

Mary Tucker

Rory

From: Allen, Brendan (Engineering and Major Projects) <brendan.allen@esb.ie>
Sent: Tuesday 6 December 2022 16:18
To: Appeals2
Subject: Response to 3rd party Appeal ABP Reference 315059-22
Attachments: Planning Appeal Response 06122022.pdf

Dear Sir/Madam

Please find attached a Response to 3rd party Appeal ABP Reference 315059-22.

Can you confirm receipt of this response.

Regards,

**Brendan Allen | Planning Team Leader Civil Environmental & Renewable Engineering | Engineering & Major Projects | ESB T: +353 1 703 8195 M: 086 8336990 | www.esb.ie
One Dublin Airport Central, Dublin Airport, Cloghran, Co. Dublin, K67 XF72.**

My location is One DAC and I typically work from there every Tuesday. Feel free to catch up with me in person/book in person meetings – otherwise you can reach me on Teams/e-mail and mobile.

At ESB, we are committed to working flexibly while also respecting our right to disconnect. While it suits me to email now, I do not expect a response or action outside your working hours.

An t-impeallacht? - Smaoinigh air sula bpriontáileann tú an r-phost seo.
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6th December 2022

Re: Response to 3rd party Appeal ABP Reference 315059-22
Applicant: The Electricity Supply Board (ESB)

Dear Sir/Madam,

1. Introduction

I refer to a third party planning appeal submitted in relation to ABP Reference 315059-22, relating to the planning application made by the Electricity Supply Board (ESB). This submission provides the applicants response to the issues raised in the planning appeal.

It should be noted that the issues raised in the appeal have already been comprehensively addressed and assessed in detail in the various documents submitted by ESB and issued by Cork County Council (CCC) during the planning application process as follows:

- Environmental Impact Assessment Report (EIAR) – prepared by Jennings, O'Donovan & Partners (October 2021).
- Planning Report (October 2021).
- Further Information Response (March 2022).
- Clarification of Further Information Response (July 2022).
- CCC Planning Officer Reports dated December 2021, May, and October 2022.

There are no new issues raised that have not been previously addressed by ESB and assessed by CCC.

In responding to the issues raised, and in the interests of brevity, summaries of documents are provided and references are made to the documents above, where necessary. More comprehensive information can be found in the referenced documents.

The following parties, and their roles, were involved in preparing the planning application:

- The Electricity Supply Board (ESB) – the ESB, in its capacity as a statutory undertaker, made the application to CCC.



- ESB Networks (ESBN) is a subsidiary company of the ESB – the role of ESBN is to process grid connection applications from generators and to manage the construction of CRU approved grid connections. ESBN were responsible for constructing that section of the grid connection which is already constructed.
- ESB Engineering and Major Projects – ESB EMP provides engineering and planning services across the ESB group. The ESB EMP Planning Team submitted the application.
- Jennings, O'Donovan & Partners (JOD) – JOD are an engineering consultancy. Historically they have been retained by Dereenacrinnig West Windfarm. In this case they worked with ESB EMP to produce all the engineering and environmental documents required to support the planning application made by ESB.

2. Background and Planning History

This appeal has arisen on foot of a planning decision issued by CCC on 18th October 2022 (CCC Reg. Ref. 21/737) to grant planning permission to the ESB for the removal of the existing grid connection works and for the development of the full length of a new grid connection over a distance of approximately 14.8 km, between the existing Ballylicky ESB substation and the permitted Dereenacrinnig West Windfarm (DWW).

2.1 Grid Connection Works Completed

ESB construction works related to the grid connection commenced in October 2017. Prior to the construction of the grid connection, ESB carried out an Exempted Development Screening Study of the proposed grid connection, to determine whether it would fall within the planning exemptions available for such development. The determination at that time was that it did fall within the relevant planning exemptions and works commenced on that basis. During the construction works CCC issued a Warning Letter in May 2018 to ESB in relation to the planning status of the grid connection works. Without prejudice to its position, ESB agreed to pause the grid connection works and to apply for planning permission for the works that had not yet commenced and to apply for substitute consent for the works that had already been completed.

2.2 CCC Planning Application Reference 19/0010

A planning application for the construction of the unbuilt section of the grid connection was submitted to CCC in January 2019 under planning application reference 19/10. That planning application was for the "installation of approximately 3.2km of underground cable ducting and associated electrical cabling, approximately 1.2km of overhead line ...The works, which will take place at separate locations along the 14km grid connection route, are required to complete the grid connection from Dereenacrinnig West Windfarm to the ESB Ballylickey substation." This was granted by CCC in September 2019.



2.3 Planning Appeal Reference ABP 305790-19 - (appeal of CCC 19/10)

Planning application CCC Reference 19/10 was appealed by a 3rd Party to An Bord Pleanála (ABP) under planning appeal reference ABP 305790-19. The decision of CCC to grant planning permission was upheld by ABP on the 2nd June 2020, subject to eight conditions.

2.4 Application for Substitute Consent ABP Reference SU04.305609 - (planning application for works that had not been completed)

An application for Substitute Consent under Section 177E of the Planning and Development Act 2000 [as amended] was submitted by ESB to regularise the planning status for the partially built grid connection to connect the already consented Derreenacrinnig West Wind Farm to the existing Ballylicky substation in County Cork. This had been preceded by an application to seek Leave to Apply for Substitute Consent (ABP Reference LS04.302837), this was granted in May 2019. The substitute consent application submitted to ABP sought to retain 5 sections of the partially constructed grid connection which consists of c. 9.7 km of OHL. Substitute consent was granted by ABP on the 2nd June 2020.

2.5 Judicial Review

The decision to grant substitute consent and the decision to grant planning permission by ABP outlined in 2.3 and 2.4 above were challenged by a 3rd party by way of Judicial Review [JR] under Section 50 of the Planning and Development Act, 2000, as amended. That challenge was upheld by the High Court [2020] 548 JR]. Whilst various grounds were cited in the challenge, the core grounds of the JR centred on the fact that the substitute consent procedure was in breach of European Law and that Ireland had failed to correctly transpose the requirements of Directive 2011/92/EU as amended. A core ground of the challenge was that the decision to grant substitute consent was premised on an earlier decision to grant leave to apply for substitute consent which took place without public participation. These grounds had been cited in previous unrelated cases before ABP. This resulted in legislative changes in December 2020 to the Planning and Development Act 2000. The JR was in the Courts system at the time the legislation was amended. In March 2021, the High Court issued an Order quashing both decisions related to the grid connection issued by ABP in June 2020.

2.6 Reason for Current Application

ESB has considered various options in relation to consenting the grid connection and concluded that the Section 34 process is the most prudent way to proceed. Whilst planning legislation provides for a planning consent to be achieved via a combination of a Section 34 application and a Substitute Consent application as previously consented by ABP, ESB notes the issues raised in the JR in relation to splitting the consenting process into different applications and has decided to proceed based on a singular Section 34 application.

2.7 Current Planning Status of the As Constructed Elements

For clarity ESB can confirm that the current as-constructed elements are not subject to any enforcement proceedings. On page 3 of the Appellants appeal he incorrectly states *"...particularly since now the poles have been removed by order of the High Court, there is no existing infrastructure to financially influence one choice over another."*

No enforcement proceedings have been issued by any party in relation to the existing as-constructed development.

3. CCC Planning Process

The application was submitted to CCC in October 2021 following a pre-planning consultation in June 2021 with CCC.

3.1 Planning Officers Report (POR) December 2021

Key elements of the POR are set out below:

- Section 3 details the planning history of both the proposed grid connection and the DWW.
- Sections 4 and 5 describe the proposed development and pre-planning consultations.
- Section 6 sets out the planning policy context, focussing the CCC County Development Plan 2014. It notes that *"In terms of the cable route of the 20kv line perhaps half of the cable route lies within an area mapped as "Normally discouraged" although as the 20KV route progresses east and southeast it goes to an area "Open to Consideration" and "Acceptable in Principle". A large part of the entire subject area, both the Derreenacrinnig West Windfarm and the proposed 20 kv route lies within an area mapped as High Value Landscape Area. There are no Scenic Routes close to the route of the 20kv cable. No part of the Derreenacrinnig West Windfarm and the proposed routes lies within any Area of Special Conservation or Special Protection Area. There are no other designated areas of conservation interest in the immediate area.*
- Section 7 summarises the various CCC internal reports focussing in some detail on the biodiversity aspects of the development.
A number of the internal reports recommend the application be deferred (i.e. further information be sought) but none recommend refusal.
- Section 8 summarises the response to external referrals to statutory bodies which similarly recommend that further information be sought.
- Section 9 summarises the various objections made in relation to the proposed development, many of which are again referenced in the planning appeal.
- Section 10 sets out a detailed assessment of the planning application and concludes as follows:
 - The application is valid and in accordance with the requirements of planning legislation.

- It provides a detailed commentary from CCCs perspective in relation to relevant planning legislation and history. It notes the following in its assessment-these are key in terms of addressing the grounds of appeal:
 - Overview, Substitute Consent and Post Pol O Grianna and others v An Bord Pleanála in December 2014 and the Judicial Review
 - *It would have been possible for ESB to have gone down the Substitute Consent route again with this revised scheme. As the minutes of the pre planning meeting on the 24th June 2021 record, set out in the appendix for reasons of transparency, they have not done so based on their own legal advice. (page 29)*
 - *the fact that it was previously accepted via the Substitute Consent that ESB had not acted in such a "cavalier fashion" and that An Bord Pleanála had concluded that there was an "exceptional case" and that through this current planning application ESB are seeking to make progress, such a course of action (i.e. Refusal of planning permission for past failures to comply) is not one that is recommended. (page 29)*
 - *This is not a Substitute Consent application and it is not an application to retain the unauthorised 20 KV line since submitted with an EIAR as outlined below is possible. (page 29)*
 - *It would appear unfortunate that this (i.e. an explanation in relation to the removal of the existing line and the formation of a new line, part underground) was not mentioned anywhere in the passing or even in the submitted planning report dated October 2021 and therefore the developer could have better explained why they are still in situ. Potentially they may of course argue, that it is better to remove the unauthorised poles all at the same time as new ones are constructed to reduce both the environmental impact and general disturbance on, and to, the same lands, and/or are keeping that options open via the potential Substitute Consent route. (page 30)*
 - Environmental Impact Assessment Report

In the main it is considered that the EIAR complies with European Union (Planning and Development) Environmental Impact Assessment) Regulations 2018 including Article 94, Schedule 6 subject to a number of shortcomings being addressed, as set out in the registered letter below, and considered "significant" such supplementary information will further allow third parties the further opportunity to comment upon the same thereby increasing further the level of public participation the ground for quashing the previous appeal decisions. (page 31)
 - Development Plan Provisions

In terms of grid connection and the cable route itself there are specific objectives namely which had been set out in full (see above) namely objectives ED6-1 and ED 6-2 (see above) which not only supports the sustainable development of the grid but of the necessity to at least consider the feasibility of undergrounding, or the use of alternative routes, especially in highly sensitive landscape areas. (page 31)

- Removal of the Existing Constructed 20kv Line and Wooden Poles
The letters of representation have stated that ESB have some difficult questions to answer. A number of the representations have essentially indicated that the wooden poles will be removed only to be put back in the exact same place. That is obviously not correct and whilst there is an entire section on the removal of the constructed 20KV line in the EIAR it does not state why this line is being removed since it cannot be retained under a Section 34 planning application with an EIAR and it would have been preferable to be more candid in order that the developer explained this to the public. (page 32)
- Undergrounding the 20KV Route along the Public Road Network
 - Objectives ED6-1 and ED6-2 of the County Development Plan 2014 have been set out in full (see above) since it has been inferred that that is a requirement underground the cable whereas in fact objective ED6-2 simply reminds of the "need to consider the feasibility of undergrounding or the use of alternative routes especially in landscape character areas that have been evaluated as being of high landscape sensitivity." The fundamental difference is "need to consider." (page 33)
 - However whilst acknowledging undergrounding beneath the road was previously approved by both Cork County Council and An Bord Pleanála on what are now quashed decisions, new advice has come to light which is now suggesting that the road network is not used for the laying of cables beneath it where possible as the report the Area Engineer dated 13th December 2021 clarifies. To this end the developer be required to reinvestigate the line of the route and its proximity to the road network and submit amended plans where necessary, and where possible. (page 33)
- Alternative Locations/ Route for the Cable
What would be highly useful for the decision maker, is for this issue to at least be explored, substantiated and justified one way or the other as a reasonable alternative study by the developer. It is therefore not considered unreasonable given the allegations that placing the new route right next to the existing route has been stated to be "absurd" for the developer to demonstrate this alternative option. Reasonable alternative may relate to matters such as project design, technology, location, size and scale. Indeed the Directive requires that information provided by the developer in an EIAR shall include a description of the reasonable alternatives, the reasonable alternatives which are relevant to the project and an indication for the main reasons for the option chosen taking into account the effects of the project on the environment. (page 35)
- Landscape and Visual Impact
 - The undergrounding of the three areas is largely considered appropriate providing always that the concerns of the Area Roads Engineer as cited above can be mitigated upon. (page 36)
 - It is concluded therefore that the overall the landscape impact is to an acceptable level a point which no doubt the developer will continue to

*stress which may result in few, if any changes, to the submitted scheme.
(page 36)*

- Archaeology

The Council's archaeologist has not raised a specific concern and it is concluded that the combined archaeological impact is limited, appropriate mitigations measures imposed to include a specific archaeological condition in the event of permission being granted. (page 38)

- Appropriate Assessment Screening Report

The planning application was accompanied by an Appropriate Assessment Screening Report at Appendix G red to be consistent and compliant with Article 6(3) of the Habitats Directive 92/43/EEC and to examine the potential effects of the projects or plans, either alone or in combination with other projects or plans, upon the conservation objectives of European Sites. That report has screened out any requirement for a Habitats Directive Appropriate Assessment in the form of a Natura Impact Statement (NIS) not least since there are no Natura 2000 site within the zone of influence and with the use of best practise constructions methods and appropriate planning conditions no indirect impacts to any Natura 2000 site are envisaged. The Heritage Unit in the report dated 13th December 2021 are in agreement that there is no stated requirement to carry out any Stage 2 Screening Appropriate Assessment. (page 40)

- Adequacy of the Environmental Impact Statement Report

- *This application was accompanied by an Environmental Impact Assessment Report and some 10 Appendices. It is considered that in the main it complies with the European Union (Planning and Development) Environmental Impact Assessment) Regulations 2018 including Article 94 Schedule 6 in, in so far as it contains a fair and reasonable assessment of the likely significant effects on the environment although a number of shortcomings have been identified, not least since it is somewhat convoluted and repetitious in parts. There is limited assessment of the alternative routes for the cable route from Ballylickey substation to Derreenacrinnig West Windfarm and the undergrounding of the entire route should at least be examined it would actually add much value to do to the reliability, or otherwise, of the scheme and the conclusions reached therein. In addition the Heritage Unit has required further information on a number of issues. (pages 40 and 41)*
- *The Environmental Impact Assessment Report also contains a Non-Technical summary contained and Appendices which is adequate. (page 41)*

- Assessment of the Likely Significant Effects Identified, Having Regard to the Mitigation Measures Proposed

- *The assessment set out above has considered the range of relevant likely significant effects with due regard given to the mitigation measures proposed in the event that the development proceeds. Set out below is a list of some of the most important mitigation measures considered*

necessary to address the range of potential significant impacts are arising from the proposed development. (page 42)

- *Human Beings Impact through noise, disruption and general distances during the construction phase that could be controlled through best practices and working conditions.*
- *Road network: Impact through disruption, heavy machinery and plant that can be controlled through working conditions and best practice.*
- *Surface water drainage proposals controlled through best practices and conditions.*
- *Conclusions Regarding the Acceptability or Otherwise of the Likely Residual Effects Identified (page 42 and 43)*
 - *The principal areas of concern are as follows:*
 - *The uncertainty regarding the alternative routes that have been considered for the cable supported by robust justification for the route selected.*
 - *The potential impact upon habitats and water quality.*
- *Having regard to the above comprehensive POR assessment, Further Information was recommended. This was agreed with the Senior Executive Planner who concluded "Having regard to the nature of the proposal and the interdepartmental reports on file, I agree with the recommendation of the Area Planner to seek Further Information."*

3.2 Planning Officers Report (POR) May 2022

Key elements of the POR are set out below:

- The Section "Response to Further Information" provides an assessment as follows:
 - *The Further Information, which was extensive, was received on the 4th April 2022 which included at itemised extensive information including the Kerry Slug dated March 2022 and a Surface Water Management Plan dated February 2022 and a letter dated 23rd February 2022 from a third party which disassociates previous stated objections raised. This further information was duly forwarded to internal consultees for further comment and further views have been submitted from the Area Engineer dated 5th May 2022 who has requested further information for a Construction Management Plan and detailed road survey where undergrounding of the cable is proposed. Both the Environment Unit (further report dated 20th May 2022) and the Council Ecologist (further report dated 26th May 2022 have now recommended permission subject to conditions details the planning history of both the proposed grid connection and the DWW. (page 1)*
 - *It is also advised that the Council archaeologist in a further report dated 19th May 2022 has recommended a grant of permission subject to two conditions regarding the appointment of a qualified archaeologist to oversee all works and for the submission of details of location of the stays for poles within the zone of the archaeological monument. (page 1)*
 - *Further Recommendation (pages 2 and 3)*

Having regard to the original assessment it is recommended that permission should be deferred for Clarification set out below.

- *Disturbance to the public road network and crossings including at Dromloughlin and beneath the road at Gleanareagh and other areas*
 - *Submit a Construction Management Plan*
 - *Submit a detailed survey (six copies) of the proposed sections of road where undergrounding is proposed*
- *This was agreed with the Senior Executive Planner who concluded the following:*
 - *I have examined the application documents and read the departmental reports received on file, including the Area Planner's assessment of the further information response submitted and recommendation to seek clarification of further information.*
 - *I have discussed the further information response with the Area Planner and I am satisfied the applicant has addressed Items 1, 2, 3, and 10 of the Further Information request to the satisfaction of the Planning Authority. The Area Engineer has recommended deferral for clarification of further information in relation to item no 4 of the further information request, which relates to the proposed undergrounding of cables beneath the public road. I note the Council Ecologist is satisfied with the further information response in relation to Items 5,6,7,8 and 9. I note the County Archaeologist and Environment Officer have raised no objection to granting permission for the proposed development.*
 - *Having regard to the nature of the proposal and the interdepartmental reports on file, I agree with the recommendation of the Area Planner to seek Clarification of Further Information in accordance with the requirements of the Area Engineer.*
 - *"Having regard to the nature of the proposal and the interdepartmental reports on file, I agree with the recommendation of the Area Planner to seek Further Information."*

3.3 Planning Officers Report (POR) October 2022

This report was prepared by the Senior Executive Planner – the key elements of the POR are set out below:

- *The further information responses received on the 04/04/2022 and 25/07/2022, were deemed to constitute significant further information, which was re-advertised in accordance with the provisions of Article 35 of the Planning and Development Regulations 2001 (as amended).*
- *Clarification of Further Information was sought by the Planning Authority on the 27/05/2022, following concerns raised by the Area Engineer regarding disturbance to the public road network and requesting the submission of a Construction Management Plan and a detailed survey of the proposed sections of road where undergrounding is proposed. The Area Engineer has assessed this further information response and raised no objection to permission being granted subject to conditions.*
- *The Area Engineer, Council Archaeologist and Environment Officer's reports on file have recommended a grant of permission subject to conditions.*
- *The Council Ecologist has concluded that the proposed project will not adversely affect the integrity of any European site, in view of the sites Conservation Objectives and has recommended a grant of permission subject to conditions. It is considered that the responses received have addressed the issues highlighted in the further information request relating to the submitted EIAR and the requirements of the EIA Directive have been satisfied.*

- *It is therefore considered that all outstanding issues have been addressed to the satisfaction of the Planning Authority. Having regard to the positive inter-departmental reports received on file which raise no objection to this proposed development, permission is recommended subject to appropriate conditions.*
- *This was agreed with the Senior Planner who concluded "The response received following the clarification of further information request is noted as are the supplementary interdepartmental reports, the report of the Senior Executive Planner and the submissions received. As all outstanding issues have now been addressed and there is no further concern raised by the Area Engineer, I concur with the recommendation of the Senior Executive Planner to grant permission for the subject development."*

Planning Permission was granted on 18th October 2022.

4. Issues Raised in the Appeal

The issues raised in the appeal, and in submissions made during the CCC planning process fall within the following headings:

- Failure to consider alternatives.
- Alternative processes.
- Consultation undertaken for the EIAR.
- Contradictions in the Non-Technical Summary.
- Key Planning Policies – CCC Development Plan 2014.
- Is the development a grid connection or a wind farm.
- Impact on local tourism.
- 3rd party submissions.
- Concluding statements.

In addition to the documents prepared by the 3rd party appellant, he includes various observations made by other 3rd parties. This appeal is not made in the names of those 3rd parties but solely in the name of the appellant so it is unclear whether those other parties' grounds are actually part of the appeal or not.

5. Response to Issues Raised in the Appeal

5.1 Failure to Consider Alternatives

The POR October 2021 concluded that:

"What remains missing in the EIAR is that no option has been put forward for the complete undergrounding of the cable route as many of the letters of representation have submitted. What has been examined to date is a "mix of both." Clearly it was previously acknowledged in the decision by An Bord Pleanála and their Senior Inspector that Option 1 was the preferred and acceptable route." Clearly the matter will not go away, as the many letters of representation have indicated, and it is simply not

known at this juncture whether or not the complete undergrounding of the cable is a viable alternative or not and whether it will have greater or lesser environmental constraints.

What would be highly useful for the decision maker, is for this issue to at least be explored, substantiated and justified one way or the other as a reasonable alternative study by the developer. It is therefore not considered unreasonable given the allegations that placing the new route right next to the existing route has been stated to be "absurd" for the developer to demonstrate this alternative option. Reasonable alternative may relate to matters such as project design, technology, location, size and scale. Indeed the Directive requires that information provided by the developer in an EIAR shall include a description of the reasonable alternatives, the reasonable alternatives which are relevant to the project and an indication for the main reasons for the option chosen taking into account the effects of the project on the environment.

Whilst ESB believed that this issue was adequately addressed in the EIAR, we provided more detailed information through the response to the RFI in March 2022 and the CFI in October 2022.

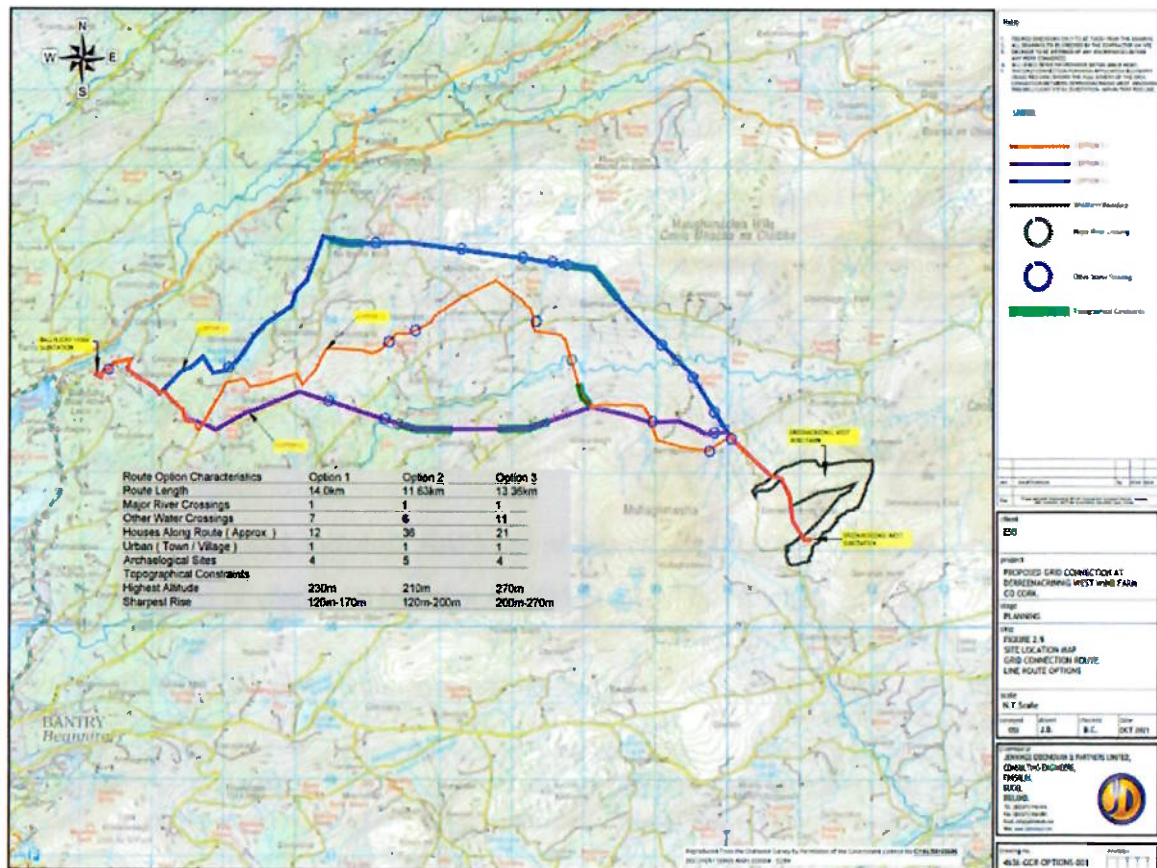
5.1.1 Alternatives as Considered in the EIAR October 2021

The alternatives as considered in the EIAR are referred to initially in EIAR Section 2.16.3 Grid Connection Alternatives as follows:

In Ireland, connecting into the national grid is the statutory responsibility of the Commission for Energy Regulation (CER) with the Enduring Connection Policy (ECP) process largely influenced by national policy and the need to provide capacity on the national electricity grid for renewable energy production. In processing connection applications and modifications, ESB and / or Eirgrid must give due consideration to the efficient development of the transmission and distribution networks but must also give due regard to the environment.

Prior to the commencement of development of the as built grid connection, a number of alternative grid connection routes were considered as part of a high-level assessment. Key consideration was given to environmental matters. For example, some locations had more inherent environmental sensitivities than others. It was possible to avoid such routes in favour of a route which has fewer constraints and more capacity to sustainably assimilate the grid connection.

Following the omission of two of the routes as a result of the technical and environmental considerations, a more detailed analysis was carried out in EIAR Section 2.16.4 of the preferred route as summarised below.



Option 1

Option 1 was considered to be the preferred route option as it posed the least environmental constraints and was a more cost-effective option than Option 2 and 3. In terms of residential amenity it was the route which encountered the least number of residential properties in comparison to Option No. 2 and No. 3. The levels along the route are more favourable when compared to Option No. 2 and 3.

Option 2

Option 2 located to the south of the site of The Derreenacreenig West Wind Farm was discounted on the basis that it is located in close proximity to a number of archaeological sites. There are a number of dwellings along this route which were not receptive to the proposals and on that basis that option was discounted.

Option 3

Option 3 located to the north of The Derreenacreenig West Wind Farm was discounted because of topographical constraints relating to steep gradients and irregular landform. The route explored as part of option 3 entailed a number of stream and river crossings.

The conclusion of the consideration of alternatives resulted in the selection of Option 1 to bring forward for full EIAR.

5.1.2 Alternatives as Considered in the RFI March 2022

The POR December 2021 resulted in a RFI which sought further information in relation to alternatives as follows:

While the Planning Authority notes that three options for the alternative transmission line/cable route have been examined, the developer is invited to consider submitting reasoned justification, supported by evidence, as to whether the complete undergrounding of the cable is a viable alternative or not and whether it would have greater or lesser environmental constraints and to submit such information as to whether this alternative has been explored. Reasonable alternatives may relate to project design, technology, location, size and scale and the Directive requires that information provided by the developer in an EIAR of the reasonable alternatives are relevant to the project with an indication of the main reasons for the option chosen taking into account the effects of the project on the environment.

Consideration of Full Undergrounding

RFI response pages 2 and 3 provide the background as to why grid connections are not generally placed underground. This is based on ESB's statutory requirement to design the Least Cost Technical Solution (LCTS) in the first instance.

It is industry standard practice for medium voltage circuits, such as the proposed grid connection associated to this planning application to be provided utilising overhead line technology.

Overhead lines are deemed both efficient and reliable for typical distribution/transmission connections. The technology has long been adopted by ESB's and global electrical power system operators and is preferred technical solution for grid connections across open countryside such as that encountered between Ballylickey ESB station and Dereenacrinnig Windfarm site.

Developments of this nature have established installation, operation, maintenance and fault repair methods which can be carried out in relatively short timeframes.

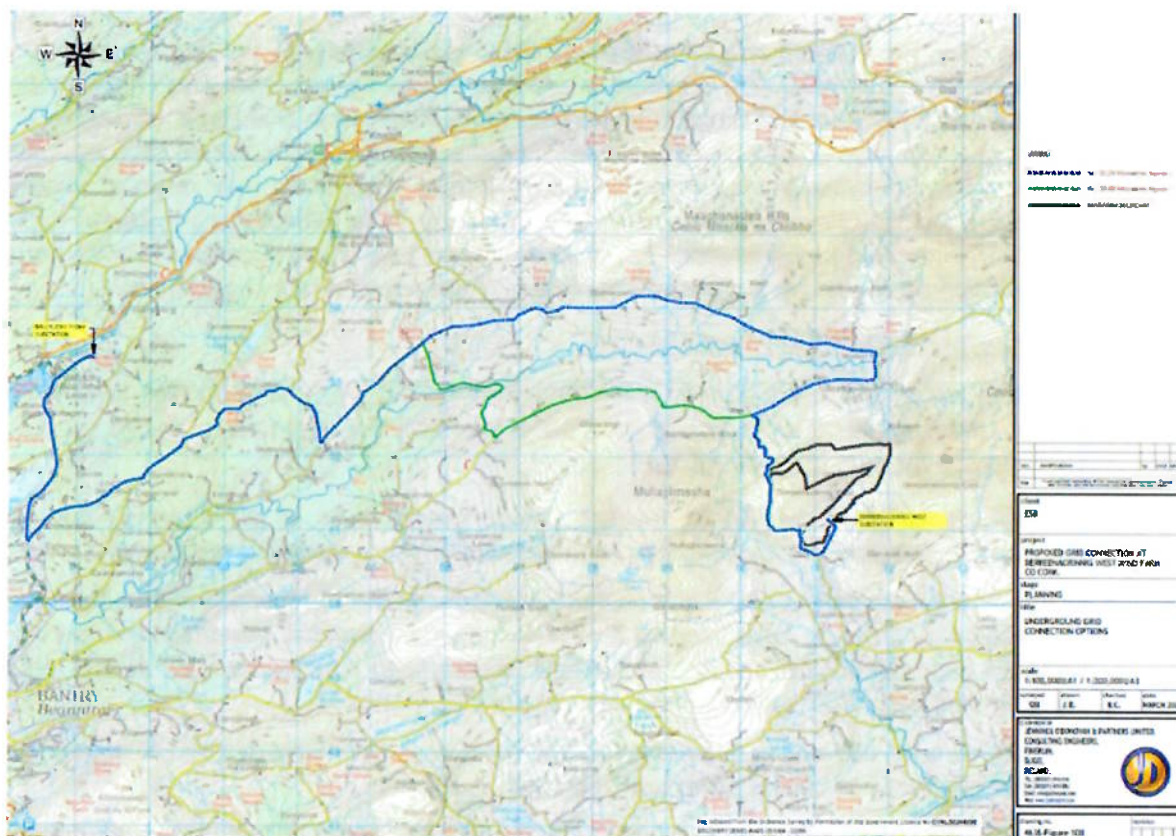
Medium voltage connections or sections of the circuits can also be placed underground using ducting and trenching and while the technology is also technically acceptable and proven, fault identification and associated repairs and maintenance of underground cables typically take far longer to resolve. The placing of cables underground is also considerably more expensive to develop and repair.

It is commonplace across Ireland's medium voltage network for connections to be made up of long sections of overhead line with or without sections of underground cable connecting ESB stations on the network to generation locations such as windfarms or solar farms. In more populated or developed areas it can be commonplace for sections of the grid connections to be undergrounded due to constraints such as clearance from buildings, topography, existing larger services/conflicts, access/landowner issues or other constraints such as archaeology and environmental considerations.

With a grid connection agreement in place between Dereenacrinnig Windfarm and ESB Networks (ESBN), it was important for the applicant and ESN to consider a number of alternative grid connection layouts and routes which included a full underground route of the grid connection.

RFI response pages 3 to 8 provided more detailed analysis of the consideration of a full undergrounding of the grid connection as follows.

An assessment of a full underground grid connection was undertaken by the Applicant as part of the EIAR at an earlier stage. Two underground routes were assessed 1a and 1b as depicted on Drawing 4636 Figure 100.



There are multiple routes utilising the public road to route the underground cables to Derreenacrinning West Wind Farm from ESB's Ballylickey station. The two underground options reviewed were the most practical and where possible, routed west to east from Ballylickey ESB station to the wind farm site.

The two potential routes explored as part of The EIAR are set out in Table 1.1 and are shown in Drawing 4636 Figure 100. As can be seen from Figure 100, Options 1a and 1b share the same route before diverging south at Ards More.

Route 1a is approximately 22.3km and route 1b is approximately 20km. Both the potential routes from Ballylickey substation traverse along public roads for over 20km to the wind farm site.

Table 1.1 Underground Route Selection Criteria

Route Characteristics	Route 1A	Route 1B
Length of route	22.3km	20km
Natura 2000 sites (SPA/SAC)*	Over 5km from route	Over 5km from route

Existing infrastructure	Almost entirely within public roads including a section of N71 secondary route road south from Ballylickey	Almost entirely within public roads including a section of N71 secondary road south from Ballylickey
Impact of diversions during construction	The expected construction period would last approximately 6-10 months and would result in significantly more disruption to residents and road users as a result of road closures	The expected construction period would last approximately 6-9 months and would result in significantly more disruption to residents and road users as a result of road closures
Residential Properties Along the Route	118 residential properties along the route	121 residential properties along the route
Water crossings	There are approximately 20 water crossings along the route. The grid connection involves the crossing of the Mealagh River in four locations which may involve directional drilling across the river.	There are 14 water crossings along the route. The grid connection involves the crossing of the Mealagh River in two locations which may involve directional drilling across the river.

Landscape and Visual Impacts

While it is acknowledged that underground cables have a reduced visual impact when compared to overhead lines however the construction phase of the cable installation ground works will disturb some natural features and where possible directional drilling may be required, construction access and land reinstatements are necessary.

Repairs and Maintenance

Overhead lines allow for easier repairs when required and have a range of advantages that make them the default option for transmission and distribution system operators.

Overhead electricity line technology is a recognised and established and a reliable method for energy transmission.

Compared to underground cables, construction and access for maintenance purposes for overhead lines can typically be carried out quicker and easier.

Underground cables can present more complicated fault location issues and the repairs of cables typically require longer outage durations on the circuits and associated ground works where required.

Proximity to European Sites

Neither of the proposed underground grid connections traverse any European Sites as demonstrated in Drawing 4636 Figure 101 enclosed. The nearest European Sites are Glengarriff Harbour and Woodland SAC (c.8km), Derryclogher (Knockboy) Bog SAC (c.7km) and The Caha Mountain SAC (c.8km).

Construction Methodology for Underground Grid Connection

The construction methodology for the underground grid connection is documented in section 2.7.5 of the EIAR and in the Construction Method Statement prepared as part of the EIAR.

The 20kV underground power cable construction type is 20kV XLPe cable to be ducted according to ESB Network's 'Specification for the Installation of Ducts & Structures for Underground 10-20kV Power Cables & Communication Cable'. The 20kV power cable will be laid in a single 125mm diameter uPVC duct in a cable trench.

A 100 metres section of trench will be developed at any one time. The second 100 metres will only be excavated once the majority of reinstatement has been completed on the first. The excavated trench will be approximately 325mm in width and 950mm deep. Trackway material within the temporary working area will be stripped and stockpiled adjacent to the excavation. Subsoil will be stockpiled separately.

The underground grid connection option would result in the excavation of 31 m³ of spoil for each 100 metre section of duct in roadways. This spoil will be largely existing access road construction material and competent subsoil material.

This material will be removed from site as it is being excavated and will be transported to a fully licensed landfill for disposal.



Plate 1: Typical Trench Construction within roads Ducts

Ecological Impacts

The installation of a full underground grid connection would potentially result in a greater environmental impact and would have the most significant ecological impacts when compared with the construction and removal of the Overhead Line. For example, trenches need to be excavated and access to the construction site has to be cleared for heavy machinery required for cable transportation and trenching.

Construction works associated with underground grid connections may also cause soil compaction, which in turn can have considerable negative impacts on biodiversity.

The underground grid connection options would potentially require directional drilling in one location across the Meallagh River. Directional drilling is the practice of drilling holes in a non-vertical direction for the laying of ducts which contain cables beneath features such as watercourse and where using standard installation methods is not possible. Adverse environmental impacts can occur from the inadvertent release of drilling fluids during directional drilling. This contributed to the decision to select the preferred route as part of the planning application.

Traffic Disruption

For a project of this size, a full underground grid connection of 20-23Km, almost entirely within public roads including a section of national road (N71). This would result in significant disruption to traffic during construction. Traffic plans would need to be in place to identify and resolve any foreseeable problems. During construction, local access to dwellings and businesses would be maintained and works will move at approximately 30 to 50 metres a day, meaning people can reasonably expect to have work directly outside their house for limited periods of time. By comparison, the preferred proposal would result in significantly less traffic disruption and impacts on residential amenity.

Archaeological Constraints

Consideration was given to archaeological sites along the route. There are a number of recorded archaeological sites located within 100 metres of the underground grid connection routes which could be potentially impacted by the grid connection.

Conclusion

The provision of overhead line for developments of this nature is the established industry standard. The preferred grid connection route is considered to be the optimum and least environmentally sensitive arrangement available to transport renewable electricity from the permitted Derreenacrinnig West Wind Farm to the national grid.

The proposed development has been arrived at after a detailed iterative analysis, examination and evaluation of environmental and technical considerations, including an assessment of various alternatives including the underground grid connection identified above.

The provision of a full underground grid connection would result in more disruption to residents as a result of road closures and construction works in close proximity to dwellings during the construction period.

In addition, the construction of a full underground grid connection would result in the removal of a significantly larger amount of excavated material than the preferred route now before the local authority.

Having regard to the above, it is considered that a rigorous route selection, in line with The EIA Directive, was carried out before arriving at the Preferred Grid Connection route now before the local authority.

5.2 Alternative Processes

The appellant relates this point to the issue of undergrounding as an alternative to an overhead line and states that the analysis in the EIAR misses the point and does not appear to have been considered by the planner.

The issue of undergrounding both in full and in part has been comprehensively addressed throughout the application and has been clearly considered by the planner as evidenced in the POR October 2021 and in the request for further information (RFI) and the clarification request for further information (CFI).

In considering this ground for appeal, the Board should consider the issue under the heading 5.1 (alternatives considered) as this is more appropriate for the type of development proposed as the transmission of electricity by way of any electrical circuit whether underground or overhead does not involve any process. The issue of alternatives is addressed as above.

5.3 Consultations Undertaken for the EIAR in August 2021

In his appeal the appellant refers to a number of 3rd party submissions. Under this particular appeal ground he appears to be stating that in the absence of responses from statutory authorities to the applicant's EIAR consultation letters in August 2021, that this renders the application premature.

As the Board will be aware, EIA is a process that starts when the developer commences the assessment. As part of any EIAR it is normal to write to a variety of statutory agencies in order to scope out the key issues for the EIAR, some agencies respond whilst others do not. The lack of a response from an agency at this stage does not necessarily reduce the quality of an EIAR as the developer will be carrying out a range of assessments. When the developer submits the planning application it is then referred to variety of statutory agencies by the planning authority. This allows the views of those agencies to be considered by the planning authority. In this case responses were made by the Inland Fisheries Ireland, Geological Survey of Ireland and Health and Safety Executive. CCC internal departments provided comprehensive assessments at all stages.

It is considered that this ground of appeal is irrelevant to the decision of CCC to grant planning permission.

5.4 Contradictions in the Non-Technical Summary (NTS)

This appellant points out what he believes to be various contradictions in the NTS focussing on the topics of landscape and visual on page 23, material assets on page 25 and conclusions on page 28.

The POR October 2021 states the following in relation to the EIAR *"The Environmental Impact Assessment Report also contains a non-Technical summary contained and Appendices which is adequate."*

Therefore, notwithstanding any alleged contradictions in the NTS, it has been deemed by CCC to be adequate. Suggestions that public participation has in some way been hindered as a result of this are not substantiated. Public notices (both site and newspaper) were published on three occasions, prior to the application seeking views in relation to the EIAR, with the application in October 2021 and advising of significant further information in August 2022. Given the many public notices and the submissions made by the public at each stage of the process it is clear that public participation has not been hindered in any way.

It is considered that this ground of appeal is irrelevant to the decision of CCC to grant planning permission.

5.5 Key Planning Policies Cork CDP 2014

The appellant again refers to a 3rd party submission and refers to how planning policies were listed in the EIAR and his interpretation that undergrounding has not been considered in the EIAR.

The POR October 2021 provides a comprehensive assessment of the relevant CDP policies as they relate to new electricity transmission networks as follows:

Development Plan Provisions

In terms of grid connection and the cable route itself there are specific objectives namely which had been set out in full (see above) namely objectives ED6-1 and ED 6-2 (see above) which not only supports the sustainable development of the grid but of the necessity to at least consider the feasibility of undergrounding, or the use of alternative routes, especially in highly sensitive landscape areas. (page 31)

Objectives ED6-1 and ED6-2 of the County Development Plan 2014 have been set out in full (see above) since it has been inferred that that is a requirement underground the cable whereas in fact objective ED6-2 simply reminds of the "need to consider the feasibility of undergrounding or the use of alternative routes especially in landscape character areas that have been evaluated as being of high landscape sensitivity." The fundamental difference is "need to consider." (page 33)

The POR states on pages 33 – 35 that:

The EIAR at para 2.16.4 and the Route Analysis makes it clear that :

"A number of options were explored for the Grid connection as part of the EIAR. Consideration was given to various grid connection routes alternatives. Both overhead and underground cables (and/ or a mix of both) were considered to be technically feasible and viable alternatives for this project." What remains missing in the EIAR is that no option has been put forward for the complete undergrounding of the cable route as many of the letters of representation have submitted.

What would be highly useful for the decision maker, is for this issue to at least be explored, substantiated and justified one way or the other as a reasonable alternative study by the developer. It is therefore not considered unreasonable given the allegations that placing the new route right next to the existing route has been stated to be "absurd" for the developer to

demonstrate this alternative option. Reasonable alternative may relate to matters such as project design, technology, location, size and scale. Indeed the Directive requires that information provided by the developer in an EIAR shall include a description of the reasonable alternatives, the reasonable alternatives which are relevant to the project and an indication for the main reasons for the option chosen taking into account the effects of the project on the environment.

The assessment of the issue in the POR resulted in a RFI and CFI which deals with the issues of alternatives as and how the current proposal complies with the relevant CDP policies.

In considering this ground for appeal, the Board should consider the issue under the heading 5.1 (alternatives considered) as ultimately this point seems to be related to alternatives. The issue of alternatives is addressed as above.

5.6 Is the Development a Grid Connection or a Windfarm

ESB can confirm that the proposed development is a grid connection as stated in the public notices. The statutory role of ESB is that of the distribution system operator (DSO), it does not have a statutory role in generation.

References in the EIAR to the proposed development contributing to climate change should be read in the context that if a windfarm cannot connect to the national electricity grid the windfarm cannot contribute to climate change and the grid connection is in that context intrinsically linked to the windfarm. This is acknowledged in the POR October 2021 at page 39 as follows:

The positive benefit of the windfarm development is that it should bring positive benefits to air quality not least due to windfarms replacing otherwise fossil fuels. In the long term this is expected to have a significant long term positive impact cumulatively and such a benefit is simply highly consistent with the national approach as recently outlined in the government white paper "Ireland's Transition to a Low Carbon Energy Future 2015-2030" and the commitment to green energy. Without the electricity cable in this instance there can be no positive benefit to even contemplate.

It is considered that this ground of appeal is irrelevant to the decision of CCC to grant planning permission.

5.7 Impact on Local Tourism

The appellant again refers to a 3rd party submission which discusses St. Finbars Way walking route. It is suggested that the EIAR has ignored the impact on major recreational walking trails. EIAR Section 4.4.5 Tourist Attractions within Study Area 1 Development Site and Environs (10km) notes that *"There are many walks and drives in the surrounding area"* and in Section *"The Development will not interfere with any scenic routes Fáilte Ireland published guidelines in 2011 for the treatment of tourism in an EIA, which describes the effects of projects on tourism. Many of the issues covered in the report are similar to those covered in this EIAR, for example, scenery is assessed in Chapter 10: Landscape and Visual Amenity."*

The POR October 2021 does not identify tourism as likely to experience significant impacts.

5.8 Comment on 3rd Party Submissions

The appellant copies in various 3rd party submissions made during the planning process. The planning appeal is not made in the name of any of these parties.

It is suggested that CCC have not give adequate consideration to the 3rd party observations. It is clear from the all the PORs that all submissions have been considered in some detail, and the RFI and the CFI reflect many of the issues raised in the 3rd party submissions.

5.9 Concluding Statements

It is suggested that CCC have failed to carry out a proper EIA and that normal planning requirements have not been applied to this application.

It again raises the issues of alternatives and alleges that ESB is attempting to circumvent the decision of the High Court.

It suggests there are no conditions to monitor or insist on the removal of existing works.

It discusses the planning history of the existing grid connection elements.

It suggests that the existing poles have been constructed illegally and ESB is reluctant to comply with planning law.

All of the above have been clearly considered in the planning application documents and in the CCC PORs. The POR notes on page 4 the background to this application as follows:

At Ballylickey ESB substation which is located around 14.8 kilometres away to the west and in the past and in recent years overhead lines have been constructed stated to be on 138 wooden poles. That development was permitted by Cork County Council and by An Bord Pleanála but was the Judicial Review which was allowed with the planning decision being quashed and therefore this application seeks to rectify that Judicial Review decision by seeking planning permission for the following development.

The removal of the existing grid connection and for new works to provide a new grid connection over a distance of approximately 14.8km in length between the existing Ballylickey ESB substation and the permitted Derreenacrinnig West Windfarm.

The proposed development involves the following works:

(a) The removal of approximately 9.5 km of 20 kV of the overhead line along the route that will consist of the removal of 138 wood poles, ranging from 9.0 metres to 12.5 metres above ground, supporting electrical conductor lines and ancillary structures and equipment.

(b) Following removal of the overhead line a new overhead line would be constructed some 10.8 kilometers in length being 20KV it has been indicated that this would be in the order of 157 wooden poles again ranging from 9 metres to 12.5 metres above ground , electrical conductor lines and ancillary structures and equipment.

(c) The installation of approximately 4 km of underground cable ducting and associated electrical cabling, and all other ancillary works including joint bays, culverts, marker posts and all associated developments.



And on Page 29 the following:

This new application is not considered 'premature' as suggested but has resulted in a rather convoluted and messy arrangement and the wider ramifications O'Grinna decision and the Judicial Review. Whilst the 2006 Windfarm Guidelines remain in force and remind that they becoming even more unfit for purpose since the ruling of Mr Justice Peart the case of Pol O Grianna and others v An Bord Pleanála in December 2014.

It would have been possible for ESB to have gone down the Substitute Consent route again with this revised scheme. As the minutes of the pre planning meeting on the 24th June 2021 record, set out in the appendix for reasons of transparency, they have not done so based on their own legal advice.

The numerous planning conditions and mitigation measures in the EIAR equally applicable to the removal as well as the construction of the grid connection so clearly protection of the environment will be a key feature of any works, if permitted by the Board.

6. Conclusions

ESB and CCC have followed all statutory processes and requirements in relation to this planning application.

It is submitted that the issues raised in the appeal are not new and have already been raised during the planning application process. It is further submitted that these issues have already been addressed in various documents during the planning application process.

The RFI and the CFI and associated response in particular have ensured that the CCC had adequate information available to them to complete the EIA process resulting in the Notification of the Decision to Grant Permission in October 2022.

Finally, it is submitted that ABP have all necessary information available to them to grant planning permission for the proposed development.

If you have any queries please contact me at Brendan.allen@esb.ie or 086 8336990.

Yours faithfully,

Brendan Allen FIPI

Planning Team Leader