



Planning and Development Acts 2000 to 2020

Planning Authority: Tipperary County Council

Planning Register Reference Number: 18/600913

Appeal by Ecopower Developments Limited of Zetec House, Purcellsinch IDA Business Park, Dublin Road, Kilkenny against the decision made on the 10th day of January, 2019 by Tipperary County Council to refuse permission for the proposed development.

Proposed Development: The construction and operation of the already consented (but not built) Upperchurch Windfarm (UWF) planning reference number 13/510003. The proposed development (UWF Related Works) will consist of:

- (a) 17.9 kilometres of internal windfarm cabling;
- (b) 13 number haul route works, to facilitate the haulage of turbine components to the Upperchurch Windfarm site;
- (c) one number telecoms relay pole, measuring 18 metres in height, with telecoms relay equipment attached;
- (d) three number realigned windfarm roads, to realign two lengths of consented Upperchurch Windfarm (UWF) roads and to provide access to the telecoms relay pole;
- (e) one number change of use of an existing 'agricultural' entrance to 'agricultural and forestry entrance' and

(f) ancillary works, all at Graniera, Shevry, Gleninchaveigh, Coumnageeha, Knocknamena Commons, Knoccknabansha, Knockmaroe, Knockcurraghbola Commons, Knockcurraghbola Crownlands, Foilnaman, Grousehall, County Tipperary. This application is for a 10 year permission, under Section 41 of the Planning and Development Act, 2000, as amended. (As amended by the revised public notice received by An Bord Pleanála on the 26th day of November, 2019, in which the Board received revised proposals comprising of a revised Environmental Impact Assessment Report (EIAR) and a revised Natura Impact Statement (NIS).

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.

Reasons and Considerations

In coming to its decision, the Board had regard to the following:

- (a) national policy with regard to the development of sustainable energy sources,

- (b) the Wind Energy Development Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in June 2006,
- (c) the provisions as set out in the current Tipperary County Development Plan, including those regarding renewable energy development set out within the Tipperary Renewable Energy Strategy, 2016 and the appended Tipperary Wind Energy Strategy, 2016,
- (d) the siting of the proposed development in the approximate location of the permitted windfarm and the purpose of the proposal as enabling infrastructure for the permitted windfarm,
- (e) the pattern of development in the area (including the separation distance to dwellings) and the pattern of permitted development in the area,
- (f) the nature and extent of the proposed development,
- (g) the submissions on file, and
- (h) the report of the Inspector,

it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the visual amenities of the area or of property in the vicinity, would not have an unacceptable impact on the landscape character of the area, would not be detrimental to the natural heritage or cultural heritage of the area, and would, therefore, be in accordance with the proper planning and sustainable development of the area.

Appropriate Assessment Screening

The Board agreed with and adopted the screening assessment and conclusions carried out in the Inspector's report that the only European sites in respect of which the proposed development has the potential to have a significant effect in view of the conservation objectives for these sites, are the Slievefelim to Silvermines Mountains Special Protection Area (Site Code: 004165); the Lower River Suir Special Area of Conservation (Site Code: 002137) and the Lower River Shannon Special Area of Conservation (Site Code: 002165) and consequently an Appropriate Assessment is required.

Appropriate Assessment

The Board considered the Natura Impact Statement, the Revised Appropriate Assessment Report and other associated documentation submitted with the application and appeal, the mitigation measures contained therein, the submissions and observations on file and the Inspector's assessment. The Board completed an appropriate assessment of the implications of the proposed development on the aforementioned European sites in view of the sites' conservation objectives. The Board considered that the information before it was adequate to allow the carrying out of an appropriate assessment. In completing the appropriate assessment, the Board considered, in particular, the following:

- (a) the likely direct and indirect impacts arising from the development and the proposed development, both individually, when taken together and in combination with other plans or projects,
- (b) the mitigation measures, which are included as part of the current proposal,
- (c) the submissions from the planning authority, the observers and prescribed bodies in the course of the application, and
- (d) the conservation objectives for the European sites.

In completing the appropriate assessment, the Board accepted and adopted the appropriate assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European sites, having regard to the sites' conservation objectives. In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the sites' conservation objectives and there is no reasonable scientific doubt as to the absence of such effects.

Environmental Impact Assessment

The Board completed an Environmental Impact Assessment of the proposed development, taking into account:

- (a) the nature, scale and extent of the proposed development,
- (b) the Environmental Impact Assessment Report, the Revised Environmental Impact Assessment Report and other associated documentation submitted in support of the application,
- (c) the submissions from the planning authority, the observers and prescribed bodies in the course of the application, and
- (d) the Inspector's report.

The Board agreed with the summary of the results of consultations and information gathered in the course of the Environmental Impact Assessment, and the examination of the information contained in the Revised Environmental Impact Assessment Report and the associated documentation submitted by the applicant, and the submissions made in the course of the application as set out in the Inspector's report. The Board was satisfied that the Inspector's report sets out how these various environmental issues were addressed in the examination and recommendation which are incorporated into the Board's decision.

Reasoned Conclusion of the Significant Effects

The Board considered that the Revised Environmental Impact Assessment Report, supported by the documentation submitted by the applicant, provided information which is reasonable and sufficient to allow the Board to reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account current knowledge and methods of assessment. The Board is satisfied that the information contained in the Revised Environmental Impact Assessment Report is up to date and complies with the provisions of EU Directive 2014/52/EU amending Directive 2011/92/EU. The Board considered that the main significant direct and indirect effects of the proposed development on the environment are those arising from the impacts listed below.

The main significant effects, both positive and negative, are:

- Positive impacts on **population and human health** on the local economy from increased spending and jobs during the construction period and from payments to local landowners and from sourcing of stone and concrete.

Visitors to the area will be exposed to changes in the environment on a temporary basis during construction works. There will be no significant impacts due to the distance from construction works to waymarked trails, the short duration of construction works and the non-intrusive nature of noise from turbines.

Construction phase impacts on Population and Human Health will be mitigated through a range of Project Design Environmental Measures and Best Practice Measures, for example, construction within 350 metres of a residence will not take place at the same time as the grid connection or Upperchurch Windfarm works.

- Potential for adverse effects on **Biodiversity** from slight to moderate magnitude arising from Upperchurch Windfarm Related Works and cumulatively with the Whole Upperchurch Windfarm Project with respect to aquatic habitats and species, Hen Harrier, general birds, non-volant animals and marsh fritillary.

Adverse impacts to aquatic habitat and species may occur due to a decrease in surface water quality, instream works at some watercourse crossings and species disturbance/displacement from additional sedimentation or contamination. There is also the potential for adverse impacts through changes to flow regime. This will be mitigated through implementation of sensitive crossing designs in consultation with Inland Fisheries Ireland. There will also be specific measures for reinstatement works including site-specific bank stabilisation, reinstatement of bank slope and character, creation of compound channels, and reinstatement of instream flow features.

Slight adverse impacts to Hen Harrier are expected from temporary or permanent reduction or loss of foraging habitat and disturbance/displacement of foraging Hen Harrier (ex situ). As the majority of grid connection works will take place along the public road, disturbance or displacement effects of the Whole Upperchurch Windfarm Project will be no greater than for Upperchurch Windfarm Related Works.

Mitigation measures for Hen Harrier include the prevention of construction works during Hen Harrier breeding season. During the roosting season (October to February) construction works within one kilometre of a roost will be limited to the period between one hour after sunrise to one hour before sunset. Monitoring of nesting and roosting Hen Harrier will take place within two kilometres and one kilometre of the construction works boundary respectively.

There will be cumulatively slight impacts to Golden Plover and Meadow Pipit in relation to habitat loss. However, all works will be outside the Irish breeding range for Golden Plover and Meadow Pipit and these birds will benefit from enhancement measures for Hen Harrier.

Hedgerow removal will take place outside the bird breeding season. Moderate but temporary disturbance/displacement effects to other mammals (Irish Hare, Pine Marten, Red Squirrel and Fallow Deer). No significant to moderate adverse cumulative effects to badger and other mammals and no significant to slight adverse effects for Otter. Project Design Environmental Measures are proposed for otter and badger include relating to confirmation surveys and proximity of construction works.

Slight adverse impacts to Marsh Fritillary due to habitat loss arising from Upperchurch Windfarm Related Works and cumulatively with Upperchurch Windfarm works. Pre-construction surveys will be carried out for Devil's-bit Scabious (larval food plant of Marsh Fritillary) and this habitat will be trimmed/cut in the last available late April/early May prior to commencement of construction.

Cumulative impact to bats will be imperceptible to not significant. Project Design Environmental Measures that will reduce any impact on bats include the carrying out of construction works during daylight hours, cowling of lighting, confirmatory surveys, usage of bat boxes and installation of bat crossing structures at severed hedges.

In terms of cumulative assessment, there will be moderate positive impacts on Hen Harrier, general birds and terrestrial habitat from the planting of trees as part of the Upperchurch Hen Harrier Scheme.

In addition to Project Design Environmental Measures and Best Practice Measures, an Environmental Management Plan developed for the proposal will include a Surface Water Management Plan and Invasive Species Management Plan.

- Potential for slight to moderate adverse impact to **Soils** from excavation/ relocation and imperceptible or slight impacts in relation to erosion, compaction and contamination effects will be mitigated by Project Design Environmental Measures including the prohibition of land reinstatement during very wet weather, no batching of wet cement on site, immediate grading and seeding of permanent overburden storage berms after emplacement and refuelling of vehicles away from watercourses.
- Potential adverse impacts to local surface **Water** bodies could occur from morphological impacts to watercourses due to instream works, and from surface water quality impacts during conifer plantation, earthworks and dewatering of excavations resulting in contamination, increased flood risk and run-off. These will be mitigated by a suite of 18 environmental protection measures, and 11 best practice measures have been integrated into the project design to avoid or reduce any significant effect to the water environment. In addition, most of the watercourses to be crossed are minor and works are distributed within several water bodies over a large geographical area.
- Positive cumulative impacts on **Climate** from the Whole Upperchurch Windfarm Project due to the production of renewable wind energy and a reduction in the use of fossil fuels.
- Potential impacts in terms of **Material Assets (Roads)** during the construction phase include damage to road boundaries and road pavements. There is also the potential for impacts to road users from increased journey times arising from construction works and construction deliveries to the site. Cumulatively, the impact will be of an imperceptible to slight magnitude. Impacts will be mitigated through implementation of a Traffic Management Plan and Project Design Environmental Protection Measure relating to the timing of construction works.

- Potential impacts on **Cultural Heritage and the Landscape** will be mitigated during the construction stage through archaeological monitoring of ground works and agreement with the Department of Culture, Heritage and the Gaeltacht of parapet works to bridges listed in the National Inventory of Architectural Heritage. The overall visual impact of the Whole Upperchurch Windfarm Project from sensitive locations, including designated viewpoints, is evaluated as imperceptible to slight. The main visual impact will be from the turbines themselves, which were assessed in the original Environmental Impact Assessment, where it was accepted that the development will not change the visual character of the area to a significant degree.

The Board completed an Environmental Impact Assessment in relation to the proposed development and concluded that, subject to the implementation of the mitigation measures referred to above, including proposed monitoring as appropriate, and subject to compliance with the conditions set out below, the effects on the environment of the proposed development, by itself and in combination with other development in the vicinity, would be acceptable. In doing so, the Board adopted the report and conclusions set out in the Inspector's report.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European energy policy, the National Planning Framework and the relevant provisions of the North Tipperary County Development Plan 2010 (as varied), would make a positive contribution to Ireland's national strategic policy on renewable energy and its move to a low energy carbon future and would have an acceptable impact on the environment and on the amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. 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 submitted on the 9th day of November 2018, and by the further plans and particulars received by An Bord Pleanála on the 6th day of February 2019, 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.

2. Apart from any departures specifically authorised by this permission, the development shall be carried out and completed in accordance with the terms and conditions of the permission granted on under An Bord Pleanála appeal PL22.243040 (planning authority register reference 13/510003) and any agreements entered into thereunder.

Reason: In the interest of clarity.

3. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection.

Reason: In the interest of clarity.

4. The mitigation measures contained in the Natura Impact Statement which was submitted with the appeal shall be implemented in full.

Reason: In the interests of clarity and the proper planning and sustainable development of the area and to ensure the protection of European Sites.

5. The mitigation and monitoring measures contained in the Environmental Impact Assessment Report and associated documentation submitted with the appeal shall be implemented in full.

Reason: In the interests of clarity and the proper planning and sustainable development of the area.

6. The developer shall retain the services of a suitably qualified and experienced bird specialist to undertake appropriate surveys of this site for the Hen Harrier. Details of the surveys to be undertaken shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To monitor the impact of the development on the local population of the Hen Harrier.

7. Details of landscaping alongside the proposed access roadways, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of landscape and visual amenity.

8. In the event that the proposed development causes interference with telecommunications signals, effective measures shall be introduced to minimise such interference. Details of these measures, 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 and following consultation with the relevant authorities.

Reason: In the interests of protecting telecommunications signals and of residential amenity.

9. 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 and highest point of the telecoms pole and turbines (to the top of the blade spin).

Reason: In the interest of air traffic safety.

10. Prior to commencement of development, a detailed Construction Management Plan for the construction stage shall be submitted to, and agreed in writing with, the planning authority generally in accordance with the proposals set out in the Revised Environmental Impact Assessment Report. The Construction Management Plan shall incorporate the following:

- (a) a detailed plan for the construction phase incorporating, inter alia, construction programme, supervisory measures, noise management measures, construction hours and the management of construction waste,
- (b) a comprehensive programme for the implementation of all monitoring commitments made in the application and supporting documentation during the construction period,

- (c) details of a pre-construction survey to identify/confirm the absence of any Hen Harrier nests within the subject site, and including a work cessation protocol including appropriate buffer in the vicinity of any identified nest, until the nest has been vacated at the end of the breeding season,
- (d) an emergency response plan, and
- (e) proposals in relation to public information and communication.

A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for public inspection by the planning authority.

Reason: In the interests of environmental protection and orderly development.

11. Details of the road network to be used by construction traffic and by the long-term maintenance traffic including detailed arrangements for the protection of bridges to be traversed shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of traffic safety.

12. (a) The applicant shall engage with the services of a suitably qualified archaeologist to monitor all topsoil stripping and groundworks associated with the development, licenced under the National Monuments Acts, 1930-1994. No sub-surface work shall be undertaken in the absence of an archaeologist without his/her express consent.

- (b) The archaeologist is required to notify the Heritage Division of the Department of Arts, Heritage and the Gaeltacht in writing at least four weeks prior to the commencement of site preparations. This will allow the archaeologist sufficient time to obtain a licence to carry out the work.
- (c) Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The applicant shall be prepared to be advised by the Heritage Division of the Department of Arts, Heritage and the Gaeltacht with regards to any necessary mitigating action (e.g. preservation in situ, or excavation) and shall facilitate the archaeologist in recording any material found.
- (d) A buffer zone measuring at least 30 metres in width shall be established around Recorded Monument TN039-046 Ring-Barrow, which is located within the development area, as identified in the archaeological assessment included in the Environmental Impact Assessment Report. No groundworks, landscaping, site offices, compound/depot or storage facilities shall be established within this buffer zone.
- (e) The planning authority and the Department of Arts, Heritage and the Gaeltacht shall be furnished with a report describing the results of the archaeological monitoring, and including any necessary specialist reports, following the completion of all archaeological work on site.

Reason: To ensure the continued preservation (either in-situ or by record) of places, caves, sites, features or other objects of archaeological interest.

13. 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 relevant 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 relevant 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 relevant planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory reinstatement of the delivery route.

14. 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 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 such reinstatement. 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: To ensure satisfactory reinstatement of the site.

15. 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. The contribution shall be paid prior to 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. 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and 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.

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

Dated this day of 2021.