

Sam

Mary Tucker

From: Graeme Thornton <Graeme.Thornton@mwp.ie>
Sent: Monday 4 September 2023 11:53
To: Appeals2
Subject: Submission for planning ref ABP 317239-23
Attachments: 21992 ABP Submission 20230831 final.pdf; ABP 317239 receipt.pdf

Dear Sir / Madam

Please find attached a submission on behalf of Cloncant Renewable Energy Ltd. in relation to case number ABP-317239-23 which is also linked with case number ABP-317245-23. A hard copy was delivered into ABP this morning and the receipt is also attached.

Regards,

Graeme Thornton

B.Sc. Dip OS&H

Senior Environmental Scientist

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Registered Company: Malachy Walsh & Co Ltd

Registered Office: Park House, Beshara Road, Blackrock, Cork, Ireland.
Registered in Ireland: No. 133443

Planning Ref: ABP-317239-23
4th September 2023.

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
BY HAND

Planning Reference: ABP-317239-23

Re: Whether the increase in the Megawatt (MW) output at a permitted wind farm development, without increasing the size and scale of any works, layout or plans at Ticknevin, Carbury, Co. Kildare is or is not development and is or is not exempted development.
Ticknevin, Carbury, Co. Kildare and also Co. Offaly (Ballykilleen, Shean, Kilcumber, Cloncant, Cushaling and Rathmore, Edenderry, Co. Offaly and Ballina, Geashill, Co. Offaly).

Dear Sir / Madam,

Malachy Walsh and Partners have been engaged by Cloncant Renewable Energy Limited, Cork Airport Business Park, Cork ("the Applicant") to make a submission to An Bord Pleanála (hereinafter "the Board") as part of case number ABP-317239-23, as requested by letter dated 15 August 2023 pursuant to section 131 of the Planning and Development Act 2000, as amended ("the 2000 Act"). The request relates to an application by the Applicant under Section 5(1) of the 2000 Act and the declaration now requested of the Board as to whether the increase in the MW output at a permitted wind farm development, without increasing the size and scale of any works, layout or plans at Ticknevin, Carbury, Co. Kildare ("the Proposal") is or is not development and is or is not exempted development.

Background

On 19 March 2021, the Applicant submitted a request to Kildare County Council for a declaration pursuant to section 5 of the 2000 Act on the question of whether the increase in the Megawatt (MW) output of a permitted wind farm development, without increasing the size and scale of any of the

Directors Peter Fay BSc CEng MIEI MStructE | Peter O'Donnell BE CEng MICE FIEI | Jack O'Leary ME CEng FIEI | Paul Collins BE CEng MIEI MStructE | Declan Cremen BE CEng MIEI MStructE | John Lee BE HDipSHWW CEng FIEI

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Registered Office Park House, Bessboro Road, Blackrock, Cork, Ireland



the Planning Permission with an increased output of 59.4 MW. For clarity, the Permitted Development can be constructed and operated as described in the Environmental Impact Assessment Report (EIAR), Natura Impact Statement (NIS) and the Planning Drawings.

At the time of the application for planning, a turbine candidate of up to 5.5 MW was available and with 9 turbines, the expected yield was 49.5 MW. At the time of writing, machines are available that are at the same size and scale as the permitted turbines, but due to advancements in technology, the internal generator has a capacity up to 6.6 MW which would increase the output of the wind farm to 59.4 MW.

Therefore, while an increased capacity is positive in terms of energy output, it does not require an increase in the size or scale of the development and the permitted wind farm can be developed in accordance with the plans and particulars originally submitted and the Conditions of the Planning Permission.

Whether the Proposal is or is not development and is or is not exempted development.

The Proposal and the question of whether this increase in MW is considered development or exempt development, has been remitted to the Board for determination by High Court Order dated 20 June 2022.

What is Development?

Section 3(1) of the 2000 Act defines development -

except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

Only Part (a) requires consideration for the purposes of the Permitted Development. It is therefore necessary to consider the Proposal as follows -

1. Whether this will result in additional "works" that have not been provided for in the Permitted Development; and
2. Whether the increase in MW will result in a "material change in use" for the purposes of Section 3(1)(a).

The proposed increase in MW output will not result in any increase in the size and scale of the Permitted Development. In these circumstances, the Proposal would not have an effect on planning or environmental matters, such as noise, increase in scale, traffic movement or other matters which would give rise to material planning or environmental considerations. The visual impact of the constructed development will remain as indicated on the planning drawings approved by the Board in granting Planning Permission.

Permitted Development

It is also necessary to consider what has been authorised under the terms of the existing Planning Permission.

The description of the development sought, as advertised in the public notices, set out in the planning application and reflected in the Board Order makes no mention of 49.5 MW or any particular make or type of turbine. No specific condition of the planning permissions limits the windfarm to 49.5 MW and/or the use of particular turbines.

To further consider what has been permitted by the Planning Permission it is necessary to consider Condition 1 of the permission;

“The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 27th day of February, 2020, except as may otherwise 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.”

In order for a matter to constitute a “particular” for the purposes of Condition 1, a matter contained in the application must be specific and/or involve a clear commitment. *Lanigan v Barry [2016]*³ makes clear that for a particular to be of a binding nature, it must be in the form of a “clear commitment”. Whilst detail regarding megawatt output is provided in the planning documentation, no clear commitment is provided which would have the effect of limiting the megawatt output to 49.5MW.

When the planning documentation is considered as a whole, there is no basis for contending that any clear commitment was given that the output of the nine turbines would be limited to 49.5MW. In

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There is therefore no reference to capacity input in the project description and what has been assessed for the purposes of the EIAR is “*nine (9) candidate wind turbines with a blade tip height of up to 187 metres and a rotor diameter of up to 163 metres*”.

- (v) Similarly, Section 2.4.4.1 of the EIAR (Turbine Model) states as follows:

“The proposed turbine model will not be specified; however, the project has been designed using worst case models, including the noise and visual impact assessments. A tendering procedure will be undertaken for the supply of the turbines. The turbine ultimately selected will be certified under the International Electrotechnical Commission IEC 61400-1 safety standards and designed to withstand the environmental conditions encountered on site.”

- (vi) Section 15.4.2 of the EIAR (Operational Phase) in relation to shadow flicker states as follows:

“The impact assessment has been completed by calculating the potential shadow flicker from turbines at the proposed locations using a turbine specification that represents a worst-case scenario for the project, i.e. a maximum rotor diameter of 163m and hub heights of 105.5m (T1 to T4) and 103.5m (T5 to T9). The exact turbine type will not be known until after the contract has been awarded under a competitive tender. The model was generated using industry-standard simulation software WindFarm™. The results are presented in Appendix 10.”

The EIAR therefore does not specify the turbine that will be used to allow for a level of flexibility but states that what will be assessed is the worst-case scenario for the project, i.e. “*a maximum rotor diameter of 163m and hub heights of 105.5m (T1 to T4) and 103.5m (T5 to T9)*”.

- (vii) The only reference in the EIAR to specific turbines MW and/or the overall megawatts is in the context of identifying a worst-case scenario for the purposes of assessment of environmental impacts of noise and also in the context of considering emissions savings. Section 3.6 of the EIAR (Alternative Sources of Energy) states as follows:

“The proposed development will contribute approximately 49.5MW of renewable energy to the grid. Should it not be developed, non-renewable energy sources will continue to be the main energy generation process to meet current energy demands. This will further contribute to greenhouse gas and pollutant production, and impede Ireland’s commitment to meet its EU and national emissions targets and to strive towards sustainable development.” [emphasis added]

Environmental Effects of Proposal

Neither the NIS nor the EIAR specify the MW output from the wind farm as the WTG to be installed is subject to change. However, a number of calculations and assumptions on MW output were used in the EIAR in order to complete the comprehensive assessment. In order to show these assumptions are still within the worst-case scenario and that the 6.6MW WTGs that are proposed for the Permitted Development are still within the parameters assessed within the EIAR we request that the Board consider the following;

1. Noise modelling in the EIAR had to assume a WTG noise input in order to reach a conclusion within the assessment. Section 10.3.2.1 within the EIAR outlined the inputs that were used were for the Siemens Gamesa SG155 5.5MW that had a maximum operating sound power level of 107.8dB (A). See below Table 10-8 from the EIAR showing the sound power levels used in the model (note 2dB are added within the model to the manufacturers values to account for various uncertainties in accordance with the Institute of Acoustics Guidelines).

Table 10-8. Siemens SG 155 – Total Sound Power Levels

Wind Speed (m/s)	dB LwA	dB LwA (+2dBA)
4	98.5	100.5
5	103.8	105.8
6	107.8	109.8
7	107.8	109.8
>10	107.8	109.8

The Section 5 determination now before the Board requires consideration of the Siemens Gamesa SG 155 6.6 MW being adopted for the Permitted Development. The maximum noise emission from the SG 155 6.6 MW is 105dB (A) with the below table showing the sound power levels.

Wind speed [m/s]	3	4	5	6	7	8	9	10	11	12	Up to cut-out
AM0	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-1	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-2	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-3	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-4	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-5	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-6	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-7	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
AM-8	92	92	94.8	98.8	102.1	105.0	105.0	105.0	105.0	105.0	105.0
N1	92	92	94.8	98.8	102.1	104.0	104.0	104.0	104.0	104.0	104.0
N2	92	92	94.8	98.8	102.1	103.5	103.5	103.5	103.5	103.5	103.5
N3	92	92	94.8	98.8	102.0	102.0	102.0	102.0	102.0	102.0	102.0
N4	92	92	94.8	98.8	101.0	101.0	101.0	101.0	101.0	101.0	101.0
N5	92	92	94.8	98.8	100.0	100.0	100.0	100.0	100.0	100.0	100.0
N6	92	92	94.8	98.8	99.0	99.0	99.0	99.0	99.0	99.0	99.0

As can be seen the SG 155 6.6 MW WTG maximum noise output is 2.8dB(A) lower than the 5.5MW WTG that was modelled and assessed within the EIAR. The new WTGs are quieter and

In terms of the grid connection and grid capacity, it is respectfully submitted that these do not fall for consideration by the Board in their determination under Section 5 as included in the Quashed Declaration. For clarity, that the grid connection does not form part of the Planning Permissions.

In terms of Grid Capacity, the 6.6MW WTGs that are proposed for the Permitted Development will have an installed capacity of 59.4MW. However, capacity allocation is, in this case, within the remit of EirGrid as Transmission System Operator (TSO) and is not a lawful consideration under a Section 5 declaration. In this respect, under its current Grid Connection Agreement with EirGrid, the Applicant is limited to exporting 50 MW from the wind farm. The 50 MW maximum export capacity was allocated to the Applicant in accordance with the terms of EirGrid Enduring Connection Policy Stage 2 (ECP-2.1).

Moreover, an increased output capacity from 49.5MW to 59.4MW will have no impact on the size or scale of the Permitted Development.

Conclusion

In conclusion, the proposal of the 6.6MW WTG for the Permitted Development does not constitute works. An increase in energy use does not amount to a material change in use, as there are no planning considerations which could lead to a conclusion of a material change in use.

An examination of the plans and particulars, including the EIAR and the inspector's reports on the planning applications confirms that no defined commitment to specific limits of installed capacity could be taken to have been incorporated into the Planning Permission by virtue of a general condition such as condition 1 of the Planning Permissions. 49.5MW is not a defined commitment in the planning permission.

In conclusion, it is submitted the Proposal is not '*development*' for the purposes of section 3 of the 2000 Act.

Yours sincerely,



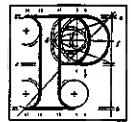
Graeme Thornton MWP

On behalf of Cloncant Renewable Energy Ltd.

AN BORD PLEANÁLA
GENERAL RECEIPT
ADMHÁIL

No. IR118524
Uimh. IR

An Bord Pleanála



RECEIVED FROM
FUARTHAS Ó

M.H.C

The sum of
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in respect of:
ar:

Appeal or other Statutory Fee
Achomharc nó ar Tháille Reachtúil eile

Purchase of Statutory Documents
Doiciméid Ríachtúil a cheannach

Other - Please specify
Eile - Sonraigh le do thoil/len bhur dtoil

317239

(2) Documents in relation to:
Doiciméid a bhaineann le:

SEE NOTE ON BACK OF RECEIPT
LÉIGH AN NÓTA AR CHÚL

Signed
Sínithe

A.J. L

Date
Dáta

04-09-23

Planning Ref: ABP-317239-23
4th September 2023.

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1
BY HAND

AN BORD PLEANÁLA

LDG- _____
ABP- _____

04 SEP 2023

Fee: € _____ Type: _____
Time: 10:16 By: [Signature]

Planning Reference: ABP-317239-23

Re: Whether the increase in the Megawatt (MW) output at a permitted wind farm development, without increasing the size and scale of any works, layout or plans at Ticknevin, Carbury, Co. Kildare is or is not development and is or is not exempted development.
Ticknevin, Carbury, Co. Kildare and also Co. Offaly (Ballykilleen, Shean, Kilcumber, Cloncant, Cushaling and Rathmore, Edenderry, Co. Offaly and Ballina, Geashill, Co. Offaly).

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the Planning Permission with an increased output of 59.4 MW. For clarity, the Permitted Development can be constructed and operated as described in the Environmental Impact Assessment Report (EIAR), Natura Impact Statement (NIS) and the Planning Drawings.

At the time of the application for planning, a turbine candidate of up to 5.5 MW was available and with 9 turbines, the expected yield was 49.5 MW. At the time of writing, machines are available that are at the same size and scale as the permitted turbines, but due to advancements in technology, the internal generator has a capacity up to 6.6 MW which would increase the output of the wind farm to 59.4 MW.

Therefore, while an increased capacity is positive in terms of energy output, it does not require an increase in the size or scale of the development and the permitted wind farm can be developed in accordance with the plans and particulars originally submitted and the Conditions of the Planning Permission.

Whether the Proposal is or is not development and is or is not exempted development.

The Proposal and the question of whether this increase in MW is considered development or exempt development, has been remitted to the Board for determination by High Court Order dated 20 June 2022.

What is *Development*?

Section 3(1) of the 2000 Act defines development -

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(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

Only Part (a) requires consideration for the purposes of the Permitted Development. It is therefore necessary to consider the Proposal as follows -

1. Whether this will result in additional "works" that have not been provided for in the Permitted Development; and
2. Whether the increase in MW will result in a "material change in use" for the purposes of Section 3(1)(a).

The proposed increase in MW output will not result in any increase in the size and scale of the Permitted Development. In these circumstances, the Proposal would not have an effect on planning or environmental matters, such as noise, increase in scale, traffic movement or other matters which would give rise to material planning or environmental considerations. The visual impact of the constructed development will remain as indicated on the planning drawings approved by the Board in granting Planning Permission.

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It is also necessary to consider what has been authorised under the terms of the existing Planning Permission.

The description of the development sought, as advertised in the public notices, set out in the planning application and reflected in the Board Order makes no mention of 49.5 MW or any particular make or type of turbine. No specific condition of the planning permissions limits the windfarm to 49.5 MW and/or the use of particular turbines.

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Reason: In the interest of clarity."

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When the planning documentation is considered as a whole, there is no basis for contending that any clear commitment was given that the output of the nine turbines would be limited to 49.5MW. In

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There is therefore no reference to capacity input in the project description and what has been assessed for the purposes of the EIAR is "nine (9) candidate wind turbines with a blade tip height of up to 187 metres and a rotor diameter of up to 163 metres".

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In terms of Grid Capacity, the 6.6MW WTGs that are proposed for the Permitted Development will have an installed capacity of 59.4MW. However, capacity allocation is, in this case, within the remit of EirGrid as Transmission System Operator (TSO) and is not a lawful consideration under a Section 5 declaration. In this respect, under its current Grid Connection Agreement with EirGrid, the Applicant is limited to exporting 50 MW from the wind farm. The 50 MW maximum export capacity was allocated to the Applicant in accordance with the terms of EirGrid Enduring Connection Policy Stage 2 (ECP-2.1).

Moreover, an increased output capacity from 49.5MW to 59.4MW will have no impact on the size or scale of the Permitted Development.

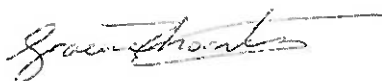
Conclusion

In conclusion, the proposal of the 6.6MW WTG for the Permitted Development does not constitute works. An increase in energy use does not amount to a material change in use, as there are no planning considerations which could lead to a conclusion of a material change in use.

An examination of the plans and particulars, including the EIAR and the inspector's reports on the planning applications confirms that no defined commitment to specific limits of installed capacity could be taken to have been incorporated into the Planning Permission by virtue of a general condition such as condition 1 of the Planning Permissions. 49.5MW is not a defined commitment in the planning permission.

In conclusion, it is submitted the Proposal is not '*development*' for the purposes of section 3 of the 2000 Act.

Yours sincerely,



Graeme Thornton MWP

On behalf of Cloncant Renewable Energy Ltd.