



An
Bord
Pleanála

Inspector's Report

ABP-312316-21

Development

Section 146B application for amendments to An Bord Pleanála Case Reference PL11.VA0015 for an electrical transmission infrastructure project (Laois-Kilkenny Reinforcement Project)

Location

Ballyragget, Co. Kilkenny

Planning Authority

Kilkenny County Council and Laois County Council

Applicant

EirGrid plc

Type of Application

Section 146B: Request to alter previously approved Strategic Infrastructure project

Date of Site Inspection

None

Inspector

Niall Haverty

1.0 Introduction

1.1. EirGrid plc ('the requester') has requested that the Board exercise its powers under section 146B of the Planning and Development Act 2000, as amended ('the Act'), to alter the terms of approval for the development of an electrical transmission infrastructure project, referred to as the Laois-Kilkenny Reinforcement Project, in Counties Laois and Kilkenny, which was approved by the Board following an application under the provisions of section 182A of the Act (Ref. PL11.VA0015).

2.0 Planning History

2.1. 'Parent' Section 182A Approval (PL11.VA0015)

2.1.1. The requester was granted approval by the Board on 23rd April 2014 for the Laois-Kilkenny Reinforcement Project, which comprised development consisting of 8 No. inter-related elements, summarised as follows:

- Unit 1: New 400kV/110kV GIS substation in the townland of Coolnabracky, Co. Laois.
- Unit 2: New connection to the Coolnabracky substation from the existing Moneypoint-Dunstown 400kV line (c. 1.4km).
- Unit 3: New connection to the Coolnabracky substation from the existing Athy-Portlaoise 110kV line.
- Unit 4: A new 110kV/38kV/ MV substation outside Ballragget, Co. Kilkenny.
- Unit 5: A new 110kV overhead line between Ballyragget and Coolnabracky substation (c. 26km).
- Unit 6: Uprate of the existing Ballyragget – Kilkenny overhead line (c. 22km).
- Unit 7: A new bay in the existing Kilkenny 110kV substation.
- Unit 8: Modifications to the existing Athy – Portlaoise 110kV line (c. 3.6km).

2.2. Previous Section 146B Alterations to PL11.VA0015

2.2.1. ABP-305108-19

2.2.2. On the 6th November 2019 the Board decided that proposed alterations at Kilkenny 110kV substation, consisting of: the replacement of the existing strung busbar and gantries with tubular busbars; the replacement of the existing Ballyragget 38kV end mast with a new 15m high lightning monopole; the installation of a new sectionalising cubicle; and a new internal wall within the control building to accommodate a battery room and a new ramp at the entrance would not result in a material alteration to the terms of the development and therefore altered the decision accordingly.

2.2.3. 11.VM0012

2.2.4. On the 31st August 2017 the Board decided that proposed alterations consisting of an additional temporary angle mast structure and localised diversion of the existing Athy-Portlaoise 110 kV overhead lines and the use of an existing farmyard as a temporary compound for materials storage and site offices would not result in a material alteration to the terms of the development and therefore altered the decision accordingly.

3.0 Proposed Alterations

3.1. The proposed alterations, as set out in the requester's cover letter dated 20th December 2021, relate only to the approved Unit 6 'uprate of the existing Ballyragget – Kilkenny overhead line' and concern the specific portion of the existing overhead line uprate in the vicinity of the approved Ballyragget substation. The proposed alterations include the repositioning of approved/existing structures and the provision of one new wooden poleset required to facilitate the realignment.

3.2. More particularly, the proposed alterations are described as follows:

- The existing End Mast ('BK 1 (EM)') is to be relocated c. 50m westward into the area of the approved Ballyragget 110kV/38kV substation. The specific location of the relocated End Mast ('EM 1') is in the area of the existing 38kV substation which is to be replaced by the approved substation.
- 1 No. new double wooden Intermediate Poleset ('IMP 2') will be required along the existing alignment to the east of the substation, due to the overhead line span becoming too long as a result of the westward relocation of the End Mast.

- Associated minor realignment of structures up to Angle Mast 4 ('AM 4'). No other additional structures are required.
- 3.3. The requester states that the overall approved development is currently under construction and that works on Unit 6 are “substantially complete in compliance with the Board’s approval, but are not yet completed”.
- 3.4. The request was accompanied by a cover letter, an Appropriate Assessment Screening Report, a copy of the Board’s Order for PL11.VA0015 and 3 No. drawings. These comprise a Route Map identifying the proposed alterations and two ESB drawings of a ‘Suspension Wood Poleset’ and a ‘Single Circuit Strain Tower with Shieldwire’, respectively.

4.0 Requester’s Submission

- 4.1. The requester’s submission can be summarised as follows:
- The proposed alterations are a minor realignment of the approved uprated circuit and are in response to a specific landowner request for same.
 - The nature, extent and design of the End Mast and typical Intermediate Poleset is the same as previously approved.
 - The variation in the proposed and previously approved alignments is considered to be negligible.
 - EirGrid has reviewed the EIAR, NIS, Inspector’s Report, Board Order and Direction associated with the overall approval. EirGrid is satisfied that the proposed modest modifications do not depart materially from the nature, extent and location of the previously approved development and that the EIA and AA undertaken by the Board for the overall development remain valid for this proposed modification.
 - EirGrid has undertaken an AA Screening Report which concludes that:
 - The proposed modifications will not, following application of the hydrogeological mitigation within the parent application, result in adverse effects on European sites, either alone or in combination with other plans or projects.

- The proposed modifications will not, either alone or in combination with other plans or projects, result in significant effects to other species, habitats or designated sites.
- The proposed development is a non-material modification of the previously approved development as per ABP Ref. PL11.VA0015.

5.0 Legislative Provisions

5.1. Section 146B(1) of the Planning and Development Act 2000, as amended, provides that, subject to subsections (2) to (8) and section 146C, the Board may, on the request of any person who is carrying out or intending to carry out a permitted strategic infrastructure development, alter the terms of the development.

5.2. **Would the Alteration be a Material Alteration?**

5.2.1. Subsection (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. Before making such a decision, subsection (2)(b) states that the Board may invite submissions in relation to the matter to be made to it by such person or class of person as the Board considers appropriate (which class may comprise the public if, in the particular case, the Board determines that it shall do so). The Board shall have regard to any submissions made to it on foot of that invitation.

5.3. ***Alteration Would not be a Material Alteration***

5.3.1. Under subsection (3)(a), if the Board decides that the making of the alteration would not constitute the making of a material alteration of the terms of the development concerned, it shall alter the planning permission/approval accordingly and notify the person who made the request and the planning authority of the alteration.

5.4. ***Alteration Would be a Material Alteration***

5.4.1. Under subsection (3)(b), if the Board decides that the making of the alteration would constitute the making of such a material alteration, it shall:

- (i) require the requester to submit to the Board the information specified in Schedule 7A to the PDR in respect of that alteration, or in respect of the alternative alteration being considered by it under subparagraph (ii)(II), unless the requester has already provided such information, or an environmental impact assessment report on such alteration or alternative alteration, as the case may be, to the Board, and
- (ii) following the receipt of such information or report, as the case may be, 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.

5.4.2. Subsection (3A) provides that where the requester is submitting to the Board the information referred to in subsection (3)(b)(i), that information shall be accompanied by any further relevant information on the characteristics of the alteration under consideration and its likely significant effects on the environment including, where relevant, information on how the available results of other relevant assessments of the effects on the environment carried out pursuant to European Union legislation other than the EIA Directive have been taken into account. Subsection (3B) also provides that said information may 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.

5.4.3. Subsection (4) requires that, before making a determination under subsection (3)(b)(ii), the Board shall determine whether the extent and character of the alteration requested, and any alternative alteration it is considering are such that the alteration, were it to be made, would be likely to have significant effects on the environment (and, for this purpose, the Board shall have reached a final decision as to what is the

extent and character of any alternative alteration the making of which it is so considering).

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

5.4.5. Under subsection (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.

5.4.6. Under subsection (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, of the alteration.

5.4.7. Subsection (7) sets out the matters 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.

6.0 Board Correspondence

6.1. The Board informed Laois County Council and Kilkenny County Council of the request received in letters dated 18th January 2022. A copy of the request was enclosed for their information, asking that it be made available for public inspection.

6.2. The Planning Authorities were not invited to make a submission at this stage.

7.0 Assessment

7.1. There are two stages to be considered in assessing a request under section 146B. The first stage is whether the proposed alterations would constitute a material alteration of the terms of the development concerned? If the Board decides that it would not constitute a material alteration, it shall alter the approval accordingly. If,

however, the Board decides that it would constitute a material alteration, then the second stage applies and the Act sets out the procedure to be followed in determining if the proposed alterations would have significant effects on the environment and other related matters.

7.2. Consideration of Materiality

- 7.2.1. The proposed alterations relate to changes to an approved/existing 110kV overhead powerline and a number of supporting structures in the vicinity of the approved Ballyragget 110kV substation, as indicated on the submitted drawing number PE687-D371-029-001-001.
- 7.2.2. The existing End Mast ('BK 1 (EM)') is to be relocated c. 50m westward into the area of the approved Ballyragget 110kV substation. This will involve it moving from the eastern side of a local road which runs in a north-south direction to the western side, with the relocated End Mast ('EM 1') in the area of the existing 38kV substation which is to be replaced by the approved substation.
- 7.2.3. As a result of the increased length of the overhead line span caused by the relocation of the End Mast, it is proposed to erect 1 No. new Intermediate Poleset ('IMP 2') along the overhead line alignment to the east of the substation. As a further result of the slight realignment of the overhead line caused by the westward movement of the End Mast, the minor repositioning of two further Intermediate Polesets up to Angle Mast 4 ('AM 4') is also proposed. No other additional structures are proposed.
- 7.2.4. The proposed alterations are stated to have resulted from landowner engagement and to be in response to a specific landowner request.
- 7.2.5. The design of the relocated End Mast and the additional Intermediate Poleset is consistent with previously approved structures. The End Mast is a steel lattice tower structure, with a height of 21.5m, while the poleset comprises a double wooden pole with a crossarm, with a height of 21.3m. Drawing Nos. PG567-D004-484-001-000 and PG567-D004-463-002-001, submitted with the request, illustrate details of the structures.
- 7.2.6. With regard to potential impacts on residential or visual amenity, I note that the portion of the overhead power line in question is located a minimum of c. 73m from

the nearest dwellings to the south. The relocation of the End Mast will bring it to the opposite side of the road from these dwellings and will increase the separation distance. The new Intermediate Poleset will be located a similar distance from the dwellings as the current End Mast, however it comprises two timber poles with a cross arm and is less visually intrusive than a steel mast tower. The repositioning of the other Intermediate Polesets is very minor and given the separation distances from the nearest dwellings and the public road, the change is not likely to be readily apparent.

- 7.2.7. Construction of the End Mast will take place adjacent to the Ballyragget substation compound and the nature and scale of these works and the erection of wooden polesets are not of a level that I would consider likely to result in additional noise, dust or air emissions of a material nature. Consequently, and having regard to the significant separation distances to the nearest residential receptors, I do not consider that the proposed alterations would result in any material impacts on residential amenity.
- 7.2.8. With regard to potential impacts on other receptors, I note that a graveyard is located immediately to the north of Ballyragget substation. There are numerous existing and approved elements of electrical infrastructure in the area, including single and double wooden poles, angle masts and the substation infrastructure. The proposed alterations will not introduce any new form of development to the area and while the relocation of the End Mast to the vicinity of the substation will bring it slightly closer to the graveyard, its positioning adjacent to other electrical infrastructure will serve to slightly lessen its overall visual impact in my opinion and will not result in any additional or increased visual or landscape impacts of a material nature.
- 7.2.9. Having regard to the limited scale of the proposed alterations relative to the approved development, I do not consider that the additional construction traffic movements will be material in nature. During the operational phase, the proposed alterations would not result in any additional traffic movements.
- 7.2.10. With regard to surface water management, the proposed/relocated structures will not collect rainwater and there are no watercourses in the immediate vicinity of the structures. No material impacts on surface water are likely to arise.

7.2.11. With regard to biodiversity, the proposed alterations are located in areas of negligible to low ecological value, comprising hardstanding in Ballyragget substation where the End Mast is to be relocated and improved agricultural grassland to the east, where the additional and realigned polesets are located. There has been no change to the ecological baseline environment in the vicinity since the 'parent' application was assessed and approved by the Board and there are no surface watercourses in the immediate vicinity of the proposed alterations. Having regard to the nature of the approved development and the nature and scale of the proposed alterations that form the basis of this request, I do not consider that any new or additional impacts on biodiversity of a material nature are likely to arise. I note, however, that the River Nore, which is within both an SPA and an SAC is located c. 400m to the west of Ballyragget substation, and I have addressed potential issues relating to Appropriate Assessment separately in Section 7.3 below.

7.3. Appropriate Assessment

- 7.3.1. A Natura Impact Statement was submitted in connection with the application for the Laois-Kilkenny Reinforcement Project (PL11.VA0015). The Board subsequently completed an Appropriate Assessment screening exercise in respect of the River Nore SPA (Site Code 004233), Lisbigney Bog cSAC (Site Code 000869) and Ballyprior Grassland cSAC (Site Code 002256), concluding that the proposed development, in itself or in combination with other plans or projects, would not be likely to have a significant effect on these European sites. The Board went on to complete an Appropriate Assessment of the potential impacts of the proposed development on the River Barrow and River Nore SAC (Site Code 002162). The Board concluded that, subject to the implementation of the identified mitigation measures, the proposed development, in itself or in combination with other plans or projects, would not adversely affect the integrity of the River Barrow and River Nore SAC, in view of the conservation objectives for this site.
- 7.3.2. This s.146B application was accompanied by a short document, entitled 'Appropriate Assessment and other Biodiversity', and referred to in the cover letter as an Appropriate Assessment Screening Report which concludes that the proposed modifications will not, following application of the hydrogeological mitigation within the parent application, result in adverse effects on European sites, either alone or in

combination with other plans or projects. It also states that the proposed modifications will not, either alone or in combination with other plans or projects, result in significant effects to other species, habitats or designated sites.

- 7.3.3. As noted above, the River Nore is located to the west of Ballyragget substation (i.e. the proposed relocated position for the End Mast), with a separation distance of c. 300m from the boundary of the River Barrow and River Nore SAC and c. 400m from the boundary of the River Nore SPA.
- 7.3.4. The qualifying interests for the River Nore SPA are Kingfisher (*Alcedo atthis*). The qualifying interests for the River Barrow and River Nore SAC are Estuaries [1130]; Mudflats and sandflats not covered by seawater at low tide [1140]; Reefs [1170]; *Salicornia* and other annuals colonising mud and sand [1310]; Atlantic salt meadows (*Glauco-Puccinellietalia maritima*) [1330]; Mediterranean salt meadows (*Juncetalia maritimi*) [1410]; Water courses of plain to montane levels with the *Ranunculon fluitantis* and *Callitricho-Batrachion* vegetation [3260]; European dry heaths [4030]; Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]; Petrifying springs with tufa formation (*Cratoneurion*) [7220]; Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles [91A0]; Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]; *Vertigo moulinsiana* (Desmoulin's Whorl Snail) [1016]; *Margaritifera margaritifera* (Freshwater Pearl Mussel) [1029]; *Austropotamobius pallipes* (White-clawed Crayfish) [1092]; *Petromyzon marinus* (Sea Lamprey) [1095]; *Lampetra planeri* (Brook Lamprey) [1096]; *Lampetra fluviatilis* (River Lamprey) [1099]; *Alosa fallax fallax* (Twait Shad) [1103]; *Salmo salar* (Salmon) [1106]; *Lutra lutra* (Otter) [1355]; *Trichomanes speciosum* (Killarney Fern) [1421]; *Margaritifera durrovensis* (Nore Pearl Mussel) [1990].
- 7.3.5. The main channel of the River Nore SAC in the Ballyragget area is stated to support a population of Nore Freshwater Pearl Mussel, which is highly sensitive to any deterioration in water quality. While there are no watercourses downstream of the proposed modifications that could provide a direct pathway to the main channel of the River Nore, the requester's report states that drainage at the substation site has been shown to go directly to groundwater, which could discharge to the main channel of the River Nore and that likely significant effects from the proposed modifications on the River Barrow and River Nore SAC cannot be excluded in the

absence of the stated mitigation measures contained in the NIS for the approved development. The mitigation measures set out in that NIS include bunding of fuels and chemicals during construction, bunding of operational phase oil stores, restrictions and specifications for concrete use and appropriate treatment of operational foul water.

7.3.6. I note that condition No. 2 attached to the Board's Order for PL11.VA0015 states that:

(a) "the mitigation measures identified in the environmental impact statement, Natura impact statement, and associated documentation on file, shall be implemented in full, except as may be required to comply with the following conditions.

(b) The construction of the proposed development shall be supervised by suitably qualified and experienced environmental personnel, to ensure that all environmental mitigation and monitoring measures are implemented in full.

Reason: In the interests of clarity and of environmental protection."

7.3.7. Having considered the Board's determination on Appropriate Assessment in case PL11.VA0015, and having regard to: the nature and limited scale and extent of the proposed alterations relative to the approved development; the nature of the potential effects associated with the proposed alterations which are the same as those previously identified in the NIS for the approved development at Ballyragget substation; the approved mitigation measures contained in the NIS to address those potential effects; the nature of the receiving environment, together with the distance to the nearest European sites, I consider that no new or additional Appropriate Assessment issues arise and that the proposed alterations to the approved development would not be likely to have a significant effect individually or in combination with other plans or projects on any European sites.

7.4. **Conclusion**

7.4.1. In conclusion, I consider that no new or materially different considerations arise from the proposed alterations beyond those considered in the assessment undertaken in the s.182A application for approval of the Laois-Kilkenny Reinforcement Project (PL11.VA0015).

- 7.4.2. I am of the opinion, having fully considered the proposed alterations and the development as approved under PL11.VA0015, that the Board would have had no reason to determine the proposal differently had the relocation of the end mast, the provision of an additional poleset and the slight realignment of a number of structures, as proposed in the alterations, formed part of said application. Consequently, I consider it reasonable to conclude that the making of the alterations that are the subject of this request would not constitute the making of a material alteration of the development as approved under PL11.VA0015.
- 7.4.3. Finally, I have considered the provisions of s.146B(2)(b) which provides for the invitation of submissions from persons, including the public, at the Board's discretion. Having considered the nature, scale and extent of the proposed alterations, the information on file and the nature, scale and extent of the development approved under PL11.VA0015, 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 determining the matter.

8.0 Recommendation

- 8.1. I recommend that the Board decides that the making of the alterations that are the subject of this request does not constitute the making of a material alteration of the terms of the development that was approved by the Board under reference number PL11.VA0015.
- 8.2. A Draft Order for the Board's consideration is provided overleaf.

DRAFT ORDER

REQUEST received by An Bord Pleanála on the 21st day of December 2021 from EirGrid plc under section 146B of the Planning and Development Act, 2000, as amended, to alter the terms of a strategic infrastructure development comprising an electrical transmission infrastructure project, referred to as the Laois-Kilkenny Reinforcement Project, in Counties Laois and Kilkenny, which was the subject of an approval under An Bord Pleanála reference number PL11.VA0015.

WHEREAS the Board made a decision to approve, subject to conditions, the above-mentioned development by order dated the 23rd day of April 2014,

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 follows:

- Relocation of existing End Mast ('BK1 (EM)') c. 50m westward into the area of the approved Ballyragget 110kV/38kV substation; provision of 1 No. new double wooden Intermediate Poleset ('IMP 2') along the existing 110kV overhead line alignment to the east of Ballyragget substation; associated minor realignment of structures up to Angle Mast 4 ('AM4'), all as illustrated on drawing number PE687-D371-029-001-001 submitted with the request.

AND WHEREAS having regard to the nature of the issues involved, 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 in relation to the matter from other persons,

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 of the documents on file and the Inspector's report, the Board considered that, subject to the implementation of the mitigation measures contained in the Natura Impact Statement for the approved strategic infrastructure development, 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 21st day of December 2021 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 and scale of the development approved by An Bord Pleanála under Reference Number PL11.VA0015,
- (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 scale of the proposed alterations when considered in relation to the overall approved development,
- (iv) the absence of any new or additional environmental concerns of a material nature (including in relation to European Sites) arising as a result of the proposed alterations, 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 2000, as amended, the Board hereby makes the said alteration.

Niall Haverty
Senior Planning Inspector
15th February 2022