

Eve O'Sullivan

Subject: OBJECTION RE W0282-01
Attachments: W0282-01 APPEAL.pdf

From: peter sweetman [<mailto:sweetmanplanning@gmail.com>]
Sent: 13 May 2014 09:49
To: Wexford Receptionist
Subject: OBJECTION RE W0282-01

It's not possible to make a submission or objection for Reg Number W0282-01 at this time.

P SWEETMAN

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Environmental Protection Agency
Johnstown Castle
Wexford

2014-05-13

RE: Appeal against the Environmental Protection Agency decision in.

Reg No.	Name	Location
W0282-01	Glanpower Limited	Derryclure Energy Centre, Derryclure, Tullamore, County Offaly.

Dear Sir/Madam

We have been instructed by the Derryclure, Environmental Protection Group to appeal the RD of this proposed development. We also appeal on our own behalf.

This is an appeal against the decision of the Environmental Protection Agency, it is not an appeal against the conditions of the decision as it is our submission that no Environmental Impact Assessment according to Articles 2 to 4 of the Environmental Impact Assessment Directive has been carried out.

No Environmental Impact Assessment as required under the March 2013 Guidelines has been carried out.

An Environmental Impact Statement shall contain all the likely significant effects as An Bord Pleanála in its Decision on PL.19. 238420 states that further information on the following which was not adequately covered in the Environmental Impact Statement needed to be supplied.

(a) Prior to commencement of development, details of a Construction Traffic Management Plan for the control and operation of the proposed new junction during the construction phase, shall be submitted to and

agreed in writing with the planning authority prior to commencement of development.

(c) The Construction Traffic Management Plan shall be subject to ongoing review with the planning authority during the whole of the construction period with review periods being directly related to the levels of construction employees on site.

11. The construction of the development shall be managed in accordance with a 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:

(a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;

(b) Location of areas for construction site offices and staff facilities;

(c) Details of site security fencing and hoardings;

(d) Details of on-site car parking facilities for site workers during the course of construction;

(e) Details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;

(f) Measures to obviate queuing of construction traffic on the adjoining road network;

(g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;

(h) Measures to control emissions of dust during construction, including monitoring arrangements;

(i) Measures to control noise levels during construction, including monitoring arrangements

(j) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained;

(k) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil;

(l) Means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.

(m) A Construction Manager shall be appointed to liaise directly with the planning authority in relation to compliance with this condition.

12. Prior to commencement of development, a detailed landscaping scheme for the site, generally in accordance with the proposals submitted with the planning application, shall be submitted to and agreed in writing with the planning authority. This scheme shall include:

(a) details of all existing trees and hedgerows on the site, specifying those proposed for retention, together with measures for their protection during the period in which the development is carried out,

(b) details of the species and setting of all new planting, including supplementary planting around the site boundaries,

(c) an implementation programme for planting on site and an associated maintenance programme,

(d) provision for topsoiling and grass seeding of all berms and screening mounds as soon as practicable after construction, with provision for dust suppression as required, and

(e) details of road frontage boundary treatment.

13. Prior to commencement of development, the developer shall submit to And agreed in writing with the planning authority, a detailed layout for lighting on site; the layout shall be provided at scale 1:1,000 and shall include provision for lighting of all internal roads, storage and hardstanding areas, circulation areas between buildings and pedestrian walks. Details to accompany the above shall include numbers and type of light fittings (which shall be selected to minimise light pollution), locations and orientation of fittings, wattages and height of lighting standards and a planned maintenance programme. The lighting plan shall include proposals to minimise lighting outside of relevant operational times.

The only communication from An Bord Pleanála on file is the letter of 9th October 2013 which does not contain the information sought.

Your inspector states:

I have considered and examined the content of the EIS and other material (information submitted in the licence application, the planning permission, planning inspectors report, correspondence between the Agency and the

*planning authority and **An Bord Pleanála regarding the EIA and submissions made by third parties in relation to the EIS).***

It is not possible for the inspector to have considered the correspondence between the agency and **An Bord Pleanála regarding the Environmental Impact Assessment because it does not exist.**

The inspector did not consider the submission made by us referring the Board to the CJEU Judgement in Case C 50/09,

The judgement states;

26 According to the Commission, Article 3 of Directive 85/337 is of pivotal importance, since it sets out what constitutes an environmental impact assessment and must therefore be transposed explicitly. The provisions relied upon by Ireland as adequate transposition of Article 3 of the directive are insufficient.

27 Thus, section 173 of the PDA, which requires planning authorities to have regard to the information contained in an environmental impact statement submitted by a developer, relates to the obligation, under Article 8 of Directive 85/337, to take into consideration the information gathered pursuant to Articles 5 to 7 thereof. By contrast, section 173 does not correspond to the wider obligation, imposed by Article 3 of Directive 85/337 on the competent authority, to ensure that there is carried out an environmental impact assessment which identifies, describes and assesses all the matters referred to in that article.

What the Environmental Protection Agency has done in this case is exactly what was shown to be inadequate by the CJEU.

28 As for Articles 94, 108 and 111 of, and Schedule 6 to, the PDR, the Commission observes that they are confined, first, to setting out the matters on which the developer must supply information in its environmental impact statement and, second, to specifying the obligation on the competent authorities to establish that the information is complete. The obligations laid down by those provisions are different from that, imposed by Article 3 of Directive 85/337 on the competent authority, of carrying out a full environmental impact assessment

The judgement clearly states that "the obligation on the competent authorities to establish that the information is complete"

The conditions of the An Bord Pleanála decision clearly show that the information was not complete.

36 Article 3 of Directive 85/337 makes the competent environmental authority responsible for carrying out an environmental impact assessment which must include a description of a project's direct and indirect effects on the factors set out in the first three indents of that article and the interaction between those factors (judgment of 16 March 2006 in Case C-332/04 Commission v Spain, paragraph 33). As stated in Article 2(1) of the directive, that assessment is to be carried out before the consent applied for to proceed with a project is given.

The Environmental Protection Agency has not carried out an Environmental Impact Assessment prior to the consent applied for to proceed with a project is given as the purported Environmental Impact Assessment stated subject to the conditions.

○ The Agency states;

An EIA as regards the functions of the planning authorities was carried out by the planning authority and An Bord Pleanála when granting planning permission for the development (Planning Ref. PL19.238420). That EIA addressed the significant likely effects of the construction and operational phases of the development. The Planning Authority and An Bord Pleanála did not provide any additional observations to the Agency.

As shown above the decision of An Bord Pleanála shows that significant likely effects of the construction and operational phases of the development were not assessed as they were subject to prior to commencement of development conditions.

○ The CJEU Judgement states:

– by failing to ensure that, where planning authorities and the Agency both have decision-making powers concerning a project, there will be complete fulfilment of the requirements of Articles 2 to 4 of that directive;

The inspector states:

An EIA, as respects the matters that come within the functions of the Agency, has been carried out in accordance with Section 83(2A) of the EPA Acts

It is our submission that there has not been complete fulfilment of the requirements of Articles 2 to 4 of that directive.

Yours faithfully



Peter Sweetman
And on behalf of
Derryclure, Environmental Protection Group
c/o John Deering

Please respond by email to sweetmanplanning@gmail.com

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