



An
Bord
Pleanála

Inspector's Report

ABP-304110-19

Development	Erection of 7 wind turbines with substation & associated site works.
Location	Lands at Taghart South, Taghart North, Glasleck & Ralaghan, Shercock, Co Cavan
Planning Authority	Cavan County Council
Planning Authority Reg. Ref.	16/74
Applicant(s)	Taghart Energy Ltd.
Referral	Referral under section 34(5).
Referred by	Taghart Energy Ltd.
Planning Authority Decision	No agreement reached
Date of Site Inspection	1 st July 2019 and 17 th July 2019
Inspector	Deirdre MacGabhann

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1.0 Introduction

- 1.1. Under PL02.247401 (PA ref. 16/74) the Board granted permission, on appeal, for the development of 7 no. wind turbines, and associated works and structures, on lands at Taghart South, Taghart North, Glasleck and Ralaghan, Shercock, Co. Cavan. Condition no. 6(a) required the permitted turbines to have a maximum tip height of 125m, with the design, height and colour to be agreed in writing with the planning authority.
- 1.2. The applicant proposes installation of turbines within the stated maximum height of 125m, but with different hub height and blade length than set out in the original planning application documentation. The applicant has sought the view of the planning authority, if the proposed alteration to turbine structure, is within the scope of the permission granted, and condition no. 6(a) in particular. No agreement has been reached with the planning authority and the matter has been referred to the Board under section 34(5) of the Planning and Development Act 2000 (as amended).

2.0 Site Location and Description

- 2.1. The appeal site is situated in the townlands of Taghart South, Taghart North, Glasleck and Ralaghan, c.4km south of Shercock and c.6km to the north west of Kingscourt in Co. Cavan. The sites in an undulating drumlin landscape, framed by a triangle of regional roads comprising the R165 between Bailieborough and Kingscourt, the R162 between Kingscourt and Shercock and the R178 between Shercock and Bailieborough.
- 2.2. On the minor road network surrounding the site is rural development comprising principally agricultural holdings and residential properties. St. Joseph's Church and Corlea National School lie to the south east of the subject site.

3.0 Point of Dispute

- 3.1. In February 2019 the applicant submitted details of the proposed turbine design to Cavan County Council, for agreement under condition no. 6(a) of the permission granted under PL02.247401. Their submission included details of two turbine types which they considered to be suitable for installation. Both are within the **125m**

maximum height specified by the Board, but with a reduced hub height and increased rotor diameter than that previously proposed:

- **Hub height of 68m and rotor diameter of 114m** (blade length 57m), and
- **Hub height of 69m and rotor diameter of 112m** (blade length 56m).

3.2. Comparative elevations and photomontages from 4 no. locations are shown in Annex 2 and 3 of the applicant's reference submission respectively (NB the location of VRP16 shown on the photomontages is incorrect and its correct location is shown in Figure 1, Location of VRPs, in history file PL02.247401).

3.3. The applicant states that following completion of the tendering process and prior to commencement of development, details of the precise turbine model will be submitted to the planning authority, with specific hub height/rotor diameter configuration.

3.4. In March 2019 the planning authority advised the applicant that '*On the basis of the information submitted with this compliance submission, the planning authority is unable to determine whether the design proposals fulfil the requirements of Condition no. 6(a) of the Board's Decision, or whether they are consistent with the plans and particulars of that permission. Therefore no agreement can be reached at this time*'.

3.5. The referral question is therefore, whether the proposed turbine options, fall within the parameters of the plans and particulars of the permissions granted and comply with the requirements of condition no. 6(a).

4.0 Planning History

4.1. The following cases have been determined in respect of the appeal site:

- PL02.239141 – Permission granted for 9 no. wind turbines in May 2013, with 64m hub height and 71m rotor diameter, maximum height 99.5m.
- PL02.247401 – Permission granted for a reduced number of turbines (7 no.), slightly modified layout and adjustment to height (**hub height 73.5m, rotor diameter 103m**, total 125m). Conditions attached to the permission control implementation of all mitigation measures, micrositing (precluded), noise, shadow flicker, interference with telecommunications reception,

environmental monitoring (including usage of the site by bats and birds) and archaeological appraisal.

- PA ref. 18/211 – Permission granted for extension to PL02.239141 to May 2023.
- ABP-301742-18 and ABP-301717-18 – Permission granted for the installation of the underground connection of the wind farm to the transmission system.

4.2. In addition, the applicant refers to the Board's determination of a similar reference case in County Cork, where the Board decided that the provision of alternative turbine types, within the permitted height envelope, fell within the terms and conditions of the permission (Esk Wind Farm, PL04.240281 and PL04.RP2104 – see attachments).

4.3. This case is also **travelling with ABP-304318-19**, in respect of technical amendments to the permitted substation and compound area under PL02.247401.

5.0 Applicant's Submission

5.1.1. The applicant considers that the 2 no. turbine design options, as detailed in their submission to the planning authority, are consistent with the plans and particulars submitted with the planning application, including the Environmental Impact Statement, are fully in accordance with the Environmental Impact Assessment undertaken by the Board and comply with the principles of proper planning and sustainable development for the following reasons:

- The planning application (PL02.247401), in its public notices and accompanying Environmental Impact Statement, did not propose a specific turbine model but instead sought permission for any wind turbine up to a maximum height of 125m. Given the rapidly changing nature of turbine technology, the cover letter submitted with the application stated '*It may therefore be necessary for hub heights and rotor diameters to be immaterially modified but within an overall maximum height envelope of 125m. Any immaterial modifications caused by a change in the turbine model eventually installed on site (in terms of hub height, rotor width, dimensions, finishing or micro-siting) will not impact on the substantive conclusions of the EIS*'. It is stated that similar unambiguity is set out in the EIS, in Volume 2, Chapter 2,

section 2.4.1, which refers to a number of turbine models which could be potentially suitable to the site (see attachments).

- Following the above, the applicant specifically sought that a condition be attached to allow for such an eventuality, as per Condition 6(a) of the permission.
- **Proper planning and sustainable development.** The principle of the wind farm has been established under PL02.239141 and PL02.247401. The erection of the wind turbines, within the overall permitted height of 125m, does not contravene these precedent decisions and the development remains compliant with the proper planning and development of the area.
- **Conditions of PL02.247401.** The proposed turbine design options can be provided so as to remain fully compliant with the conditions of consent issued by the Board under this permission. The applicant refers individually to all conditions, including that the proposed turbine types comply with emission limits for noise (C8), shadow flicker (C9) and telecommunications interference (C10).
- **Environmental Impact Statement.** The proposed turbine designs will not result in any changes to impacts on environmental receptors, including the following:
 - Human beings – No changes to impacts.
 - Flora and fauna - The site is not assessed as being of particular significance for birds or bats. The larger swept area will not, therefore, have any direct or indirect significant effects on the ecological environment.
 - Soils and geology – Foundation design may differ to accommodate specific turbine type, but degree and depth of excavations will not change.
 - Visual impact – Vertical extent of turbines will not change but horizontal extent will. This increase will largely go unnoticed and will be imperceptible to the casual observer. Comparative photomontages are attached at 3-5km setback (3 no.) and closer than 1km (1 no.). At these distances, the applicant considers that the different turbine designs are barely perceptible and negligible respectively.

- Noise – Whilst some dwellings may experience an immaterial change to noise levels, no dwelling will experience levels in excess of the limits prescribed in condition no. 8 of the permission.
- Shadow flicker - Whilst some dwellings may experience an immaterial change in shadow flicker levels, no dwelling will experience levels in excess of the limits prescribed in condition no. 9(b) of the permission.
- Access – Revised dimensions will not affect access.

In summary, the applicant considers that the proposed development complies with the EIS submitted.

- Case law recognises that planning permissions must be interpreted in a reasonably flexible manner and that a planning permission encompasses the plans and particulars submitted with the planning application and any immaterial deviation thereof (O’Connell v Dungarvan Energy Ltd, unreported, High Court, Finnegan, J., February 27, 2001).

6.0 Other Correspondence

- 6.1. On file is a copy of the Planning Report in respect of the compliance submission. It refers to applicant’s submission and considers that on the basis of the information submitted, the planning authority is unable to determine whether the design proposals fulfil the requirements of condition no. 6(a) of the permission or whether they are consistent with the plans and particulars of that permission. The report notes that no agreement can be reached at this time and that drawings refer only to *‘typical turbine design’*.
- 6.2. On the 18th February 2019, the planning authority advised that they had no further comments to make on the case.

7.0 Assessment

- 7.1. Having regard to my inspection of the appeal site and submissions on file, the key matters for this case relate to:
- Principle/context.

- Consistency of alternative turbine types with the planning permission granted, principally in terms of environmental effects.

- 7.2. **Principle/context.** Public notices for the permitted development refer to the *'erection of 7 no. wind turbines with a maximum height of 125m'*. Furthermore, as stated Section 2.4.1 of the Environmental Impact Assessment specifically refers to the potential for modification of hub heights and rotor diameters within the overall maximum height envelope.
- 7.3. In neither the Inspector's report or Board's decision were concerns raised regarding possible adverse impacts, as a consequence of alterations to turbine type and condition no. 6(a) specifically permits turbines to a maximum height of 125m, with details to turbine design, height and colour to be submitted to the planning authority for agreement. This contrasts with the position taken with regard to micro-siting, where it was considered that its use could result in noise limits being exceeded at certain receptors and shadow flicker arising, where condition no. 5 of the permission granted expressly precluded micro-siting.
- 7.4. Having regard to the above, the alternative turbine design options submitted by the applicant, fall within the limitation of condition no. 6(a) and are acceptable in principle.
- 7.5. **Consistency of alternative turbine types with the planning permission granted.** The substantive issue before the Board is, therefore, whether the proposed turbine types are materially different in planning terms compared with the type proposed in the original appeal. The alternative turbine types proposed have smaller hub height and a longer blade length than the type presented at the time of application:
- Previously assessed – hub height **73.5m**, rotor diameter **103m**, maximum height 125m.
 - Alternative type A – hub height **68m**, rotor diameter **114m**, maximum height 125m.
 - Alternative type B – hub height **69m**, rotor diameter **112m**, maximum height 125m.
- 7.6. The main effect of the alternative arrangements is to increase the horizontal extent of the proposed turbines i.e. the increase in rotor diameter, of c.11%, gives a larger swept area, of c.20% (total vertical extent will remain as permitted) and possibly

construction effects e.g. arising from consequential changes to foundation design, if required. I examine below the potential impacts that may arise from these alterations by environmental parameter.

- 7.7. **Population and human health.** Impacts on population and human health may arise from any significant increase in noise, shadow flicker or visual effects over and above assessed effects. These are examined below, and I conclude that the proposed turbine types would not give rise to any such effects, or therefore have any significant effects on population or human health.
- 7.8. **Biodiversity.** It was previously accepted by the Board that, while bats are present in the area, the site is not a major roosting or feeding site, and that impacts, with the proposed mitigation measures would be slight. Similarly, it was accepted that the subject site was of low bird sensitivity to wind energy developments and that species occurring in the area would not be adversely or significantly affected by the development, subject to the implementation of proposed mitigation measures. Within this context, I consider that the proposed increase in swept area of the turbine is quite modest and unlikely to have any significant effect on bat or bird populations. The applicant states the degree and depth of turbine excavations will not be altered as a consequence of the alternative turbine types. Subject to this limitation, I would not anticipate any other effects to arise on biodiversity (e.g. from land take) as a consequence of the proposed turbine types, over and above those already assessed.
- 7.9. **Land, soil, water, air and climate.** The applicant states that turbines will remain in the location as permitted and whilst foundation design may alter to cater for the turbine supplier's specification, the degree and depth of excavation will not be altered. Within this context, I would not expect any additional impacts on **land, soil or water** to arise.
- 7.10. In the submission to the planning authority, the applicant states that *'whilst some dwellings may experience an immaterial change in noise levels, no dwelling will experience levels of the limits prescribed in Condition 8'*. As stated, the Board previously had concerns that the development could give rise to noise impacts on certain properties, and consequently in their decision to grant permission they precluded micro-siting of turbines. No evidence is provided to support the applicant's statement and I would therefore, be concerned if any dwelling were to

experience a substantial change in noise level. Notwithstanding this, the terms of condition no. 8 are clear and strict i.e. it requires that wind turbine noise arising from the development, by itself or in combination with other existing or permitted wind energy development, shall not exceed the greater of (a) 5 dB(A) above background noise levels, or (b) 43 dB(A) L90,10min and that prior to the commencement of development, the developer submit and agree in writing with the planning authority a noise compliance monitoring programme for the development, including any mitigation measures such as the de-rating of particular turbines. Subject to adherence to this condition, I would not consider that any significant effects on **noise** will arise as a consequence of the change to turbine type.

- 7.11. With regard to shadow flicker, the applicant also states that '*whilst some dwellings may experience an immaterial change in shadow flicker levels, no dwelling will experience levels in excess of the limits prescribed in Condition no. 9(b)*'. Again, no evidence is provided to support this statement. However, as with noise, the Board's condition no. (9b) is strict and requires that shadow flicker arising from the proposed development, by itself or in combination with other existing or permitted wind energy development in the vicinity, shall not exceed 30 hours per year or 30 minutes per day at existing or permitted dwellings or other sensitive receptors. Subject to adherence to this mitigation measures (and associated conditions), I would not consider that any significant effects on **shadow flicker** will arise.
- 7.12. The proposed turbines are considered to be a more efficient design than those previously referred to in the application documentation. Given the rapidly evolving technology in the sector, this assertion is reasonable, and the proposed turbines are likely to have further **climatic** benefits.
- 7.13. **Material assets, cultural heritage and the landscape.** In the Board's assessment of the permitted development, it was considered that no significant effects would arise in respect of **cultural heritage** or **material assets**. The proposed turbines have different structural components. However, the applicant has stated that this does not raise any issues for transportation over and above the permitted development and again I note that the movement of materials would be subject to condition no. 11 of the permission. As stated that proposed turbine types will have a larger swept area and horizontal extent. As the development is generally removed from any features of cultural heritage and changes are relatively modest, I would not anticipate any significant impacts in this regard.

- 7.14. With regard to **landscape** effects, I have reviewed the original photomontages submitted with PL02.247401 and I have visited the site and surrounding area and I have had regard to the applicant's comparative photomontages for the proposed turbine types from VRP 12, 15, 16 and 23. Having regard to this, I consider that at >1km visual effects are unlikely to be discernible given the distance, absence of change to overall turbine height, modest change to rotor diameter and swept area and tapering nature of rotor blades. The applicant does not present many photomontages of the proposed turbine types at <1km e.g. VRP5, 6, 7, 8, 9, 19, 20, and the Board may wish to seek more information in this regard. Notwithstanding this, from these viewpoints, I would anticipate that whilst the effect of changes in type would be more evident, visual effects are unlikely to be significant for the same reasons. I do not consider, therefore, that even at distances of less than 1km, that visual effects would be demonstrably different from those previously assessed, when viewed from the public road or sensitive receptors. Having regard to these conclusions, I also do not consider that significant cumulative landscape or visual effects would arise with the proposed change of turbine type.
- 7.15. **Interactions.** The Board previously concluded that the interactions identified in the EIS would not lead to significant environmental effects beyond those already identified for each of the individual environmental topic. With the proposed change to turbine types, and general absence of effects, I would not anticipate any additional impacts arising from interactions.
- 7.16. In summary, I consider that whilst the proposed development will result in localised visual effects, it will not give rise to any significant environmental effects above and beyond those previously identified in the Board's environmental impact assessment.
- 7.17. **Conditions of the permission.** I would accept that the proposed turbine types do not conflict with any of the conditions attached to the Board's previous grant of permission under PL02.247401.

8.0 **Appropriate Assessment**

- 8.1. The Board previously accepted and adopted the Inspector's screening assessment in respect of the development. In summary, they were satisfied on the grounds that the development was located >15km from any Natura 2000 site and did not comprise habitat that was important to mobile species of conservation interest, that the

development either individually or in combination with other plans or projects, would not be likely to have a significant effect on any European site (and that a Stage 2 Appropriate Assessment and submission of a Natura impact statement was not, therefore, required).

- 8.2. The proposed turbines differ from that indicated in the original application, with an increase in rotor diameter and swept area and a reduction in hub height. Having regard to the modest nature of these alterations, the distance of the site from any European sites and absence of habitat on site of importance for any mobile species of conservation interest, I consider that no appropriate assessment issues arise and that the proposed development falls within the scope of the permitted development in this regard.

9.0 Recommendation

- 9.1. In conclusion, for the reasons stated above, I consider that the proposed turbine types are not materially different from the turbine types considered by the Board in their assessment of the development permitted under PL02.247401 and, therefore, fall within the scope of this permission. Consequently, I recommend that the Board agrees that the alternative turbine types are agreed under condition 6(a) of the permission.

10.0 Reasons and Considerations

WHEREAS by order dated the 3rd day of August 2017 An Bord Pleanála, under appeal reference number PI02.247401, granted subject to conditions a permission to Taghart Energy Limited care of Galetch Energy Services of Clondargan, Stradone, Co. Cavan for development comprising the erection of seven number wind turbines with a maximum height of 125m and all associated site development works including a 38kV substation and compound; a staff welfare facility, wastewater treatment system and percolation area; turbine foundations; crane hardstandings; access tracks; underground cabling; three number site entrances; a permanent meteorological mast with a maximum height of up to 83 metres and temporary upgrade to the R162/L3520 junction, on lands at Taghart South, Taghart North, Glasleck and Ralaghan, Shercock, County Cavan.

AND WHEREAS condition 6(a) attached to the said permission required the developer to submit all details of the proposed turbines, including design, height and colour for the written agreement of the Planning Authority prior to the commencement of development:

AND WHEREAS the developer and the Planning Authority failed to agree on the above details in compliance with the terms of the said condition and the matter was referred by the developer to An Bord Pleanála on the 2nd day of April 2019 for determination:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 34(5) of the Planning and Development Act, 2000, as amended, hereby determines that the Board agrees that the alternative turbine types comprising a hub height of 68m and a rotor diameter of 114m (blade length of 57m) or hub height of 69m and a rotor diameter of 112m (blade length of 56m), are within the terms and conditions of the permission and are agreed under condition 6(a).

Deirdre MacGabhann

Planning Inspector

18th July 2010