



An
Coimisiún
Pleanála

Inspector's Report ACP-323639-25

Details of Referral

Point of detail under Section 34(5)(a) of the Planning and Development Act 2000 (as amended) regarding condition no. 1 & no. 4 - planning ref:22/340 (ABP-318295)

Location

Bilboa Wind Farm, land at Boolyvannanan and Coolnakisha, Bilboa, County Carlow.

Planning Authority

Carlow County Council

Planning Authority Reg Ref.

CPL/25/80

Applicant

Boolyvannan Renewable Energy Limited.

Type of Referral

Point of Detail

Referred by

Boolyvannanan Renewable Energy Limited

Date of Site Inspection

N/A

Inspector

Bríd Maxwell

1.0 Introduction

This case is a referral under Section 34(5) of the Planning and Development Act 2000, as amended. It concerns a point of detail in dispute between the referrer / developer and the planning authority. The referrer has requested a determination from the Commission on the appropriate implementation of points of detail in reference to two conditions namely (1 & 4) imposed by An Bord Pleanála in relation to a grant of permission for a wind farm development at Boolyvannan and Coolnakisha, Bilboa, County Carlow. The referrer is seeking a determination from An Coimisiún Pleanála having failed to achieve agreement with the planning authority.

2.0 Site Location and Description

- 2.1. The site is as described in the Inspector's report attached to 318295. It extends to 25.2 hectares and is located at Boolyvannanan and Coolnakisha, Bilboa, in Co Carlow. The site lies approximately 8km to the southwest of Carlow Town and circa 1km south of the small settlement of Bilboa and 'Three Counties Bridge' which lies on the border of counties Carlow, Laois and Kilkenny. Other settlements in the vicinity include Kilkenny City located circa 18km to the southwest, Castlecomer 11km to the west, Leighlinbridge 6km to the southeast and Bagnalstown 10km to the southeast. The location is an upland area of the Killeslin Hills which form part of the Castlecomer Plateau. The site comprises commercial coniferous forestry, predominantly Sitka spruce with an area of bog to the north east of the site known as Red Bog.

3.0 Planning Permission

- 3.1. On 21st November 2024 An Bord Pleanála upheld the decision of Carlow County Council and granted permission for the development of a windfarm, referred to as Bilboa windfarm, comprising five wind turbines with turbine blade diameter of 117m and overall height to tip of 136.5m one permanent meteorological mast, access road and internal tracks, electricity substation, temporary construction compound, turbine laydown area, control building, 1 borrow pit, crane hardstanding, underground

cabling, up to approximately 18 hectares of forestry felling and all associated site works, with an operational lifetime of 30 years. Permission was granted subject to 23 no conditions.

3.2. Condition 1 requires that:

“The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including further information received by the planning authority on the 2nd day of June 2023, 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.”

Condition 4 as follows:

“The following design requirements shall be complied with:

- (a) The wind turbines shall have a maximum tip height of 136.5metres*
- (b) Final details of the turbine design shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.*
- (c) Cables within the site shall be laid underground.*
- (d) The wind turbines shall be geared to ensure that the blades rotate in the same direction.*

Reason: In the interest of visual amenity.”

4.0 Point of Dispute.

- 4.1 The point of dispute became evident further to the developer’s submission of a compliance document to Carlow County Council on 9th June 2025 outlining within a technical note the developer’s proposals in respect of conditions 1 and 4(b).

The submission outlined details of proposed amendments to turbine and substation levels arising from the discovery that planning application drawings had recorded incorrect levels following detailed topographical surveys (ground truthing) on site.

- 4.2 The developer considers that the difference in turbine levels “*could be agreed through Condition 4(b) in line with condition 1*”. It is asserted that “*the difference will not impact the finished floor level of any structure and therefore we feel this would not be considered a material change.*” Technical note advises that topographical surveys carried out resulted in the discovery that the actual ground levels at proposed turbine and substation locations vary compared to levels assumed in the original application by the following amounts:

Turbines

	Existing ground level on planning drawings	2024 Murphy geospatial topographical survey	Level difference between topographical survey and planning	Permitted top of turbine FDN level. 1.0m above OSI ground level	Proposed top of turbine FDN level, 1.0m above surveyed ground level	Level difference between permitted and proposed design
T#	mOD	mOD	mOD	mOD	mOD	mOD
T1	303.3	300.0	-3.3	304.3	301.0	-3.3
T2	297.9	296.9	-1.0	298.9	297.9	-1.0
T3	294.6	293.2	-1.4	295.6	294.2	-1.4
T4	286.2	282.2	-4.0	287.2	283.2	-4.0
T5	285.1	281.7	-3.4	286.1	282.7	-3.4

Substation

	Existing ground level on planning drawings	2024 Murphy geospatial topographical survey	Level difference between topographical survey and planning	Permitted substation level 0.0m¹ above OSI ground level	Proposed substation level, 1.2m² above surveyed ground level	Level difference between permitted and proposed design
Substation Level	280	275.6	-4.4	280	276.8	-3.2

4.3 In terms of an explanation for the discrepancy the developer notes that *“the planning application drawings submitted to Carlow County Council were produced using standard, and officially published, Ordnance Survey Ireland (OSI) 10 metre ordnance datum, which was the best available published data at that time. As the data is only provided at 10m intervals it was necessary to approximate the levels of intervening topography. This approximation was manually completed following a site walkover so as to estimate, with the greatest possible accuracy, actual existing site levels.*

While this approach was, and remains entirely valid and widely used, it is recognised that differences between officially published data and the actual ground-truthed site conditions can occur. Indeed, OSI acknowledges that the accuracy of the published 10-metre dataset is approximately +/-3m, while greater localised differences may also occur.

At the time of planning application, the published OSI data was relied upon as accurately reflecting actual existing ground conditions. This data was subsequently used as reference for the finished ground levels and top of turbine foundations for the proposed development.”

4.4 The developer goes on further to reason that :

“It is evident from the planning application that the construction of the turbines and substation at levels as per the actual ground level is what was intended. Building in

¹ Emphasis added to highlight actual level change

² Emphasis added to highlight actual level change

accordance with the actual ground conditions would not artificially increase or decrease the finished level of any structure but merely ensure that the finished level is reflective of existing ground conditions at each location. Accordingly, we propose that the turbine dimensions will be consistent with An Bord Pleanála ABP-318295-23 & Carlow County Council PL Ref #22/340."

The developer further outlines that

"The slight rectification in turbine elevation will not have any imperceptible change in noise impact. There will not be any changes to hardstand construction or to habitats or to ecology over that previously assessed. It can be concluded, on the basis of objective information, that the proposed minor rectifications in turbine elevation would not have any potential to affect any European site(s), or the environment generally, over and above the development already described and assessed by the environmental impact assessment of the project that was carried out by the Planning Authority when the permissions were granted. It is our opinion that these minor rectifications will not have any negative impact on residents and adjoining landowners.

Accordingly, these minor rectifications in elevation to ground levels at the five turbines and the substation do not change the essential nature of the permitted development. We note that none of the Planning Permission conditions prohibit minor deviations.

Based on the above considerations, it is our professional opinion, the construction of the turbines relative to actual ground level is in compliance with the Planning Permission and we would be grateful if you could confirm your agreement to same."

- 4.5 The Planning Authority's response to the compliance submission dated 14th August 2025 advises that:

"The compliance submission made refers to differences in levels from what planning was received for, compared to the actual levels. A compliance submission under this condition only relates to changes that are required to comply with the remaining 22 conditions of this permission. None of the other 22 conditions deal with prior

agreement of levels. The submission there is not a relevant compliance submission, but it is noted that the significant changes in levels indicated would be considered a material change.”

With regard to condition No 4 - *“no details of final turbine design on file.”*

- 4.2 Subsequent email correspondence from the developer to the Planning Authority, which has been provided by the Planning Authority in response to the referral indicated the developer’s intention to refer the Council’s response “to condition 1” to the Commission for determination under Section 34(5) of the Planning and Development Act 2000 as amended.
- 4.3 Responding email correspondence from the Planning Authority expresses the view that Section 34(5) of the Planning and Development Act 2000 as amended does not apply as condition No 1 does not provide for points of details to be agreed (i.e for details to be submitted for compliance purposes) and none of the 22 other conditions require agreement with respect to levels.

5.0 Planning Authority Response to Referral

- 5.1 The Planning Authority considers that :

“The reference to turbine design in part (b) of Condition No 4 is not intended to be so broad in scope as to accommodate revisions to turbine levels, arising from what appears to be approximated site ground levels in the applicant’s initial site investigations and topographic surveys.

A candidate turbine of a type and scale likely to be selected for construction was used to inform the submitted plans and particulars of the planning application. Therefore, part (b) of condition No 4 is to facilitate the applicant’s submission of a final selected turbine design (or model) for the agreement of the Planning Authority prior to the commencement of development.”

6.0 Planning History.

318295-23 The Board upheld the decision of Carlow County Council to grant a 10-year permission for a windfarm development comprising construction of five wind turbines (overall tip height 136.5m), meteorological mast, electricity substation and associated site works. Permission was granted subject to 23 no conditions.

PL01.240245 (PA Ref 11/154) 10-year permission for wind energy development in the townlands of Boolyvannan and Coolnakisha, Bilboa, Co Carlow. The development consists of the erection of five number wind turbines (maximum hub height 90 metres, maximum blade diameter 93metres), one permanent meteorological mast, access road and internal site tracks, electricity substation, underground cabling and all associated site works.

20/180 Permission granted by Carlow County Council 12 July 2021 for the installation of approximately 4.6 kilometres (km) of underground cables within the Carlow County Council (CCC) boundary and approximately 2.0 km within the Laois County Council (LCC) boundary with a voltage of up to 38 kilovolts and associated works, including a new substation within LCC, for the connection of the consented Bilboa Wind Farm (Planning Register References: Carlow County Council 11/154; An Bord Pleanála PL 01.240245) to the national electricity grid; upgrading of an existing forestry track within CCC; construction of two new onsite access tracks within CCC; re-orientation and increasing in size of a crane hardstanding within CCC; and road strengthening and widening along an updated turbine delivery route, within LCC. Granted 13/8/2021 Expires 12/8/2026

7.0 Legislative Context

Planning and Development Act 2000, as amended.

The issue to be determined in this case has been submitted to the Commission under Section 34(5) of the Planning and Development Act, 2000, as amended. The relevant section of the Act states:

“The conditions under subsection (1) may provide that points of detail relating to a grant of permission may be agreed between the planning authority and the person to whom the permission is granted and that in default of agreement the matter is to be referred to the Board for determination.

(a) where for that purpose that person has submitted to the planning authority concerned such points of detail, then that authority shall, within 8 weeks of those points being so submitted, or such longer period as may be agreed between them in writing, either—

(i) reach agreement with that person on those points, or

(ii) where that authority and that person cannot so agree on those points, that authority may—

(I) advise that person accordingly in writing, or

(II) refer the matter to the Board for its determination,

and, where clause (I) applies, that person may, within 4 weeks of being so advised, refer the matter to the Board for its determination.”

8.0 Assessment

8.1 Having reviewed the documentation provided by the referrer and the Planning Authority in relation to the matter, it is evident that the substantive issue in dispute relates to proposed finished ground levels in respect of the proposed turbines and substation. The developer in their compliance submission sought to clarify and agree revised finished foundation levels for turbines and floor level for substation referring to compliance with conditions 1 and 4(b). In terms of justification for such revision it has been outlined that detailed topographical studies carried out subsequent to the grant of permission resulted in the discovery that the existing ground levels at turbine and substation locations were lower (ranging between -1.0mAOD and -4.0mAOD in relation to the turbines) and -4.4mAOD in respect of the substation, than had been detailed within the planning documentation and on the basis of which planning permission was granted. It was outlined that the planning application drawings were produced using standard and officially published OSI 10-metre ordnance datum with estimated manual approximation following site walkover.

8.2 In terms of the preliminary question regarding jurisdiction it was the assertion of the Planning Authority that the issue raised with respect to site levels is not relevant to Condition 4(b) as the condition relates solely to turbine design. (*“Final details of the turbine design shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development”*). The Planning Authority further noted that none of the 22 no conditions require prior agreement with respect to levels, and condition 1 in itself does not provide for points of detail to be agreed. The Planning Authority considers therefore that Section 34(5) of the Planning and Development Act 2000 (as amended) does not apply in this case.

8.3 Having considered the details of the matter in question, I am inclined to concur with the Planning Authority with regard to their conclusion of non-applicability of the levels details submitted to the stated conditions. I note in relation to condition 1, as follows:

“The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, including further information received by the planning authority on the 2nd day of June 2023, 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.”

The condition does not per se require prior agreement with regard to points of detail, rather it refers to matters for agreement in subsequent conditions 2-23 and none of which require agreement with respect to ground levels.

8.4 As regards condition 4 and specifically 4(b) (highlighted) as referenced it is as follows:

“The following design requirements shall be complied with:

(a) The wind turbines shall have a maximum tip height of 136.5metres

(b) Final details of the turbine design shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(c) Cables within the site shall be laid underground.

(d) The wind turbines shall be geared to ensure that the blades rotate in the same direction.

Reason: In the interest of visual amenity.”

I note that there is no reference within the condition to ground levels and I consider that “final details of turbine design” which is the matter subject to agreement, does not extend to finished ground level. As such I conclude that the matter in dispute is not correctly attributable to a point of detail agreement with respect to either condition 1 or 4(b) and therefore I am of the view that the Commission does not have jurisdiction in this instance.

8.5 Should the Commission not accept the above view, I outline my consideration of the question of materiality of the proposed level amendments as set out in the case. In this regard I note that the Planning Authority advised the applicant in their response dated 14th August 2025 that “*the significant changes in levels indicated would be considered a material change*”.

8.6 I note that in terms of ground level records, Tailte Éireann website <https://tailte.ie/> refers to an accuracy of + or –3m with regard to its Digital Terrain Model. In this context I note the discrepancy identified in the current case ranges between -1m and -4.4m, which is not insubstantial and is entirely surprising given the level of detail, accuracy and assessment expected in terms of compilation of an EIAR. Whilst it is indeed unfortunate that topographical surveys to decipher accurate site levels were not carried out to inform the planning application, it might be viewed as more favourable that the actual levels now determined are lower than the levels initially recorded. However, it is not entirely clear as to where the site level error depiction commences and ceases. For instance does it extend to other elements including permanent meteorological mast, access roads and internal tracks, temporary

construction compound. The question arises as to what extent the error now identified affects or relates to other proposed development elements and site context. In this regard I do not consider that sufficient information has been provided by the applicant to clarify the matter.

8.7 With regard to the permission granted I would concur with the developer's contention that it is evident from the planning application that the construction of the turbines and substation at levels as per actual ground is what was intended and approved. I note that in terms of the wider implications the developer asserts that the rectification of levels does not have any potential to affect European site(s) or the environment generally, over and above the development already described and assessed by the Environmental Impact Assessment and Appropriate Assessment. However, given the lack of detail as outlined above I am not satisfied that this conclusion is reasoned and it certainly does not meet the requirements for EIA and AA in terms of best available scientific evidence.

8.8 Whilst the revised turbine finished floor levels (FDN level) now proposed maintains a level 1.0m above "existing" ground levels the proposal in respect of site substation indicates a revision from 1.2m above existing surveyed ground level to where the permission previously permitted 0.0m above ground level (as per technical note). I note that application drawings drawing BiLB d010.10.2 indicates substation finished floor level 0.15 above ground level). No explanation has been provided for this alteration of raising of finished floor level by 1.2m above existing ground level which is inconsistent and contradicts the developer's contention that the rectification in elevation to ground levels does not change the essential nature of the permitted development. This increased floor level rise above existing ground level would clearly be a material alteration.

8.8 With regard to the surveys completed to assess environmental effects, ecological assessment, modelling for shadow flicker, noise and visual impact it might be argued that it is unlikely that the correction now outlined with regard to the turbines would result in material change given that these surveys apparently relied on OS mapping

with regard to baseline ground level data in respect of the site context and receptors and also having regard to the description of theoretical 'worst case scenario' in terms of assessment and accumulation of effects. On this basis whilst the developer invites the Commission to conclude that the rectification of the record of ground levels for the turbines does not change the essential nature of the permitted development, however given the lack of clarity provided in relation to the magnitude or range of the inaccuracy this is not a proven case.

9.0 Recommendation

- 9.1 In my opinion the dispute arising is not appropriately attributed to condition 4 and therefore I recommend that the Commission has no jurisdiction in terms of the determination and the referral should be deemed invalid. However, should the Commission not concur with this view, I have outlined an order in the following terms.

Whereas by order dated the 21st day of November 2024, An Bord Pleanála, under appeal reference number ABP-318295, granted subject to conditions a permission to Boolyvannanan Renewable Energy Limited, care of MWP Engineering and Environmental Consultant, Park House, Bessboro Road, Blackrock, Cork for development comprising the construction of five wind turbines, meteorological mast, electricity substation and associated site works at Boolyvannanan and Coolnakisha, Bilboa, County Carlow.

And Whereas condition no 4(b) attached to this permission required the developer to submit to and agree in writing with the planning authority proposals in relation to turbine design,

And Whereas the developer and the planning authority failed to agree on the above details in compliance with the terms of this condition and the matter was referred by the developer to An Coimisiún Pleanála on the 9th day of September 2025 for determination.

Now Therefore An Coimisiún 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 amendments to levels as set out are not within the scope of condition 4(b) of An Bord Pleanála Reference number ABP 318295-23, for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

Regard is had to the fact that condition number 1 of the permission granted under appeal reference number ABP.318295 requires that the development is be carried out in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars lodged with the planning authority on the 2nd day of June, 2023, except as may otherwise be required in order to comply with the conditions attached to the order. It is considered that condition number 4b of this permission required agreement between the planning authority and developer only in relation to final details of the turbine design and did not require agreement in respect of turbine and substation levels, as these details were approved as part of the consent for the overall development and in accordance with the plans and particulars lodged with the application.

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.

Bríd Maxwell
Planning Inspector

12^h December 2025