application for a floating LNG terminal and 600 MW Power Station in Tarbert in 2021. We are extremely concerned about the implications and consequences of Shannon LNG paying millions of euros to Kerry County Council at a point in time when it was not obliged to do so and before it lodged a new planning application. Fine Gael Councillor Jim Finucane told the Irish Independent Newspaper that these payments were “*good faith*”⁸ contributions made by a company that was committed to the area.

⁶

<http://safetybeforelng.ie/pressreleases/pressrelease20221122ControversialShannonLNGMillionsPaidToKerryCountyCouncil.html>

⁷ <https://archive.pleanala.ie/en-ie/case/PA0002>

⁸

<https://www.independent.ie/news/environment/shannon-lng-paid-kerry-county-council-41m-in-relation-to-controversial-gas-project-it-may-never-build-42005737.html>

Request to initiate Part VIII enforcement against the Shannon LNG pipeline and associated works

14. Given -

- a. that numerous serious issues of concern have been raised by this section 5 application,
- b. that Shannon LNG has now vigorously expressed in its McCann Fitzgerald response a claim to an indefinite approval to develop a 26-kilometre pipeline beyond the 10-year planning permission it requested in 2008,
- c. that on March 31st, 2022, Wes Edens, the CEO of New Fortress Energy - the owners of Shannon LNG - in an open letter⁹ to An Taoiseach Micheál Martin, claimed that the Shannon LNG project was "*shovel ready*" and that "*Planning approval for the 26km gas pipeline to connect to the GNI grid has been secured*",
- d. that Shannon LNG then claimed¹⁰ to the Single Electricity Committee (SEM) in November 2022 that it was "*the most advanced CCGT project in development in the country and by the time the auction is held in March 2023 we will have: - planning permission for the 600 MW CCGT - **planning permission for a 26km gas pipeline (as backup to the LNG terminal) with all wayleaves executed** - an executed 220 kv connection agreement for 600 MW MEC*",
- e. that Director John Melvin of the CRU has acknowledged in writing that Shannon LNG confirmed to the CRU that it would still develop a gas-fired power station in Tarbert even if an LNG import terminal is not developed should it be successful in the T4 gas auction. The only reasonable alternative source of gas to LNG in this case would be gas supplied exclusively via the 26-kilometre pipeline which would not be just a "*backup to the LNG terminal*",
- f. that under Section 9 of the Criminal Justice (Corruption Offences) Act 2018, "*A person who, either directly or indirectly, by himself or herself or with another person, corruptly creates or uses a document, that the person knows or believes to contain a statement which is false or misleading in a material particular, with the intention of inducing another person to do an act in relation to his or her office, employment, position or business to the prejudice of the last-mentioned person or another person shall be guilty of an offence*", and

⁹ <https://drive.google.com/file/d/1epvlsi8Fog2QI-O3IzGY2MyMbqa-qL7n/view?usp=sharing>

¹⁰

<https://www.semcommittee.com/sites/semc/files/media-files/Shannon%20LNG%20Response%20to%20SEM-22-076.pdf>

- g. that An Bord Pleanála was the planning authority of first instance for the Shannon LNG pipeline permission in 2009 located over the 2 different local authority areas of Limerick and Kerry -

I am hereby now making a direct representation in writing to An Bord Pleanála under section 152 of the Planning and Development Act 2000, as amended, that unauthorised development of a 26-kilometre gas pipeline may be carried out by Shannon LNG. I am formally requesting that the Part VIII enforcement process now be initiated by An Bord Pleanála in this matter in parallel to this section 5 referral.

Thank you for your time in dealing with this most urgent matter.

Yours faithfully,
John McElligott



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08 June 2023

D/23/12609

Johnny McElligott
Safety Before LNG
Island View
5 Convent Street
Listowel
Co. Kerry

Sent by email: safetybeforelng@hotmail.com

Re: Urgent complaint on the provisional T4-Capacity Auction awarded to Shannon LNG

Dear Johnny,

Thank you for your email sent 19th April 2023 to John Melvin, Director of Security of Supply and Wholesale, Commission for Regulation of Utilities, Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport, in which you lay out concerns relating to the qualification (and subsequent success) of Shannon LNG in the T-4 2026/27 Capacity Auction. You raise a number of specific points relevant to the project including the energy policy backdrop, and the planning and connection status of the project. I provide some insights into the general qualification process for the Capacity Auctions to explain how these factors are considered and provide some additional detail on the specifics of the T-4 2026/27 qualification and approvals process in particular, information which has also been recently provided to the Joint Oireachtas Committee on Environment and Climate Action.

In advance of each capacity auction, generation projects seeking to participate go through a formal application process in accordance with the provisions of the Capacity Market Code. In support of this application, they supply EirGrid and SONI (the Transmission System Operators or TSOs) with information relating to their proposed projects. The TSOs then review this information, in each and every case, in order to determine the eligibility and likely deliverability of the project in time for the target deliverability date assigned to the auction. For example, for the most recent T-4 Auction, held in March of this year, the target date for new generation units is for the projects to commence operation on the 1st of October 2026. On the basis of this review, the TSOs then recommend to the SEM Committee the inclusion or exclusion of the projects seeking to participate in each auction. In the normal course of events, the TSOs' recommendations regarding qualification are followed.

In advance of the T-4 Capacity Auction held in March of last year 2022 (targeting commencement of operation of new units on 1st October 2025) the TSOs recommended not qualifying the proposed Shannon LNG power generation units. The TSOs have noted to the SEM Committee that the rationale for this recommendation was based on, among other things, consideration of the Implementation Plans provided. Further, that even in the absence of the government policy with respect to LNG, the TSOs would not consider the plans to be achievable as proposed. The SEM Committee accepted this recommendation and, as a result, the Shannon LNG generation units were not qualified to participate in that Auction.



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In the most recent T-4 Auction, held in March 2023, the TSOs recommended the qualification of the units. Given the previous recommendation to not qualify the units, the SEM Committee sought further clarification from the TSOs in support of this recommendation, including that the TSOs seek confirmation from the developer that the commercial case for the generation project is not contingent on the construction of the LNG terminal, and that the new capacity can be delivered in the absence of the terminal.

The TSOs responded, noting their view that the submitted project plan reflects a more reasonable timeframe for delivery, that the connection offer process has progressed for the project, and also confirming that the developer had stated that the new capacity would be capable of being delivered without the construction of the LNG terminal.

Notwithstanding the above, the SEM Committee were of the view that, on the basis of the range of statutory and other processes required to deliver the project in its totality (including processes that may be necessitated by the inclusion of any LNG import development and associated pipeline such as safety cases, unbundling requirements inter alia) that the project remained at risk of not being delivered in a timely fashion. On that basis the SEM Committee considered that the TSOs recommendation should not be accepted in this instance. However, it was an exceptional measure for the SEM Committee to seek to reject the TSO recommendation to qualify a generator and in this case, it was not possible to uphold this position given the clear, detailed and binding restrictions and timelines in the decision-making process (contained the Capacity Market Code).

The CRU had further engagement with the project developer in order to provide additional insight into the project and the deliverability of same. The CRU received confirmation from the project developer that the generation project was not contingent on the delivery of any LNG import facility, and that the generation projects would proceed to be developed, should they be successful in the auction, in the absence of any future development of an LNG import facility. The project developer also addressed concerns relating to the processes associated gas pipeline. The Shannon LNG generation project was qualified to participate in the March T-4 auction, and was successful in that auction.

Yours sincerely,

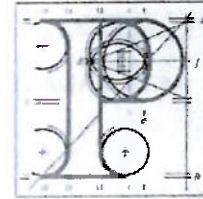
[Sent by email with no signature]

John Melvin
Director of Security of Supply and Wholesale
Commission for Regulation of Utilities

c.c. Colin Broomfield, Director of Wholesale Markets, Utility Regulator, and Eamon Ryan T.D., Minister for the Environment, Climate and Communications and Minister for Transport

Our Case Number: ABP-317419-23

Planning Authority Reference Number: EC33/23



**An
Bord
Pleanála**

John McElligott
Safety Before LNG
Island View
Convent Street
Listowel
Co. Kerry

Date: 20 July 2023

**Re: Whether any works carried out on the Shannon LNG pipeline from Foynes Co. Limerick to Tarbert Co. Kerry as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 17th, 2009 carried out any time from today's date (and/or contrary to the consent conditions) is or is not development or is or is not exempted development.
Leahy's, Foynes, County Limerick to Tarbert, County Kerry**

Dear Sir / Madam,

I have been asked by An Bord Pleanála to refer to the above-mentioned referral.

The Board is of opinion that in the particular circumstances of this referral, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission dated 19th July 2023 from McCann Fitzgerald LLP on behalf of New Fortress Energy.

In accordance with section 131 of the Planning and Development Act, 2000, (as amended), you are requested to make any submissions or observations that you may have in relation to this enclosure **on or before 9th August 2023**. The Board cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Board not later than 5.30 p.m. on the date specified above.

If no submission or observation is received before the end of the specified period the Board will proceed to determine the referral without further notice to you, in accordance with section 133 of the 2000 Act, (as amended).

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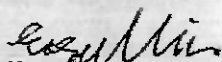
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Please quote the above referral number in any further correspondence.

Yours faithfully,



Eoin O'Sullivan
Executive Officer
Direct Line: 01-8737134

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AN BORD PLEANÁLA

LDG: _____

ASP: _____

MCCANN FITZGERALD

Fee: € _____ Type: _____

Time: 14:34 By: HAND

19 July 2023

Figure 1

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1. The scope of section 5.

- 1.1 There is no doubt about the scope of section 5 of the Planning Acts. Subsection (1) makes clear that it concerns only where a "question arises as to what, in any particular case, is or is not development or is or is not exempted development" within the meaning of the Planning Acts.
- 1.2 The Board's jurisdiction under section 5 does *not* extend to determining whether a particular development is unauthorised or whether a particular permission is extant.
- 1.3 Late last year, the Supreme Court addressed this emphatically in *Krikke & ors. v. Barranafaddock Sustainable Electricity Limited* [2022] IESC 41. The court delivered two judgments. Both referred to *Roadstone Provinces Ltd. v. An Bord Pleanála* [2008] IEHC 210, when confirming that:
 - (a) in the words of Hogan J., "it is clear from a long line of authority that the Board's s. 5 jurisdiction does not extend to determining that a particular development is unauthorised"; and,
 - (b) in the words of Woulfe J., "the question of whether the development comes within the scope of the planning permission, i.e. whether it was authorised, is not an issue that the planning bodies have jurisdiction to decide".
- 1.4 We make this point because the letter from Mr McElligott to the Council dated 26 April 2025, in support of his request under section 5, explains the essence of his request. In the final paragraph, he states that "[w]e are essentially asking if breaching a condition, or the impossibility of fulfilling a pre-commencement condition, going to the heart of [the pipeline approval], renders implementation of that [pipeline approval] unlawful and unauthorised development".
- 1.5 That request cannot be entertained by the Board. Put simply, the Board has no jurisdiction to answer that question.
- 1.6 It is acknowledged that the Board may reformulate the question asked: see most recently *Coxia Unlimited Company t/a Mr Price Branded Bargains v. An Bord Pleanála* [2025] IEHC 375. However, mere reformulation to ask whether works on the 26km pipeline are development or exempted development is meaningless.
- 1.7 It is self-evident that the pipeline works comprise development and are not exempted development. There is no dispute about that, and that is not the question asked.
- 1.8 If the Board did have jurisdiction to consider whether pipeline works are unauthorised development, which is denied, our clear and unequivocal answer is that those works are permitted development under and in accordance with the pipeline approval.
- 1.9 For clarity, under section 182D(11)(a) of the Planning Acts, no permission is required for development approved under section 182D. This is not a class of exempted development, such as those within section 4 of the Planning Acts, or the Second Schedule of the Planning and Development Regulations 2001 (as amended) (the "Planning Regulations"). It follows that interpretation of the pipeline approval, and forming a view on whether that approval remains extant, is not relevant to any question about exempted development and is not a matter for the Board.

- 1.10 Mr McElligott cannot use, or more correctly abuse, section 5 in the manner proposed. For these reasons, we invite the Board to exercise its discretion under section 138(1)(b) of the Planning Acts, to dismiss the referral on the basis that the referral should not be further considered by the Board having regard to "the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral)".

The following further submissions are made without prejudice to the foregoing preliminary objection that the Board does not have jurisdiction to entertain this referral.

2. The referenced exchanges between the Council and the Board.

- 2.1 We note with surprise the letter from the Council to Mr McElligott dated 24 May 2023, in which reference is made to a written request made by the Council to the Board "to clarify the length of [the pipeline approval]".
- 2.2 We are surprised for two reasons. First, as explained, the duration of the pipeline approval cannot be the subject of a request under section 5. Second, where any public authority is curious about whether the approval granted to our client is existing, we believe that our client's formal views should be sought. In our view, it would be inappropriate for the Board to offer any view on matters of such interest to our client without first affording our client natural justice, and an opportunity to be heard.
- 2.3 We expect the written request is now moot, such that nothing from our client is required. However, if we are wrong, do please ensure that the request is provided to our client for comment.

3. The duration of the pipeline approval.

- 3.1 By way of preliminary observation, we note the recent Supreme Court judgment in *Ballyboden Tidy Towns Group v An Bord Pleanála* [2022] IESC 47. There are several judgments with similar title, but concerning different permissions. This judgment concerns the approval granted by the Board for flood defence works along the Whitechurch stream under section 177AE of the Planning Acts. The approval was for an indefinite duration. The court dismissed a complaint that an approval of indefinite duration was incompatible with European law.
- 3.2 The court observed (at § 46), with reference to the Habitats Directive, that there is no temporal limitation on development consent under that European law. The same is true for other Directives that require environmental assessment.
- 3.3 After considering relevant case-law of the Court of Justice of the European Union ("CJEU"), the court concluded (at § 52) that "there are circumstances in which the grant of a permanent authorisation may be appropriate". There is no need for an approval to be temporary, because (as explained at § 54) "the possibility of changed environmental conditions subsequent to approval of a development is a matter to be dealt with under the "obligation of general protection" established under Article 6(2) of the Directive."
- 3.4 In particular, the court quoted from Case C-224/08 *Stadt Papenburg* and concluded (at § 58) that the CJEU accepted that a permitted activity "can be the subject of an indefinite permission". The Supreme Court was satisfied this point was so clear that no reference to the CJEU was necessary.

- 3.5 In the same way that an approval under section 177AE of the Planning Acts has indefinite duration, the pipeline approval under section 182D has indefinite duration.
- 3.6 The concept of duration is a creation of domestic law. Specifically, under section 40 of the Planning Acts, there is an "appropriate period" that limits the duration of a permission. Specifically, a permission:
- "shall on the expiration of the appropriate period (but without prejudice to the validity of anything done pursuant thereto prior to the expiration of that period) cease to have effect as regards –
- (a) in case the development to which the permission relates is not commenced during that period, the entire development, and
- (b) in case the development is commenced during that period, so much of the development as is not completed within that period."
- 3.7 The "appropriate period" is defined at section 40(3), in general, to mean five years beginning on the date of the grant of permission.
- 3.8 At the time when the pipeline approval was granted, on 17 February 2006, the definition of "permission" was that inserted by section 6(b) of the Planning and Development (Strategic Infrastructure) Act 2006 (the "2006 Act"). That was inserted with effect from 31 January 2007 (SI No. 654 of 2006).
- 3.9 The definition of "permission" was "a permission granted under section 34 or 37G, as appropriate". Section 34 concerns ordinary planning applications, and section 37G concerns applications for strategic infrastructure development.
- 3.10 At the relevant time, the definition of "permission" did not include approvals under section 182D.
- 3.11 It still does not. The definition was amended with effect from 1 October 2021 (SI No. 488 of 2021) by section 174 (and paragraph no. 1 of Schedule 12) to refer to permissions granted under sections 37N or 293.
- 3.12 For completeness, we note that there is a separate definition for "permission" that is limited in relevance to section 173C of the Planning Acts. For the purposes of that section, which concerns environmental impact assessment of waste water discharges, there is an expanded definition of "permission" that includes "approval for development under section 175, 177AE, 181B, 182D or 226".
- 3.13 The intention of the Oireachtas is clear. There is a range of decisions that have indefinite duration. This includes gas pipeline approvals under section 182D, the approvals of local authority projects on the foreshore approved under section 226, or those that require environment impact assessment under section 175 or appropriate assessment under section 177AE, certain state authority projects approved under section 181B, railway works and certain road authority development.

- 3.14 There is no doubt that section 40 has no relevance to an approval under section 182D, including the pipeline approval. That being so, there is no "appropriate period", no limited duration, and no limited "life" to the approval.
- 3.15 For this reason, there is no doubt that the pipeline approval is existing, and development under and in accordance with the pipeline approval is not unauthorised.
- 3.16 The request made by Mr McElligott can be read to acknowledge this. He does not attempt to suggest that section 40 has any relevance, or that the Planning Acts or European law otherwise limits the duration of the pipeline approval. Indeed, he expressly acknowledges that section 40 does not apply to the approval.
- 3.17 His sole basis for complaint is that the cover letter for the application made under section 182C of the Planning Acts included the following line: "Shannon LNG is seeking planning permission for this development for a period of 10 years". Mr McElligott suggests that this statement in the cover letter dated 14 August 2008 is a binding commitment, expressed within the plans and particulars lodged with the application. He suggests that condition 1 of the pipeline approval means the pipeline development must be carried out in accordance with this binding commitment, and so cannot be carried out after 2018.
- 3.18 He does not cite any legal authority for the proposition that a statement in a cover letter, of this kind, could ever voluntarily circumscribe the indefinite duration provided under the Planning Acts.
- 3.19 The only authority cited is in his cover letter dated 15 June 2023, referring the matter to the Board. He refers to *Glassco Recycling Limited v. An Bord Pleanála* [2023] IEHC 243 and suggests that the court concluded that the documents submitted with a planning application are of a nature designed to identify specific and precisely enforceable parameters for the development including its use".
- 3.20 That is not what the court concluded.
- 3.21 The court was quoting with approval the judgment of the Supreme Court in *Lanigan v. Barry* [2016] 1 IR 451 and [2016] IESC 46. In *Lanigan*, the court considered whether use of a motor racing circuit on certain days and times, and at a given frequency, had been prohibited.
- 3.22 In *Lanigan*, the Supreme Court considered whether a general condition, like condition 1 to the pipeline approval imposed, indirectly, a condition relating to the scale and timing for operation of a motor racing circuit.
- 3.23 The court explained (at § 4.1) that:

"The starting point has to be to note that it would have been easy for the Planning Authority concerned, if it had wished so to do, to impose specific terms as to hours, scale and timing of use. This the Planning Authority did not do. While that is not, necessarily and in and of itself, an end to the matter, it nonetheless is, in my view, a significant factor to be taken into account. To interpret a general clause such as condition 1 (which imposes an obligation to carry out the development in accordance with the drawings and specifications submitted) in a way which imposes very specific obligations in the absence of a specific condition does, in my view, require that what might reasonably be considered to be the drawings and specifications be

clearly of a nature designed to identify specific and precisely enforceable parameters for the development (including its use)."

3.24 The court elaborated (at § 3.5 to 3.8) that:

"[I]t is important, in my view, to distinguish between a general description of the *scale of operation of a facility which might be anticipated*, on the one hand, and a specific condition limiting the maximum scale of the operation concerned, on the other. The distinction may be easy to define in some cases but there may well be grey areas in other cases. For example, a retail unit might be described as being likely to attract a certain level of footfall. That description might, indeed, be relevant for planning purposes for it would undoubtedly affect traffic and potentially the amenity of other property occupiers in the vicinity. But such a description would be unlikely to be taken as imposing an absolute limit on the amount of customers which the retail unit would be permitted to entertain on any given day. Likewise, the documents filed in respect of a planning application might suggest that a retail unit was designed for daytime use. That might indicate the sort of use which might implicitly be approved by the granting of planning permission for the unit concerned. It is well settled that in considering the use which may be regarded as being permitted, it is possible to look at the development for which permission has been granted together with any documents submitted in the context of the relevant planning application.

In such a case the planning authority might choose to impose a specific condition concerning hours of opening. If it did so choose then the matter would be clear and it would be a breach of the relevant condition for the retail unit to open outside the hours as specified. However, even if no such specified opening hours were included as conditions attached to the planning permission, it would always be open to a court to consider whether opening significantly outside the parameters which were contemplated by the planning application itself might amount, in all the circumstances, to a sufficient intensification of use (over the use impliedly authorised by the permission) so as to justify a finding of a material change. However, in that latter case it would be necessary to take into account a range of factors including the degree of difference from the use which it might be inferred had been permitted by the planning permission, so as to assess whether any variation from that contemplated use could be said to involve a material change of use" (Emphasis added.)

3.25 The court was reluctant to interpret a general clause such as condition 1 "in a way which imposes very specific obligations in the absence of a specific condition". The court elaborated that such an obligation would only arise where "it would be appropriate to construe the documents submitted by the applicant for planning permission as giving a clear and specific commitment rather than a general indication concerning the scale and timing of the operation" (§ 4.4).

3.26 In *Lanigan*, having considered the documents submitted with the planning application, the court concluded there was *no specific commitment* concerning scale and timing of operation. Instead, the information could only be used for the purposes of assessing the broad level of operation for which permission was granted "and thus for assessing the baseline by reference to which the materiality of any intensification or use can be judged".

3.27 The court explained (at § 3.10) that:

"The distinction is between a specific requirement which must be obeyed more or less to the letter, on the one hand, and a general indication which may inform the baseline use by reference to which the materiality of an intensification of use may be judged. An assessment as to which of those two categories any particular description may fall into is one involving the proper construction of the planning permission as a whole including how that planning permission should be construed in the light of the documents filed by the applicant insofar as it can be said that those documents have been incorporated by reference into the permission itself."

- 3.28 When the text used is considered "in the context of the circumstances in which the document concerned was produced including the nature of the document itself" (§ 3.11), as with *Lanigan*, the remark in the cover letter cannot be read to comprise "drawings and specifications be clearly of a nature designed to identify specific and precisely enforceable parameters for the development".
- 3.29 The position in *Glassco* was very different. The court explained "[o]n the facts here, the content of the [remedial environmental impact statement] submitted in support of the substitute consent application clearly and repeatedly stated that the application related to an annual intake of up to 97,000 tonnes and this part of the application was, to use Clarke C.J.'s formulation [in *Lanigan*], of "a nature designed to identify specific and precisely enforceable parameters for the development including its use".
- 3.30 Mr McElligott is wrong. The court did not find that every line within any planning application document identifies a specific and precisely enforceable parameter. In fact the court said the reverse. Not every line has this consequence. The only reason that the court in *Glassco* could find such a specific and precisely enforceable parameter is because the tonnage limitation was "clearly and repeatedly stated".
- 3.31 The same is not true for the pipeline approval.
- 3.32 There is no reference to any limitation of duration within any of the site notice, the environmental impact statement ("EIS"), the related non-technical summary or other planning documents.
- 3.33 The application documents relevant to the pipeline approval include only aspirational references to when it was hoped the construction period would commence. These described when it was then "currently intended", "scheduled" or "intended" to carry out construction, thereby implying that the intention might change and was not in any sense fixed.
- 3.34 Other times and periods are also discussed more generally: August to early November was described as an "ideal" period for felling trees (EIS, vol. 2, para 10.10.12, p. 129); it was "envisaged" that the pipes would be delivered in winter (EIS, vol. 2, para. 7.4.2, p. 67); removal of hedgerows "should" be removed between September and February (EIS vol. 2, para. 10.10.2, p. 130).
- 3.35 There is no suggestion, anywhere, that the pipeline work would be completed before 2019.
- 3.36 In fact, strictly, there is no reference to any limitation of duration in any of the "plans and particulars". The cover letter cannot, and should not, be read to comprise a plan or particular, of the kind to which condition 1 refers.

3.37 The single isolated line in a cover letter does not meet the threshold explained by the Supreme Court in *Lanigan* and applied by the High Court in *Glassco*. That single isolated line does not comprise anything of "a nature designed to identify specific and precisely enforceable parameters for the development". It follows that the general obligation in condition 1 of the pipeline approval cannot be read to deprive our client of an indefinite approval.

4. Other matters.

4.1 Although not stated in the "Section 5 Application" form, the letter from Mr McElligott to the Council dated 26 April 2023 suggests that condition 2 of the pipeline approval "cannot be complied with" because the planning permission for the LNG terminal to which it refers expired.

4.2 Condition 2 of the pipeline approval imposes a requirement to submit details of "the phasing of the proposed development". Mr McElligott suggests that cannot be complied with because the phasing details are required to address how the pipeline development might overlap "the construction of the permitted liquefied natural gas terminal at Ralappane". Mr McElligott takes issue with the reference in the condition to the word "permitted".

4.3 Mr McElligott is correct that the original permission for the LNG terminal has expired. That refers to a permission for strategic infrastructure development granted to our client by the Board on 31 March 2018 (Board ref. PA08.PA0102). The permission was twice amended (Board ref. nos. PL08.PM0002 and PL08.PM0014). The validity of the second of those amendments was questioned in proceedings bearing the title *Friends of the Irish Environment CLG v. An Bord Pleanála* and record number High Court 2018 734 JR. The matter was referred to the Court of Justice of the European Union ([2019] IHEC 8 and Case C-254/19). Consequently, an order was made on 9 November 2020 quashing the amendment bearing reference no. PL08.PM0014, so the permission bearing reference no. PL08.PA0002 has expired.

4.4 However, Mr McElligott is wrong that expiry of that permission has any relevance to condition 2 of the pipeline approval. There is nothing to prevent a phasing plan that proposes construction of the pipeline before any terminal, or even absent any terminal at all. The use of the word "permitted" in the condition cannot mean the condition, or the approval, is ineffective soon as permission for the terminal expires.

4.5 For completeness, we note that a fresh application for permission for strategic infrastructure development comprising, as summarised by the Board, "Shannon Technology and Energy Park consisting of power plant, battery energy storage system, floating storage and regasification unit, jetty, onshore receiving facilities, above ground installation and all ancillary structures/works" (Board ref. ABP-311233-21) remains pending.

In conclusion, we believe the request is misconceived and based on a mistaken understanding of both section 5 of the Planning Acts and the pipeline approval.

We invite the Board to exercise its discretion under section 138(1)(b) of the Planning Acts, to dismiss the referral on the basis that the referral should not be further considered by the Board having regard to "the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral".

Without prejudice to the foregoing preliminary objection that the Board does not have jurisdiction to entertain this referral, we have demonstrated that the pipeline approval is indefinite, and has no

"appropriate period", no duration and no "life". Also, we have demonstrated that condition 1 to the pipeline approval cannot be read to deprive our client of an indefinite approval.

There is no reference to any limitation of duration within any relevant planning document. The application documents relevant to the pipeline approval include only aspirational references to when it was hoped the construction period would commence. Contrary to what Mr McElligott suggests, there is commitment at all that the pipeline work would be completed before 2019.

In fact, strictly, there is no reference to any limitation of duration in any of the "plans and particulars".

The single isolated line in a cover letter cannot, and should not, be read to comprise a plan or particular, of the kind to which condition 1 refers. Further, it does not meet the threshold explained by the Supreme Court in *Lanigan* and applied by the High Court in *Glassco*.

Yours sincerely

(sent by email, so bears no signature)

Brendan Slattery
McCann FitzGerald LLP

Direct Dial: +353 1 511 1572
Email: brendan.slattery@mccannfitzgerald.com



Safety before LNG
Protecting the Shannon Estuary and its people

Safety Before LNG
Island View
Convent Street
Listowel
County Kerry
V31 PW61

Email:

Web: www.SafetyBeforeLNG.ie

15th June 2023

An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

By email to bord@pleanala.ie

Re: Section 5 Referral on Shannon LNG pipeline

Dear Sir/Madam,

We are hereby referring to An Bord Pleanála the Planning and Development Act 2000, section 5 response by Limerick City and County Council received by us on May 24th 2023, attached below.

A cheque for €220, the required fee, along with a paper copy of this referral is being sent by post.

In support of this referral we add the following:

In the High Court Case 2021 699 JR¹ - Glassco Recycling Limited -v- An Bord Pleanála – paragraph 48, Justice Ferriter points out clearly that in the absence of an express condition in a development consent, the content of the documents submitted with a planning application are of *"a nature designed to identify specific and precisely enforceable parameters for the development including its use"*.

In its planning application for the pipeline consent GA0003 lodged on August 14th, 2008, and for which permission was granted on February 17th 2009, Shannon LNG stated to An Bord Pleanála that it was only *"seeking planning permission for this development for a period of 10 years"*² There is an absence of any express condition added to the development consent which would override this 10-year period and our contention is that the planning permission for the Shannon LNG pipeline has expired.

Please do not hesitate to contact us if you require further information.

Yours faithfully,

John McElligott

¹ https://courts.ie/view/judgments/09b2acaf-0cbc-4a83-8424-87263c62d9d8/f229eaa1-b375-4303-b112-8c2cf9750c7e/2023_IEHC_293.pdf/pdf

² [safetybeforelng.ie/licensing/lngpipeline/Planning Application Document_ABP_C1767-10.pdf](http://safetybeforelng.ie/licensing/lngpipeline/Planning%20Application%20Document_ABP_C1767-10.pdf)



Comhairle Cathrach
& Contae Luimnigh

Limerick City
& County Council

Pleanáil, Corhshaol agus Cruthú Áite
Comhairle Cathrach agus Contae Luimnigh
Bothar Thuar an Daill
Tuar an Daill, Luimneach
V94 WV78

Planning, Environment and Place-Making
Limerick City and County Council
Dooradoyle Road
Dooradoyle, Limerick
V94 WV78

PLANNING, ENVIRONMENT & PLACE-MAKING

EC33/23/SMn/CL

24th May 2023

John McElligott
Safety Before LNG
Island View
Convent Street
Listowel
Co. Kerry
V31 PW61

Re: Section 5 Application on Shannon LNG Pipeline

Dear Sir,

I refer to the above application received on 27th April 2023 and wish to inform you that the Planning Authority has written to An Bord Pleanála to clarify the length of permission No. 08.GA003.

The Planning Authority is not in a position to make a decision on the above application until such time as written confirmation has been received from An Bord Pleanála.

You may wish to submit a declaration directly to An Bord Pleanála.

*Section 5 3(b) of the Planning and Development Acts 2000 (as amended) is as follows:
Without prejudice to subsection (2), in the event that no declaration is issued by the Planning Authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that declaration was due to be issued under subsection (2).*

An Bord Pleanála may be contacted on low-call 1800-275175 or e-mail appeals@pleanala.ie

Any further queries in relation to this matter should be addressed to Seán Moran, Development Inspector.

Yours faithfully,

For Director of Services
Planning, Environment & Place-Making.

customerservices@limerick.ie
www.limerick.ie
@LimerickCouncil
061 - 556 000



LIMERICK CITY & COUNTY COUNCIL

PLANNING AND ENVIRONMENTAL SERVICES

SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

Applicant's Name:	John McElligott, 'Safety Before LNG'
Applicant's Address:	Island View, Convent Street, Listowel, County Kerry, V31 PW61
Telephone No.	087-2804474
Name of Agent (if any):	
Address:	
Telephone No.	
Address for Correspondence:	John McElligott, 'Safety Before LNG', Island View, Convent Street, Listowel, County Kerry, V31 PW61

Location of Proposed development:

26 km gas pipeline route from Leahys, Foynes, County Limerick to Tarbert, County Kerry

Description of Proposed development:

We request a declaration under Section 5 (1) of the Planning and Development Act 2000 on whether any works carried out on the Shannon LNG pipeline from Foynes Co. Limerick to Tarbert Co. Kerry as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 17th, 2009 carried out any time from today's date (and/or contrary to the consent conditions) is or is not development or is or is not exempted development.

The proposed development is a 26km. natural gas pipeline, with associated above ground installations (AGIs), to connect the now-expired Shannon LNG Regasification Terminal at Ralappane, Tarbert, County Kerry to the existing natural gas network at Leahys, County Limerick

Is this a Protected Structure or within the curtilage of a Protected Structure.
YES/NO

Applicant's interest in site:	Member of 'Safety Before LNG', which is opposed to the proposed US Fracked Gas Import Terminal in Tarbert.
List of plans, drawings, etc. submitted with this application:	<ul style="list-style-type: none">a. Full Section 5 Application sent by email and by post (with €80 cheque attached) to Limerick City and County Council by John McElligott, Safety Before LNG, dated 26th April 2023b. Requested clarification sent to Limerick County Council dated 27th April 2023c. Shannon LNG application letter to An Bord Pleanála requesting planning permission for 10 years – dated 14 August 2008d. Foynes AGI Site Location Map 1 to 10560e. 26 Km Pipeline Route Map

Have any previous extensions/structures been erected at this location
YES/NO

If Yes please provide floor areas of all existing structures:

Signature of Applicant (or Agent): John McElligott (signature submitted on posted documentation)

NOTES: Application must be accompanied by:

- (a) Fee of €80
- (b) Site location map
- (c) Site layout plan
- (d) Dimensioned plans and elevations of the structure and any existing structures.
- (e) Where the declaration is in respect of a farm building, a layout identifying the use of each existing building together with floor area of each building.

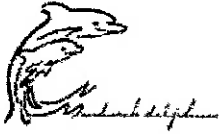
Application to be forwarded to:

Limerick City & County Council, Planning and Environmental Services,
City & County Council Offices, Dooradoyle Road, Limerick.

OFFICE USE ONLY

Ref. No. _____ Date Received _____

Fee Received _____ Date Due _____



Safety before LNG
Protecting the Shannon Estuary and its people

Safety Before LNG
Island View
Convent Street
Listowel
County Kerry
V31 PW61

Telephone: [REDACTED]
Email: [REDACTED]
Web: www.SafetyBeforeLNG.ie

26th April 2023.

To:
Limerick City & County Council,
Planning and Environmental Services,
City & County Council Offices,
Dooradoyle Road,
Limerick.
By post and by email to planning@limerick.ie

Re: Section 5 Declaration on Shannon LNG Pipeline.

Dear Sir/Madam,

We request a declaration under Section 5 (1) of the Planning and Development Act 2000

On whether any works carried out on the Shannon LNG pipeline from Foynes Co. Limerick to Tarbert Co. Kerry as described in the planning application granted by An Bord Pleanála under reference GA0003 on February 17th, 2009 carried out any time from today's date (and/or contrary to the consent conditions) is or is not development or is or is not exempted development.

In your decision we ask you to consider the following relevant issues:

1. It seems that the pipeline consent GA0003¹ which was granted on 17th February 2009 expired in 2019² at the latest. Planning permission expires after 5 years by default³ for applications lodged under Part III or Part XXI of the Planning and Development Act 2000 as amended, if not otherwise mentioned in one of the conditions of a grant for development consent. The Pipeline Application was lodged under Section 182C of Part XI. However, Condition 1 of the pipeline consent states that "*the development shall be carried out in accordance with the plans and particulars, including the environmental impact statement, lodged with An Bord Pleanála on the 14th day of August 2008*". Condition 2 states that "prior

¹ <https://archive.pleanala.ie/en-ie/case/GA0003>

² http://www.safetybeforelng.ie/licensing/lngpipeline/complete_decision_on_lng_pipeline.pdf

³ <https://revisedacts.lawreform.ie/eli/2000/act/30/section/40/revised/en/html>

to the commencement of development, details of the phasing of the proposed development, in conjunction with the construction of the permitted liquefied natural gas terminal at Ralappane and Kilcolgan Lower, County Kerry, shall be submitted to, and agreed in writing with, the relevant local authorities".

Condition 1 cannot be complied with because in its planning application lodged on August 14th, 2008, Shannon LNG stated to An Bord Pleanála that it was only "seeking planning permission for this development for a period of 10 years"⁴.

Condition 2 cannot be complied with because planning permission for the LNG terminal is no longer "permitted" since development consent for the LNG Terminal PA0002⁵ expired in 2018.

We are essentially asking if breaching a condition, or if the impossibility of fulfilling a pre-commencement condition, going to the heart of permission GA0003, renders implementation of that permission unlawful and unauthorised development. This development is linked to the Shannon LNG terminal, which lost its planning permission in 2018. In simpler terms, Shannon LNG applied for a 10-year planning permission for a pipeline which they got in 2009, so do they need to reapply for planning permission for a pipeline from Foynes to Tarbert?

We have forwarded you the required fee of €80 by post and await your feedback.

Yours sincerely,
John McElligott

⁴

http://safetybeforelng.ie/licensing/lngpipeline/Planning%20Application%20Document_ABP_C1767-10.pdf

⁵ <https://archive.pleanala.ie/en-ie/case/PA0002>

Section 5 Declaration on Shannon LNG Pipeline

Safety Before LNG SLNG <safetybeforelng@hotmail.com>

Thu 27/04/2023 08:59

To: enforcements@limerick.ie <enforcements@limerick.ie>; planning@limerick.ie <planning@limerick.ie>

📎 1 attachments (100 KB)

Limerick CoCo Section 5 Referral on Shannon LNG Pipeline.pdf;

Dear Margaret-Anne,

Thank you for your quick reply.

This is a section 5 application for the following reasons:

1. On March 31st, 2022, Wes Edens, the CEO of New Fortress Energy - the owners of Shannon LNG - in an open letter [1] to An Taoiseach Micheál Martin, claimed that the Shannon LNG project was "*shovel ready*" and that "*Planning approval for the 26km gas pipeline to connect to the GNI grid has been secured*".
2. Shannon LNG then claimed [2] to the Single Electricity Committee (SEM) in November 2022 that it was "*the most advanced CCGT project in development in the country and by the time the auction is held in March 2023 we will have: - planning permission for the 600 MW CCGT - **planning permission for a 26km gas pipeline (as backup to the LNG terminal) with all wayleaves executed - an executed 220 kv connection agreement for 600 MW MEC***".
3. We are concerned that Shannon LNG's claims that it has planning permission for a 26km gas pipeline is not true and that it is a signal of intent to start working on the pipeline as if it has planning permission.
4. Also, recently, workers have been seen on the site of the pipeline route in some sort of pre-preparatory survey works, it would seem, but if the planning has expired then this needs clarification.

If you wish to give your opinion on whether the pipeline would be unauthorised and requires planning, then that would be very helpful too. But this is essentially a section 5 application.

Kind Regards,
John McElligott.

[1] <https://drive.google.com/file/d/1epvlsi8Fog2QI-O3IzGY2MyMbqa-qL7n/view?usp=sharing>

[2] <https://www.semcommittee.com/sites/semc/files/media-files/Shannon%20LNG%20Response%20to%20SEM-22-076.pdf>

From: enforcements <enforcements@limerick.ie>
Sent: Wednesday 26 April 2023 11:57
To: safetybeforelng@hotmail.com <safetybeforelng@hotmail.com>
Subject: FW: [EXTERNAL]Section 5 Declaration on Shannon LNG Pipeline

Hi John,

Are you asking for a Section 5 Application or are you asking our opinion is there something unauthorised in this area? Could you clarify please.

Regards,
Margaret-Anne

From: plandev <planning@limerick.ie>
Sent: Wednesday, April 26, 2023 12:11 PM
To: enforcements <enforcements@limerick.ie>
Subject: FW: [EXTERNAL]Section 5 Declaration on Shannon LNG Pipeline

From: Safety Before LNG SLNG <safetybeforelng@hotmail.com>
Sent: Wednesday 26 April 2023 10:33
To: plandev <planning@limerick.ie>
Subject: [EXTERNAL]Section 5 Declaration on Shannon LNG Pipeline

Caution: This is an external email and may have a suspicious subject or attached content.
Please take care when clicking links or opening attachments. When in doubt, contact your IT Department

Limerick City & County Council,
Planning and Environmental Services,
City & County Council Offices,
Dooradoyle Road,
Limerick.

Dear Sir/Madam,

Would you please be so kind as to confirm receipt of the attached Section 5 Request?

Thanking you in advance,

Yours faithfully,

John McElligott
'Safety Before LNG'

www.SafetyBeforeLNG.ie

Island View, Convent Street, Listowel, County Kerry. Telephone: 087-2804474

Limerick City & County Council Disclaimer



Arup Consulting Engineers

Our ref C1767.10/EL/FK
File ref A.1.1 L0037
Date 14 August 2008

15 Oliver Plunkett Street
Cork
Tel +353 21 4277670
Fax +353 21 4272345
eoghan.lynch@arup.com
www.arup.ie

An Bord Pleanála
64 Marlborough Street
Dublin 1

For the attention of The Secretary

ARUP

Dear Sir/Madam

**C 1767.10 Shannon Pipeline
Notice of Direct Planning Application to An Bord Pleanála in respect of a Strategic Infrastructure Development**

On behalf of our Client, Shannon LNG Limited, please find enclosed an application for permission in respect of a Strategic Infrastructure Development by Shannon LNG Limited.

The proposed development is a natural gas pipeline to connect the proposed Shannon LNG Terminal at Ralappane, County Kerry to the existing natural gas network at Leahys, County Limerick. The development will consist of a steel natural gas pipeline (approximately 26km long, below ground) and two above ground installations (AGIs); the Shannon LNG Terminal AGI is situated at the western end of the pipeline within the boundary of the proposed Shannon LNG Terminal, and Foynes AGI is situated at the eastern end of the pipeline at a greenfield site on the existing natural gas network at Leahys, County Limerick.

The proposed pipeline has a nominal diameter of 750 millimetres and a design pressure of 98barg; this is the pressure required at the LNG terminal end of the pipeline to meet the injection pressure requirements of 85 barg at the existing natural gas network. The pipeline will be designed, installed, operated and maintained to meet the requirements of I.S. 328:2003, 'Code of Practice for Gas Transmission Pipelines and Pipeline Installations'.

Although a specific route has been developed for the pipeline, planning permission is sought for a corridor along the pipeline route. The purpose of the corridor is to allow for route refinement in the event that unforeseen features are discovered during the construction of the pipeline, for example an archaeological feature. The pipeline route would be adjusted within the confines of the corridor to avoid the feature, subject to the agreement of the landowner. The corridor is 100 metres wide and is normally centred on the pipeline (i.e. it extends 50 metres on both sides of the line) except where it is moved laterally to avoid going outside the boundary of the land owned by the wayleave landowner, or to avoid other features. At a number of locations the corridor is constrained on both sides such that its width is less than 100 metres. The predicted impacts and mitigation measures, described in the Environmental Impact Statement, are based on this corridor.

../2

Dublin
50 Ringsend Road Dublin 4
Tel +353 (0)1 233 4455

Limerick
Hartstonge House
Upr Hartstonge Street
Tel +353 (0)61 212 100

Galway
Commerce House
Flood Street
Tel +353(0)91 566 183

Shannon LNG has also applied for a Compulsory Acquisition Order under Section 32 of the Gas Act, 1976 relating to all landowners along the route where consent had not been received at the time of application.

The proposed Shannon LNG Terminal AGI falls within the footprint of the proposed Shannon LNG Terminal which is an establishment to which the Major Accident Directive applies.

Shannon LNG is seeking planning permission for this development for a period of 10 years.

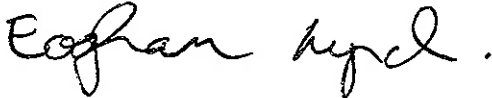
Five hard copies and five electronic copies of the following documentation are enclosed:

- application form and appended documentation
- planning drawings, and
- the Environmental Impact Statement prepared in relation to the application

The application will also be available for viewing at a dedicated website, <http://www.shannonpipelineplanning.ie>, from 19 August 2008. We confirm that the planning application information available on this website is the same as that submitted to An Bord Pleanála.

Please contact the undersigned if you have any queries.

Yours faithfully
for
Arup Consulting Engineers



Eoghan Lynch

Encl.

Copy to: Shannon LNG Limited






NOTES:

1. DRAWINGS FOR PLANNING PURPOSES ONLY,
NOT FOR BID OR CONSTRUCTION.
2. ORDNANCE SURVEY RURAL MAP SHEET
REFERENCE 4794, 4795, 4857, 4858.
3. REPRODUCED FROM THE ORDNANCE SURVEY
BY PERMISSION OF THE GOVERNMENT.
OSI LICENCE No. MP0004407.

PL1	PL2	EG	Revised for Planning	MD
Issued	Issued	By	Description	Out by
20.05.08	21.06.08	EG	Revised for Planning	MD
20.05.08	20.05.08	EG	Issued for Planning	MD

PLANNING

LEGEND:

- | | |
|---|--|
|  | PIPELINE PLANNING CORRIDOR |
|  | LANDHOLDING UNDER CONTROL OF LANDOWNER OF AGI SITE |
|  | EXISTING WAYLEAVE |
|  | EXISTING PIPELINE |
|  | LOCATION OF PROPOSED FORTNES AGI AND ACCESS ROAD |

SHANNON LNG LIMITED
SHANNON PIPELINE

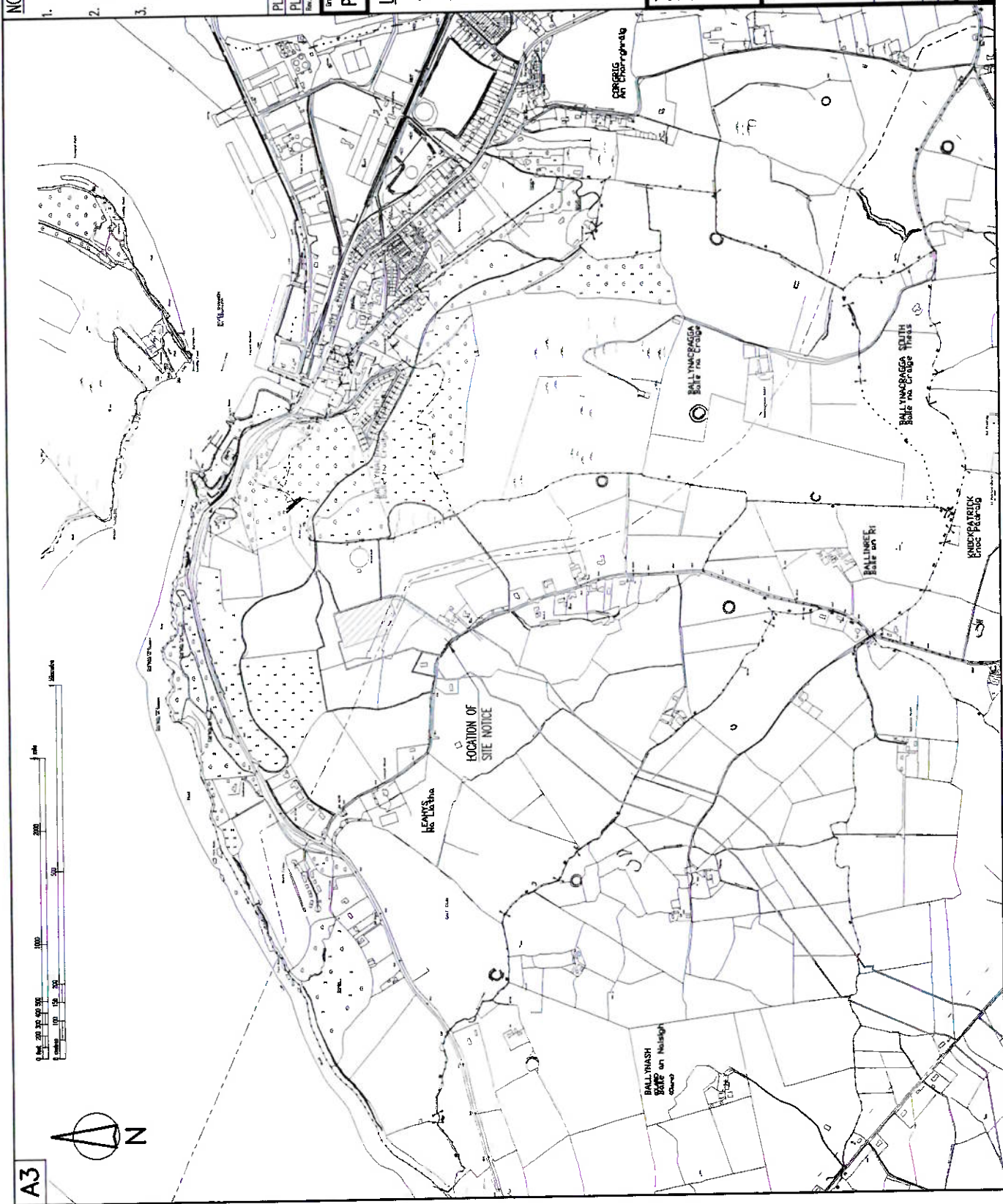
FOYNES AGI
SITE LOCATION MAP
1:10560

ARUP

15 Oliver Plunkett Street Cork
Tel 021-4277670 Fax 021-4277345
Email cont@cp.com

Source 1:10560 • A3	Originator EG
Checked	Approved
	Date 08.05.98

Lot No.	C1767	License No.	SL-004	Plate	PL2
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Whether the device has any real benefit can be speculated. Presumably, it should be used by smokers or casual tea drinkers who don't quit the habit. But the people engaged about the study worried if any Coughing Sighs, cigarette while "coughing," and Coughing Sighs don't do the trick for me by any means of the device, and I'll have to quit smoking after that. But let the other way.

1. ALL DIMENSIONS IN METRES UNLESS INDICATED OTHERWISE.

1. ALL DOMAINS IN ALLIES MUST OVERLAP.
2. DO NOT SOLVE, USE PLACED OVERLAP/ONS ONLY
3. BARRIERS FOR PLANNING PURPOSES ONLY, NOT FOR AND OR CONSTRUCTION.
4. LAND USE/US SHOW RELATE TO DOMINANT DIRECTION WITH ROAD UNLESS OTHERWISE NOTED
5. COORDINATES SHOWN ARE TO BEING MATERIAL GRID IN METERS

POSTED FROM THE
FURNING OFFICE
DURING THE 19TH CENTURY

P2	used	50	USED FOR PLANNING	P8
P1	used	50	USED FOR PLANNING	P8
P3	used	50	USED FOR INFORMATION	P8
P2	used	50	USED FOR INFORMATION	P8
P1	used	50	USED FOR INFORMATION	P8

Creeping



SHANNON PIPELINE

PIPELINE ROUTE



PAKUP

C1767	RM-001	P12
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ANNEX II

Land Registry Register of Ownership of Freehold Land

Folio 2356F

Land Registry

County Kerry

Folio 2356F

Register of Ownership of Freehold Land

Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

No.	For parts transferred see Part 1(B) Description	Official Notes
1	<p>The property shown coloured RED as Plan(s) 2 on the Registry Map, containing 12.7754 Hectares, situate in the Townland of RALAPPANE, in the Barony of IRAGHTICONNOR, in the Electoral Division of TARBERT.</p> <p>The registration does not extend to the mines and minerals, except those in and under the part of the land coloured green on Plans 1, 2 and 3 (O.S. 3).</p>	<p>From Folio KY16438 From Instrument No. D2143/75</p>
2	<p>The property shown coloured RED as Plan(s) 1 on the Registry Map, containing 11.5917 Hectares, situate in the Townland of RALAPPANE, in the Barony of IRAGHTICONNOR, in the Electoral Division of TARBERT.</p> <p>The registration does not extend to the mines and minerals, except those in and under the part of the land coloured green on Plans 1, 2 and 3 (O.S. 3).</p>	<p>From Folio KY16440 From Instrument No. D2143/75</p>
3	<p>The property shown coloured RED as Plan(s) 3 on the Registry Map, containing 1.0218 Hectares, situate in the Townland of RALAPPANE, in the Barony of IRAGHTICONNOR, in the Electoral Division of TARBERT.</p> <p>The registration does not extend to the mines and minerals, except those in and under the part of the land coloured green on Plans 1, 2 and 3 (O.S. 3).</p>	<p>From Folio KY16442 From Instrument No. D2143/75</p>
4	<p>The property shown coloured RED as Plan(s) 21 on the Registry Map, situate in the Townland of KILCOLGAN LOWER, in the Barony of IRAGHTICONNOR, in the Electoral Division of TARBERT.</p> <p>The registration does not extend to the mines and minerals which are excepted and reserved unto the Grantor, his heirs and assigns by Indenture dated 28th November 1855 made between David Mahony of the one part and Stephen Edward Collis of the other part (being a Conveyance under the provisions of the Renewable Leasehold Conversion Act, in lieu of a certain lease for lives renewable for ever).</p>	<p>From Folio KY29866 From Instrument No. D2143/75</p>
5	<p>The property shown coloured RED as Plan(s) 5 on the Registry Map, containing 30.3514 Hectares, situate in the Townland of RALAPPANE, in the Barony of IRAGHTICONNOR, in the Electoral Division of TARBERT.</p>	<p>From Folio KY30022 From Instrument No. D2143/75</p>

Land Registry

County Kerry

Folio 2356F

Part 1(B) - Property
Parts Transferred

Land Registry

County Kerry

Folio 2356F

Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965		
1	05-JUN-1991 D2593/91	SHANNON FREE AIRPORT DEVELOPMENT COMPANY LIMITED of SHANNON AIRPORT, COUNTY CLARE is full owner. Cancelled D2017LR011334U 24-JAN-2017 Land Cert Application No.: 633716945852 Date: L.C. RETAINED IN C.O. (KY16438), (KY16440) (KY16442), (KY29866) (KY30022)	
2	24-JAN-2017 D2017LR011334U	SHANNON COMMERCIAL ENTERPRISES DAC of Shannon Airport, Shannon, County Clare is full owner.	

Land Registry

County Kerry

Folio 2356F

Part 3 - Burdens and Notices of Burdens

No.	Particulars
1	The property is subject to the provisions prohibiting letting, subletting or subdivision specified in Section 12 of the Land Act, 1965, and to the provisions restricting the vesting of interests specified in Section 45 of the said Act in so far as the said provisions affect same.
2	The property Nos. 1, 2 and 3 is subject to the fishing rights and fisheries reserved by Section 45 of the Land Act, 1923. L.R.5/27334 L.R.7/27334 L.R.9/27334
3	The property No. 4 is subject to the right to hunt, hawk, fish and fowl reserved unto the Grantor, his heirs and assigns in an Indenture dated 28th November 1855 made between David Mahony of the one part and Edward Collis of the other part.