

PETER SWEETMAN & ASSOCIATES

SUBMISSION RE ABP – PL88.315059

ABP Ref .NO.	PL88.315059
PA NO:	21/737
DESCRIPTION	Removal of existing Electricity supply grid and replacement with similar, and all associated works
ADDRESS	Derreenacrinig West, Barnagowlane West, Glanareag, Ards Beg, Ardrah, Laharanshermeen, Maulraha,, Maulikeeve, Derryarkane, Cappanaboul,, Skahanagh, Gortroe, Shandrum Beg, Shandrum More, D
APPLICIANT	The Electricity Supply Board (ESB) (Applicant)
Date	06 December 2022

I wish to make an observation on the appeal lodged to An Bord Pleanala in respect of the above development namely an application by the ESB for the removal of existing Electricity supply grid and replacement with similar, and all associated works which was permitted by Cork County Council on 18 October 2022.

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

1. It must assess the planning merits of the Application in accordance with the **Planning and Development Act 2000** (as amended) & Planning Regulations to ensure that the proposed development is in accordance with the proper planning and sustainable development of the area. While there are aspects of this proposal that does not accord with the Planning and Development Act one point in particular is the attempt by the Applicant in this application to seek to permit the removal of electricity infrastructure, already constructed with the replacement of that same infrastructure in the identical location and/or adjacent to the place from which it was removed. Furthermore, the Applicant has not complied with the obligations pursuant to Articles 17-23 of the 2001 Planning Regulations and those concerns have not been resolved in the decision of Cork County Council.
2. An Bord Pleanala is required to form and record a view as to the environmental impacts of the development pursuant to the **Environmental Impact Assessment Directive**, as amended (2014/52/EU). In this application there is a clear attempt by the Applicant to circumvent the obligations under the EIA Directive. It is clear from the Council's technical reports and the Developers own documents that an EIA has not been carried out for the entire development. The Acquiring Authority failed to engage with the requirements of the EIA Directive in any manner or form notwithstanding that I raised it in my original submission.
3. An Bord Pleanala is the competent authority having responsibilities under the **Habitats Directive**.

1. *The threshold for screening for Appropriate Assessment is set out in Kelly -v- An Bord Pleanála [2014] IEHC 400 (25 July 2014) which states at 26.*

26. There is a dispute between the parties as to the precise obligations imposed on the Board in relation to the stage 1 screening by s.1777U but its resolution is not strictly necessary in these proceedings. There is agreement on the nature and purpose of the screening process which is well explained by Advocate General Sharpston in Case C-258/11 Sweetman at paras 47-49:

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

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

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

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

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

This is a strict standard and An Bord Pleanala does not have legal jurisdiction to give permission if it is not met.

4. The development must be assessed for compliance with the requirements of the **Water Framework Directive** (2006/60/EC). The Developer has provided scant reference to the Water Framework Directive and/or compliance with its provisions. In addition, the local authority has failed to have proper regard to its obligations under the Water Framework Directive in line with its jurisdiction.

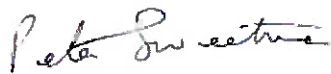
This fact means that the proposal does not comply with the recent Judgment of Ms Justice Hyland in my case entitled Peter Sweetman v An Bord Pleanala and Ors in which the High Court has referred specific questions to the European Court of Justice on the proper application of the Water Framework Directive. This proposed development comes within the Judgment and the terms of the reference to Europe. As the Board is aware it is precluded from granting permission to this development under the terms of the ruling of Hyland. J. until such time as there has been a proper and full assessment for

the purposes of the Water Framework Directive to include proper considerations being given to the question of assignment and classification.

5. I have read the technical reports produced by Cork County Council and I am satisfied that in totality they do not satisfy the requirements of the Planning and Development Acts, EIA Directive, Habitats Directive & Water Framework Directive as set out above.

I see from the appeal filed that the last day to make a submission is 5.30pm on 06 December 2022.

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



Peter Sweetman

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