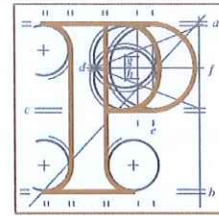


Our Case Number: ABP-306272-19

Your Reference: Cleanrath Windfarm Limited



An
Bord
Pleanála

MKO
Tuam Road
Galway
H91 VW84

Date: 5th May 2020

Re: Leave to apply for substitute consent Wind farm

Cloontycarthy, Cleanrath North, Cleanrath South, Derreenacarton, Derrineanig, Turnaspidogy, Milmorane, Coomlibane, Rathgaskig, Derragh, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha and Lackabaun, Co. Cork.

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2019. A copy of the order is enclosed.

The effect of this order is to direct you to make an application to the Board for substitute consent not later than 12 weeks after the date of the giving of the Board's decision (or such further period as the Board may allow). The application shall be accompanied by a remedial Environmental Impact Assessment Report and a remedial Natura impact statement.

Please note that the final date for the making of an application for substitute consent is 4th August 2020.

Section 177E of the Planning and Development Act, 2000, as amended, sets out the requirements for a valid substitute consent application and your attention is also drawn to Part 19 of the Planning and Development Regulations, 2001, as amended, which requires, inter alia, the applicant to submit to the Board a newspaper/site notice. You are requested to contact the Board at bord@pleanala.ie in relation to the wording of the public notice prior to publication of same, or any other matter concerning the making of the application. A fee is also payable to the Board in respect of the substitute consent application.

Separately, it would greatly assist to Board to have a soft copy of the entire application submitted with six hard copies. In this regard, the drawings on the soft copy should be in PDF format.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is

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

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

normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

A further enclosure contains information in relation to challenges by way of judicial review to the validity of a decision of An Bord Pleanála under the provisions of the Planning and Development Act, 2000, as amended.

Yours faithfully,

pp V. Kennedy
Miriam Baxter
Executive Officer

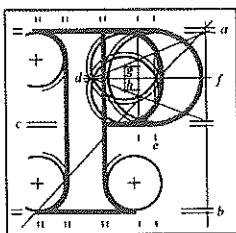
BP100QN

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
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An
Bord
Pleanála

Board Order
ABP-306272-19

Planning and Development Acts 2000 to 2019

Planning Authority: Cork County Council

Application for Leave To Apply For Substitute Consent by Cleanrath Windfarm Limited care of MKO of Tuam Road, Galway.

Development: Windfarm in the townlands of Cloontycarthy, Cleanrath North, Cleanrath South, Derreennacarton, Derrineanig, Turnaspidogy, Milmorane, Coomlibane, Rathgaskig, Derragh, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha, and Lackabaun, County Cork.

Decision

GRANT leave to apply for substitute consent under section 177D of the Planning and Development Act 2000, as amended, based on the reasons and considerations set out below

CM56

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Reasons and Considerations

Having regard to section 177C and section 177D of the Planning and Development Act, 2000, as amended, the planning history of the site, all the documentation on file, and the report of the planning Inspector, the Board is satisfied that:

- (a) the development is one where an Environmental Impact Assessment and Appropriate Assessment are required,
- (b) the permission granted for the development by the Board (appeal reference number PL 04.246742, planning register reference number 15/6966) may be in breach of law, invalid or otherwise defective in a material respect pursuant to a final judgement of the Supreme Court [No. 167/18] by reason of a procedural error, and
- (c) exceptional circumstances exist by reference, in particular, to the following:
 - the fact that the regularisation of the development would not circumvent the purpose or objectives of the Environmental Impact Assessment Directive or of the Habitats Directive,

- that the applicant could reasonably have had a belief that the development was not unauthorised,
- that the ability to carry out an Environmental Impact Assessment and Appropriate Assessment, and provide for public participation in such assessments, has not been substantially impaired, and
- that the actual or likely significant effects on the environment or adverse effects on the integrity of a European Site, if any, can be remedied.

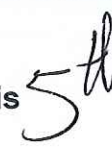

the Board decided that it would be appropriate to consider an application for the regularisation of the development by means of an application for substitute consent.

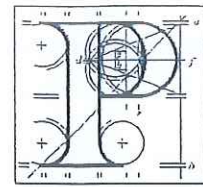
 MS 

Chris McGarry

Member of An Bord Pleanála

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

Dated this  day of  2020.



Judicial Review Notice

Judicial review of An Bord Pleanála decisions under the provisions of the Planning and Development Act 2000 (as amended)

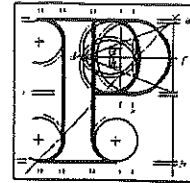
A person wishing to challenge the validity of a Board decision may do so by way of judicial review only. Sections 50, 50A and 50B of the Planning and Development Act 2000 (as substituted by section 13 of the Planning and Development (Strategic Infrastructure) Act 2006, as amended/substituted by sections 32 and 33 of the Planning and Development (Amendment) Act 2010 and as amended by sections 20 and 21 of the Environment (Miscellaneous Provisions) Act 2011) contain provisions in relation to challenges to the validity of a decision of the Board.

The validity of a decision taken by the Board may only be questioned by making an application for judicial review under Order 84 of The Rules of the Superior Courts (S.I. No. 15 of 1986). Sub-section 50(6) of the Planning and Development Act 2000 requires that subject to any extension to the time period which may be allowed by the High Court in accordance with subsection 50(8), any application for judicial review must be made within 8 weeks of the decision of the Board. It should be noted that any challenge taken under section 50 may question only the validity of the decision and the Courts do not adjudicate on the merits of the development from the perspectives of the proper planning and sustainable development of the area and/or effects on the environment. Section 50A states that leave for judicial review shall not be granted unless the Court is satisfied that there are substantial grounds for contending that the decision is invalid or ought to be quashed and that the applicant has a sufficient interest in the matter which is the subject of the application or in cases involving environmental impact assessment is a body complying with specified criteria.

Section 50B contains provisions in relation to the cost of judicial review proceedings in the High Court relating to specified types of development (including proceedings relating to decisions or actions pursuant to a law of the state that gives effect to the public participation and access to justice provisions of Council Directive 85/337/EEC i.e. the EIA Directive and to the provisions of Directive 2001/12/EC i.e. Directive on the assessment of the effects on the environment of certain plans and programmes). The general provision contained in section 50B is that in such cases each party shall bear its own costs. The Court however may award costs against any party in specified circumstances. There is also provision for the Court to award the costs of proceedings or a portion of such costs to an applicant against a respondent or notice party where relief is obtained to the extent that the action or omission of the respondent or notice party contributed to the relief being obtained.

General information on judicial review procedures is contained on the following website,
www.citizensinformation.ie.

Disclaimer: The above is intended for information purposes. It does not purport to be a legally binding interpretation of the relevant provisions and it would be advisable for persons contemplating legal action to seek legal advice. Modified 30/11/2011



An
Bord
Pleanála

Fógra faoi Athbhreithniú Breithiúnach

Athbhreithniú breithiúnach ar chinneadh a rinne An Bord Pleanála faoi fhorálacha an Achta um Pleanáil agus Forbairt, 2000 (arna leasú)

Nuair is mian le duine agóid dhlíthiúil a chur in aghaidh cinnidh an Bhoird caithfear é sin a dhéanamh trí athbhreithniú breithiúnach amháin. Tá na forálacha chun agóid dhlíthiúil a chur in aghaidh cinnidh an Bhoird le fáil in ailt 50, 50A agus 50B san Acht um Pleanáil agus Forbairt, 2000 (arna ionadú le halt 13 den Acht um Pleanáil agus Forbairt (Bonneagar Straitéiseach) 2006, le halt 32 agus 33 den Acht um Pleanáil agus Forbairt (leasú), 2010 agus le halt 20 agus 21 den Acht Comhshaoil (Forálacha Ilghnéitheacha), 2011.)

Ní féidir ceistiú a dhéanamh in aghaidh cinnidh an Bhoird ach amháin trí iarratas ar athbhreithniú breithiúnach faoi Ordú 84 de Rialacha na nUaschúirteanna (I.R. Uimhir 15 de 1986). Faoi réir fho-alt 50(6) den Acht um Pleanáil agus Forbairt, 2000 déanfar iarratas ar chead chun iarratas a dhéanamh ar athbhreithniú breithiúnach laistigh den tréimhse 8 seachtain den dáta a rinne an Bord an cinneadh nó laistigh d'aon síneadh ama a cheadaíonn an Ard-Chúirt faoi fho-alt 50(8). Tabhair faoi deara nuair atá athbhreithniú breithiúnach i gceist faoi alt 50 nach féidir ach bailíocht an chinnidh a cheistiú agus ní thugann an Chúirt aon chinneadh faoi fhiúntas na forbartha ó thaobh prionsabail pleanála cuí nó forbairt inchothaithe na háite nó éifeachtaí ar an timpeallacht. Tá sé leagtha síos in alt 50 nach ndéanfar cead d'athbhreithniú breithiúnach muna bhfuil an Chúirt sásta go bhfuil forais shubstaintiúla ann chun argóint a dhéanamh go bhfuil an cinneadh neamhbhaillí nó gur ceart é a neamhniú agus go bhfuil suim shásúil ag an iarratasóir leis an ábhar i gceist san iarratas nó i gcásanna a bhaineann le measúnacht tionchair timpeallachta gur eagraíocht í an t-iarratasóir a chomhlíonann coinníollacha áirithe.

Tá forálacha in alt 50B mar gheall ar chostais maidir le himeachtaí san Ard-Chúirt i dtaobh athbhreithniú breithiúnach i gcásanna áirithe (lena n-áirítear imeachtaí faoi chinntí nó gníomhartha de bhun dlí de chuid an Stáit lena dtugtar éifeacht do na forálacha faoi rannpháirtíocht an phobail agus rochtain ar an gceartas atá leagtha amach i dTreoir 85/337/CEE i.e. an Treoir faoi mheasúnacht tionchair timpeallachta agus na forálacha i dTreoir 2001/42/CE maidir le héifeachtaí pleananna agus clár áirithe ar an timpeallacht a mheasúnú). Is í an fhoráil ghinearálta in imeachtaí lena mbaineann alt 50B ná go n-íocfaidh gach páirtí a chostais féin. Is féidir leis an gCúirt costais a bhronnadh i gcoinne aon pháirtí i gcásanna áirithe. Chomh maith le sin tá forálacha i bhfeidhm ionas gur féidir leis an gCúirt iomlán a chostas nó cuid díobh a bhronnadh ar an iarratasóir, in aghaidh fhreagróra nó fhógrapáirtí i gcásanna ina bhfaightear faoiseamh mar gheall ar gníomhú nó neamhfheidhm an fhreagróra nó an fhógrapáirtí.

Tá eolas ginearálta faoi athbhreithniú breithiúnach le fáil ar an suíomh idirlín www.citizensinformation.ie.

Séanadh: Tá an t-eolas thuas tugtha mar threoirlíne. Ní éilítear gur léirmhíniú dlí faoi na forálacha ábhartha atá ann agus dá mbeadh sé ar intinn ag éinne cás dlí a thógáil in aghaidh an Bhoird bheadh sé inmholta comhairle dlí a fháil ar dtús. Athbhreithnithe 30/11/2011