



An
Bord
Pleanála

Inspector's Report 306388-20

Question

Whether the erection of wind turbines and access road at the location below is or is not development or is or is not exempted development

Location

Curraghmarky, Birchgrove,
Moanvaun, Tooreen, Garracummer,
Cummer More, Cummer Beg,
Turraheen Upper and Rossmore,
Hollyford, County Tipperary

Declaration

Planning Authority

Tipperary County Council

Planning Authority Reg. Ref.

S5/19/116

Applicant for Declaration

Ray Neilon

Planning Authority Decision

Is development and is not exempted
development

Referral

Referred by

Ray Neilon

Owner/ Occupier

Brookfield Renewable Ireland Ltd

Observer(s)

None

Inspector

B. Wyse

1.0 Site Location and Description

- 1.1. The development in question, the Garracummer Wind Farm, is located in a upland area of County Tipperary. It is about 20kms south of Nenagh; about 20kms north of Tipperary Town; about 25kms east of Limerick City; and about 20kms west of Thurles.
- 1.2. The wind farm consists of 17no. wind turbines and associated supporting infrastructure straddling 9 townlands. The nearest village is Hollyford approx. 2-3kms to the south east.

2.0 The Question

- 3.0 A question has arisen as to whether the erection of wind turbines and access road at Curraghmarky, Birchgrove, Moanvaun, Tooreen, Garracummer, Cummer More, Cummer Beg, Turraheen Upper and Rossmore, Hollyford, County Tipperary is or is not development and is or is not exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

The planning authority Declaration refers to the receipt of an application under section 5 from Ray Neilon in the following terms:

Are the larger turbines that are erected without proper planning exempt or not exempt from planning? Turbines are bigger all round to include larger blades, bigger and more powerful motors and 13 turbines are not in their specific locations as in planning.

The Declaration then indicates that an attachment to the application raising the following additional questions:

- *Are the turbine blades which are longer than planning was exempt or not exempt from planning?*
- *Are the larger motors on these turbines exempt or not exempt from planning?*

- *Are the turbines that are not in their specific locations exempt or not exempt from planning?*
- *Is the access road from/to turbine 6 exempt or not exempt from planning?*
- *Is the Special Protection Area (SPA) at Barna/Garracummer exempt or not exempt from industrial development? Five of these turbines are in the SPA.*

The Declaration then formulates the question as follows:

Whereas a question has arisen as to whether the erection of wind turbines and access road at Curraghmarky, Birchgrove, Moanvaun, Tooreen, Garracummer, Cummer More, Cummer Beg, Turraheen Upper and Rossmore, Hollyford, County Tipperary is or is not development and is or is not exempted development.

The Declaration is that the said erection of wind turbines and access road is development and is not exempted development.

The Declaration indicates that the following legislative provisions were taken into account:

- (a) Sections 2, 3, 4 and 5 of the Act, and
- (b) Articles 6 and 9 of the Regulations, and
- (c) Class 2(b) of Part 1 of Schedule 2 of the Regulations.

The Declaration indicates that the planning authority concluded that the wind turbines and access road come within the definition of development contained in section 3 of the Act and that there is no relevant express exemption under section 4 of the Act or Article 6 of the Regulations.

4.2. Planning Authority Reports

4.2.1. Planning Report

Basis for planning authority declaration.

Includes:

- On the basis of legal advice the planning authority formulated the question as per that set out in the Order.
- The legal opinion to the planning authority included:

Section 5 of the Act is not designed to address the question as to whether any development that has occurred is 'unauthorised development'. The only issues that can be considered for the purposes of Section 5 is as to whether there has been development and, if so, whether that development constitutes exempted development.

The definition of 'development' has two limbs: 'works' and 'material change of use'. It is within jurisdiction of the planning authority and the Board to consider the question as to whether there has been a 'material change of use' from the permitted use. However, it is not within the jurisdiction of the planning authority, under a Section 5 application, to consider whether works that have been carried out have deviated from the terms of a permission or are in breach of the conditions thereof. Furthermore, in the opinion of Senior Counsel, the Board does not have jurisdiction under a Section 5 referral to adjudicate on the question as to whether works have been carried out in breach of the terms or conditions of the relevant planning permission. This is properly a matter for enforcement.

Any works that have been carried out other than in accordance with the terms and/or conditions of a permission are indisputably 'works'. There is, therefore, in reality, no 'question' to be determined. Neither the planning authority nor the Board have jurisdiction to answer a different question: are the works that have been carried out in breach of the terms and conditions of the relevant permission? That is not a question as to whether 'works' have taken place.

- The Garracummer wind farm consists of 17no. Nordex N90 2.5MW wind turbines and all ancillary supporting infrastructure.
- The 17no. turbines were permitted to 3 separate applicants and under 3 separate planning permissions but are now operated collectively by Brookfield Renewable Energy as the Garracummer Wind Farm.

- The turbines as constructed have an output capacity of 42.5MW, an overall height to blade tip of 110m, a hub height of 65m and a blade diameter of 65m.
- The erection of the turbines and access road etc. is development (Section 3 of the Act). There is no express exemption in the Act or Regulations except under Class 2(b) of Part 1 of Schedule 2 but which the development clearly does not avail of.

Note: The planning authority documentation includes Board Orders and Inspector's Reports in relation to case Refs. 301738-18; 304496-19; and RL2891.

5.0 Planning History

The principal planning permissions relating to the wind farm are as follows:

PA Ref 04/1178

Permission granted to John Bourke in Dec. 2004 for 2no. wind turbines, an electrical substation, a meteorological mast 40m high and associated ancillary works. The turbines had a tower height of 65m and a blade diameter of 70m.

PA Ref 04/1034

Permission granted to Richard Hickey in March 2005 for 2no. wind turbines, an electrical substation, a meteorological mast 40m high and associated ancillary works. The turbines had a tower height of 65m and a blade diameter of 70m.

PA Ref 04/1259 ABP Ref 23.215597

Permission granted to Garracummer Wind Farm Ltd in May 2006 for a 26MW wind farm comprising 13no. 2MW wind turbines, hub height up to 67m, rotor diameter up to 80m and base to blade tip height up to 107m. Development also included; turbine transformers; turbine hardstands; new access roads; strengthening/widening existing forestry access roads; drainage; substation control building and fenced compound; underground electrical cables linking turbines to the substation compound;

underground communication cables; and all associated site works and ancillary development.

The owner/occupier's submission on the referral (Section 6.3 below) contains details of several other permissions obtained for various amendments/modifications to the wind farm development.

6.0 Policy Context

6.1. Development Plan

South Tipperary County Development Plan 2009 and North Tipperary County Development Plan 2010 extended. New County Development Plan currently in preparation.

6.2. Natural Heritage Designations

Not relevant.

7.0 The Referral

7.1. Referrer's Case

The referral is lodged by Ray Neilon, Lusmor, Commonealine, Cappwhite, County Tipperary.

The main grounds of the referral can be summarised as follows:

- The planning authority only replied to one of the questions put to it in the initial application for a declaration.
- The Board is requested to inform the Referrer if the wind farm is operating with or without planning permission.
- The questions are those as set out in the planning authority's Order (see Section 3.1 above).
- Information submitted in relation to the wind farm includes:

- By reference to PA Ref. 04/1259 the 13 turbines; have blades 10m longer in diameter than permitted (a deviation of 12.5%); are located up to 25m from their site specific locations; and have a power output of 2.5MW rather than the 2.0MW permitted (increasing the power output of the wind farm from 26MW to 32.5MW).
- By reference to PA Ref. 04/1034 the 2 turbines have blades 20m longer in diameter than permitted (a deviation of 28%); and the power output of the wind farm is 5MW rather than the 4MW as permitted.
- By reference to PA Ref. 04/1178 the 2 turbines have blades 20m longer in diameter than permitted (a deviation of 28%); and the power output of the wind farm is 5MW rather than the 4MW as permitted.
- It is believed that Condition 3 was used to allow the planning authority to agree the bigger turbines.
- The service road to turbine 6 is not in compliance with Condition 6.

7.2. Planning Authority Response

Includes:

- No additional issues raised in referral beyond those already considered by the planning authority.
- The planning authority considers that the principle of this referral is similar to that made to the Board under ABP Ref 04.RL2713. In this case (copy enclosed) the Board advised the Referrer that the matters raised related to interpretation and enforcement of a planning permission and were, therefore, outside the scope of a section 5 Referral.

7.3. Owner/ Operator's Response

Includes:

- The wind farm was constructed as a single development and has been operating since December 2012 in accordance with the relevant permissions.

- The jurisdiction of the Board is limited to declaring what is or is not development and, where relevant, what is or is not exempted development. Assertions of non-compliance with conditions, firmly disputed by BRIL, are outside the scope of a Section 5 referral.
- The submission includes full details of all the planning permissions obtained for the wind farm, including several relating to amendments/modifications to the development. It is submitted that the 'as built' wind farm is within the scope of the permissions granted.
- The turbine type [Nordex N90 2.5MW HS Turbine, hub height 65m, rotor diameter 90m and tip height 110m for all 17no. turbines] was the subject of a compliance submission to the planning authority under PA Ref 08/1236 and PA Ref 04/1259 ABP 23.215597 and this was agreed by the planning authority by letter dated 30 May 2011.
- Similar compliance submissions were also made under PA Refs 04/1034 and 04/1178 in June 2011.
- A post construction compliance submission in relation to noise was confirmed in 2014.
- The 17 'as built' turbines are in accordance with the relevant compliance submissions and any deviation from planning permissions is immaterial and was agreed by the planning authority prior to construction.
- All turbines are built in their permitted locations. Turbines T11, T12 and T13 were relocated on foot of a further information request during the planning authority's consideration of application PA Ref 04/1259 ABP Ref 23.215597 and are located in accordance with this permission.
- The Slieve Felim SPA was designated in 2007, after permission PA Ref 04/1259 ABP Ref 23.215597 was granted in May 2006.
- During construction of T6 it was not possible to use the proposed access road due to steep gradients so an existing internal forestry road to the north of T6 was used instead.

8.0 Statutory Provisions, Precedent Cases and Relevant Case Law

8.1. Planning and Development Act, 2000

Section 2 (1)

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

Section 3 (1)

“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 structure or other land”.

Section 4 (1)

Identifies exempted development for the purposes of the Act.

8.2. Planning and Development Regulations, 2001

Article 6

Identifies exempted development for the purposes of the Act.

Article 9

Identifies circumstances where development identified under article 6 loses its exempted development status.

8.3. Precedent Referrals

8.3.1. The cases referenced in the planning authority submissions are as follows.

ABP Ref. RL2713

This refers to a 2010 referral by Cork County Council in relation to a question stated as to whether an alleged change of use from light industry/warehousing to retail is or is not development or is or is not exempted development.

It appears the Council put a stay enforcement proceedings and made the referral to the Board.

The Board, by letter, advised the Council that the referral was inappropriate and outside the scope of Section 5 as it related to enforcement by the planning authority of a condition of one of its planning permissions, the Board having no role in enforcement.

ABP Ref. RL2891

This refers to a 2011 decision of the Board on a referral in relation to a question stated as to whether alterations to turbines in a wind farm as constructed (ie the turbines as constructed were different in terms of certain dimensions to those for which permission had been obtained) at Kilvinane and Garranure, Ballinacarriga, Dunmanway, County Cork, is or is not development or is or is not exempted development.

The Board decided that the alterations to the turbines and wind farm were development and not exempted development for the following reasons:

- (a) The erection of the turbines comes within the scope of the definition of development contained in Section 3 of the Planning and Development Act 2000,
- (b) the relocation of and alterations to turbines, including the modifications to the overall height of the turbines and the length of the rotor arms/blades do not come within the scope of the permission granted,
- (c) there is no provision for exemption for the said relocation and alterations to turbines provided for in either Section 4, as amended, of the said Act or Article 6 of the Planning and development Regulations 2001, and
- (d) therefore, the construction of the wind turbines as currently erected on the site, including alterations and modifications to the turbines height and rotor arms/blades is development and is not exempted.

The Board order noted that in deciding not to accept the Inspector's recommendation that the modifications issue raised relates to matters that cannot be determined by the Board under a section 5 referral, the Board considered that the grounds were clearly stated and the issues identified in the referral case.

ABP Ref. 301738-18

This refers to a 2018 decision of the Board on a referral in relation to a question stated as to whether the deviation from the permitted blade length of 45m (90m diameter) to the constructed blade length of 51.5m (103m diameter) in relation to permission PA Ref. PD11/400 for modifications to a wind farm at Barranafaddock Wind Farm, County Waterford is or is not development or is or is not exempted development.

The Board decided that the deviations were development and not exempted development for similar reasons to those cited under ABP Ref. RL2891.

ABP Ref. 304496-19

This refers to a 2019 decision of the Board on a referral in relation to a question stated as to whether works relating to alterations to wind turbine specification and locations by reference to PA Ref. 11510251 at Castlewaller, Newport, County Wexford is or is not development or is or is not exempted development. The alterations included increases to the permitted rotor diameter from 90m to 97m, tip height from 145m to 148.5m (all relating to 16 turbines) and relocation of 11 of the 16 turbines by up to 20m.

The Board decided that the alterations were development and not exempted development for the following reasons:

- (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 PA Ref. 11510251, 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, and
- (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.

8.4. **Relevant Case Law**

There are a number of relevant court judgements on the question of the scope of a section 5 referral, including whether or not it extends to the interpretation of a planning permission.

The most recent case to address the issue is **Krikke and others v. Barranafaddock Sustainability Electrical Ltd [2019] IEHC825**.

This case arose on foot of an application to the Court under section 160, Planning and Development Act 2000 (a planning injunction), that followed on from the decision of the Board on section 5 referral case ABP Ref. 301738-18 (see Section 7.3.1 above).

The principal legal issues in the case concerned the interaction between the respective competencies of local planning authorities, An Bord Pleanala and the courts. In particular, the weight, if any, to be given to a section 5 declaration in subsequent enforcement proceedings was considered.

To address these matters the judgement considered, amongst other issues, the issue of whether a section 5 referral can properly apply to the interpretation of a planning permission. It concluded, by reference to case law, that An Bord Pleanala does have jurisdiction to interpret a planning permission in the context of a section 5 referral.

The legal cases cited in the judgement were:

**Palmerlane Ltd v An Bord Pleanala [1999] 2 ILRM 514, and
Grianan an Aileach Interpretative Centre Ltd v Donegal County Council [2004]
IESC 41.**

The judgement (parag. 93) includes the following:

There is no principled distinction between (i) a finding that a particular act of development is or is not “exempted development”, and (ii) a finding that a particular act of development does not come within the scope of a planning permission. In each instance, an Bord Pleanala is required to assess the difference between two forms of “development”, and to reach a determination as to whether the difference between the two is material or immaterial. In the case of the user of lands, the exercise is to determine whether there has been a material change of use. In the case of permitted works under a planning permission, the exercise is to determine whether the difference is an immaterial deviation.

The **Palmerlane Ltd** case concerned a dispute as to whether the use of a convenience store for the sale of hot food for consumption off the premises constituted development. The operator of the store had sought to refer the matter to the Board under section 5 (of the 1963 Act). The Board had refused to deal with the reference on the grounds that it did not have the power to decide if a development had been carried out in accordance with a permission. The key consideration here was that the sale of hot food had commenced at the same time as the opening of the shop. Having noted that the Board would have been prepared to deal with the reference if the use for the sale of hot food had been introduced subsequent to the opening of the shop, the Court granted the relief sought and decided that the subject matter did constitute a valid reference for the purposes of section 5.

In ruling on the Palmerlane case the Court placed reliance on the earlier case of **McMahon v Dublin Corporation [1997] 1 ILRM 227** in which the Court upheld a decision by An Bord Pleanala under section 5 that a holiday home use in a number of houses, commenced when the houses were built, was development on the grounds that this use, the first use, was not authorised by the planning permission, and constituted a material change of use. In commenting on the **McMahon** case the Court stated, in relation to the An Bord Pleanala decision, that this was effectively a

decision that the use of the houses as holiday homes and temporary lettings was not in accordance with the relevant planning permission.

The **Grianan an Aileach** case concerned a dispute as to the use of an interpretative centre under the terms of its planning permission. In the course of its adjudication on the central issue in the case (the jurisdiction of the High Court in interpreting a planning permission notwithstanding the existence of section 5 of the Act) the Supreme Court had cause to consider the scope of the section 5 jurisdiction. In this context the Court endorsed the reasoning in **McMahon** and **Palmerlane** and concluded that a question as to whether proposed uses constitute development which is not authorised by a planning permission is one which may be determined under section 5 of the Act.

9.0 **Assessment**

9.1. **Introduction**

- 9.1.1. Given the terms of the referral as stated to the Board and the terms of the Declaration as issued by the planning authority, and bearing in mind that a referral to the Board under section 5 of the Act is for a review of the Declaration, I propose to carry out this assessment in two parts.
- 9.1.2. The first part considers the Declaration as issued by the planning authority, and therefore, the question to which the planning authority addressed itself.
- 9.1.3. The second part considers the other matters set out in the referral, namely, those other questions which the referrer contends the planning authority did not address or answer.

9.2. **Review of the Planning Authority Declaration**

- 9.2.1. As indicated at section 3.1 above the planning authority formulated the question as follows:

Whereas a question has arisen as to whether the erection of wind turbines and access road at Curraghmarky, Birchgrove, Moanvaun, Tooreen, Garracummer,

Cummer More, Cummer Beg, Turraheen Upper and Rossmore, Hollyford, County Tipperary is or is not development and is or is not exempted development.

9.2.2. Is or is not development

The erection of wind turbines and the provision of the access road clearly fall within the definition of 'works' in section 2(1) and of 'development' in section 3(1) of the Act. The erection of the wind turbines and the provision of the access road, therefore, constitute development. It is noted that this is not disputed by the owner/operator of the wind farm.

9.2.3. Is or is not exempted development

There is no relevant express exemption for this development in either the Act or the Regulations. The development, therefore, does not constitute exempted development. It is noted that this is not disputed by the owner/operator of the wind farm.

9.3. Other Matters/Questions raised in the Referral

9.3.1. As indicated at Section 6.1 above the other matters/Questions put before the Board, and as previously raised with the planning authority, are as follows:

- *Are the larger turbines that are erected without proper planning exempt or not exempt from planning? Turbines are bigger all round to include larger blades, bigger and more powerful motors and 13 turbines are not in their specific locations as in planning.*
- *Are the turbine blades which are longer than planning was exempt or not exempt from planning?*
- *Are the larger motors on these turbines exempt or not exempt from planning?*
- *Are the turbines that are not in their specific locations exempt or not exempt from planning?*
- *Is the access road from/to turbine 6 exempt or not exempt from planning?*
- *Is the Special Protection Area (SPA) at Barna/Garracummer exempt or not exempt from industrial development? Five of these turbines are in the SPA.*

In summary the Referrer asks the Board to decide if the wind farm is operating with or without planning permission.

- 9.3.2. By reference to Sections 7.3 and 7.4 above it is evident that the matter of the Board's jurisdiction to interpret a planning permission under section 5 of the Act has been the subject of much consideration both by the Board itself and by the courts. It is also evident, even in the context of the recent 2019 High court decision in **Krikke and Others**, that the matter remains one of some dispute as demonstrated in the planning authority decision in this case and the Senior Counsel opinion on which it was based (see Section 3.2.1 above).
- 9.3.3. It is noted that the planning authority's Declaration was issued on 16 December 2019 just days after the High Court decision in **Krikke and Others** was made on 6 December 2019. By reference to the planning authority correspondence on file it is not clear if the Senior Counsel opinion took that decision into account.
- 9.3.4. In relation to the High Court decision in **Krikke and Others**, and with due deference to the court, I would make the following comments:
- The previous legal judgements referred to in that case [**McMahon; Palmerlane; and Grianan an Aileach**] all refer to cases that involved a change of use. In such cases, in dealing with a section 5 referral, the Board must, and inevitably does, consider the terms of any planning permission in order to establish if the new use is a departure from it to the extent of constituting, in the first instance, a change of use and, in the second instance, a material change of use and, thereby, constituting development. The object of the exercise is not to interpret the permission per se but to determine whether or not the new use constitutes development. The permission, in effect, is the baseline against which the new use is assessed. This is the only way to ascertain if development has occurred or is proposed to take place when it is a use that is in question.
 - The situation in relation to works is quite different. These are assessed in themselves in a section 5 referral and the assessment is not contingent on an interpretation of the terms of any planning permission [save later in the process and in the limited circumstance where the question of contravention

of a condition attached to a permission might have to be considered to perhaps de-exempt development that would otherwise be exempt]. The works carried out or proposed are as described/observed and the relevant legislative tests relating to exemptions/de-exemptions are applied. The answer is that they are either exempted development or not exempted development irrespective of whether or not a permission exists for them. Clearly, if they are deemed not to be exempted development but a planning permission is in place the owner/occupier does not have to be concerned. This latter point is important as the Board has received what might be termed 'hostile' referrals, initiated by third parties, questioning whether a neighbour, for instance, has carried out development that is not exempted development on their property. One such case referred to an entire farmyard complex comprising several structures erected over a considerable period of time, many of which were erected pre-1964 or on foot of planning permissions as well as structures that were erected as exempted development.

- It follows that I have considerable difficulty with the characterisation of the section 5 referral process as set out at parag. 93 of the **Krikke and Others** judgement (see Section 7.4 above). It is simply not the case, in my opinion, that a finding of development or exempted development is effectively the same thing as a finding as to whether or not an act of development comes within the scope of a planning permission. For the reasons outlined above an act of development can be determined to be not exempted development while at the same time having been the subject of a grant of planning permission. [It should be noted that this could theoretically also apply in a case involving a use if such were the subject of a 'hostile' referral similar to the works example cited above. However, I am not aware that the Board has actually received such a case].

9.3.5. I am of the view, therefore, that the opinion of Senior Counsel to the planning authority in this case is the correct one and I consider that the Board should pursue a similar approach.

9.3.6. I would add that should the Board be minded to answer the questions put by the Referrer – essentially to determine if the wind farm is operating in accordance with its' planning permissions – this case clearly illustrates the difficulties of undertaking

such a task. As indicated the subject wind farm was developed and is operating under a number of different planning permissions and associated conditions, including permissions that modified the development, and on foot of several compliance submissions dealt with, as was appropriate, by the planning authority. And all of these permissions and related matters span a very considerable period of time.

10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the erection of wind turbines and access road at Curraghmarky, Birchgrove, Moanvaun, Tooreen, Garracummer, Cummer More, Cummer Beg, Turraheen Upper and Rossmore, Hollyford, County Tipperary is or is not development or is or is not exempted development:

AND WHEREAS Mr. Ray Neilon, Lusmor, Commonealine, Cappawhite, County Tipperary requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 16th day of December, 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Mr. Ray Neilon referred this declaration for review to An Bord Pleanála on the 10th day of January, 2020:

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

- (a) Sections 2(1), 3(1) and 4 of the Planning and Development Act, 2000, as amended,
- (b) article 6 of the Planning and Development Regulations, 2001, as amended,
- (c) the documentation and submissions received from the parties to the referral,

- (d) the planning history of the site,
- (e) precedent referral cases An Bord Pleanála Ref.s RL2713; RL2891; 301738-18; and 304496-19 and
- (f) relevant case law, in particular, **Krikke and Others v. Barranafaddock Sustainability Electrical Ltd [2019] IEHC825.**

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the wind turbines and the provision of the access comes within the scope of the definition of development contained in section 3, Planning and Development Act, 2000 (as amended).
- (b) There is no relevant express exemption provided for in either section 4, Planning and Development Act, 2000 (as amended) or article 6, Planning and Development Regulations, 2001 (as amended).
- (c) The questions raised in relation to whether or not the wind farm is operating with or without planning permission do not come within the scope of a section 5 referral.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the erection of wind turbines and access road at Curraghmarky, Birchgrove, Moanvaun, Tooreen, Garracummer, Cummer More, Cummer Beg, Turraheen Upper and Rossmore, Hollyford, County Tipperary is development and is not exempted development.

Brendan Wyse
Assistant Director of Planning

5 March 2021