



An
Bord
Pleanála

Board Direction ABP-304496-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on September 17th, 2019.

The Board decided, as set out in the following Order, that the deviation of the permitted rotor diameter from 90 metres to 97 metres and of the permitted tip height from 145 metres to 148.5 metres of 16 turbines, and the relocation of 11 of the 16 permitted turbines by up to 20 metres, all at a windfarm to which planning permission register reference number 11/51/0251 relates, at Castlewaller, Newport, Co Tipperary, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether works relating to alterations to wind turbine specification and locations set out in submission to planning authority on 28/4/2014 under planning ref 11510251 (an extension of the duration for which was granted under planning reference 16600472) is or is not development and is or is not exempted development.

AND WHEREAS Stephen and Denise Walsh, c/o Connellan and Associates, of 'Sonas', Cahercalla Wood, Cahercalla, Ennis, Co. Clare, requested a declaration on this question from Tipperary County Council, and the Council issued a declaration on the 26th day of April 2019 stating that the matter was not development.

AND WHEREAS Stephen and Denise Walsh referred this declaration for review to An Bord Pleanála, on the 17th day of May 2019.

AND WHEREAS An Bord Pleanála, in the light of the documentation submitted with the referral, decided to re-word the question as follows:-

Whether the deviation from the permitted rotor diameter from 90 metres to 97 metres and from the permitted tip height of 145 metres to 148.5 metres of 16 turbines, and the relocation of 11 of the 16 permitted turbines by up to 20 metres, all at a windfarm to which planning permission register reference number 11/51/0251 relates, at Castlewaller, Newport, Co Tipperary, is or is not development and is or is not exempted development.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) The planning permission granted under register reference number 11/51/0251, which was expressed to be for a wind farm consisting of 16 turbines (each with a maximum hub height of 100 metres, maximum rotor diameter of 90 metres and with a total tip height of 145 metres), one permanent meteorological mast, 2 borrow pits, a sub-station including a control building, new internal access roads, upgrading of existing internal access roads, expansion of drainage system, turbine hardstands, wastewater holding tank, underground cables and ancillary works,

- (d) The documentation on file, including details of the proposed amendments to the permitted Castlewaller wind farm, and in particular to the turbine blade rotor diameter dimensions and overall tip height and to the locations of 11 of the 16 turbines, as outlined in submission to the planning authority by ABO Wind Ireland Limited on the 28th day of April 2014 on file register reference number 11/51/0251, and
- (e) Relevant case law, including Bailey - v - Kilvinane Wind Farm Ltd [2016] IECA 92.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the turbines would involve the carrying out of works and therefore comes within the definition of development;
- (b) The development for which planning permission was granted, under register reference 11/51/0251, specified, inter alia in the public notice, the maximum hub height, maximum rotor diameter and total tip height;
- (c) The relocation of the turbines, in the absence of any planning condition permitting such relocation or micro-siting, does not come within the scope of the permission;
- (d) The alterations to the turbines, as proposed, including the increased diameters of the turbine rotor blades and of the turbine tip heights beyond that specified as the maximum diameter and tip height in the planning permission, does not come within the scope of the permission granted;
- (e) The deviations in question from the permitted development are material in nature and are not *de minimis*, having regard to the terms of the permission

granted; and the potential for increased impacts on residential amenity, visual amenity and biodiversity/protected species;

- (f) There is no provision for exemption, in the Planning and Development Act 2000, as amended, and in the Planning and Development Regulations 2001, as amended, for these relocations and alterations to turbines.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the deviation of the permitted rotor diameter from 90 metres to 97 metres and of the permitted tip height from 145 metres to 148.5 metres of 16 turbines, and the relocation of 11 of the 16 permitted turbines by up to 20 metres, all at a windfarm to which planning permission register reference number 11/51/0251 relates, at Castlewaller, Newport, Co Tipperary is development and is not exempted development.

Board Member

Date: 17th September 2019

Philip Jones