

An Bord Pleanála,
64 Marlborough Street
Dublin 1 D01 V902.

AN BORD PLEANÁLA	
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Time: _____	By: <u>Reg Rost</u>

Derrybrien East,
Loughrea,
Co Galway

16th November 2021

Objection to the Derrybrien Windfarm Substitute Consent “Exceptional Circumstances” Application by the ESB PL07 308019-20 and in reply to An Bord Pleanála correspondence dated 05 November 2021

Dear Sir / Madam,

I write to you as a local farmer affected by the landslide in 2003 and I submit my objection to the application by the ESB for Substitute Consent.

I request An Bord Pleanála to refuse Substitute Consent to the windfarm development at Derrybrien (application No PL07 308019-20) on the basis that “exceptional circumstances” do not exist in this case.

This response is in addition to my previous submissions dated 27th August 2020 and 06th September 2021.

Due to your previous decision making in relation to this windfarm development any decision you make is compromised and tainted.

I want to put on record that I fully support the inclusion and the findings of the *Technical Assessment of Derrybrien Windfarm and Ancillary Works by Arcadis Design & Consultancy July 2021* which identify very serious deficiencies with the rEIAR submitted with the substitute consent application.

It is my view that the An Bord Pleanála correspondence dated 5th November 2021 was as a result of the ESB being facilitated in their efforts to nullify the Arcadis report. In the interest of natural justice I am requesting An Bord Pleanála contact the authors and allow them the right of reply.

Contrary to the planning legislation all the public planning notices were removed in 2020. New public notices were erected in August 2021 which are once again all removed as of November 2021.

The windfarm is an unauthorised development and the Irish state have accumulated a fine of in excess of €16 million to date and increasing by €15,000 every day.

As a member of the local community we should be involved in the public consultation process in respect of the EIA, which would be a preliminary step in the Planning Application under the 2010 Act, for Substitute Consent, we are disappointed that another Planning Application has been made in August 2021. No public consultation process has taken place in regard to this windfarm project.

Criteria for exceptional circumstances.

- Whether regularisation of the development concerned would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or the Habitats Directive. **(Yes it would).**
- Whether the applicant had or could reasonably have had a belief that the development was not unauthorised. **(Yes, were aware of unauthorised development)**
- Whether the ability to carry out an assessment of the environmental impacts of the development for the purposes of an environmental impact assessment or an appropriate assessment and to provide for public participation in such an assessment has been substantially impaired. **(Yes it has).**
- The actual or likely significant effects on the environment or adverse effects on the integrity of a European site resulting from the carrying out or continuation of the development. **(Yes there are long term negative effects).**
- The extent to which significant effects on the environment or adverse effects on the integrity of a European site can be remediated. **(No not possible).**
- Whether the applicant has complied with previous planning permissions granted or has previously carried out an unauthorised development. **(No).**
- Such matters as the Board considers relevant. **(Two CJEU cases against Ireland and non compliance with EIA and Habitats Directives).**

In March 2021, the ESB erected a sign along the entrance roadway to Derrybrien bog warning turbary owners of peat instability. My contractor refused to enter Derrybrien bog to cut turf in 2021 therefore my constructional right to cut my turf and property rights have been grossly interfered with by the ESB and Gort Windfarms Limited. I am objecting in the strongest possible way to the application by the ESB that exceptional circumstances exist in this case. An Bord Pleanála cannot allow a situation where a turf hopper is stopped going onto Derrybrien bog and a crane with a lifting capacity of 300 tonnes is allowed onto

the same bog. Regardless of the spin in the rEIAR the truth is that the weights of the large cranes are 72 tonnes and 60 tonnes.

An Bord Pleanála must issue a clear decision stating that the ESB / GWL application do not comply with the “Exceptional Circumstances” criteria and the precautionary principle requires to be applied to this Derrybrien windfarm project.

As in CJEU Case C – 258/11. See relevant extract below.

46 Consequently, if, after an appropriate assessment of a plan or project's implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type whose conservation was the objective that justified the designation of the site concerned as an SCI, the view should be taken that such a plan or project will adversely affect the integrity of that site.

47 In those circumstances, that plan or project cannot be authorised on the basis of Article 6(3) of the Habitats Directive. Nevertheless, in such a situation, the competent national authority could, where appropriate, grant authorisation under Article 6(4) of the directive, provided that the conditions set out therein are satisfied (see, to this Waddenvereniging and Vogelbeschermingsvereniging, paragraph 60). effect,

48 It follows from the foregoing considerations that the answer to the questions referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the site in the list of SCIs, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

On those grounds, the Court (Third Chamber) hereby rules:

Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that a plan or project not directly connected with or necessary to the management of a site will adversely affect the integrity of that site if it is liable to prevent the lasting preservation of the constitutive characteristics of the site that are connected to the presence of a priority natural habitat whose conservation was the objective

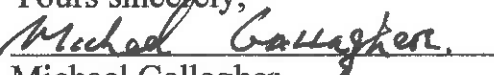
justifying the designation of the site in the list of sites of Community importance, in accordance with the directive. The precautionary principle should be applied for the purposes of that appraisal.

I reserve the right to challenge the decision if the precautionary principle is not applied in this case for the reasons outlined above.

I look forward to a favourable response from you as a matter of urgency.

I look forward to a reply from you.

Yours sincerely,


Michael Gallagher

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