

AN BORD PLEANÁLA

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Carrigdangan
Kilmichael
Macroom
Co. Cork
P12 P281

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

Re. Case number ABP-307939-20: Substitute consent for the Cleanrath Windfarm development, Townlands of Reananerree, Cloontycarthy, Cleanrath North, Derrineanig, Cleanrath South, Milmorane, Coombilane, Rathgaskig, Augeris, Gorteenakilla, Carrignadoura, Gurteenowen, Gurteenflugh, Lyrenageeha and Lackabaun, Co. Cork.

A Chara,

I am responding to the call for submissions from the public about the above development and wish to register my opposition to the granting of substitute consent.

The appellants, MKO on behalf of Cleanrath Windfarm Ltd, refer to the conditions stated in the Planning and Development, and Residential Tenancies, Bill 2020 which are:

- a) "whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive"
- b) "whether the applicant had or could reasonably have had a belief that the development was not unauthorised"
- c) "whether the ability to carry out an assessment of the environmental impact of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired"
- d) "the actual or likely significant effects on the environment or adverse effect on the integrity of a European site resulting from the carrying out or continuation of the development"
- e) "the extent to which significant effects on the environment or adverse effect on the integrity of a European site can be remediated"
- f) "such other matters as the Board considers relevant"

I would like to point out first of all that I cannot see any exceptional circumstances provided by MKO regarding the Cleanrath Windfarm development. Nor has there has been any attempt to address any of the issues raised in the various court cases and they have provided nothing to refute the findings of the Supreme Court decision S:AP:IE:2018:000167. Section 4 of that ruling states:

"In this case, one of the matters which the applicants sought to argue was that the guidelines were inadequate and out of date, and also to argue for lower levels of permitted noise from windfarm developments. The Inspector appointed by the Board considered this submission irrelevant, and it appears the Board adopted the Inspector's report in this regard. This court decided, in essence, that while the Board could consider and, if it considered it appropriate, reject the submission made on behalf of the applicants, it was not entitled to reject it as irrelevant. Accordingly, the court concluded that the decision of the Board to grant planning permission was invalid."

It is of concern to me that the Board can so easily adopt findings that are dismissed as "irrelevant" without appropriate or adequate investigations. I fear that this will be the case here, where the

develop have submitted a request for substitute consent without providing any substantial exceptional circumstances. They have submitted the required remedial EIAR and NIS but have they conducted thorough surveys and investigations that would satisfy a majority of ecologists? Have they taken the necessary time to ensure there are no species of special interest in the area?

Regarding a) "whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive" I have concerns because the review of the EIA Directive says itself on the website that

"the Environmental Impact Assessment Directive (known as the EIA Directive) should be adapted to reflect the experience gained as well as changes in EU legislation and policy, and European Court of Justice case law."

Research is ongoing with regards to impact of wind turbines, for example the recent NPWS research published about bat migration:

(<https://www.academia.edu/11569595/>

How_to_mitigate_impacts_of_wind_farms_on_bats_A_review_of_potential_conservation_measures_in_the_European_context).

More research is also needed on the impact on hen harriers as the habitat around the Cleanrath windfarm is potentially suitable for hen harriers. There are questions raised by many ecologists about whether EIARs conducted are thorough enough. Windfarms in potential hen harrier habitats would contravene the Habitats Directive as well as other species like bats. MKO state they have submitted further evidence (remedial Natura Impact Statement and a remedial Environmental Impact Assessment Report) as part of their appeal on the grounds of exceptional circumstances but these have not had appropriate public scrutiny and are exercises in repetition and box ticking. As stated above, there are concerns that EIAs need to be adapted, as stated on page 60 of the NPWS bat migration research.

Regarding b) "whether the applicant had or could reasonably have had a belief that the development was not unauthorised" MKO write in the letter that they got permission from the Board for the windfarm but this decision was appealed and they should not have commenced works while appeals were ongoing and it is my contention therefore that any development while appeals were ongoing is therefore unauthorised. Cleanrath Windfarm Ltd were overconfident and bullish in their decision to go ahead with the development given the local opposition and ongoing appeals and court cases. There were serious allegations about noise and proximity that were being addressed. What precedent does it set if a development can proceed while a case is being submitted to and decided in the Supreme Court? The developers are not a small business, but part of a larger company (Enerco Energy Ltd) with a large portfolio of developments and they knew exactly what they were doing.

Regarding c) "whether the ability to carry out an assessment of the environmental impact of the development for the purpose of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired" it is my opinion that the public participation process is flawed and that planning proposals are inadequately displayed and publicised and that developers could do more to make their plans available to members of the public and particularly those communities closest to the development. By creating smaller sub-companies, i.e. Cleanrath Windfarm Ltd which is actually under Enerco Energy Ltd, there is, in my opinion, an attempt to confuse communities about who is operating and how to communicate with these developers. As stated above, assessments of the environmental impact are inadequate, the surveying times are not long enough, particularly regarding bats, as mentioned in the above NPWS research which states that bats need to be surveyed at several different periods during their life cycles (roosting, breeding etc). Hen harriers as well require

intensive surveys which are conducted throughout the year with surveying lasting several hours each time. Can the Board be satisfied this has been carried out and also, several years have passed since the original EIA was conducted. Furthermore, communities are currently becoming increasingly overwhelmed by planning proposals, many of which are coming from the same address in Lissarda (Enerco) and extensions are being applied for and there is too much obfuscation by the wind developers as to their overall plans for the area and the impact on communities and habitats/wildlife.

Regarding d) "the actual or likely significant effects on the environment or adverse effect on the integrity of a European site resulting from the carrying out or continuation of the development", the development is one of many in habitats that have been marked out as being of potential significance to hen harriers. Bat species are also found in this area and the impact on wind turbines for both bird and bat species needs to be updated, particularly as the size and density of developments have increased at an exponential rate in the last five years. The hen harrier is critically endangered and the country is trying to encourage and earmark potential habitats for them to expand into. This area, the Shehy hill range, has been earmarked as potential hen harrier habitat and yet this is the exact same area that is being heavily developed and indeed there are extant hen harriers in the Shehy hill range further away from this development. MKO and Cleanrath Windfarm Ltd cannot possibly claim to know there is no adverse impact on species like hen harriers when there have been no appropriate surveys done and, even if there are no hen harriers, they cannot claim to not adversely affect a species that is critically endangered and is losing habitat despite directives to try to encourage their expansion. They cannot expand into a landscape dominated by wind turbines. And it is not just wind turbines, but the roads that are built to service the turbines that eat into habitat and provide a disturbance for potential nesting hen harriers (which are ground nesting and very sensitive to disturbance. Minimum 500m buffer zones are required when surveying them, for example).

Regarding e) "the extent to which significant effects on the environment or adverse effect on the integrity of a European site can be remediated" MKO state remedial assessments were carried out, as mentioned above. But again, they cannot guarantee the impact on hen harriers. Absence of evidence is not evidence of absence. Much windfarm development is considered to be highly insensitive by many ecologists and biologists and research cannot currently keep up with the rate of development. A species that has been recently absent from an area due to habitat loss is now finding that potential habitats are instead populated by windfarm developments. Some species can adapt to this, but many, including hen harriers, are particularly sensitive to such developments.

Regarding f) "whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development". As stated above, the development was being challenged and appealed and by relying on earlier permission granted by the Board to build the windfarm they are themselves invalidating their current request because they are requesting exceptional circumstances despite the ruling of the Supreme Court. This would be a very different situation if they had not gone ahead with the development but the fact they are relying on earlier permission but are also ignoring the outcome of the Supreme Court suggests that this was a premeditated act by Cleanrath Windfarm Ltd who had hoped to proceed with the development despite objection, appeals, and due legal process, because they hoped to make use of the exceptional circumstances justification. It sets a very poor precedent and makes a mockery of due process and the rights of local communities and the legal requirements and best practice that developers should adhere to.

Regarding g) "such other matters as the Board considers relevant". This is not a one-off development but part of a large portfolio of developments by a large company that potentially impacts on several communities across the country. Exceptional circumstances should not just include the minutiae of a single development by one company but should consider the impact on

future developments by said company and the due legal process they should adhere to. If they are granted substitution on the grounds of exceptional circumstances based on prior permission being granted, what exactly is to stop future developments at any point in the appeals process if they can rely on such a, for want of a better word, loophole? It makes a mockery of the appeals process and our court system. Their developments are, after all, using the same grounds and circumstances each time and yet they impact on different communities and different habitats each time. There needs to be more done to distinguish between developments, and the unique habitats at each location need to be given due regard in the planning process. The EIAs and other assessments carried out are almost identical and this raises serious questions and concerns about their efficacy and comprehensiveness. They have not adequately stated exceptional circumstances except that they went ahead and proceeded with the development despite the case being appealed in court. The remedial NIS and EIARs are requirements stipulated under the terms of the amendment to the Planning and Development, and Residential Tenancies, Bill 2020, but they have not provided any other exceptional circumstances that should assuage concerns that should justify such exemptions being granted.

MKO state that they fulfilled the requirements of the granting of permission by the Board in a previous ruling on the 19th of May 2017 when they proceeded to complete the developments at Cleanrath despite the matter being appealed, a request for judicial review, and being referred to the Supreme Court. They have claimed that they are at risk of huge financial loss because of losing eligibility for the REFIT scheme. I would argue it would be prejudicial to consider only the impact on the developer rather than the appellants of the Supreme Court case, Klaus Balz and Hanna Heubach, not to mention the community as a whole who are impacted. If it were always to be the case that it is the party who may lose the most financially, then this would tip the balance of favour to the side of developers and wealthy individuals against ordinary citizens. Clearly this is not the case, fortunately, and so such considerations are part of the process that developers have to face and they do not always go according to the developer's plan. But their rewards are when they do and they stand to make large profits. In this case, the Supreme Court ruled against them.

I would urge the Board to reject this application because there have been no exceptional circumstances provided and the developers acted in bad faith knowing exactly what they were doing. To grant substitute consent in this case would set a bad precedent and would be extremely prejudicial.

Is mise, le meas,



Elizabeth Fleming

