

An Bord Pleanála,
64 Marlborough St.
Dublin 1.

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ABP-	
25 MAY 2022	
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Tony Miller,
Tooreen,
Dunmanway,
Co Cork.
20th May, 2022.

Re: ABP SU04.307939. Application for substitute consent for Cleanrath Windfarm Ltd.

Dear Sir/Madam,

I would like to make the following submission concerning the application for substitute consent made by MKO on behalf of Cleanrath Windfarm Ltd.

a). 'whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive.'

The needs and requirements of both these Directives are constantly evolving as experience and knowledge of impacts increase. The EIA required for this development was made over 10 years ago and a lot has changed since then especially with the recent declaration of a 'Biodiversity Crisis' by the current government. For example, Cleanrath and its greater area has been highlighted as Hen Harrier territory and the Hen Harrier is now one of this country's most critically endangered bird species.

b). 'whether the applicant had or reasonably have had a belief that the development was not unauthorised'

It can be accepted that the developers had secured planning permission for Cleanrath Windfarm. However, they also knew that Klaus and Hannah Heubach would explore every legal avenue open to them in an attempt to prevent this development being built so close to them. This included an appeal to the Supreme Court. The effect of the Heubach's being granted permission to go ahead in the Supreme Court was to effectively freeze the planning permission. The development should not have gone ahead and if it had started, it should have stopped. This would have been known by the developers.

Cleanrath Windfarm Ltd is part of the much larger Enerco Ltd of Lissarda, Macroom, Co.Cork which has a lot of experience in such legal matters. The decision to start and then to continue construction despite an on-going Supreme Court case would have been made at the highest level within the company with full knowledge of what they were doing. Management must have been either over confident or believed that a completed windfarm could easily get substitute consent if necessary.

I think this is exactly the sort of case that the European Court of Justice was considering when it brought Ireland before the court in case C-215/06. Access to substitute consent was further tightened by the Supreme Court in *An Taisce v An Bord Pleanála* in 2020. In this case there are no exceptional circumstances as the developers must have known exactly what they were doing when they began or continued with site works.

If substitute consent is granted this would set a precedent that even decisions of the Supreme Court can be safely ignored. Furthermore, where does this leave people like Klaus and Hannah who, at great personal cost, win in the Supreme Court only to have that verdict overturned by a *fait accompli* by the developer?

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.'

At the time of first lodging this planning application, public participation was always poorly advertised or encouraged. A public consultation evening was held many miles from the development area and was followed soon after with a planning application showing no attempt to respond meaningfully to any concerns raised. Such lack of consultation, in general, led government to intervene and propose stricter procedures with the Draft Windmill Guidelines. Local communities in this area have been overwhelmed with planning applications for windfarms, extensions to them, sub-stations and junction widening, by various companies, mostly all originating from Enerco in Macroom. This had led to a feeling of fatalism amongst the community which will be made worse if substitute consent is granted in this case.

f). 'Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development.'

This consideration is not an easy one to comment upon or to judge. This application is being made by MKO on behalf of Cleanrath Windfarm Ltd. Cleanrath is a company set up for this development only meaning it has no other planning history. However, it is in reality a part of Enerco and it would take a long, complicated search to see if any of Enerco's many other subsidiaries have been involved in other unauthorised developments or applications for retention.

Furthermore, as argued above, ignoring the Supreme Court case seems to have been a deliberate act made at the highest level within the company.

g). 'such other matters as the board considers relevant.'

I believe MKO has not shown that there are exceptional circumstances in the case of Cleanrath Windfarm Ltd that would justify substitute consent. Cleanrath Ltd and Enerco Ltd are experienced in the field and knew exactly what they were doing when they constructed the windfarm while it was being appealed to the Supreme Court. This was not an oversight. Granting substitute consent will set a precedent which would go directly against the European Court's recent ruling.

Yours sincerely,



