



An  
Bord  
Pleanála

## Inspector's Report ABP301484-18

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**Declaration**

P13/401.

**Reference By**

Cavan County Council

**Question**

Whether the laying of crushed stone at a depth of 100 millimetres and the laying of 804 Gravel to accommodate a storage area for on-going works at a windfarm is or is not development or is or is not exempted development.

**Address**

Gartnaneane Windfarm, Baileborough, County Cavan.

**Owner/Occupier**

SSE Renewables (Ireland Limited).

**Date of Site Inspection**

13<sup>th</sup> September, 2018.

**Inspector**

Paul Caprani.

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## **1.0 Introduction**

A question has been referred to An Bord Pleanála pursuant of Section 5 of the Planning and Development Act 2000 (as amended) as to whether or not the laying of crushed stone to a depth of 100 millimetres and the overlaying of the crushed stone with 804 gravel to a depth of a further 50 millimetres at a windfarm development outside Baileborough, County Cavan constitutes development which is exempted development. The referral was made by SSE Renewables to Cavan County Council who in turn referred it directly to An Bord Pleanála. The submission of SSE Renewables argues that the works constitute exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act 2000.

## **2.0 Site Location and Description**

The Gartnaneane Windfarm is a relatively small windfarm comprising of approximately 10 turbines in an upland drumlin area in north-west County Cavan. The windfarm is located approximately 4 kilometres due north of the town of Baileborough. The area to which the laying of crushed stone relates is located adjacent to the main access track leading to the individual turbines. The area in question according to the information contained on file, amounts to approximately 100 square metres and is located approximately 110 metres from the junction with the local access road serving the development. The site is currently occupied by mounded inert material which is overgrown. An agricultural shed is located adjacent to the access road to the north-west of the subject site and lands contiguous to the south-eastern boundary of the site accommodate the electricity substation serving the windfarm development. All other land surrounding the subject site is undeveloped. The closest turbines to the lands which are the subject of the referral are located approximately 120 metres to the north-east and south-west respectively.

## **3.0 The Proposal**

- 3.1. The activities proposed to be undertaken on site involve the laying of an area of approximately 10 metres by 10 metres with 3 inched crushed stone to a depth of 100

millimetres and over this the laying of 804 gravel to a depth of 50 millimetres to accommodate a storage area. The storage area will be used for such purpose for the lifetime of the windfarm.

#### **4.0 The Question**

- 4.1.1. The question before the Board is whether or not the activities to be undertaken constitute development and if they constitute development whether or not such development constitutes exempted development under the Planning and Development Acts and Regulations.

#### **5.0 The Referral**

- 5.1. It appears from the information contained on file that SSE Renewables originally submitted the referral to Cavan County Council who in turn submitted it directly to An Bord Pleanála for determination. It appears that Cavan County Council did not issue a determination in respect of the question put before it.
- 5.2. The SSE Renewables submission sets out that the proposed activities which are the subject of the referral constitutes exempted development. In this regard reference is made to Section 4(1)(h) of the Act. It is argued that the works proposed constitute alterations that do not materially affect the external appearance of the structure. The works are not significant and must be judged in the scale and nature of the existing windfarm which consists of 10 turbines with a hub height of 65 metres.
- 5.3. While de-exemptions would apply in certain circumstances where appropriate assessment and EIA were required, it is argued that such de-exemptions do not apply to the provisions of Section 4(1)(h). Notwithstanding this argument neither appropriate assessment or EIA is required in this case. An EIA screening report has been submitted with the referral which concludes that the works undertaken do not fall within a class which requires environmental impact assessment.
- 5.4. **Planning Authority's Submission**  
Cavan County Council have not submitted any observations on the referral in question.

## 6.0 Legislative Provisions

### 6.1.1. Planning and Development Act 2000 (as amended)

Section 2 sets out definitions and the following definitions are relevant.

“*Alterations*” - alterations include

(a) the plastering or painting or the removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structure.

“*Structure*” means any building, structure, excavation or other thing constructed or made on in or under any land or any part of a structure so defined and

(a) where the context so admits includes the land on, in or under which the structure is situate.

“*Use*” in relation to land does not include the use of the land for the carrying out of any works thereon.

“*Works*” include any act, operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 “*Development*” in this Act development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1) “*exempted development*” – The following shall be exempted development for the purposes of the Act.

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works that affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

### 6.1.2. **Planning and Development Regulations 2001**

Article 6(1) subject to Article 9, the development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that Class in the said Column 1.

Class 16 – the erection, construction or placing on any land in, over, or under which or on land adjoining which development consisting of works (other than mining) is being or is about to be carried out pursuant of a permission under the Act or exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The conditions and limitations applying to Class 16 are that such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

## 7.0 **Assessment**

- 7.1. The first issue before the Board which requires to be determined is whether or not the activities to be undertaken on the site constitute “works”. Works are defined as any act or operation involving, inter alia, construction and excavation. What is proposed in this instance is excavation and alterations to the land in order to provide an infill hardstanding area which, according to the information contained on file is to be used for storage. The excavation of the lands in question and the provision of a hardstanding area constitute works and as such falls within the definition of ‘development’ under the Planning and Development Acts. It appears that this aspect of the referral is not disputed by the owner/occupiers of the lands.
- 7.2. Following from this, a question now arises as to whether or not any of the exempted development provisions apply, either under the 2000 Act (as amended) or the Regulations (as amended).
- 7.3. The owner/occupier of the lands argue that the works undertaken are exempt under the provisions of Section 4(1)(h) “development consisting of the carrying out of works

for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure to render the appearance inconsistent with the character of the structure or neighbouring structure”.

- 7.4. “Structure” under the Act means any building, structure, **excavation** (my emphasis) or other thing constructed or made on, in or under any land or any part of a structure so defined and (a) where the context so admits include the land on, in or under which the structure is situate.
- 7.5. It is clear in my opinion that the above definition which includes the act of “excavation” falls within the definition of structure. Furthermore, the infill of gravel material on site as proposed could reasonably be construed as “or other thing constructed or made on, in or under any land” as set out in the definition of “structure”. The works proposed to be undertaken could in my view be classed as a structure as defined in the Act. Therefore, in the context of Section 4(1)(h) it could be reasonably argued that the provision of a small area of hardstanding for storage would not materially affect the external appearance of the structure i.e. the lands in question or the wind turbines nor would they render the appearance inconsistent with the character of the structure or neighbouring structure having regard to the overall size of the site, the existence of agricultural buildings, access tracks, turbines and electricity substations all of which are located in the vicinity of the site. The owner/occupier’s assertions in my view that the laying of gravel material for an outdoor storage facility associated with the wind farm would (a) fall within the definition of “structure” and (b) would constitute exempted development as it complies with the criteria for exemption as set out under the provisions of Section 4(1)(h).
- 7.6. The Board in determining the referral, may also wish to consider the issue of change of use. It appears that the subject works to be undertaken are specifically for the creation of a small outdoor storage facility on site presumably for the storage of materials etc. associated with the windfarm. It could be argued that the works to be undertaken constitute a change of use from agricultural use to open air storage. For the purposes of the referral a question could arise as to whether or not the change of use is material in the context of the Planning and Development Act.

- 7.7. I would consider it reasonable to conclude that any change of use in this instance is not material. In terms of the overall planning unit the actual change of use of 100 square metres of land for storage is negligible in the context of the overall windfarm area. Furthermore, I do not consider that the change of use could be considered material in visual terms as there are areas of hardstanding and agricultural buildings in the vicinity and therefore the area to which the change of use relates cannot be considered under any circumstances to be located in an area of pristine and undeveloped land.
- 7.8. Nor is it likely in my view that the change of use will give rise to any material impacts on the environment in terms of additional noise generation, traffic generation, odour nuisance or pollution of surrounding lands and water. Having regard to the scale and nature of the proposed storage areas it is not considered that the proposal will have any consequential environmental impact which could be deemed to be material under the Planning Acts.
- 7.9. Class 16 of the Planning and Development Regulations 2001 (as amended) would not apply in this instance as the lands would not be used for the storage of machinery or other plant associated with the construction of the windfarm as the windfarm in question has been developed and is operational.
- 7.10. Finally, I would agree with the applicant that the nature of works to be undertaken would not be of a nature that would require either EIA or AA and therefore the provisions of Section 4(4) of the Act would not apply in this instance.
- 7.11. I therefore recommend that the Board issue a declaration on the said referral under the provisions of Section 5 as follows:

**WHEREAS** a question has arisen as to whether the laying of crushed stone to a depth of 100 millimetres and the overlaying of gravel at a depth of 50 millimetres to accommodate a storage area for on-going works at a windfarm is or is not development and is or is not exempted development.

**AND WHEREAS** Cavan County Council requested a declaration on the said question on the 23<sup>rd</sup> of April, 2018.



**AND WHEREAS** An Bord Pleanála in considering this referral had particular regard to –

- (a) Sections 2, 3 and 4 on the Planning and Development Act 2000, as amended
- (b) Specifically, Section 4(1)(h) of the Planning and Development Act 2000,
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended
- (d) The nature, extent and scope of works proposed to be undertaken.

**AND WHEREAS** An Bord Pleanála concluded that

- (a) the excavation of lands and the laying of crushed stone and gravel constitutes works under the definition of the Act,
- (b) the act of excavation and the laying of crushed stone and gravel fell within the definition of structure as set out in the Act,
- (c) the excavation and layout of crushed stone and gravel constitute works for the maintenance, improvement or other alteration of any structure as defined in Section 4(1)(h) of the said Act and having regard to the nature, scale, extent and location of the said works these works do not materially affect the external appearance of the existing windfarm so as to render the appearance inconsistent with the character of the windfarm and that of neighbouring structures,
- (d) having regard to the nature, scale and extent of the proposed storage area in the context of the existing windfarm any change of use in the said lands are not considered to be material in the context of the existing windfarm,
- (e) the proposed works would not be likely to have a significant effect, either individually or in combination with other plans and projects on any Natura 2000 sites and therefore do not require an appropriate assessment.
- (f) Furthermore, having regard to the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, the works undertaken do not require the submission of an environmental impact statement.

**NOW THEREFORE** An Bord Pleanála in exercise of the powers conferred on it by Section 5(3)(a) of the 2000 Act, hereby decides that the laying of crushed stone to a depth of 100 millimetres and the laying of gravel above the crushed stone to a depth of 50 millimetres constitutes development which is exempted development.

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Paul Caprani,  
Senior Planning Inspector.

24th September, 2018.