



Comhairle Cathrach
& Contae **Luimnigh**

Limerick City
& County Council

Seirbhísí Pleanála agus Comhshaoil,
Comhairle Cathrach agus Contae Luimnigh,
Tuar an Daill,
Luimneach

Planning and Environmental Services,
Limerick City and County Council,
Dooradoyle,
Limerick

EIRCODE V94 WV78

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PLANNING & ENVIRONMENTAL SERVICES

EC60/20/MOB/CL

January 2021

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
LDG-	<u>034335-21</u>
ABP-	
14 JAN 2021	
Fee: € <u>110-</u>	Type: <u>Cheque</u>
Time: _____	By: <u>Post</u>

RE: Declaration under Section 5(4) of the Planning and Development Acts 2000 (as amended)

Dear Sir/Madam,

Whereas a question has arisen as to whether

- (1) the underground electricity cable grid connections and associated works from the Mauricetown Wind Farm 38kV Substation to the Tullylease 38kV Substations in County Limerick
- (2) the underground electricity cable grid connections and associated works from the Tullylease 38kV Substation to the electricity cable grid connection which runs from Dromdeeven Wind Farm 38kV substation to the Glenlara 110kV Substation in County Cork as far as the Limerick County/Cork County border at Glashawee River and
- (3) the underground electricity cable grid connections and associated works from the Dromdeeven Wind Farm 38kV Substation to the Glenlara 110kV Substation in County Cork as far the Limerick County/Cork County border at the Glasawee River is or is not exempt development.

Site Location:

The Mauricetown Wind Farm (An Bord Pleanála Reg. Ref. No. PL13.240910 – Limerick City and County Council Planning register reference no. 12/379) is located in the townlands of Glenduff, Darrery and Coolnanoglah, Ballagh, Co. Limerick. The Planning Permission includes permission for the development of the Mauricetown Wind Farm 38kV Substation in the townland of Glenduff, Ballagh, Co. Limerick.

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The Tullylease 38kV Substation (Limerick City and County Council Planning Reference 17/338) is located in the townland of Dromdeeveen, Ballagh, co. Limerick and is link with an electricity cable grid connection Mauricetown Wind Farm 38kV Substation.

The Dromdeeveen Wind Farm (Limerick City and County Council Planning reference 04/2722 and EOD Planning Reference 10/7007) is located in the townlands of Dromdeeveen and Glenduff, Ballagh, Co. limerick. The Dromdeeveen Wind Farm 38kV substation (Limerick City and County Council Planning reference 08/1650) is located in the townland of Dromdeeveen, Ballagh, Co. Limerick.

Planning History:

Planning Reference 12/379

Retention and completion for the construction, operation and decommissioning of up to 6 number wind turbine generators with a blade tip height of up to 132m (hub height of up to 85m and rotor diameter of up to 93m) and crane hardstandings for each turbine, the construction of a meteorological mast, electrical substation, underground electric cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks and ancillary services (an Environmental Impact Statement (EIS) and a Natura Impact Statement (NIS) have been submitted as part of this planning application) refused by Limerick City and County Council and granted on appeal by An Bord Pleanála on 07th April 2013.

Planning Reference 17/338

Permission the construction of a single storey control building and an electrical switching station compound, including electrical equipment plinths, access track, underground cable works and ancillary infrastructure at Dromdeeveen, Ballagh granted by Limerick City and County Council on 27th July 2017.

Planning Reference 04/2722

Permission for erection of windfarm comprising of increased dimensions for 7 previously permitted wind turbines, 11 additional turbines, anemometer mast and access tracks. An EIS has been submitted as part of this application at Dromdeeveen & Glenduff granted by Limerick City and County Council o 16th February on 16th February 2005.

A declaration under reference EC34/20 as to whether the laying underground of cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes is or is not development or is or is not exempt development was issued by Limerick City and County Council on 14th August 2020 to confirm that the said works was development and was permitted development under Planning Permission reference 12/379. This declaration was appealed to An Bord Pleanála to An Bord Pleanála and is currently being processed under reference ABP 308071-20.

As the Planning Authority is not in a position to determine the matter, Limerick City and County Council hereby require a declaration under Section 5(4) of the Planning & Development Acts 2000 (as amended).

Any further queries in relation to this matter should be addressed to Michael O' Brien, Development Inspector.

Yours faithfully,



For Director of Services
Planning & Environmental Services

ENCLOSURES:

- (I) Copy of Planning Permission reference 12/379
- (II) Copy of Planning Permission reference 17/338
- (III) Copy of Planning Permission reference 04/2722
- (IV) Copy of Declaration reference EC34/20
- (V) Fee of €110

PLANNING & DEVELOPMENT ACTS 2000 (as amended)

PLANNING & DEVELOPMENT REGULATIONS, 2001 (as amended)

SECTION 5 – DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

DECLARATION NO. EC34/20

Name and Address of Applicant: Liam Lenihan, Glenduff, Ashford, Ballagh, Co. Limerick.

Agent: N/A

Whether the laying underground cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes is or is not Development or is or is not Exempted Development. The works as described on the plans submitted with the application on the 29th June and 13th July 2020

AND WHEREAS the Planning Authority has concluded that the laying underground cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes is permitted development under planning permission reference 12/349 An Bord Pleanála reference PL13.240910.

NOW THEREFORE the Planning Authority in exercise of the powers conferred on it by Section 5(2) (a) of the Planning and Development Act 2000 (as amended) hereby decides that the said development as described above is **Development and is Permitted Development under Planning Permission reference 12/379 An Bord Pleanála reference PL13.240910.**

Signed on behalf of the said Council pp V. Ronan

Date: 14th August 2020

NOTE: A Declaration on Development or Exemption issued by Limerick City & County Council may be referred to An Bord Pleanála on payment of €220 for review within 4 weeks after the issuing of the declaration.

LIMERICK CITY & COUNTY COUNCIL

APPROVED OFFICER'S ORDER

SECTION 5 – DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

File Ref No. EC34/20

No. D.C. 333/20

SUBJECT: Declaration under Section 5.

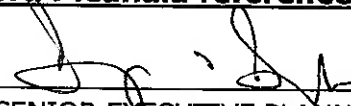
Planning and Development Act 2000 as amended
Planning and Development Regulations 2001 as amended

RE: The laying underground cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh, Co. Limerick to the substation at Dromdeeveen for grid connection purposes

ORDER: Whereas by Chief Executive's Order No. CE/2018/102 dated 01st July 2018, Conn Murray, Chief Executive, Limerick City & County Council did, pursuant to the powers conferred on him by Section 154 of the Local Government Act, 2001, delegate unto Donogh O' Donoghue, A/Senior Executive Planner the functions within the meaning of the Local Government Act, 2001 as set out therein.

Now therefore pursuant to the delegation of the functions aforesaid, I, Donogh O' Donoghue, A/Senior Executive Planner, having considered the report and recommendation of Mr. Michael O'Brien, Development Inspector dated 24/Jul/2020, hereby order that a Declaration under Section 5 of the Planning and Development Act 2000 as amended be issued to Liam Lenihan, Glenduff, Ashford, Ballagh, Co. Limerick to state that the works as described above is **Development and is Permitted Development under Planning Permission reference 12/379 An Bord Pleanála reference PL13.240910.**

Signed


A/SENIOR EXECUTIVE PLANNER, PLANNING & ENVIRONMENTAL SERVICES

Date

12/08/2020

Certified to be a true copy of Approved Officer's Order, Planning & Development Order No. D.C. _____ dated _____, pursuant to Section 151(7) of the Local Government Act 2001

Signed:


A/SENIOR EXECUTIVE PLANNER, PLANNING & ENVIRONMENTAL SERVICES



Comhairle Cathrach
& Contae **Luimnigh**

Limerick City
& County Council

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Planning and Environmental Services,
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PLANNING & ENVIRONMENTAL SERVICES

EC34/20/MOB/CL

04/Aug/2020

Donogh O' Donoghue
A/Senior Executive Planner

Declaration under Section 5

Attached please find a report in connection with the above and I recommend that a Declaration be issued.

Signed:

Michael O' Brien
Development Inspector.

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Report on application under Section 5 of the Planning and Development Act 2000 (as amended)

Reference no. EC34/20

Name and Address of Applicant: Liam Lenihan, Glenduff, Ashford, Ballagh, Co. Limerick.

Agent:

WHEREAS a question has arisen as to whether the laying underground of cables in an SPA from Mauricetown Windfarm, Mauricetown, Ashford, Ballagh to the substation at Dromdeeveen, Co. Limerick for grid connection purposes is or is not development and is or is not exempted development.

A 10 year planning permission for retention and completion for the construction, operation and decommissioning of up to six number wind turbine generator with a blade tip height of up to 132 metres (hub height of up to 85metres and rotor diameter of up to 93 metres) and crane hardstanding for each turbine, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, and in Ballagh, Co. Limerick. An Environmental Impact Statement (EIS) and Natura Impact Statement (NIS) have been submitted was granted by An Bord Pleanála in 2012.

The question the subject matter of this application is whether or not the laying of underground electrical cables along the side of the local road L-790982 from the windfarm to the Dromdeeveen substation is or is not development or is or is not exempt development.

The site map submitted with the application showed the site (circa 22.8h) of the proposed development outline in red.

The proposed grid connection (the subject of this application) from the substation in the windfarm to the substation in Dromdeeveen is outside the site outlined in the site layout map and is in place running through an SPA.

An EIS & NIS were submitted with the planning application and both of these deal with the grid connection, the planner's report dated 03rd July 2012 also refers to the grid connections.

Having examined the planning file and the relevant EIS, NIS and planner's report I am satisfied that the said grid connection formed part of the Planning application which was granted by An Bord Pleanála under reference 12/379 ABO reference PL 13.240910

I have considered this question and I have had regard particularly to –

- (a) Planning permission reference 12/379 ABP reference PL13.240910
- (b) Plans and particulars submitted with the application on 29th June and 13th July 2020.

RECOMMENDATIONS:

I therefore consider the said works to be development and to be permitted development under planning permission reference 12/349 ABP PL 13.240910.

Signed:

Michael O' Brien
Development Inspector.

LIMERICK COUNTY COUNCIL

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 2000

NOTIFICATION OF DECISION TO GRANT

John McCarthy
Dromdeeveen
Ballagh
Co. Limerick

(111)

Planning Register Number: 04/2722
Valid Application Received: 20/09/2004
Further Information Received Date: 15/12/2004

In pursuance of the powers conferred upon them by the above-mentioned Act, Limerick County Council has by Order dated 16th February, 2005 decided for the reason set out in the First Schedule hereto, to GRANT PERMISSION for development of land in accordance with the documents submitted namely:-erection of windfarm comprising of increased dimensions for 7 previously permitted wind turbines, 11 additional turbines, anemometer mast and access tracks. An EIS has been submitted as part of this application. at Dromdeeveen & Glenduff subject to the 17 conditions and the reasons for the imposition of the said conditions as set out in the Second Schedule.

Signed on behalf of said Council _____

for COUNTY SECRETARY

Date: February, 2005

If there is no appeal to An Bord Pleanála a grant of permission shall be issued as soon as may be but not earlier than 3 working days after the expiration of the period for making of an appeal (see footnote).

THIS NOTICE IS NOT A GRANT OF PERMISSION AND WORK SHOULD NOT COMMENCE UNTIL PLANNING PERMISSION IS GRANTED.

NOTE:

An appeal against a decision of a planning authority under the provisions of the Local Government (Planning & Development) Act, 2000 may be made to An Bord Pleanála at any time before the expiration of the appropriate period and on payment of the appropriate fee, by an applicant for permission or any person who made submissions or observations in writing in relation to the planning application. An appeal by a person who made submissions or observations must be accompanied by the acknowledgement of receipt of the submissions or observations from the planning authority. Any such appeal must be made in writing and received by the Board within 4 weeks beginning on the date of the making of the decision by the planning authority. The appeal must be fully complete from the start otherwise it will be invalid. It is very important to note that any appeal referrals under the 2000 to 2002 Planning & Developments Acts which are not accompanied by the correct fee will be invalid.

/P.T.O.

The scale of fees payable to An Bord Pleanála in respect of appeals, on or after 3rd June, 2003 is set out hereunder:

Case Type	On or after 3 rd June, 2003	On or after 28 th February 2005
Planning Acts		
a. Appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, where the application relates to unauthorised development.	€1,800	€1,900
b. Appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, other than an appeal mentioned at (a).	€600	€630
c. Appeal made by the person by whom the planning application was made, where the application relates to unauthorised development, other than an appeal mentioned at (a) or (b).	€600	€630
d. Appeal other than an appeal mentioned at (a), (b), (c) or (f)	€200	€210
e. Application for leave to appeal.	€100	€105
f. Appeal following a grant of leave to appeal.	€100	€105
g. Referral	€200	€210
h. Reduced fee (payable by specified bodies).	€100	€105
i. Submissions or observations (by observer).	€50	€50
j. Request from a party for an oral hearing.	€90	€95

Submissions or observations on appeals made by third parties must be received by the Board within 4 weeks from the receipt of the appeal by the Board and the fee in this case is €50. Development consisting of the provision of two or more dwellings is classed as commercial development for the purposes of an appeal.

Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1.

PLANNING REGISTER REFERENCE NUMBER: 04/2722

FIRST SCHEDULE

Having regard to the nature of the proposed development, it is considered that subject to compliance with the conditions as set out in the Second Schedule, the proposed development would be in accordance with the proper planning and development of the area.

SECOND SCHEDULE

1. This permission is subject to the submissions of 15th December, 2004.

Reason -In order to clarify the development to which this permission applies.

2. Prior to the commencement of development, a contribution of €22,000 shall be paid to Limerick County Council in accordance with the provisions of the Development Contribution Scheme made by Limerick County Council on the 19th December, 2003 in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority and that is provided or, that it is intended will be provided, by or on behalf of Limerick County Council. At the time of payment, the amount of contribution stated above, shall be in accordance with the Wholesale Price Index – Building and Construction. The amount of contribution shall be adjusted annually in January in line with the Index.

Reason – The developer shall contribute towards the expenditure incurred, or intended to be incurred, in the provision of public infrastructure and facilities benefiting development within County Limerick.

3. Transformers associated with each individual turbine and mast shall be located either within each turbine mast structure or shall be located underground beside the mast. Cables from the turbines to the substation shall be located underground.

Reason - In the interests of visual amenity and the proper planning and development of the area.

4. The wind turbines, including masts, blades and anemometer mast, shall be finished externally in semi-matt pale grey colour coated finish. Any alternative colour scheme shall be agreed with the Planning Authority prior to the commencement of development and shall not be white.

Reason - In the interests of visual amenity and the proper planning and development of the area.

5. All wind turbines shall be geared to ensure that the blades rotate in the same direction.

Reason - In the interests of visual amenity and the proper planning and development of the area.

6. The specification for the access roads to the turbines shall be as per details on the Environmental Impact Statement Sections 1.5 and 8.3. Maximum use shall be made of existing tracks during construction. Details of the treatment of excavated rock, soil and peat shall be agreed with the Planning Authority prior to the start of development. During the construction of access tracks, all necessary care shall be exercised to prevent the deposition of inert materials (settleable and suspended solids) in any water body, flowing or static.

Reason - In the interests of pollution control and the proper planning and development of the area.

7. A Traffic Management Plan shall be prepared and agreed with the Planning Authority prior to the commencement of development for the proposed route for traffic during the construction works as outlined in the Environmental Impact Statement (Section 9.1.3). The Traffic Management Plan shall include comprehensive details of the proposed route and in particular proposals to upgrade the road networks to accommodate the volume of traffic estimated during the construction phase.

Reason – In the interests of traffic safety and the proper planning and sustainable development of the area.

8. On decommissioning or any partial decommissioning of the windfarm, masts and turbines shall be dismantled and removed from the site. Prior to the start of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company or other security to secure the satisfactory reinstatement of the site upon cessation of the project, coupled with an agreement empowering the Planning Authority to apply such security or part thereof to the satisfactory reinstatement of the site. The form and amount of the security shall be as agreed between the Planning Authority and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason - In the interests of the proper reinstatement of the site and the proper planning and development of the area.

9. Facilities shall be installed at the developer's expense, as necessary, to ensure that radio or television transmissions in the area are not interfered with by the proposed development. Details of such facilities shall be submitted to and agreed with the Planning Authority following consultation with the relevant authorities prior to the wind turbines being commissioned.

Reason - In the interests of residential amenity and the proper planning and development of the area.

10. (a) The turbine with the highest as-constructed elevation shall be lighted with a layer of fixed red medium intensity lighting in accordance with IAA specifications. These lights should be fitted as close to the top of the turbine as practicable and should be visible from every angle in azimuth.

(b) The co-ordinates in WGS-84 of the as-constructed position and elevation of the highest points of each turbine (to the top of blade spin) shall be provided to the IAA, The survey work shall be carried out in accordance with the IAA specifications for the survey of en-route obstacles.

Reason - In the interests of air traffic safety.

11. The developer shall pay a sum of money to the Planning Authority as a contribution towards expenditure that is proposed to be incurred by the Planning Authority in respect of roadworks facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be agreed between the Planning Authority and the developer or, in default of agreement, shall be determined by An Bord Pleanala.

Reason - In the interests of protecting the public carriageway and preserving the public amenities of the area.

12. Materials excavated during the construction of all foundations shall in the first instance, be stored on site in an environmentally safe manner that will not result in the pollution of waters. Upon completion of the construction phase of the project, the said materials shall be disposed of in a manner and place to be agreed with the Planning Authority.

Reason - In the interests of pollution control and the proper planning and development of the area.

13. Used oils for turbine lubrication shall be recycled.

Reason - In the interests of pollution control and the proper planning and development of the area.

LIMERICK COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS, 2000 - 2004

NOTIFICATION OF GRANT OF PERMISSION

John McCarthy
Dromdeeveen
Ballagh
Co. Limerick

PLANNING REGISTER NUMBER : 04/2722

APPLICATION RECEIPT DATE: 20/09/2004

Permission for erection of windfarm comprising of increased dimensions for 7 previously permitted wind turbines, 11 additional turbines, anemometer mast and access tracks. An EIS has been submitted as part of this application. at Dromdeeveen & Glenduff .

Further to the Order dated: 16/02/2005

A PERMISSION has been granted for the development described above subject to the 17 condition(s) set out on the Schedule which accompanied the Notification of the Council's Decision dated 16/02/2005.

Signed on behalf of the said Council _____

(For) Director of Services

Date: 24th March 2005

Please note that the provisions of Planning & Development Acts, 2000 - 2004 limits the duration of this planning permission to a period of five years from the date hereof.

LIMERICK CITY & COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS 2000 (AS AMENDED)

NOTIFICATION OF DECISION TO GRANT

Highfield Energy Limited
C/O John Brennan
Design Studio 7
Old Castle View Kilgobbin Road
Dubln 18 D18A243

(11)

Planning Register Number: 17/338
Valid Application Received: 19/04/2017
Further Information Received Date: 30/06/2017

In pursuance of the powers conferred upon them by the above-mentioned Act, Limerick City & County Council has by Order dated 27/07/2017 decided for the reason set out in the First Schedule hereto, to GRANT PERMISSION for development of land in accordance with the documents submitted namely:-the construction of a single storey control building and an electrical switching station compound, including electrical equipment plinths, access track, underground cable works and ancillary infrastructure at Dromdeeven Ballagh Co Limerick subject to the 5 condition(s) and the reasons for the imposition of the said condition(s) as set out in the Second Schedule.

Signed on behalf of said Council


Heather Supple
for DIRECTOR OF SERVICES
LIMERICK CITY & COUNTY COUNCIL

Date: 27/07/2017

Under Article 20 of the Planning & Development Regulations 2001 (as amended) the applicant shall remove the site notice in respect of the application following notification of the Planning Authority's decision.

In deciding the planning application, the Planning Authority, in accordance with Section 34(3) of the Planning & Development Act 2000 (as amended) has had regard to submissions/observations received (if any) in accordance with the Planning & Development Regulations 2001 (as amended).

In accordance with Article 31(i) of the Planning & Development Regulations 2001 (as amended), if there is no appeal to An Bord Pleanála a grant of permission shall be issued as soon as may be but not earlier than 3 working days after the expiration of the period for making of an appeal (see footnote).

THIS NOTICE IS NOT A GRANT OF PERMISSION AND WORK SHOULD NOT COMMENCE UNTIL PLANNING PERMISSION IS GRANTED.

NOTE:

An appeal against a decision of a planning authority under the provisions of the Planning & Development Act 2000 (as amended) may be made to An Bord Pleanála at any time before the expiration of the appropriate period and on payment of the appropriate fee, by an applicant for permission or any person who made submissions or observations in writing in relation to the planning application. An appeal by a person who made submissions or observations must be accompanied by the acknowledgement of receipt of the submissions or observations from the planning authority. Any such appeal must be made in writing and received by the Board within 4 weeks beginning on the date of the making of the decision by the planning authority. The appeal must be fully complete from the start otherwise it will be invalid. It is very important to

note that any appeal referrals under the Planning & Development Acts 2000(as amended) which are not accompanied the correct fee will be invalid.

/P.T.O.

The scale of fees payable to An Bord Pleanála in respect of appeals is set out hereunder:

Case Type	Appeal received on or after 5 th September 2011
Planning Acts	
a. Application for strategic infrastructure development or a request to alter the terms of such development already permitted or approved.	€100,000
b. Appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, where the application included retention of development.	€4,500 or €9,000 if *EIS or **NIS involved
c. Appeal against a decision of a planning authority on a planning application relating to commercial development, made by the person by whom the planning application was made, other than an appeal mentioned at (b).	€1,500 or €3,000 if *EIS or **NIS involved
d. Appeal against a decision of a planning authority on a planning application made by the person by whom the planning application was made, where the application relates to retention of development, other than an appeal mentioned at (b) or (c) (non-commercial development).	€660
e. 1 st party appeal solely against contribution condition(s) – (2000 Act Section 48 or 49).	€220
f. Appeal other than an appeal mentioned at (b), (c), (d) or (h)	€220
g. Application for leave to appeal.	€110
h. Appeal following a grant of leave to appeal.	€110
i. Referral.	€220
j. Reduced fee (payable by specified bodies).	€110
k. Submissions or observations (by observer) on strategic infrastructure development applications, appeals and referrals.	€50
l. Request from a party for an oral hearing.	€50
*EIS - Environmental Impact Statement	
**NIS - Natura Impact Statement	

Submissions or observations on appeals made by third parties must be received by the Board within 4 weeks from the receipt of the appeal by the Board and the fee in this case is €50. Development consisting of the provision of two or more dwellings is classed as commercial development for the purposes of an appeal. Should you wish to make an appeal, the following documents are available on www.pleanala.ie

- A Planning Appeal Form/Checklist and
- A Guide to making a Planning Appeal.

Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1.

PLANNING REGISTER REFERENCE NUMBER: 17/338

FIRST SCHEDULE

Having regard to the nature of the proposed development, it is considered that, subject to compliance with the conditions as set out in the Second Schedule, the proposed development would be in accordance with the proper planning and sustainable development of the area.

SECOND SCHEDULE

1. The development shall be carried out in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 19th day of April 2017, except as may otherwise be required in order to comply with the following conditions.

Reason - In order to clarify the development to which this permission applies.

2. The developer shall pay to Limerick City & County Council a financial contribution of €1040 (One Thousand and Forty Euro) in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the Authority in accordance with the terms of the Development Contribution Scheme made under Section 48 of the Planning & Development Act 2000 (as amended). The contribution shall be paid prior to the commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment.

Reason- It is a requirement of the Planning & Development Act 2000 (as amended) that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

3. Equivalent sound levels arising from all sources within the proposed development, when measured at the boundary of noise sensitive locations (i.e. dwelling houses) shall not exceed a level of 55 dB (A)_{L_{Ar}} (60 minutes) between 0800 hours and 2000 hours Monday to Friday and 0800 hours and 1400 hours on Saturday. Noise levels shall not exceed 45dB (A) L_{Ar} (15 minutes) at any other time.

Reason – To protect the residential amenities of the area in the interest of proper planning and sustainable development of the area.

4. The construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise/vibration and traffic management measures and off-site disposal of construction/demolition waste. The plan shall also include appropriate measures to ensure that the water quality and water levels of the Glashawee River (Blackwater River SAC fresh water pearl mussel site) are not adversely affected.

Reason- In the interests of public safety and residential amenity.

5. All boundaries of the proposed development shall be screened from the public road by the planting of a double row of native hedging species (e.g. holly, hawthorn, blackthorn, ash etc.) and broad-leaved trees common to the locality. This planting shall take place on or before the first appropriate planting season after the commencement of development. Any unsuccessful planting to be replaced in the following planting season. Full details shall be submitted to and agreed with the Planning Authority.

Reason - In the interest of biodiversity and visual amenity.

LIMERICK CITY & COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACTS, 2000 (AS AMENDED)

NOTIFICATION OF GRANT OF PERMISSION

Highfield Energy Limited
C/O John Brennan.
Design Studio 7
Old Castle View Kilgobbin Road
Dubln 18 D18A243

PLANNING REGISTER NUMBER: 17/338

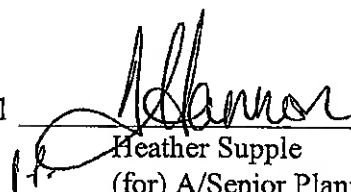
APPLICATION RECEIPT DATE: 19/04/2017

Permission for the construction of a single storey control building and an electrical switching station compound, including electrical equipment plinths, access track, underground cable works and ancillary infrastructure at Dromdeeven Ballagh Co Limerick.

Further to the Order dated: 27/07/2017

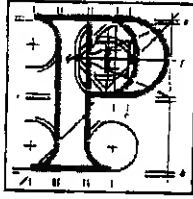
A PERMISSION has been granted for the development described above subject to the 5 condition(s) set out on the Schedule which accompanied the Notification of the Council's Decision dated 27/07/2017.

Signed on behalf of the said Council


Heather Supple
(for) A/Senior Planner
Planning & Environmental Services
31/08/2017

Please note that the provisions of Planning & Development Act 2000 (as amended) limits the duration of this planning permission to a period of five years from the date hereof.

An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2011

Limerick County

Planning Register Reference Number: 12/379

An Bord Pleanála Reference Number: PL 13.240910

APPEAL by Mauricetown Wind Farm Limited care of Wind Prospect Ireland Limited of Headland House, 1-3 The Green, Malahide, County Dublin against the decision made on the 4th day of July, 2012 by Limerick County Council to refuse permission in accordance with plans and particulars lodged with the said Council.

PROPOSED DEVELOPMENT: A 10 year planning permission for retention and completion for the construction, operation and decommissioning of up to six number wind turbine generators with a blade tip height of up to 132 metres (hub height of up to 85 metres and rotor diameter of up to 93 metres) and crane hardstandings for each turbine, the construction of a meteorological mast, electrical substation, underground electrical cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks, and ancillary services at Glenduff, Darrery and Coolnanoglash, all in Ballagh, County Limerick. An Environmental Impact Statement (EIS) and Natura Impact Statement (NIS) have been submitted with the application.

DECISION

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

MATTERS CONSIDERED

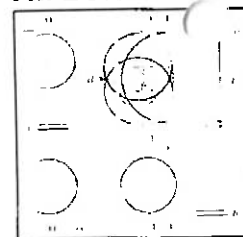
In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Our Ref: PL 13.240910
P.A.Reg.Ref: 12/379

Planner
Cont.

An Bord Pleanála



The Secretary,
Planning Section,
Limerick County Council,
County Hall,
Dooradoyle,
Co. Limerick.

(1)

18 APR 2013

Appeal

Re: Ten year planning permission for retention and completion permission for construction, operation and decommissioning of 6 no. wind turbine generators, meteorological mast and ancillary services
Glenduff, Darrery & Coolnanoglah, Ballagh, Co. Limerick

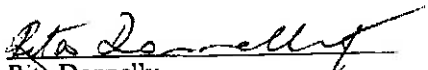
Dear Sir/Madam,

An order has been made by An Bord Pleanála determining the above-mentioned matter under the Planning and Development Acts 2000 to 2011. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,


Rita Donnelly
Executive Officer

Encl:

BP 100n.ltr



REASONS AND CONSIDERATION

Having regard to:

- (a) the Limerick County Development Plan 2010,
- (b) the national policy as set out in the Wind Energy Development Guidelines for Planning Authorities issued by the Department of Environment, Heritage and Local Government in June, 2006,
- (c) the planning history of the area,
- (d) the nature of site and the local landscape,
- (e) submissions on the file, and
- (f) the Inspector's report,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously impact on designated scenic routes and prospects in the area, would not seriously injure the residential amenities of dwellings and would, therefore, be in accordance with the proper planning and sustainable development of the area.

The Board completed an Environmental Impact Assessment of the proposed scheme which considered inter alia, the Environmental Impact Statement including mitigation measures submitted with the application and the reports, assessment and conclusions of the Inspector in relation to the environmental impacts of the scheme, the conclusions of which were broadly accepted by the Board.

The Board completed an Appropriate Assessment in relation to potential impacts on Natura 2000 sites and having regard to the Natura Impact Statement and mitigation measures proposed including provision of mitigation lands received in relation to the planning application, the Inspector's report and submissions on file, the Board concluded that on the basis of the information available that the proposed development either individually or in combination with other plans and projects would not adversely affect the integrity of the European site in view of the site's conservation objectives.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and Environmental Impact Statement, as amended by the further plans and particulars received by An Bord Pleanála on the 31st day July 2012, except where otherwise may be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars

Reason: In the interest of clarity.

2. The period during which the development hereby permitted may be carried out shall be 10 years from the date of this order.

Reason: In the interest of orderly development having regard to time constraints on grid connection.

3. This permission shall be for a period of 25 years from the date of commissioning of the wind farm.

Reason: To enable the planning authority to review its operation in the light of the circumstances then prevailing.

4. All mitigation and management proposals contained in the Environmental Impact Statement and subsequent revisions submitted to the planning authority and An Bord Pleanála shall be implemented in full.

Reason: In the interest of clarity.

5. Prior to the commencement of development, the developer shall submit a comprehensive Construction-Stage Drainage Report and Construction Management Plan for the written agreement of the planning authority which shall include:

- (a) a pre-construction ecological assessment of all watercourses in the vicinity according to criteria to be set out in consultation with Fisheries Ireland,
- (b) full details of all the control of drainage during and after construction (including tree-felling prior to construction), including the use of settlement ponds and silt traps,
- (c) full details for the control of run-off from temporary spoil storage areas,

- (d) details of the nature of all materials used in constructing temporary and permanent access tracks to the turbines and borrow pits,
- (e) full details of storage proposals for hazardous materials, cement leachate, hydrocarbons and other materials to be used during construction, and
- (f) details of the timing of works to ensure no works impacting on watercourses takes place during the bird breeding season or the fish spawning season.

Reason: In the interest of protecting watercourses and natural habitats and the prevention of environmental pollution.

6. The wind turbines including masts and blades shall be finished externally in a colour to be agreed in writing with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

7. (a) Cables within the site shall be laid underground.
- (b) The wind turbines shall be geared to ensure that the blades rotate in the same direction as other existing and proposed turbines in the area.
- (c) Transformers associated with each individual turbine and mast shall be located either within the turbine mast structure or at ground level beside the mast.

Reason: In the interest of visual amenity.

8. Soil, rock and sand excavated during construction shall not be left stockpiled on site following completion of works. Details of treatment of stockpiled materials shall be submitted to and agreed in writing with the planning authority prior to the commencement of development. The borrow pits shall be graded and finished in such a way to minimise impact on the landscape and to promote the reestablishment of appropriate vegetation for ecological enhancement.

Reason: In the interest of visual amenities of the area.

Following consultation with the National Parks and Wildlife Service, details of aeronautical requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Subsequently, the developer shall inform the planning authority and the Irish Aviation Authority of the co-ordinates of the as constructed positions of the turbines and the highest point of the turbines (to the top of the blade spin).

Reason: In the interest of air traffic safety.

10. (a) Noise levels measured externally during the operation of the development at the nearest sensitive location shall not exceed 45 dB(A) LA90 or 5dB(A) above ambient noise when measured over any 10 minute period between 0800 hours and 2000 hours and 43 dB(A) at any other time.
- (b) Measurements of noise levels shall be undertaken during the first year of operation at times, locations and frequencies to be agreed in writing with the planning authority and the results of these measurements shall be submitted to the planning authority.
- (c) Where noise levels interfere with the amenities of the area, the developer shall submit to the planning authority for its written approval detailed proposals for ameliorating excessive noise levels.

Reason: In the interest of residential amenity.

11. Shadow flicker at surrounding dwellings shall not exceed 30 hours per annum or 30 minutes per day. In the event of this limit being exceeded, the operation shall cease until mitigation measures have been agreed in writing with the planning authority.

Reason: In the interest of residential amenity.

12. Details of the road network to be used by construction traffic and by the long-term maintenance traffic shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

13. Prior to any construction works being carried out between mid-March and mid-August, a survey for breeding hen harriers shall be carried out by a competent, experienced ornithologist. The survey shall cover the area between a boundary of 500 metres of the works to be carried out during the above period. The survey methodology (location of vantage points, length and limit of observations, etc) shall be sufficient to ensure that a hen harrier breeding site will not be overlooked. Taking into account the results of this survey, no construction works shall be carried out during the above period within 500 metres of a pre-nesting breeding site and/or nest of a hen harrier, except with the written approval of the planning authority in consultation with the National Parks and Wildlife Service. There shall be no disturbance of a hen harrier on or near a nest contain eggs or unflown young.

Reason: To avoid significant disturbance to protected species.

14. Prior to construction works being carried out and for two years after the second year after commencement of operation of the wind turbines, monitoring of breeding hen harrier within, and in the area surrounding, the windfarm shall be carried out by a competent, experienced ornithologist. The results of this survey shall be sent to the National Parks and Wildlife Service by the end of each year of survey.

Reason: To ensure mitigation measures are successful.

15. All borrowing pits providing material for road construction, if adjacent or within 100 metres of the Special Protection Area, will be reinstated, after completion of construction, to a vegetation cover suitable for foraging hen harrier habitat, and maintained as such during the lifetime of the windfarm.

Reason: To avoid loss of habitat of a species for which the Special Protection Area was designated.

16. Monitoring of the use of the wind turbine sites (100 metre radius around each turbine) by bats shall be carried out by a competent ecologist, using standard methods, for one year before construction and for two years after construction works are completed. A survey for barn owl roosts shall also be carried out in the vicinity of the windfarm during the same period. If barn owls are found to be nesting within two kilometres of the windfarm, then monitoring for bird casualties shall be carried out under the turbines after commencement of operations. The area and method of search, and the timing and duration of monitoring shall be agreed with the planning authority after consultation with the National Parks and Wildlife Service prior to the commencement of works. Reports of monitoring and surveys shall be sent to the planning authority and the National Parks and Wildlife Service.

Reason: To confirm that protected species have not been adversely affected.

17. Access route bridge works over streams or rivers shall be carried out in accordance with the National Road Authority Guidelines for the protection of otters.

Reason: To ensure the protection of breeding otters.

18. Removal of hedgerows for access route widening shall be carried out only between September and February inclusive.

Reason: To avoid adversely affecting breeding birds.

19. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

- (a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,
- (b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and
- (c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

20. On full or partial decommissioning of the windfarm or if the windfarm ceases operation for a period of more than one year, the masts and the turbines concerned (including foundations) shall be removed and all decommissioned structures and any access roads shall be removed within three months of decommissioning.

Reason: To ensure satisfactory reinstatement of the site upon cessation of the project.

21. Facilities shall be installed to minimise interference with radio, television and telecommunications reception in the area. Details of the facilities to be installed which shall be at the developer's expense shall be submitted to, and agreed in writing with, the planning authority prior to commissioning of the turbines.

Reason: In the interest of residential amenity.

22. Details of the materials, colours and textures of all the external finishes of the sub-station shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

23. Disposal of foul sewage generated on the site shall be by means of chemical toilet only without a prior grant of planning permission.

Reason: In the interest of environmental protection.

24. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: In the interest of road safety and the proper planning and sustainable development of the area.

25. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.



**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this 17th day of APRIL 2013.

**Planning Report
Limerick County Council**

File No: 12/379

Name of Applicant: Mauricetown Wind Limited

Location of Development: Glenduff, Darrery & Coolnanoglah, Ballagh, Co. Limerick

Development Description:

Permission for the retention and completion for the construction, operation and decommissioning of up to 6 number wind turbine generators with a blade tip height of up to 132m (hub height of up to 85m and rotor diameter of up to 93m) and crane hardstandings for each turbine, the construction of a meteorological mast, electrical substation, underground electric cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks and ancillary services (an Environmental Impact Statement (EIS) and a Natura Impact Statement (NIS) have been submitted as part of this planning application)

Description of existing and proposed development and site analysis:

Permission is sought for the retention and completion for the construction, operation and decommissioning of up to 6 number wind turbine generators with a blade tip height of up to 132m (hub height of up to 85m and rotor diameter of up to 93m) and crane hardstandings for each turbine, the construction of a meteorological mast, electrical substation, underground electric cabling, access tracks, borrow pit, temporary construction compound, retention and completion of access tracks and ancillary services (an Environmental Impact Statement (EIS) and a Natura Impact Statement (NIS) have been submitted as part of this planning application). The site is partially located in the Stacks to Mullaghareirks Mountains West Limerick Hills and Mount Eagle Special Protection Area. The site consists of 22 ha of agricultural lands. The site is located on an elevation of between 180 and 330 metres above sea level. The area is open and exposed. The lands are located in an area, which is designated as been open for consideration to wind energy development as designated in the County Development Plan.

Planning History:

- 09/1270 - John Forde - Permission for retention of 398m of access tracks to provide suitable access for the construction, maintenance, operation and decommissioning of 2 no. wind turbine - declared withdrawn
- 04/3505 - Glenivers Wind Farm - construction of wind farm consisting of 1 no. wind turbine, (hub height 80 m) internal site trackways and associated site works - granted
- 04/475 - John Forde - Construction of 2 No. turbines (hub height 80 m), an electrical substation, with control building, internal site tracks and associated site works - granted
- 06-7016 - John Forde - Extension of duration for the development of a wind farm (Planning permission 04/475) - Refused
- 03/930 - John Forde - construction of a 50m temporary wind monitoring pole and wind monitoring equipment - granted

Submissions/Objections:

Reports:

- Eircom – indicates that Eircom have not been consulted in relation to radio interference
- IAA- conditions in the event of a grant of permission
- An Taisce –
 - o Ecological Concerns – site is located in the Stacks to Mullaghareirks Mountains West Limerick Hills and Mount Eagle Special Protection Area, there has been a decline in the hen harrier species in the last five years and no further wind turbines shall be permitted, until such time as the issue of hen harrier decline has been addressed.
The NIS addresses cumulative impact within 5 km of the site, however the NIS, should address the cumulative impact in the overall SPA,
BATS – no record of bats with 20km of the site, further measures required to ensure that the bats are not adversely impacted upon.
A corpse search shall be carried out of bats and birds by an ecological consultant
- HSE -
 - o Environmental impact statement doesn't address the impact on human beings, the direct and indirect impacts of the proposal on human health, significant omission
 - o Significant number of other windfarms in the vicinity of the site, constructed and permitted. Concern is raised in regard to the proximity of the windfarms. EIS doesn't address the cumulative impact of the proximity of the windfarms
 - o No consultation appears to have taken place at scoping stage, significant oversight
 - o No consultation with the community – significant oversight – important element of the EIS process
 - o EIS doesn't address dust generation/control during construction process, there will be a number of issues on site and a comprehensive dust management plan should be submitted
 - o EIS doesn't address a comprehensive construction management plan for the construction and development of the site
 - o Temporary construction compound indicates that effluent disposal will be collected on site and disposed to a licensed disposal facility – no details of proposed staff numbers, quantity of sanitary facilities, the capacity of facilities, no details on the design and location of same, or details of final disposal location
 - o No details of water supply to temporary works area,
 - o Ground water impact on wells within 300 metres of the site
 - o Concerns with regard to the noise impact assessment submitted
 - o Concerns with regard to the shadow flicker assessment submitted
 - o A geotechnical plan should be submitted for the site
 - o An environmental management plan should be submitted as part of the EIS
- DoAHG –

- Assessment of wind energy developments in the SPA – concerns highlighted, the planning authorities shall satisfy themselves, that the effect of any proposed wind farm development be assessed in combination with previously permitted developments, plans and projects affecting the SPA
- Disturbance/displacement and habitat mitigation – with the exception of turbine No. 3 (which is located on improved pasture lands) are all outside the SPA, however 21 ha of the afforested lands and 0.2ha of open rough grassland exist within 250 metres of the SPA, and disturbance/displacement is likely to occur.
- In combination effects – the connectivity to other windfarm within 5 km should be assessed
- Protected species – bats – protection required under Article 51 (4) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S. I. No. 477 of 211)
- Further information/conditions
- Environment Section of Limerick Co Co. –
 - From the Dept. of the Environment, Community and Local Government, Wind Energy Guidelines 2006 it is stated that noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500metres. From table 10.2 “Distance between identified receptors and wind turbines” of the noise assessment: 9no. Noise Sensitive Locations (private dwellings H01-H09) are located within 500metres of turbines T01 – T06. 2 of these are involved landowners.
 - From the EPA Guidance Note on Noise Assessment of Wind Turbine Operations, for daytime periods the noise limit is 35 – 40 dB L_{A90} or 5dB above the “quiet day-time hours prevailing background noise”, whichever is the greater.
 - For night time periods, the noise limit is 43dB L_{A90} or 5dB above the “quiet day-time hours prevailing background noise”, whichever is the greater, based on a sleep disturbance criteria of 35 dB L_{Aeq}
 - From BS4142, Rating Industrial noise affecting mixed residential and industrial areas states that a difference in level between the background noise level and the specific noise level (i.e. Turbines) of 10dB or greater is a positive indication that complaints are likely – Table 10.3 of the noise assessment shows that noise sensitive locations with 500m of the proposed turbines are both very close to and exceeding the 35dB nighttime sleep disturbance criteria by 10dB.
 - No turbines be located with 500m of any private dwellings
- County Archaeologist – conditions in the event of a grant of permission
- Heritage Officer – recommendation of a grant of permission subject to conditions
 - Ecological issues: all of the turbines are located on improved grassland which has been reseeded within the last five years. It is used for either silage or dairy cows. This type of management results in uniform sward structure with little tussock development and little floristic variety which

Tom Cassidy - Conservation officer - concerns with regard to impact of development on Glanduff Castle + other Section 53 buildings

reduces its value for prey species for the hen harrier (e.g. Meadow pipits and small rodents). Some of the turbines are relocated within the SPA but these are on improved grassland which is limited due to the harrier which favours rough grassland. There is the displacement issue and the overall loss of possible habitats has been estimated at 3.2 ha. Mitigation measures have been put forward (s. 4.5 of the (EIA).

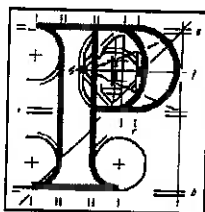
- The other ecological issues that arise are possible contamination of water courses. In this regard the mitigation measures suggested in S9.7.2 pp. 19-22 of the Minerex Report dated April 26th 2012 be implemented.
- Submissions: from An Taisce and HSE and one local Home owner. The Home owner is approximately 1000 m distance outside the buffer areas of the 2006 Wind Energy Guidelines and the gable end of the house is oriented towards the development minimising any visual intrusion. An Taisce express concern regarding the hen harrier and cumulative impacts on the SPA. This has been dealt with in the AA which mentions that the 3.2 ha loss of habitat has to be viewed in relation to the effects of wind farms in the SPA as a whole (EIA) as a whole. Cumulative impacts are assessed in S4.4. An AA screening document and an NIS has been produced as part of the assessment (Appendix 7.6). The HSE submission is lengthy and mentions issues of human health and possible. The development having prepared under the guidance of the 2006 guidelines takes such issues into account, while the mineral soil nature of the site coupled with lack of severe slopes means that subsidence is not an issue, had the soils been peat which is more unstable. Such concern would be justified. This has not been an issue on the nearby Dromdeevēen wind farm which operates in similar surroundings.
- Views and Prospects: There are no scenic views or prospects nearby.
- Routes to the wind farm: issues arise in relation to possible use of stone buildings as potential bat roosts at X 130 275 Y 122 163. These are likely to be used as a temporary roost only as they are uninsulated and subject to large temperature fluctuations. In terms of mitigation the following is suggested. The building facing lengthways to the road is to be demolished by hand with the expectation of bats being encountered. Should they be encountered then the NPWS is to be contacted. The other building gable end to the road is to be left intact if possible. No traces of bats, droppings, fur and urine staining were found on inspection. Should it be necessary to remove any trees at X 130 028 Y 121 737 to facilitate the passage of the turbines then these are to be replaced with planting comprised of native species only. Should these fail then they are to be replaced in the following growing season.
- Grid Connection: will be through the previously existing Dromdeevēen Wind farm connection which is immediately to the south of this development this is to be underground following the route of existing road ways detailed in Chapter 2 of the EIS.

- Chief Fire Officer – Category B Conditions to be attached

Objections:

3/7/12

An Bord Pleanála



Inspector's Report

REFERRALS

An Bord Pleanála Refs:	RL3369 and RL3375
Planning Authorities:	Cavan County Council and Meath County Council.
Planning Authority Refs:	Cavan Co. Co. (none) Meath Co. Co. KA/S51520.
Referrers:	Cavan County Council and Meath County Council
Developer:	Raragh Developments Limited
Location of Referral Site:	Kingscourt, County Cavan and Kilnalun, County Meath.
Question:	Whether the provision of a 20kV underground cable forming the grid connection to a planned windfarm is or is not development or is or is not exempted development.
Date of Inspection:	20 November, 2015.
INSPECTOR:	Brendan Wyse

1.0 INTRODUCTION

1.1 As these two referrals relate to the same proposal, the provision of an underground electricity cable that straddles both County Cavan and County Meath, and to the same question, the matter can be properly dealt with in a single Inspector's report. A copy of the report is attached to each file.

1.2 The Board should also note that the following similar referrals (post O'Grianna grid connections) are also current – RL3377, RL3401 (Counties Kilkenny/Tipperary).

2.0 THE SITE (see Map and Photographs)

2.1 The site is located in the vicinity of Kingscourt in County Cavan. Comprising the route of the proposed electricity line it extends north-south for approximately 5.5 kilometres from the townland of Raragh, north of Kingscourt, the location of the planned wind farm, via the centre of Kingscourt to the existing ESB substation at Kilnalun, south of Kingscourt and just over the county boundary in County Meath. The great majority of the route is in County Cavan with approximately 220 metres in County Meath.

2.2 From its northernmost point the route initially traverses farmland, including an old track and some grassland, before entering the R162. It follows this road southwards into Kingscourt and runs along Main Street. At the southern end of Main Street the route veers left and follows the Carrickleck Road southeast out of the town to the substation at Kilnalun.

2.3 Maps and photographs are included in the file pouch.

3.0 APPLICATION FOR DECLARATION

3.1 The application to Cavan County Council was lodged on 11th May, 2015. A request for further information issued on 6th June, 2015 referring to the O'Grianna court ruling and to the need to also submit an application to Meath County Council.

3.2 Further information was submitted to Cavan County Council on 1st July, 2015 and the application for a Declaration from Meath County Council was lodged on the same date.

3.3 The documentation submitted to both Planning Authorities is similar and comprises the following:

- Cover letters.
- Application forms.
- Development maps/drawings.
- AA Screening Report.
- Environmental Review.
- Archaeological Impact Assessment.
- Bat Survey Report.
- Letter from CER (Cavan County Council).
- Details of Precedent Cases.

3.4 The cover letters and maps/drawings include the following:

- The proposal is to construct 5.5 kilometres of 20kV underground cable as the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan (granted permission under Cavan County Council Ref. 09/270, ABP Ref. 02.236608) and the existing ESB substation in Kilnalun, County Meath.
- The cable will be installed under existing public roads (R162 and Carrickleck Road) and private land.
- A separate road opening licence will be obtained.
- The development will comprise a 20kV cable installed in a 125 millimetre HDPE duct at a depth of 1 metre below ground level.
- The development will be constructed by Raragh Developments Limited (RDL). Upon completion it will be handed over to ESB Networks who will own/maintain the constructed asset.
- With reference to Class 26 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, the development consisting of the laying of underground cables or other apparatus is considered exempted development.
- Under Section 16 of the Electricity Regulation Act 1999 (Authorisation to Construct) and Section 14 of the Electricity Regulation Act 1999 (Licence to Generate) the Commission grant the licence for an electrical undertaking to persons to construct a generating station and to generate electricity.

- Declarations are sought confirming the proposed development as exempt.

4.0 PLANNING AUTHORITY DECISIONS

It should be noted that neither Cavan County Council nor Meath County Council issued a Declaration. Instead they elected, under Section 5(4) Planning and Development Act 2000, as amended, to seek a determination on the matter from the Board.

5.0 REFERRALS TO THE BOARD

5.1 Cavan County Council (RL3369)

5.1.1 Report of A/Senior Planner, dated 5th June, 2015,

Recommends the further information request referred to at parag. 3.1 above.

5.1.2 Raragh Developments Limited (Developer) (received 14th August, 2015)

Includes:

- Copy Authorisation to Construct and Licence to Generate, which grant the electrical undertaking to Raragh Developments Limited, for the project in accordance with Sections 14 and 16 of the Electricity Regulation Act 1999, granted by the Commission for Energy Regulation (CER).
- Statement that these grant the licence for an electrical undertaking to Raragh Developments Limited for the purposes of constructing the wind farm and grid connection.
- In accordance with Class 26, Part 1, Schedule 2, Planning and Development Regulations 2001, as amended, these activities are considered exempted development to persons holding these licenses.

5.1.3 Raragh Developments Limited (received 9th October, 2015)

Includes:

- The underground cable is to be predominantly installed within the public road except at start and end points of the route where it will be in privately owned lands.
- Letters of consent from Jonathon Gilmore (landowner at start of route – Folio CN24351) and from ESB Networks (landowner at end of route – Folio MH10116).

5.1.4 Planning Authority Submission (Cavan County Council)

- By reference to Class 26, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, the Planning Authority is of the opinion that the development appears to be exempted development.
- There are no national monuments, protected structures, Natura 2000 or natural heritage areas affected by the development.
- Query whether there is an issue in concluding that the development is exempted development having regard to the fact that the previous application associated with the development was subject to an EIS.
- Query whether issuing this Declaration is contrary to the O'Grianna case findings.
- The Planning Authority is of the opinion that a screening for EIS may be required in order to ascertain whether the development on its own or in conjunction with the approved development would require an EIS.

5.1.5 Transport Infrastructure Ireland (TII)

- As the 5.5 kilometre cable route proposed does not traverse any national road network the issue at hand is outside the remit of the Authority in this specific instance.
- However, in the interests of avoiding unintended consequences for the national road network arising from a determination in this case, through establishing precedent, the Authority would welcome

certain considerations being taken into account by the Board in determining this case.

- Section 3 of the Planning and Development Act, 2000 defines development and having regard to the nature and extent of works proposed in the referral, the Authority is of the opinion that the proposal constitutes development for the purposes of the Act.
- Section 4 of the Act makes provision for exempt development regulations which are set out in the Planning and Development Regulations, 2001 – 2015.
- Article 9 of the Regulations provide that development to which article 6 (i.e. exempt development) relates shall not be exempted development for the purposes of the Act –
 - (a) if the carrying out of such development would –
 - (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, watermain, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies.

In this specific instances, it does not appear from the information referred that the proposal consists of or comprises a connection to an electricity supply line or cable as the essence of the development proposed itself is to provide such infrastructure. Therefore, it does not appear that the scope to rely on the above 'exemption' is available to the scheme promoter in this instance.

- Furthermore, it does not appear that the proposed works can be considered exempt development under Schedule 2, Part 1 as the scheme promoter does not appear to be a statutory undertaker for the purposes of the Exempt Development Regulations.
- The Authority would draw the Board's attention again to Article 9 of the Regulations which provides that development would not be exempted development for the purposes of the Act if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users, Article 9(1)(a)(iii) refers.

5.1.6 Environmental Health Service – HSE

This submission sets down a number of comments in relation to the implementation of the proposed development. It does not refer to the question the subject matter of the referral, namely, whether or not the development in question constitutes development and/or exempted development for planning purposes.

5.1.7 Cavan County Council Response to Submission of TII

No further comments.

5.1.8 Raragh Developments Limited Response to Submission of TII

Includes:

- Being an underground cable the proposed development will have no impact on traffic safety. A road opening licence will be sought for the works and all health and safety and traffic management requirements will be adhered to during construction.
- Class 26 is specifically omitted from the restrictions imposed by Article 9(i)(a)(v).
- In relation to Class 26 and it applying to any “undertaking authorised to provide an electricity service”, the developers have been granted an authorisation to construct and licence to generate under Sections 14(i)(a) and 16 of the Electricity Regulation Act 1999.
- Under Section 2, Part 1 of the Electricity Regulation Act 1999 the above referenced licence classifies Raragh Developments Limited as maintaining an “electricity undertaking” defined as “any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under Section 37 of the Principal Act”.
- Reference to previous decisions where grid connection works were deemed exempted development under similar circumstances:

ABP Ref. RL2789, SWS Energy.

Wicklow County Council Ref. EX18/13, ESB Wind Development and Coillte Teo.

Limerick County Council Ref. EC15/46, Kilmeedy Windfarm Ltd.

- With regard to Part 1 of Schedule 2 of the Regulations, as the works are classified under Class 26 and will be carried out under an electricity undertaking, the works are not de-exempted by this provision in the Regulations.

5.1.9 Other Bodies/Parties

It is noted that submissions/observations were requested from the following bodies/parties but none were received:

The Heritage Council

Department of Arts, Heritage and the Gaeltacht

An Taisce

Faite Ireland

An Chomhairle Ealaíon

ESB Networks

Jonathon Gilmore

5.2 Meath County Council

5.2.1 Planning Report, dated 28th July, 2015.

Includes:

- The act of laying cables constitutes development within the meaning of Section 3, Planning and Development Act 2000, as amended.
- The applicant has not demonstrated that it is an entity which constitutes an undertaker providing an electrical service for the purposes of Class 26, Planning and Development Regulations 2001, as amended.
- The O'Grianna judgement is of relevance in this case. If it is the case that both the wind farm and grid connection are a single project then EIA is required and, therefore, exemption cannot be availed of.

5.2.2 Raragh Developments Limited (Developer) (received 14th August, 2015).

As per Section 5.1.2 above.

5.2.3 Transport Infrastructure Ireland (TII)

As per Section 5.1.5 above.

5.2.4 Department of Arts, Heritage and the Gaeltacht (DAHG)

Includes:

Nature Conservation

- The environmental review does not provide sufficient enough information with regard to the amount and location of hedgerow habitat that will be lost, the species composition of such hedgerows, or the proposed time of year for the removal of hedgerows.
- There appears to be a misunderstanding of the meaning of in-combination effects in the ecological report. It is stated that the proposed cable route will be installed independent of the wind farm and not in combination, and that therefore there is no potential for cumulative or in-combination effects between these projects. However, in-combination effects should be assessed for ecological issues resulting from the wind farm and cable as well as other plans or projects which may have a cumulative or in-combination impact. For example ecological effects could include a cumulative loss of hedgerows resulting in loss of bird nesting habitat and the use by bats of hedgerows for roosting or feeding or as navigational corridors.

5.2.5 Planning Authority Submission (Meath County Council)

Includes:

- The applicant has been granted a licence to generate electricity which could be taken to fall within the meaning of "providing an

electrical service” as per Class 26, Planning and Development Regulations.

- The O’Grianna judgement is relevant as if the cabling is considered to form an integral part of the overall project, it is the case that both have been examined independent of the other.
- If the wind farm and grid connection are considered to constitute a single project then EIA is required and the exemption cannot be availed of.

5.2.6 Environmental Health Service – HSE

As per Section 5.1.6 above.

5.2.7 Meath County Council Response to Submission of TII

No further comments.

5.2.8 Raragh Development Limited Response to Submission of TII

As per Section 5.1.8 above.

5.2.9 TII Response to Submission of Meath County Council (Section 5.2.5 above)

No specific comments – position as in original submission.

5.2.10 Raragh Developments Limited Response to Submission of Meath County Council (Section 5.2.5 above)

Includes:

- The underground cable routing was selected following significant environmental review. It was determined that AA was not required, including consideration in conjunction with the permitted wind farm project.

5.2.11 Other Bodies/Parties

It is noted that submissions/observations were requested from the following bodies but none were received:

The Heritage Council

6.0 PLANNING HISTORY

Cavan County Council Ref. 09/270, ABP Ref. 02.236608 (file attached)

November 2010 grant of permission for a wind farm comprising 5 turbines to PWWP Developments Ltd at Raragh and Corrinshigo, Kingscourt, County Cavan. The application included an EIS.

Condition 9 expressly indicates that the permission does not consent to a connection to the national grid or routing/nature of same.

Cavan County Council Ref. 15/164

June 2015 grant of extension of duration of the above permission to November 2020 to Raragh Developments Ltd.

7.0 DEVELOPMENT PLANS

7.1 Cavan County Development Plan 2014-2020

No relevant objectives/designations.

7.2 Meath County Development Plan

No relevant objectives/designations.

8.0 LEGISLATION AND CASE LAW

8.1 Legislative Provisions

(a) Planning and Development Act 2000, as amended.

Section 2(1)

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and.....”

Section 3(1)

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

“statutory undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to –

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,*
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or*
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking.”*

Section 4(2)(a)(i)

“The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that –

- (i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or....”*

Section 4(4)

“Notwithstanding..... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required”.

Section 172(1)

“An environmental impact assessment shall be carried out by a planning authority or the Board, as the case may be, in respect of an application for consent for –

(a) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which exceeds a quantity, area or other limited specified in that Schedule, and

(b) proposed development of a class specified in Schedule 5 to the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule but which the planning authority or the Board determines would be likely to have significant effects on the environment".

Section 177U(9)

"In deciding upon a declaration or a referral under section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section".

(b) Planning and Development Regulations 2001, as amended

Article 3(3)

"“electricity undertaking” means an undertaker authorised to provide an electricity service”.

Article 6(1)

"Subject to article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1".

Schedule 2, Part 1

Development by Statutory Undertakers

Class 26

"the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking".

Article 9(1)

"Development to which Article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies,*
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

(c) *If it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive.*"

8.2 Case Law

O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM (copy in file pouch).

9.0 ASSESSMENT

I propose to deal with the issues in these referrals under the following headings:

- O’Grianna
- Legislative Tests
- Precedent Referral Cases (if any)

9.2 O’Grianna

9.2.1 The Board will be aware that the O’Grianna case refers to a High Court judgement on Judicial Review of a permission granted on appeal by the Board for a development comprising 6 wind turbines and associated buildings/infrastructure in County Cork. The Board’s decision on the appeal (Ref. 242223) was made on 15th November, 2013 and the High Court judgement (Ref. 2014 No. 19 JR’ 2014 No. 10 COM) was delivered on 12th December, 2014.

9.2.2 That application for permission attracted a mandatory requirement for EIA as the development exceeded the 5 wind turbine threshold provided for in Class 3(i), Part 2, Schedule 5, Planning and Development Regulations 2001, as amended. As was the case with most wind farm development applications at that time, and in line with advice contained in the Planning Guidelines, no details were included in relation to the connection to the national grid. This would be a matter for later determination as its design (including line, form, overhead/underground) would be undertaken by ESB Networks.

- 9.2.3 In essence the High Court judgement, quashing the Board's decision, was based on the conclusion that the windfarm and the grid connection constituted a single project and that both elements together would have to be subject to EIA in order to comply fully with the terms of the Directive.
- 9.2.4 As a consequence of the judgement new applications for permissions for wind farms developments, and which require EIA, now include relevant information on proposed grid connections.
- 9.2.5 In the context of the subject referrals, however, permission for the relevant wind farm (Cavan County Council Ref. 09/270, ABP Ref. 02.236608) was originally granted in November 2010, i.e. prior to the O'Grianna judgement. The decision was in accordance with the law as it stood at that time. It has since been the subject of a grant of extension of duration (Cavan County Council Ref. 15/164). The permission, therefore, is valid and is beyond challenge. The application was subject to EIA and it is not now proper or possible to revisit this.
- 9.2.6 In the referrals details are provided of the proposed grid connection. The question of EIA, including cumulative assessment, can be addressed in accordance with the requirements of the Directive and as provided for in domestic planning legislation to the extent that is appropriate for the purposes of a referral. As indicated at Section 8.1 above one of the tests that has to be considered in the referrals is whether or not EIA is required for the subject development.
- 9.2.7 While the O'Grianna judgement clearly has had implications for wind farm applications/appeals arising since the judgement, and where applicants have to include details of proposed grid connections to facilitate EIA of the whole project, I can see no impediment to the Board proceeding to deal with the subject referrals while still meeting fully its obligations under the Directive.

9.3 Legislative Tests

- 9.3.1 To recap the question before the Board can be stated as follows:

"Whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development".

- 9.3.2 The relevant legislative provisions in this case are as set out at Section 8.1. above.

Development

- 9.3.3 Having regard to the nature of the proposal, namely the construction of c.5.5 kilometres of underground cable, it is clear, by reference to Section 2(1) and 3(1) of the Act, that it does constitute development for planning purposes. The focus, therefore, is on whether or not the proposed development constitutes exempted development.
- 9.3.4 Following on from Section 4(2)(a)(i) of the Act, and the Regulations made thereunder, the relevant class of development is, as indicated, Class 26, Part 1, Schedule 2, Planning and Development Regulations 2001, as amended. I am satisfied that the proposal is *"a development consisting of the laying underground of....cables;....for the purposes of the undertaking"*. The other requirement of this class is that the development be carried out by an *"undertaker authorised to provide an electricity service"*.

Undertaker/Statutory Undertaker

- 9.3.5 As indicated Article 3(3) of the Regulations states that an electricity undertaking means *"an undertaker authorised to provide an electricity service"*. However, there is no statutory definition to clarify what exactly this means. The Electricity Regulation Act 1999, at Section 2(1), provides the following definition:

"electricity undertaking" means any person engaged in generation, transmission, distribution or supply of electricity, including any holder of a licence or authorisation under this Act, or any person who has been granted a permit under section 37 of the Principal Act".

- 9.3.6 I note that while this definition refers to holders of licences/authorisations/permits the use of the conjunction *"including"* prior to the reference to these instruments indicates that they are not essential and that the term *"electricity undertaking"* can apply to *"any person"* engaged in generation, transmission, distribution or supply of electricity. In addition, in the subject case, Raragh Developments Ltd. have been granted the relevant licence/authorisation (see Section 5.1.2 above).

- 9.3.7 I note that the submission of the TII queries the status of the developer as a statutory undertaker (see Section 5.1.5 above).

9.3.8 As indicated Class 26 falls under the heading “*Development by Statutory Undertakers*”. It is one of several classes (Classes 23 – 32) in this part of the Schedule. It seems to me, therefore, that the references to undertakers, undertakings and other bodies/authorities referred to in these classes must be construed as meaning statutory undertakers.

9.3.9 The definition of “*Statutory Undertaker*” as provided in the Act appears to encompass a very broad spectrum of categories of persons or bodies. It includes “...a person, for the time being, authorised by or under any enactment or instrument under an enactment to ...provide, or carry out works for the provision of ...electricity”. In my opinion Raragh Developments Limited would appear to fall within this category on foot of their authorisation under the Planning Act to construct a wind farm that is a project/works for the provision of electricity. Additionally, they also hold a licence/authorisation under the Electricity Regulation Act.

9.3.10 As an aside I would note that the current definition of “*Statutory Undertaker*”, clearly contemplates undertakings that are not solely public undertakings. This compares to the definition in the original 1963 Act [Section 2(1)] that appears to have contemplated public undertakings only. The change presumably reflects the liberalisation of markets in services and infrastructural provision that has occurred since then.

9.3.11 I am satisfied, therefore, that the proposed development falls within the scope of the said Class 26.

9.3.12 The next step is to consider Section 4(4) of the Act which effectively de-exempts any development which attracts a requirement for Environmental Impact assessment (EIA) or Appropriate Assessment (AA).

Environmental Impact Assessment (EIA)

9.3.13 Being an underground cable for the transmission of electricity the proposed development does not fall within a class of development for the purposes of EIA. It cannot, therefore, attract a requirement for EIA.

9.3.14 The Board will note that the Environmental review submitted with the applications finds similarly that the project is not of a prescribed class of development for the purposes of EIA. However, it proceeds to screen for EIA in any case. It concludes that the project does not require EIA.

9.3.15 To the extent that the proposed grid connection might, following the O’Grianna Judgement, be viewed, in effect, to be an extension to the wind farm it could perhaps be argued that Class 13, Part 2, Schedule 5 [Development for the Purposes of Part 10 (EIA)] of the Regulations should be considered. This class refers to extensions to developments, including those that would have already been subject to EIA. While it is very difficult to place or measure the proposed grid connection within the terms of this class as would apply in this case, namely the units of measure applied in Class 3(i) for a wind farm (turbines or megawatts), it is clear, in my view, that by any interpretation it would represent only a very minor extension and be far removed from any trigger for EIA. By reference to Article 109(2) of the Regulations, therefore, I consider that the likelihood of significant effects on the environment can be excluded.

Appropriate Assessment (AA)

9.3.16 In relation to AA the application documentation submitted to the Planning Authorities included an AA Screening Report (see Section 3.3 above).

9.3.17 The report correctly identifies the nearest European Site as Killyconny Bog (Cloghbally) SAC (Site Code 000006) at a distance of approx. 15.2 kms to southwest of the subject site, ie. outside the guideline distance usually applied for assessment purposes.

9.3.18 Copies of relevant documentation for this site, including, in particular, the site Conservation Objectives, are included in the file pouch. The qualifying interests for the site are: Active Raised Bogs [7110] (Priority Habitat); and Degraded Raised Bogs still capable of natural regeneration [7120].

9.3.19 The screening report indicates that the Killyconny Bog site is outside the hydrological zone of influence of the project. By reason of this and the significant intervening distance it is concluded that there is no likelihood of significant effects on the European Site arising from the project.

9.3.20 I note a similar conclusion drawn in the Cavan County Council submission to the Board (see Section 5.1.4 above).

9.3.21 In relation to the submission of the DAHG (see Section 5.2.4 above) I consider that there is sufficient information to conclude that there is not a likelihood of significant in-combination effects. Firstly, the small scale of the project is such that it is not reasonably conceivable, in my view,

that it would be likely to give rise to significant effects over and above those likely to arise from the wind farm, the substation or any other project or plan that might be considered. Secondly, the nature of the project, which involves the laying of an underground cable within a c.1m by 0.5m trench mostly in public roads through the built-up area of Kingscourt, is such that significant additional effects are also not likely. In this connection the reference in the DAHG submission to loss of hedgerows is not understood. The only potential loss would appear to be at the extreme northern end of the route where it crosses farmland for a very short distance. In any event, given the nature of the Conservation Objectives/Qualifying Interests of the Killyconny Bog SAC, this is not an AA issue in the subject case.

9.3.22 I consider, therefore, that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000006, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

9.3.23 I am satisfied, therefore, that the proposed development does not fall within the scope of Section 4(4) of the Act.

Article 9(1) De-exemptions

9.3.24 The next, and final, step in this assessment is to consider the relevant provision of Article 9(1) of the Regulations (see Section 8.1(b) above) in order to check if any of these 'de-exemptions' apply.

9.3.25 In relation to Article 9(1)(a)(iii), which refers to traffic hazard/obstruction of road users, I concur with the developer that the project, being an underground cable, would have no impact on traffic safety. I also note the requirement for a road opening licence and that construction will comply with relevant health and safety and traffic management requirements.

9.3.26 In relation to Article 9(1)(a)(v) I have already concluded that the proposed development falls within the scope of Class 26 (See Section 9.3.11 above) so that this article does not apply.

9.3.27 Articles 9(1)(a)(vii) and (viiA) refer to archaeological and other sites of interest that are the subject of preservation/conservation objectives.

The Board will note that the application documentation submitted to the planning authorities included an Archaeological Assessment (see Section 3.3 above). The assessment was based on both a desk-top review of relevant source material and a walk-over survey/field inspection of the proposed route. While some archaeological monitoring during construction is recommended no findings suggesting any direct impacts of significance are made.

9.3.28 On this basis I am satisfied that the proposed development does not fall within the scope of Articles 9(1)(a)(vii) or (viiA).

9.3.29 Article 9(1)(a)(viiB) refers to the issue of Appropriate Assessment and as such the conclusion reaches at paragraph 9.3.22 above applies.

9.3.30 Similarly Article 9(1)(c) refers to the issue of EIA and as such the conclusion reached at paragraphs 9.3.13 to 9.3.15 apply.

9.3 Precedent Referral Cases

9.4.1 As indicated at paragraph 3.3 above the developer in this case refers to a number of precedent decisions. These include:

ABP Ref. 04.RL.2789 (copy order at rear of file)

This is a 2011 decision that the laying of an underground electricity cable by SWS Energy, also associated with a wind farm, in the Limerick/Cork border area, was exempted development. While the decision was heavily focussed on the matter of the route traversing an SPA, it is of interest in that it also included the decision that the development in question came within the scope of Class 26, Part 1, Schedule 2 of the Regulations.

ABP Ref. 03.RL.2778 (copy order at rear of file)

This is a 2011 decision that the laying of an underground electricity cable by ESB Networks Projects South, also associated with a wind farm, in County Clare was exempted development. Again while much of the decision focussed on the matter of the route crossing an SPA it also confirmed that the development in question came within the scope of Class 26.

I also note that **ABP Ref. 13.RL.2786** is a further 2011 decision of a similar nature (copy order in file pouch).

10.0 RECOMMENDATION

I recommend that the Board should decide these referrals in accordance with the following draft orders:

1. Cavan County Council (RL3369)

WHEREAS a question has arisen as to whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development;

AND WHEREAS Raragh Developments Limited, Top Floor, Arena House, Arena road, Sandyford, Dublin 18, Ireland, requested a declaration on the said question from Cavan County Council and the said Council referred the question to the Board on the 15th day of July, 2015;

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cable comes within the scope of Sections 2(1) and 3(1) of the Act and constitutes development,
- (b) the said underground cable comes within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,

- (c) the said underground cable does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required,
- (d) the said underground cable does not come within the scope of Articles 9(1)(a)(iii), (v), (vii), (viiA) or (viiB) or Article 9(1)(c) Planning and Development Regulations, 2001, as amended, and
- (e) as the wind farm for which the proposed electrical connection is required was approved prior to the O’Grianna decision the Board can proceed to decide the subject referral, including the consideration of EIA and AA to the extent that is necessary, in accordance with the relevant legislative provisions.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is development and is exempted development.

2. Meath County Council (RL3375)

WHEREAS a question has arisen as to whether the provision of a 20kV underground cable forming the grid connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Kilnalun, County Meath is or is not development or is or is not exempted development.

AND WHEREAS Raragh Developments Limited, Top Floor, Arena House, Arena road, Sandyford, Dublin 18, Ireland, requested a declaration on the said question from Meath County Council and the said Council referred the question to the Board on the 1st day of July, 2015;

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 and Class 26, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) O’Grianna (and others) v. An Bord Pleanála (and others), Record Number: 2014 No. 2014 No. 19 JR; 2014 No. 10 COM.

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said underground cable comes within the scope of Sections 2(1) and 3(1) of the Act and constitutes development,
- (b) the said underground cable comes within the scope of Class 26, Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,
- (c) the said underground cable does not come within the scope of section 4(4) Planning and Development Act, 2000, as amended. In this regard the Board adopts the report of the Inspector in relation to EIA and AA and, thereby, has carried out the necessary assessments to conclude that neither EIA nor AA is required,
- (d) the said underground cable does not come within the scope of Articles 9(1)(a)(iii), (v), (vii), (viiA) or (viiB) or Article 9(1)(c) Planning and Development Regulations, 2001, as amended, and
- (e) as the wind farm for which the proposed electrical connection is required was approved prior to the O’Grianna decision the Board can proceed to decide the subject referral, including the consideration of EIA and AA to the extent that is necessary, in accordance with the relevant legislative provisions.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the provision of a 20kV underground cable forming the grid

connection between the planned wind farm in the townlands of Raragh, Kingscourt, County Cavan and the existing ESB substation at Klnalun, County Meath is development and is exempted development.

Brendan Wyse,
Assistant Director of Planning.

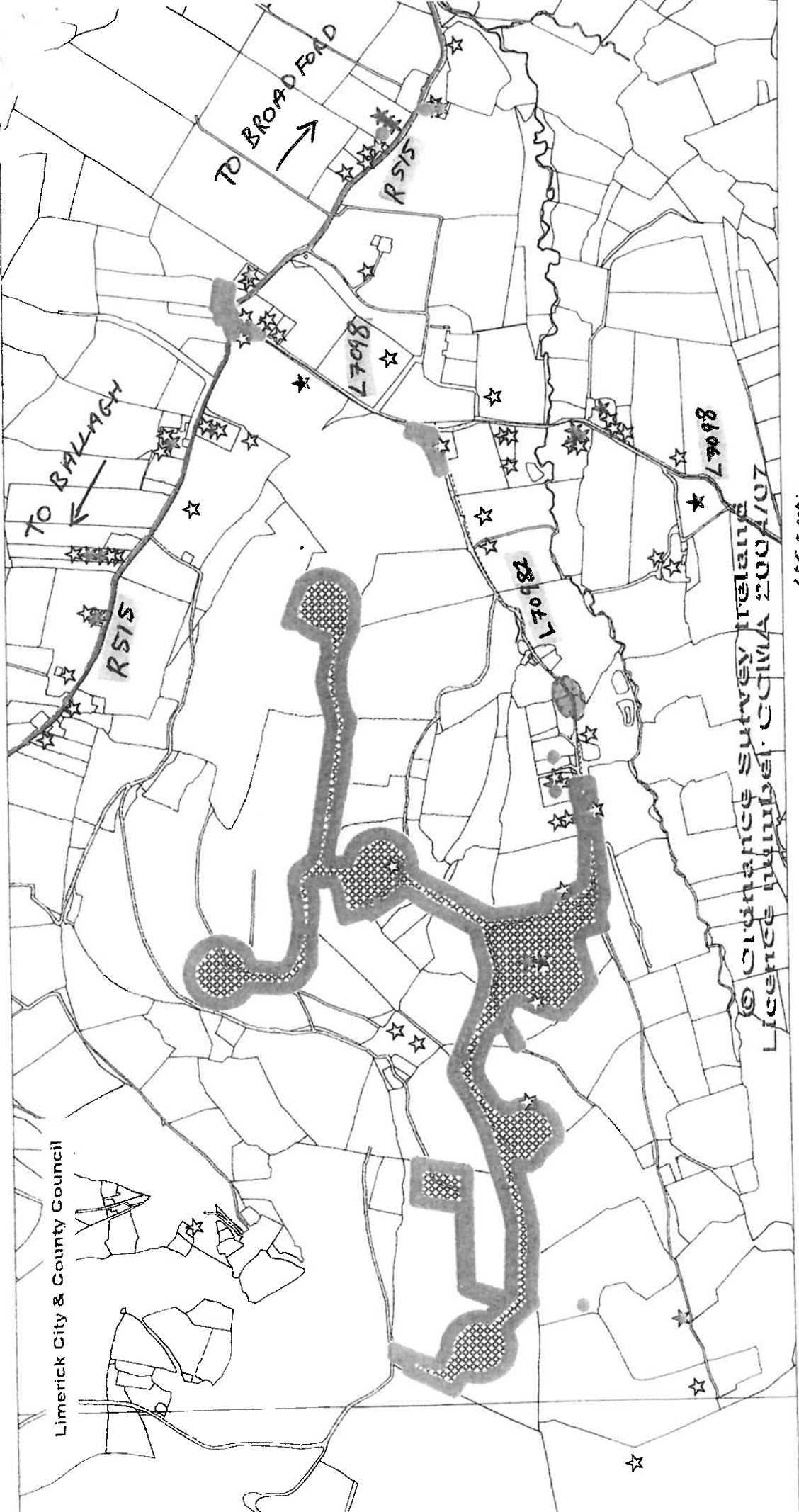
11 March, 2016.

sg

Report has been quashed in respect of RL3369 only

Planning Site Analysis

Limerick City & County Council





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SCALE 1 : 11,218



LEGEND:

-  - PLANNING BOUNDARY REF. 12/379 / PL.13.240%
-  - LOCATION OF UNAUTHORISED WORKS
- L70982 - PUBLIC ROAD NUMBER

