



An
Bord
Pleanála

Inspector's Report ABP-320650-24

Development

Section 146B application for alterations to the terms of An Bord Pleanála case reference ABP-310171-21 for the Upperchurch Windfarm Development: 22 no. wind turbines.

Location

Townlands of Graniera, Shevry, Knockcurraghbola Commons, Knockmaroe, Grousehall, Cummer, Foilnaman, Gleninchaveigh, Coumnageeha, Coumbeg, Knocknamena Commons, Glenbeg and Seskin, Co. Tipperary.

Planning Authority

Tipperary County Council

Requester

Ecopower Developments Limited

Type of Application

Application under Section 146B of the Planning and Development Act, 2000 (as amended) to alter previously approved Strategic Infrastructure Development.

Date of Site Inspection

20th May 2021

Inspector

Donal Donnelly

Contents

1.0 Introduction.....	3
2.0 Site Location and Description	3
3.0 Planning History.....	4
4.0 Proposed Alteration	6
5.0 Requester's Submission	6
6.0 Submissions	7
7.0 Legislative Provisions	8
8.0 Assessment	9
8.4. Whether the proposed alteration is or is not material.....	10
8.5. Appropriate Assessment.....	11
8.6. Conclusion	11
9.0 Recommendation.....	12
10.0 Draft Order.....	12

1.0 Introduction

- 1.1. The Board granted a ten-year planning permission in August 2014 for 22 no. wind turbines on the subject site near Upperchurch, Co. Tipperary. Amendments to this permission were approved by the Board in May 2022 (ABP-310171-21) to increase the permitted turbine heights.
- 1.2. Section 146B of the Planning and Development Act, 2000 (as amended) allows for the Board to alter the terms of a permission for a strategic infrastructure development on request of the person intending to carry out the development. The Board shall alter the planning approval if it decides that the making of the alteration would not constitute the making of a material alteration in the terms of the development concerned.
- 1.3. A request has been made to the Board to alter the terms of ABP-310171-21 and specifically Condition 3 of this permission to add clarity to the nature of the development permitted. Planning conditions to be adhered to span both 2014 and 2022 permissions and it is requested that Condition 3 be altered so that it is clear that both permissions have the same validity period to May 2032.
- 1.4. This is the 4th Section 146B request relating to the Upperchurch Windfarm development. It was decided November 2021 and August 2023 that two requests for substation and grid connection alterations would not result in material alterations to ABP-306204-19 (wind farm grid connection). In September 2024, the Board decided that proposed amendments to the previously authorised Upperchurch Windfarm to increase the size of the wind turbines would be material but would not be likely to have significant effects on the environment or on any European Site.

2.0 Site Location and Description

- 2.1. The surrounding area is characterised by upland rolling hills and valleys to the east of the Slievefelim and Silvermines Mountains. The permitted Upperchurch Windfarm is situated around a number of foothills of the wider range of hills and mountains to the east. The surrounding hills include Knockavillogue (364m OD) and Knockmaroe (411m OD), as well as three other hills at Knockcurraghbola Commons, Graniera and Shevry townlands with heights of 376m, 377m and 361m OD respectively.

- 2.2. The permitted windfarm includes a cluster of eight permitted turbines (T1-8) to the south-east positioned around an afforested hill in the townland of Shevry and along the mountain (377m OD) in the townland of Graniera. The main entrance to the permitted windfarm will be located off the R503 to the south of the site. The existing Milestone windfarm comprising 6 no. turbines is immediately to the west of this cluster.
- 2.3. Another cluster of eight permitted wind turbines (T9-16) is in the vicinity of Knockavillogue. The Éamonn an Chnoic (Ned of the Hill) Loop walking route passes through this part of the site. The western cluster of turbines (T17-21) is aligned roughly from south to north over Knockmaroe between the afforested eastern and western sides of this mountain. The central cluster of the windfarm contains a single turbine (T22) and the permitted windfarm substation.
- 2.4. The permitted windfarm site covers an area of approximately 70 hectares. The application site extends approximately 6.85km from north-east to south-west, and by 4.1km from north-west to south-east. The main land uses in the area are hill farming and forestry.

3.0 Planning History

Tipperary County Council Reg. Ref: 13/510003 (PL22.243040)

- 3.1.1. Ecopower Development Ltd. was granted a ten-year permission in August 2014 for 22 wind turbines up to 126.6m in height, 2 no. meteorological masts with wind measuring equipment attached, access roads, electrical substation compound, control buildings and ancillary works.

An Bord Pleanála Ref: ABP-301959-18

- 3.1.2. On 17th December 2018, the Board refused to approve an 110kV electrical substation and 110kV underground electrical cabling from the proposed substation to an already consented windfarm 110kV electrical substation and all ancillary works between the townland of Mountphilips, near Newport, and the townland of Knockcurraghbola, near Upperchurch. The grid connection was to continue mostly off road through lands to the north of, and roughly parallel to the R503.

Tipperary County Council Reg. Ref: 20/1048

- 3.1.3. Permission granted in December 2020 for amendments to Upperchurch Windfarm electrical substation, authorised under Reg. Ref: 13/510003 (PL.22.243040). The amendments consist of a) increase in size of the substation compound yard; b) change to the layout of electrical equipment in the substation compound yard; c) change in size, design and increase in height of the two control buildings; and d) ancillary works.

An Bord Pleanála Ref: ABP-306204-19

- 3.1.4. On 8th February 2021, the Board approved a new 110kV substation, underground 110kV cabling and ancillary works to connect the already consented Upperchurch windfarm substation (PL22.243040), to the existing 110kV overhead line.

Tipperary County Council Reg. Ref: 18/600913 (ABP-303634-19)

- 3.1.5. The Board granted permission to Ecopower Developments Ltd. on 8th February 2021 for Upperchurch Windfarm related works to include 17.9km of internal windfarm cabling; haul route works; 18m high telecoms relay pole; realignment of windfarm roads; change of use of agricultural access to agricultural and forestry; and ancillary works.

An Bord Pleanála Ref: ABP-310171-21

- 3.1.6. The Board granted permission on 12th May 2022 for amendments to the previously authorised Upperchurch windfarm (PL22.243040) to increase the size of the wind turbines and amend the height and design of the meteorological mast.

An Bord Pleanála Ref: ABP-311034-21

- 3.1.7. The Board decided, in accordance with Section 146B(2)(a) of the Planning and Development Act, 2000, as amended, that proposed alterations to the substation compound would not result in a material alteration to the terms of the development subject of the approval (ABP-306204-19).

An Bord Pleanála Ref: ABP-314836-22

- 3.1.8. The Board decided, in accordance with Section 146B(2)(a) of the Planning and Development Act, 2000, as amended, that proposed alterations to the 110kV electrical substation, underground 110kV cabling and ancillary works to connect the

consented Upperchurch Windfarm substation to the existing 110kV overhead line at Mountphillips, Co. Tipperary would not result in a material alteration to the terms of the development subject of the approval (ABP-306204-19).

An Bord Pleanála Ref: ABP-318773-23

- 3.1.9. The Board decided in September 2024 that an increase in height of the permitted turbines to 158m; realignment of four turbine hardstandings; omission of authorised site entrance and windfarm roadway; felling of an additional 4.51 hectares of forestry; and removal of 667m of hedgerow would be material but would not be likely to have significant effects on the environment or on any European Site.

4.0 Proposed Alteration

- 4.1. The proposed alteration, as set out in the requester's cover letter and particulars received by the Board on 20th August 2024, relates to the approved Upperchurch Windfarm comprising 22 no. wind turbines, access roads, electrical substation compound and control buildings and ancillary site works. Upperchurch Windfarm (as amended) was approved under ABP-310171-21 on 5th May 2022.
- 4.2. A request is now made by the person intending to carry out the development to alter Condition 3 of ABP-310171-21 to read as follows:

"The period during which the proposed development PL22.243040 and ABP-310171-21 hereby permitted may be carried out shall be 10 years from the date of this order.

Reason: *Having regard to the nature of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years."*

- 4.3. The proposed alteration of this condition is the underlined only.

5.0 Requester's Submission

- 5.1. Planning permission was granted for Upperchurch Windfarm on 6th August 2014 subject to 25 conditions (PL22.243040). Under Condition 3 of this permission, the period during which the development may be carried out shall be ten years from the

date of the Order. Permission was granted for amendments to this application on 12th May 2022 subject to 15 conditions (ABP-310171-21). Condition 2 attached to this permission states that *“apart from any departures specifically authorised by this permission, the proposed development shall be carried out and completed in accordance with the terms and conditions of the permission granted under An Bord Pleanála reference number PL22.243040, and all subsequent permissions on site, as well as any agreements entered into thereunder.”* Condition 3 of this permission also states that *“the period during which the proposed development hereby permitted may be carried out shall be 10 years from the date of this order”*. This is a repeat of Condition 3 of the parent permission.

- 5.2. The requester’s submission sets out all the conditions of the 2022 permission to include departures specifically authorised by the 2002 permission; similar conditions in both the 2022 permission and the 2014 permission; additional conditions only in the 2022 permission, and conditions only in the 2014 permission. The requester confirms that they will comply with all departures, similar conditions and additional conditions that are only in the 2022 permission, as well as any conditions that are only in the 2014 permission.
- 5.3. The reason for the request is to clarify that the Upperchurch Windfarm permitted under the 2014 permission and amended under the 2022 permission, has validity for a period of 10 years from the date of the Board Order of 12th May 2022. The request is being made out of an abundance of caution in case a question on the period of validity for the construction and operation of the windfarm arises during the due diligence process. The requester considers that the planning conditions span both the 2014 and 2022 permissions. It is therefore requested that Condition 3 of ABP-310171-21 is amended to include reference to both the parent permission and the amendment permission to the carried out within 10 years of the Board Order dated 12th May 2022.

6.0 Submissions

- 6.1. No submissions received.

7.0 Legislative Provisions

- 7.1. Under Section 146B(1) of the Planning and Development Act, 2000 (as amended), the Board may alter the terms of a permission for a strategic infrastructure development on request of the person intending to carry out the development.
- 7.2. Section 146B(2)(a) states that *“as soon as practicable after the making of such a request, the Board shall make a decision as to whether the making of the alteration to which the request relates would constitute the making of a material alteration of the terms of the development concerned.”* Section 146B(2)(b) provides for the Board to invite submissions and the Board shall have regard to any submission made.
- 7.3. Under Section 146(3)(a), the Board shall alter the planning approval if it decides that the making of the alteration would not constitute the making of a material alteration in the terms of the development concerned. If the Board decides under Section 143(3)(b) that the making of the alteration would be material, it shall (i) require the requester to submit to the Board the information specified in Schedule 7A or an EIAR, and (ii) determine whether to:
- (I) make the alteration
 - (II) make an alteration of the terms of the development concerned, being an alteration that would be different from that to which the request relates (but which would not, in the opinion of the Board, represent, overall, a more significant change to the terms of the development than that which would be represented by the latter alteration), or
 - (III) refuse to make the alteration.
- 7.4. Section 146B(3A) allows for the submission of further relevant information on the characteristics of the alteration in addition to the Schedule 7A information/ EIAR under subsection 3(b)(i). The further relevant information may also be accompanied by a description of the features, if any, of the alteration under consideration and the measures, if any, envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment of the alteration [Section 146B(3B)].
- 7.5. Section 146B(4) states that before it makes its decision to alter/ alter differently/ refuse to alter, the Board shall determine whether the extent and character of

alteration or any alternative alteration are such that the alteration, were it to be made, would be likely to have significant effects on the environment.

7.6. Subsections 146B(4A)(a) – (c) relate to the timeframe within which the Board shall make a determination under subsection (4) unless exceptional circumstances apply.

7.7. Under Section 146B(5), if the Board determines that the making of either kind of alteration referred to in subsection (3)(b)(ii):

(a) is not likely to have significant effects on the environment, it shall proceed to make a determination under subsection (3)(b)(ii), or

(b) is likely to have such effects, the provisions of section 146C shall apply (preparation of an EIAR).

7.8. Under Section 146B(6), *“if, in a case to which subsection (5)(a) applies, the Board makes a determination to make an alteration of either kind referred to in subsection (3)(b)(ii), it shall alter the planning permission, approval or other consent accordingly and notify the person who made the request under this section, and the planning authority or each planning authority for the area or areas concerned, of the alteration.”*

7.9. Section 146B(7) sets out the criteria that the Board shall have regard to in making a determination under subsection (4), while subsection (8) sets out provisions for the making of submissions or observations before a determination under subsection (3)(b)(ii) or (4) is made.

8.0 **Assessment**

8.1. Under Section 146B of the Planning and Development Act, 2000 (as amended), the requester is seeking to alter the terms of a strategic infrastructure development (ABP-310171-21) approved by the Board under Section 37E of the Planning and Development Act, 2000 (as amended). The application approved under ABP-310171-21 was for an increase in the turbine height of the originally granted wind turbines (PL22.243040).

8.2. The purpose of the proposed alteration is to add clarity to the nature of the development permitted. Planning conditions to be adhered to span both 2014 (PL22.243040) and 2022 (ABP-310171-21) permissions, and it is requested that

Condition 3 be altered so that it is clear that both permissions have the same validity period to May 2032.

- 8.3. The first consideration to assess is whether the proposed alteration would constitute a material alteration of the terms of the strategic infrastructure development approved under ABP-310171-21. Should the Board decide that the proposed alteration is not material, it shall alter the approved development accordingly. However, if it is decided that the proposed alteration is material, the Board shall consider the proposed alteration in terms of the significant effects on the environment and other related matters.

8.4. Whether the proposed alteration is or is not material

- 8.4.1. The request relates to the same Condition 3 only of the parent permission and amendment permission. Clarity is sought from the requester that the duration of the permission is from date of the order of the amendment application and not the parent permission.
- 8.4.2. In my opinion, the Board's intention was that the duration of permission is 10 years from the date of the amendment application, which was granted on 12th May 2022. I would view Condition 3 of the 2022 permission as being a departure from the parent permission and that the duration of permission is clearly from the date of the Order signed by the Board on 12th May 2022. This condition in effect supersedes the same condition attached to the parent permission and allows the applicant a period of 10 years from the date in 2022 to substantially complete the proposed works.
- 8.4.3. Notwithstanding this, I have no objection to the request that Condition 3 of ABP-310171-21 is altered by adding the reference numbers of both the parent permission and amendment permission if it provides greater clarity to the requester for the purposes of due diligence.
- 8.4.4. I consider that the proposed alteration would not be material to the terms of the development, and that the outcomes of the previous EIA process, including mitigation measures, will not alter, nor will compliance with any other conditions of the planning permission. There are no physical alterations proposed and there are no changes in circumstances, and no new or materially different considerations

arising from the proposed alteration that were not assessed under parent permission and amendment permission.

8.5. Appropriate Assessment

- 8.5.1. Having considered the Board's determination on Appropriate Assessment in case ABP-310171-21, and having regard to the nature and limited scale and extent of the proposed alteration relative to the development that was approved under ABP-310171-21, the nature of the receiving environment, together with the distance to the nearest European sites, no additional Appropriate Assessment issues arise and it is not considered that the proposed alteration to the approved development would be likely to have a significant effect individually or in combination with other plans or projects on any European sites.

8.6. Conclusion

- 8.6.1. Having considered the proposed alteration and the development as approved under PL22.243040 and ABP-310171-21, I consider it reasonable to conclude that the alteration of Condition 3 of ABP-310171-21 to add clarity to the nature of the development permitted would not constitute the making of a material alteration of the development as approved under ABP-310171-21. Furthermore, there are no changes in circumstances and no new or materially different considerations arising from the proposed alteration that were not assessed under ABP-310171-21.
- 8.6.2. I have considered the provisions of S.146B(2)(b) which provides for, at the Board's discretion, the invitation of submissions from persons, including the public. Having considered the nature and extent of the alteration, the information on file and the nature, scale and extent of the development approved under PL22.243040, as amended by ABP-310171-21, I am of the opinion that the inviting of submissions from the public in this instance is not necessary and is not required for the purposes of the Board in determining the matter.

9.0 Recommendation

- 9.1. I recommend that the Board decides that the making of the alteration the subject of this request does not constitute the making of a material alteration of the terms of the development as approved under ABP-310171-21.

10.0 Draft Order

REQUEST received by An Bord Pleanála on the 24th August 2024 from Ecopower Developments Limited under section 146B of the Planning and Development Act 2000, (as amended) to alter the terms of a strategic infrastructure development, which was for amendments to the previously authorised Upperchurch Windfarm (An Bord Pleanála case reference PL22.243040) at townlands of Graniera, Shevry, Knockcurraghbola Commons, Knockmaroe, Grousehall, Cummer, Foilnaman, Gleninchnaveigh, Coumnageeha, Coumbeg, Knocknamena Commons, Glenbeg and Seskin, Co. Tipperary the subject of an approval under An Bord Pleanála reference number ABP-310171-21,

WHEREAS the Board made a decision to approve, subject to conditions, the above-mentioned development by order dated the 12th May 2022,

AND WHEREAS the Board has received a request to alter the terms of the development, the subject of the approval,

AND WHEREAS the proposed alteration is described as the amendment of Condition 3 of ABP-310171-21 as follows:

“The period during which the proposed development PL22.243040 and ABP-310171-21 hereby permitted may be carried out shall be 10 years from the date of this order.

***Reason:** Having regard to the nature of the proposed development, the Board considered it appropriate to specify a period of validity of this permission in excess of five years.”*

AND WHEREAS the Board decided, in accordance with section 146B(2)(b) of the Planning and Development Act 2000, as amended, not to invite submissions or observations from the public in relation to whether the proposed alteration would

constitute the making of a material alteration to the terms of the development concerned,

AND WHEREAS the Board decided, in accordance with section 146B(2)(a) of the Planning and Development Act 2000, as amended, that the proposed alteration would not result in a material alteration to the terms of the development, the subject of the approval,

AND WHEREAS having considered all the documents on file and the Inspector's report, the Board considered that the making of the proposed alteration would not be likely to have significant effects on the environment or on any European Site,

NOW THEREFORE in accordance with section 146B(3)(a) of the Planning and Development Act, 2000, as amended, the Board hereby alters the abovementioned decision so that the approved development shall be altered in accordance with the plans and particulars received by An Bord Pleanála on the 24th day of August 2024 for the reasons and considerations 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.

REASONS AND CONSIDERATIONS

Having regard to:

- (i) the nature of the proposed alteration which seeks clarity in relation to the duration of permission granted under Reference Number ABP-310171-21 for this site,
- (ii) the examination of the environmental impact, including in relation to European Sites, carried out in the course of that application,
- (iii) the limited nature and extent of the proposed alteration when considered in relation to the overall approved development,
- (iv) the absence of any significant new or additional environmental concerns (including in relation to European Sites) arising as a result of the proposed alteration, and

(v) the report of the Board's Inspector, which is adopted,

It is considered that the proposed alteration would not be material. In accordance with section 146B(3)(a) of the Planning & Development Act, as amended, the Board hereby makes the said alteration.

Donal Donnelly
Senior Planning Inspector

13th December 2024

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.