

## ***Wild Ireland Defence C.L.G.***

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Allihies North  
Beara  
Co. Cork  
P75 A598

An Bord Pleanála  
64 Marlborough St  
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06 December 2022

**Re: Removal of existing Electricity supply grid and replacement with similar, and all associated works. An Environmental Impact Assessment Report (EIAR) was received with this application. PL88.315059 (Planning Ref 22/153)**

**Applicant for Permission: The Electricity Supply Board (ESB)**

To whom it concerns,

Wild Ireland Defence hereby makes an observation to appeal reference number PL88.315059 which is a 10-year planning permission for development of a wind farm comprising seven (7) number electricity generating wind turbines with a hub height of 55 metres and a rotor diameter of 52 metres, an electrical compound, sub-station building, four number car parking spaces, associated site roads and site works. It is proposed to source stone from an onsite borrow pit, all in the townland of Derreenacrinnig West, Drimoleague, County Cork. The proposed development was revised by further public notice received by An Bord Pleanála on the 20th day July, 2012, including relocation of the substation compound and revised works to the local public roads.

Wild Ireland Defence already made a submission to the Planning Department in November 2021, and it is respectfully submitted that the Council has failed to have proper regard to the grounds of appeal 1-9.

We have carefully considered the technical reports and it appears that those reports fail to address the matters raised in our original observation. We say that these matters are critical to the application for permission and we would ask that the Board would engage fully with each of our grounds of objection in its consideration of this appeal.

In ease of the board we set out hereunder a full recitation of the grounds pleaded before the local authority.

## Grounds of Appeal

1. The Planning Authority is in effect being invited by the developer to grant to it substitute consent for the length of grid connection already constructed without planning permission. The Planning Authority lacks jurisdiction to make such a decision because any such application must be made to An Bord Pleanála ('the Board'), pursuant to s.177 E (1) of the Planning and Development Act 2000, as amended. The Planning Authority has no jurisdiction to make a remedial Environmental Impact Assessment for this development. Should the Planning Authority assume an *ultra vires* jurisdiction to conduct a remedial EIA or to grant substitute consent, any such decision would be open to an application for judicial review under s.50 of the Act.
2. The developer's proposal to take down the unauthorised poles and put them back up again within a s.34 application, is an attempt to circumvent the legislative regime introduced by the Oireachtas for the retrospective rectification of EIA developments in response to the rulings of the Court of Justice of the European Union (CJEU) in Case C-215/06 Commission v Ireland. The Court of Justice in C-215/06 indicated that any such procedure must only be applied in exceptional circumstances, a point that was emphasised by the Supreme Court more recently in *An Taisce v An Bord Pleanála* [2020] IESC 39.
3. The exceptional circumstances test, which is being circumvented by the developer in this application under s.34, is set out at s.177D(2) of the Act. This test includes *inter alia* consideration of whether the developer could reasonably have had a belief that the development was unauthorised and consideration of whether the applicant has previously carried out unauthorised development. In this regard, it is noted that the developer in this planning application has failed to remind the Planning Authority that in April 2017 Cork County Council issued a Declaration under s.5 of the Act that the grid connection was not exempted development and that the unauthorised works were constructed in full knowledge of the said Declaration. It is not appropriate for the Planning Authority to entertain a planning application under s.34 for what seems like the sole purpose of allowing the developer to avoid having to answer difficult questions to the Board in an exceptionality test which is part of the proper transposition of the EIA Directive into domestic law.
4. Without prejudice to the above, the Planning Authority does not have sufficient information before it to enable it to carry out an EIA, Appropriate Assessment Screening, assessment under the Water Framework Directive or a consideration of the impacts on the Strategic Environmental Assessment for its own Development Plan. This planning application is based on outdated expert reports and drawings that cannot be related to the proposal that is now before the Planning Authority. The developer's planning report and EIAR are *dated* 2021 but rely on expert reports prepared for previous consent applications for a grid connection but are not relevant to this development.
5. The reports in question were scant when they were prepared but are now no longer even relevant to the current proposal which purports to be a hybrid remediation and development project, and which is a materially different development. It is not clear how the obligation in Annex IV of the EIA directive for the EIAR to contain a description of the current state of the

environment is to be complied with. As regards the Habitats Directive, even if the Planning Authority had jurisdiction to make a decision on this application (which is denied) the Planning Authority has no jurisdiction to make a decision based on an Appropriate Assessment screening that does not rely on best scientific information or an Appropriate Assessment that does not come to complete precise or definitive findings and conclusions capable of removing all scientific doubt as to the impacts on the conservation objectives of European sites. It is difficult to see how this can be done on the basis of outdated maps, drawings and reports.

6. Alternatives have not been properly considered, either a basic remediation alternative (i.e. to remove the poles) or consideration of alternative routes. It is very unfair on the public for this project to be considered as a *fait accompli* in circumstances where there was never public participation on the siting of the route that is proposed now or the route which was partially constructed. The developer creates the impression that the wind farm construction has substantially commenced. This is not the case. Some internal roads have been constructed but no work has commenced on the construction of the wind turbines, cabling or substation.
7. Impacts on waterbodies have been given little or no consideration or the impact on the objectives of the Water Framework Directive.
8. The proposed development does not comply with Articles 17-23 of the Planning and Development Regulations 2001 and in particular it is submitted that there is insufficient detail and design of the proposed development in the planning documents.
9. Based on the above submission, Wild Ireland Defence respectfully requests that planning permission be denied for the proposed development.

Wild Ireland Defence has also considered the appeal of Mr Ian Collins in this case and entirely endorses the very comprehensive submissions made by Mr Collins in his appeal. We would ask that An Bord Pleanála would consider the grounds of this observation in the light of Mr Collins Appeal.

We are enclosing the required €50 fee noting that the Board are accepting observations until close of business today.

We await receipt of acknowledgment of this observation in due course.

Is mise, le meas, on behalf of Wild Ireland Defence CLG

Maire Uí Mhuirín

M. Uí Mhuirín,  
(Secretary, Wild Ireland Defence CLG)

