MAULAKIEVE
BANTRY
Co CORK

13 - SEPT. - 2020

AN BORD PLEANALA
64, MARLBOROUGH STREET
DUBLIN 1

ABP. - 307939 - 20

Tel 027 66092
email ianstephencollins@gmail.com

Dear Sir/Madam

I wish to offer a submission on the application for substitute consent lodged by Cleanrath Windfarm Ltd in County Cork. I understand there is no fee payable. I would be obliged if you could confirm receipt of this submission and confirm it will be considered. Telephone or email would be an acceptable method.

Yours Faithfully

IAN COLLINS

AN BORD PLEANÁLA
LDG- 030759-20
ABP-
15 SEP 2020
Fee: € Type:
Time: By: Exp Post

Submission by IAN COLLINS ABP. 307939 PI

In preface to this submission a pertinant quote from M'Kechnie in AN TAISCE and PETER SWEETMAN Supreme Court 01.07.2020

"(16) Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.

(17) Participation, including participation by associations, organisations and groups, in particular non-governmental organisations promoting environmental protection, should accordingly be fostered, including, inter alia, by promoting environmental education of the public.

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being."

This application is so complex at this stage that it fails any test to be understandable by an ordinary member of the public coming to it afresh. The lack of clarity in the copious documentation provided makes the task of meaningful public participation within what is effectively a four week period impossible. The lateness in uploading of these documents and the present unreliability of the postal service serve to further disadvantage any member of the public's participation and is against the principles if not the substance of the Aarhus Convention. There is also a complete lack of any tabulated index of all the other documents which maybe relevant in the previous planning applications, appeals to An Bord Pleanala (ABP) and the various court judgements in the Judicial Review proceedings which provide the context necessary to enable an understanding of this application for substitute consent.

Notwithstanding any of the above it is clear that this application must be taken as a completely new application for planning consent despite the wind farm having been partially constructed. Subsection (12) of Section 34 PDA 2000 makes it clear that exactly the same rules apply for permission to retain a development as would apply for seeking planning permission in the usual way. That is this must be treated as if the development has not been constructed. This obviously means the fact of its existance and the substantial investment involved cannot form a reason for it to be excused scrutiny in any way, nor can the developer expect any succour to be allowed by reason of his incurred expense.

This application to the Bord has already passed the 'test' for it being an 'exceptional circumstance' by passing the 'leave to apply for substitute consent' stage. That stage was not open to the public to express an opinion as to what might constitute 'excepional circumstance'. A dangerous precedent may be being established here as the Bord is inter alia accepting that a developer may ignore a judgement of the Supreme Court and carry on with a development pending the completion of a legal process purely on the grounds of avoiding a relatively small financial penalty. In this case a reduction of the extremely generous tariffs offered under the REFIT scheme to those slightly less generous tariffs available under the RESS scheme. In other words because the developer is such a substantial player in the provision of Wind generated electricity nationally (550 Mw installed, 180 Mw under construction and 400 Mw at various stages of development) he should not be inconvenienced by such trifling matters as a "planning consent which may be in breach of law" It is apparent that there can be no argument over the Bord's acceptance of this application despite the subsequent judgement 01-07-20 An Taisce -v- ABP, Peter Sweetman -v- ABP Supreme Court, that public participation must be able to take place at the 'Leave to apply for substitute consent' stage. If the leave to apply for substitute consent were being applied for today public participation

would have to be facilitated and this whole procedure could be questioned "in toto".

There is a further implication to be drawn from the Balz+Harbach judgement in the Supreme Court in that it is no longer sufficient to rely on any guidlines such as the WEDG 2006 or even the interim suggestions drawn from the Targeted Review, instead the inspector must take into consideration all information placed before him (Judgement sections 36-57) Therefor it is putting the inspector in an invidious position inasmuch as s/he is tasked with making judgements on all sorts of scientific arguments that s/he may have not sufficient expertise to decide upon and could conceivably make catastrophic mistakes which provided s/he had taken 'due consideration' of all the evidence would be unchallengable thereafter. In such complex cases as consideration of planning consent for large scale projects such as wind farms which involve contentious issues and large expenditures there is no equitable balance available between the resources of the 'public' and that of the developer. The system is open to abuse in as much as any particular consultant, by reference to his/her 'expert' standing, may advance opinions as to this effect or that consequence which forms a weighted argument to the inspector. Whereas should an ordinary member of the public wish to advance a contrary or merely different view they would have to engage an expert of equal standing to argue their case. As there is such a large disparity in the available resources to local objectors compared with a developer of almost endless means, in order for the objectives of Aarhus to be achieved there follows that there is a great burden placed on the Bord and its' inspectorate to investigate and assess each and every assertion advanced by a developer in his/her EIAR or rEIAR in the EIS. Transparency requires a full and detailed evaluation of each submission by a member of the public as consideration for their involvement.

There is another consideration which now exists which further undermines the reliance that has hitherto been placed on guidelines and County Development Plans, Landscape classifications and even national level plans such as NREAP. There is a European Court of Justice judgement of 25th June 2020 C24/19 which clarifies that orders and circulars of Member States that regulate the installation and operation of wind turbines constitute (in themselves) 'plans and programs' subject to environmental assessment under Directive 2001/42 when i) their adoption is regulated by national legislative or regulatory provisions; and ii) they are likely to have significant environmental effects. The Cork County Development Plan and the WEDG of 2006 both relied on in the EIAR and rEIAR are both without the required environmental assessments. Since this application for Substitute consent is to be necessarily viewed as a 'new' application it will be bound by this decision as a matter of course.

Furthermore even if this must be viewed as a new application for planning permission the submissions by various members of the public concerning a wind farm on this site going back to the original planning consent application 11/5245 must be reconsidered as the public may not be adequately informed that the procedure being followed here would require them to make new submissions. It is necessary to do this because the process of applying for substitute consent and the public's right to participate, are not sufficiently understood to the extent that convential applications for planning consent to the local authority are familiar. Since the encouragement of the public (see (17) in the preface) to participate is a requirement under the Aarhus Convention this is the least that should be done to 'foster' that participation. Some of those past submissions challenge the reliance placed on development plans of the local authority and the WEDG 2006; they must be reconsidered in the light of recent events and tested on their merits as opposed to being dis-regarded in favour of various guidelines and plans that were perceived to take

precedence

The reliance in the WEDG 2006 on ETSU-R-97 is thoroughly undermined by Dick Bowdler and many others and is a totally unsuitable foundation for defining the allowable noise limits to protect noise sensitive locations from nuisance from wind turbines operating. Footlong they were never meant to apply to 'low noise' environments having been derived from earlier work to define noise limits from industrial estates and the like. The selection in the i EIAR and EIAR of a noise limit of 40 dB(A) is not substantiated as even the WEDG 2006 suggests at P29

"Instead, in low noise environments where background noise is less than 30 dB(A), it is recommended that the daytime level of the LA 90, 10 min of the wind energy development noise be limited to an absolute level within the range of 35-40 dB(A)"

This was derived at a time when turbine heights were in the range 50-60 metres high and a separation distance of 500 metres was the limit i.e. 8 to 10 times the height.

Even by the guidelines a noise limit of 35 dB(A) could be adopted.

In the event noise monitoring has been carried out at various locations described as C04, C18 and C23 and it is clear that had this lower limit have been 'chosen' it would have been exceeded or very closely approached very frequently. See Ch 11 EIAR Vol. 1 Fig 11-4 Distribution of Wind Speeds + direction over 'baseline' survey Period. In all cases these predicted and measured (during operation) were in excess of 5 dB(A) over background noise and hence noticably audible. 'Survey personnel noted that turbine noise was audible at low level upon equipment set-up and during various inspections' (Sections 5.1, 5.2, 5.3 Appendix 11-8 EIAR Vol 3b)

If an assessment of ETSU-R-97 were ever carried out fairly it would become apparent that the original basis for that set of guidelines

was derived from an older set of noise limits which were designed to protect near neighbours of industrial estates and similar exigencies, (see the work of Derek Bowdler) and referred to a totally different set of noise propagation from the constant noise created by wind turbines. In the past in other submissions regarding other wind developments acoustic experts of equal standing have been engaged by near neighbours to potential developers who have advanced totally different opinions to those contained in the EIARs, which contested the noise predictions and questioned the nature of the noise not just its volume. In the case modelled in the EIAR and rEIAR the audible increase in noise observed above is obviously in a very sensitive situation where near neighbours who are primarily engaged in working outside during the day are going to potentially very irritated by the wind farm generated noise.

To illustrate further the confusion generated by the Noise chapters and appendicies table 10 p17 in appendix 11.8 assessment of compliance with Planning Conditions it uses a noise criterion of 43dB(A) to establish compliance without specifying day or night yet in the EIAR and rEIAR ch 11 it proposes that the self-imposed noise limit would be 40dB(A) daytime at wind speeds below 5m/s (Ch. 11.3.2.2.3). Similarly in rEIAR Ch 11 p8 there is an undertaking to use 'a night time 5dB(A) above background allowance has been adopted in this assessment' If tables 7,8,9, in section 5 in appendix 11.8 EIAR Vol 3b are compared with table EIAR Ch 11 table 11.12 p32 it is clear that noise levels variously exceed background noise levels by more than 5dB(A) It seems that the undertaking above is just an attempt at 'after the event' window dressing that was not even checked for its accuracy

There is another inaccuracy in the discussion of AM (amplitude modulation). In ch 11 rEIAR it is stated that the frequency is typically 1 Hz and it helpfully shows how this is derived. A blade in a three-bladed turbine passes the tower once a second when the turbine revolves at 20 rpm. Over a two week time period I observed turbines in three wind farms and recorded that the turbine blades passed

the tower 38 to 39 times a minute. This equates to a frequency of 0·64 Hz. This may or may not be important but I suspect that close scrutiny of the EIAR and rEIAR would yield many more incidences of careless inexactitude some of which may be very significant assertions similarly erroneous.

There is much weight given to the WHO Environmental Noise Guidelines for the European Region and the 'lower' limits used in the EIAR but there is a caveat; the WHO is concerned that not enough work has been done in the area of wind turbine noise and is proposing limits set to avoid damaging human health i.e. provable deleterious health effects. The EIAR continues in the same vein with quotes from NHMRC, Health Canada, New South Wales Health Department, The Australian Medical Association, and The Journal of Occupational and Environmental Medicine. All of which maintain more or less that there is no 'clear or consistant association between noise from wind turbines and any reported disease'. All very well but this is no comfort to any wind farm near neighbour who is constantly irritated by the disturbance to their once peaceful environment. Where is the survey of near neighbours showing how 'welcome' they find the noise, Shadow flicker and visual affront from a wind power station. Good planning is about the avoidance or minimisation of the effects of any development on 'its' neighbours. It is inevitable that there will be conflicts between the existing inhabitants of any area and that development which is being proposed. It is the task of the planner to minimise any adverse predictable effects. In other European countries the conflicts between wind farms and their neighbours have been minimised by greater separation distances and more stringent noise limits than exist here. Are Irish citizens less deserving of protection? That there has been more than six years between the announcement of a consultation of a review of the 2006 guidelines and the emergence of draft guidelines for further consultation is testament to the power and influence of the wind energy industry who wish the less onerous guidelines to be in existance as long as possible to their benefit. The very fact of there being a review is tacit acknowlegement of their insufficiency and at last the

Bord and County Councils have been released from having to have been bound by them and are free to better protect the environment of the near neighbours of wind farms. Now the guidelines are recognised in law as not being sufficient to be relied on, more realistic criteria can be considered by planners and, as here, by inspectors. Separation distances must be greater than the 500metres minimum as at present in the 2006 guidelines. The draft guidelines propose a separation distance of 5 times blade tip height which would (should) preclude the design of this development as is. If more cautious limits were adopted as have been adopted elsewhere then there would necessarily be fewer turbines permitted on this site. It would not stop this development (although it may curtail somewhat its profitability) but it would offer a greater degree of protection against obvious nuisance to its near neighbours. (It might be pertinant to point out that Ireland is proving to be a magnet for wind farm development by virtue of it having the second highest electricity price in Europe and extremely generous support from Government, so much so that an influx of data centres are being planned and electricity generation is set to increase by 50% by 2030. It must be of great comfort to know that the despoilation of West Cork will enable such progress). The lack of any real redress for the inconvenience, distress and nuisance suffered by near neighbours due to ineffective monitoring by an already overstretched County Council compliance department and a congested, ponderous and extremely expensive legal route is a further reason to limit the potential effects at the planning stage rather than rely on conditions imposed on a developer to operate in a particular manner.

Freed from the constraints of the WEDG 2006 I recommend the inspector to consult with the following peer reviewed documents in his/her deliberations as to the veracity in part or otherwise of the OPINIONS advanced in chapter 11 of both the rEIAR and the EIAR by Mr MICKE SIMMS

PUNCH and JAMES: WIND TURBINE NOISE AND HUMAN HEALTH: A FOUR DECADE HISTORY OF EVIDENCE THAT WIND TURBINE NOISE POSES RISK

SARAH LAURIE :- A CRITICAL ANALYSIS OF ACCURACY OF THE 'COMPLAINTS' DATA FROM CHAPMAN

PALLER, BIGELOW, MAJOWICZ, LAW and CHRISTIOS: WIND TURBINE NOISE, SLEEP QUALITY and SYMPTOMS OF INNER EAR PROBLEMS

RAYMOND HARTMAN: THE ADVERSE HEALTH EFFECTS OF INDUSTRIAL WIND TURBINES

SARAH TAYLOR: REPORT ON HEALTH IMPACTS OF WINDFARMS ON SHETLAND 2013

STIGWOOD, LARGE & STIGWOOD: AUDIBLE AMPLITUDE MODULATON, RESULTS OF FIELD MEASUREMENTS AND INVESTIGATIONS

All can be found on the internet but I can supply pdf by email if required. Contact by letter if required. I look forward to reading your assessment.

Furthermore since necessarily any consideration of a planning application involves balancing the advantages against the disadvantages it is useful to examine critically the assertions of positive environmental effects claimed to be springing from this development. In EIAR Chapter 10.2.3.3. p23 a figure of 'Losses due to turbine life, construction manufacture, decommissioning.' This is a highly contentious figure which is without obvious authority and the appendix 10.1 in EIAR vol 3b is not much help either. It gaves a range of 994 to 8147 tonnes of CO_2 per MW of capacity for turbine life. If we use a median figure it gives a figure of 112741 tonnes CO_2. This does not specify if it is the turbine only or the ground work to support it. Then there is an overstatement of capacity factor of approx 7% as 27-28 is a more generally adopted figure. Then 'Losses due to backup' is put at zero whereas the model quoted only suggests this figure should be zero when less than 20% of electricity demand is being met from wind. At the present reported contribution from wind generated electricity (quoted in the EIAR as being over 39% in 2020 so far) this figure is very significant, as at this degree of degree of delivery there is a large amount of reactive

thermal plant, mostly open cycle gas turbines grid connected to balance the fluctuating output of wind turbines. This plant is ramping up and down to effect this balance and is thus operating inefficiently and producing more CO_2 than if it were operating at or near its maximum rated output. This offsets the carbon saved by the wind generators and there is much discussion among engineers as to the real carbon savings that are being made at 40% of electrical demand being met by wind, There are now occasions when the amount of wind generated electricity is greater than can be used by the grid which again reduces its usefulness. This all serves to completely undermine the accuracy of the claimed benefit enormously to the extent that no credibility should be attached to these claims. I would recommend the inspector to research this thoroughly - there is much published work available and in the first instance consult

MISKELLY and QUIRK - Wind Farming in South Eastern Australia for a real time analysis of an electrical grid with a significant penetration of wind generated electricity

The points at issue here resolve into a single conundrum, the rEIAR and EIAR are not fit to be viewed as comprehensive assessments to be relied on in the decision-making process and the assertions contained therein need to be fully scrutinised and tested by the planning authority and that process must be tranparently and comprehensively described so that the final decision can be seen by the public as having been fairly and reasonably arrived at in compliance with the EIS Directive

If this were an entirely new wind farm proposal today with no previous history it should not be approved on

the basis of this EIAR as reliance on the WEDG 2006 would no longer be sufficient and at the very least fewer turbines would be permitted. Even the Bord's own inspectors in the past have held that view. Nor could the Bord have justified adequately its previous decisions footed as they were on the WEDG 2006

If this were a new application for leave to apply for substitute consent there would have to be public participation at that stage of the process and the test for 'exceptionality' could have been argued and scrutinised

Given the situation as is the Bord has the opportunity to ameliorate the situation and require the removal of the turbines most proximate to the sensitive receivers to minimise the adverse effects on those most immediately affected. There is an opportunity to set a precedent to developers to be more wary of decisions of the Courts and less cavalier in their actions. Justice for the unfortunate neighbours of this development needs to be seen to be done and the balance between public and private needs to be re-established

The right to live in an environment which is adequate for personal health and well-being must take precedence over what in reality is a commercial venture whose particular value to the county as a whole has not been demonstrated.

I beg the Bord to take my submission into consideration and I enclose my previous observation which proves prescient now that the landscape of the Upper Lee Valley has been despoiled.

Yours Faithfully

IAN COLLINS

COPY OF SUBMISSION re 11/5245
which is still of relevance and accordingly I resubmit it

Tel. 027 66092

MAULAKIEVE
BANTRY
Co CORK

12 - JULY - 2011

Applicant - CLEANRATH WINDFARM
N°. 115245
and ABP-307939 now

Dear Sir/Madam.

We would like to register the following objections to the proposed Wind Generator at Cleanrath and Derrineanig appl". No 11 5245 and hope that you will take them into consideration when you arrive at your decision.

i) The turbines are in some cases less than 1 km from existing dwellings and in any case are less than 3 km from Inchigeelagh village. There is obviously the potential to create a serious nuisance to a large number of people. Increasingly in Europe there is pressure arising to make the minimum distance between a turbine and a proximate dwelling 2 km. These turbines are of such huge dimensions even that distance may in future prove to be inadequate to protect nearby residents The County Council has a duty to protect the environment of those neighbouring developments of vast scale like this one.

ii) The proposed development is less than 9 km from the existing permitted wind farm at Grousemount. Surely this would constitute an unacceptable concentration of wind farms in this area. The residents of the lowland between Grousemount and Derrineanig will feel overwhelmed by Wind Turbines.

iii) The lakes between Ballingeary and Inchigeelagh constitute an area of outstanding natural beauty and with enormous potential for tourist /recreational growth. It is already an area which has an established tourist industry which should be treasured. It would be a sacrilege to

to allow this development which would overshadow much of the northern aspect of this unspoilt area. If a 'Windfarm' is allowed here then it drives a coach and horses through the notion that there is any reasonable planning criteria that can stand in the way of endless 'Wind farm' developments. If this proposal is allowed then we may as well stop the process of Wind Power developers having to go through the process of applying for planning permission and just let them be erected anywhere that is convenient for them. The turbines will be clearly visible from much of the R584 and this road is clearly an important tourist route.

iv) No less august an institution than the Irish Association of Engineers is calling for a radical rethink of our Energy Policy cf. www.iae/site_media/pressroom/documents/2011/Apr/06/IAE_Energy-Report_Web2_05.04.2011.pdf. They are warning that the rush into wind-generated electricity is ill-thought out, will cost us all a fortune and will result in a very high electricity price for the forseeable future. It seems public pressure is growing for a proper audit of the costs and benefits (if any) of so much wind generation on the Island of Ireland. Wind power may soon be seen to be a prohibitively expensive source of 'free energy', one that the country cannot afford, that will drive up costs in the economy and could easily become the next 'bubble' that bursts leaving everyone to pick up yet more financial debris.

v) The increasing number of speculative applications for wind farms which are comming before the Planning Dept. are beginning to have the effect of further blighting the housing market in the areas adjascent to the applicants sites'. This is leading to more stress on the owners of recently purchased or built properties whose owners are already experiencing the worry of whether or not they can hold onto their property. If there is a whiff of a wind farm in the area they feel their prospects of being able to sell their house, should the need arise, will be severely reduced Add into this uncertainty the demands of developers for a 10 year

grant of planning permission and it seems to nearby residents as if they have been doubly cursed. Since the number of wind farms that have already been given planning permission and are not yet built (because the infrastructure of the distribution network has not yet been developed to receive their generation) are constituting a potential overhang to the electrical supply market, it would seem unwise to grant any further planning permissions until it becomes clear if they will ever be needed or be built. A moratorium on these applications is badly needed.

Yours Faithfully

Ian Collins
Anthony Cohu

IGollins


AN BORD PLEANÁLA
15 SEP 2020
LTR DATED
FROM
LDG-
ABP-