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Laura Grady Lawlor

From: Meabhann Crowe <mcrowe@mkoireland.ie>
Sent: Wednesday 17 July 2024 14:53
To: Appeals2
Subject: 230623- Meenbog SubCon - ABP-319466-24
Attachments: 230623 Meenbog SubCon-ABP-DCC Subs-17.07.20204.pdf

Importance: High

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FAO: Laura Grady Lawlor

Good afternoon Laura,

I refer to your letter of the 1st of July 2024 and the Substitute Consent application for 25 no. deviations from the permitted Meenbog Wind Farm development, currently under consideration by An Bord Pleanála.

I attach to this email our response to the submission by Donegal County Council on the matter. I trust the attached is in order however should you require anything further please do not hesitate to get in touch.

Yours sincerely,
Meabhann P. Crowe.

Meabhann P. Crowe, MRTPI
Senior Planner

Mon – Thurs. Only

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FAO Laura Grady Lawlor
Executive Officer
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

Our ref: 220623

Your ref: 319466-24

Date: 17th July 2024

By Post and Email

Re: ABP-319466-24 - Substitute Consent Application for 25 no. Deviations from the Permitted Meenbog Windfarm Development (ABP PA05E.300460) ("the Substitute Consent Application")

Dear Sir/Madam,

We refer to your letter dated 1 July 2024 requesting Planree Limited ("Planree") to make a submission or observation in accordance with section 131 of the Planning and Development Act 2000 (as amended) ("the Act") on a report of Donegal County Council ("the Council") dated 20th June 2024 ("the Council's Report") lodged in accordance with Section 177I of the Act.

As set out in the Preliminary/Introduction section of the Council's Report, the High Court in an Order made on the 22nd April 2024 (following Judgment delivered by Mr. Justice Holland on 10th April 2024) in Section 160 planning proceedings taken by the Council against Planree and Mid Cork Electrical Limited, found that the entire windfarm development at Meenbog (permitted under ABP-300460-17) ("the Permitted Meenbog Windfarm Development") was unauthorised. We note that the Council did not raise this issue in its submission on Planree's leave application.

Planree has appealed the decision of the High Court as it disagrees with the finding of that Court that the presence of 25 deviations/unauthorised development (which are the subject matter of the within Substitute Consent Application) at the wind farm site renders the entire Permitted Meenbog Windfarm Development unauthorised. The appeal is scheduled to be heard by the Court of Appeal on 21 and 22 October 2024. We expect a decision from the Court of Appeal will be available early in 2025: the urgency of the appeal has already been explained to the Court of Appeal which has granted this case priority.

Planree respectfully requests that the Board progresses its consideration of this Substitute Consent Application in the meantime but defers making its decision until the Court of Appeal's judgment issues. Planree requests that the Board continue to process the Substitute Consent Application in light of the importance of this renewable energy project and noting that the planning permission for the *Permitted Meenbog Windfarm Development* (ABP-300460-17) has an expiry date of 25 June 2028. In particular, Planree is aware of the other submissions received by the Board on this application and is ready and willing to respond to the points made in those submissions if requested to do so by the Board, pursuant to its powers under section 131 of the Act.

In accordance with the provisions of Section 177I of the Act comment is provided below in respect of each of the items listed in Section 177I(2) of the Act as set out in the Council's Report as requested:

Item (a) Information relating to development (including development other than the development which is the subject of the application for consent) carried out on the site where the development the subject of the application for consent is situated, an any application for permission made in relation to the site and the outcome of the application.

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The Council's view in respect of the applications is noted however its summary of the return to site by Planree is misleading and Planree wishes to clarify the following:

Planree only went back on site to recommence works after it had received (a) written confirmation from the EPA 28 September 2021 that it was satisfied with the remediation works carried out by Planree, as well as with site stability, and confirmed compliance with the Direction which it has issued; and (b) written confirmation from the Council 11 July 2022 of compliance with its s.12 Notice which lifted the Council's Halting of Works Notice. Having received these written confirmations from the EPA and the Council, Planree was satisfied that there was no impediment to returning to work on the site to carry out works further to the Planning Permission granted.

Immediately on receipt of the referenced Enforcement Notices from the Council (which were ultimately quashed by the High Court on Planree's application and with the consent of the Council), Planree ceased any further works on the site and has not recommenced construction on site since. The Section 160 proceedings referenced above are ongoing.

Item (b) Information relating to any warning letter, enforcement notice or proceedings relating to offences under this Act that relate to the applicant for substitute consent.

No comment

Item (c) Information regarding the relevant provisions of the development plan and any local area plan as they affect the area of the site and the type of development concerned.

Since the submission of the Substitute Consent Application, a new Development Plan has come into force¹ in the Donegal County Council administrative area. As is detailed below, that has been considered in the Planning Report attached to Planree's Substitute Consent Application.

In relation to the relevant Development Plan provisions, the Council state the following:

"This application for substitute consent seeks only to regularise 25 no. deviations to the permitted windfarm development, out of the original 45 no. identified deviations (47 no. when sub-divided) and does not seek to regularise the entire as constructed unauthorised wind farm (as per the Judgement) nor the remedial works carried out post bog slides and does not seek consent to complete out the windfarm. Accordingly it is the Council's contention that the present application is inadequate/inappropriate."

As stated above, Planree confirms that it has appealed the High Court Judgment of Mr. Justice Holland which deemed the entire permitted Meenbog Windfarm Development unauthorised. In circumstances where the Court of Appeal quashes that part of the Judgment/Order of the High Court then the current application is appropriate and a decision by the Board to grant the current Substitute Consent Application will be adequate to regularise the unauthorised elements of the permitted Meenbog Windfarm Development.

At the time that the Substitute Consent Application was submitted to the Board, the Donegal County Development Plan 2018-2024 (as varied) was in force and the Donegal County Development Plan 2024-2030 had been published in draft form. The Planning Report and Chapter 2: Background of the rEIAR lodged with the Substitute Consent Application took into account both the Donegal County Development Plan 2018-2024 (as varied) and the then draft Donegal County Development Plan 2024-2030. Both the Donegal County Development Plan 2018-2024 and the Donegal County Development Plan 2024-2030 are supportive of the delivery of wind energy projects, in the context of climate change mitigation and adaptation. The policy analysis contained within the Substitute Consent Application demonstrates that the 25 deviations the subject of the Substitute Consent Application align with the key policy objectives set out in the current Development Plan. There is no new information provided by the Council in their submission to the Board which alters this position.

¹ A Draft Ministerial Direction has been issued in respect of several aspects of the Plan however these are not found to be of relevance to the application site

Item (d) (i) Any information that the authority may have concerning – (i) current, anticipated or previous significant effects on the environment, or on a European site associated with the development or the site where the development took place and, if relevant, the area surrounding or near the development or site, or (ii) any remedial measures recommended or undertaken.

It is important to highlight to the Board that the 47/45 no. deviations the Council continue to refer to in their submission is misleading. By way of background, the Council engaged SLR Consulting in 2021 to review the ecological risks associated with 45 deviations from the planning consent of the Meenbog Windfarm Development. Planree, in the Substitute Consent Application, demonstrated that in fact only 25 no. deviations exist which require regularisation, as the remaining 22 no. potential deviations (none of which were listed in the Notice of Motion in the section 160 proceedings) assessed by SLR Consulting were shown not to require substitute consent following their consideration in the following context:

1. What has been built on-site is different to what was permitted and shown on the original planning application drawings, only because what has been permitted, has not yet been constructed or completed.
2. What has been built on-site is different to what was permitted and shown on the original planning application drawings, only because what has been built now occupies a smaller footprint than what was originally permitted.
3. Elements of the permitted development have not been constructed/developed, and will not be constructed/developed, giving rise to a difference between what is on-site and what was permitted and shown on the original planning application drawings.
4. Elements of the permitted development were identified as potential deviations, before being confirmed as having formed part of the original planning permission application and having the benefit of planning permission.
5. Elements of the development were identified as potential deviations, even though they were temporary construction-related installations, such as storage containers or temporary site offices.
6. An identified potential deviation was a pre-existing forestry road and was not developed as part of the works to the permitted wind farm.
7. Some identified potential deviations were emergency works undertaken in the period immediately after the peat failure, which have now been removed or reverted back to the permitted design/layout.
8. "Tree movement" was identified as a potential deviation but would not constitute works or development within the meaning of the Planning and Development Act for which substitute consent may be required.
9. Some potential deviations were enhanced water protection measures (as provided for in the EIAR's drainage design) in the form of additional silt ponds, check dams and roadside berms, and therefore integral to the protection of water quality during the construction of the permitted wind farm.

A detailed consideration of these 25 deviations was set out in the Leave to Apply for Substitute Consent application lodged with the Board in July 2022 (ABP Ref: LS05E.314062) (Appendix 3 of the submitted Planning Report refers).

The remedial EIAR and remedial NIS accompanying the Substitute Consent Application comprehensively and robustly reach the conclusion that the 25 deviations have not resulted in, either individually, cumulatively or in-combination, any significant negative environmental effects.

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The remedial EIAR and remedial NIS have taken into account the changes in the receiving environment as a result of the peat slide and changes that may have occurred since the Board completed the EIA and AA. The purpose and objectives of the EIA Directive and Habitats Directives will be fulfilled by the Substitute Consent Application, and will not, and have not been circumvented. This includes the requirement for public participation in the EIA and AA processes which the public consultation element of the Substitute Consent Application ensures.

For the avoidance of doubt, in the time since the November 2020 peat failure at the site, and following investigations by the Council (and SLR Consulting on their behalf), the EPA (and ARUP on their behalf) and Planree (and Fehily Timoney Consulting Engineers and Ionic on their behalf), nothing has emerged to suggest that any of the deviations from the Permitted Meenbog Windfarm Development was in any way responsible for the peat failure event.

While the Board's original EIA and AA was for the development as originally permitted it should be noted that the potential for a peat slide was considered: (i) in the EIAR submitted with that application, as acknowledged in the Board's Direction where reference is made to Appendix 4.2 of the EIAR containing the Peat and Spoil Management Plan, and (ii) the CEMP submitted with the application included an emergency response plan in relation to excessive peat movement and/or the onset of a peat slide, which was referred to in Condition 7 of the Planning Permission requiring compliance with the CEMP.

Item (e)) (i) The Opinion, including reasons therefor, of the chief executive as to whether not substitute consent should be granted for the development.

Planree respectfully requests that the Board progresses its consideration of this substitute consent application but defers making its decision until the Court of Appeal's judgment issues. Planree is ready and willing to respond to the submissions made to the Board if the Board so requests.

I trust the information set out in this letter is sufficient for the Board to continue their deliberations in respect of the substitute consent application. Should you require anything further please do not hesitate to contact me.

Yours faithfully,



Meabhann P. Crowe, MRTPI

Senior Planner

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