



An
Bord
Pleanála

Inspector's Report ABP-309780-21

Development	Point of Detail – Condition No. 15 of PL 11.248518 (11 no. wind turbines and associated ancillary infrastructure)
Location	Knockardugar, Boleybawn, Garrintaggart, Ironmills (Kilrush), and Graiguenahown, Co. Laois
Planning Authority	Laois County Council
Planning Authority Reg. Ref.	16/260
Applicant	Pinewood Wind Ltd.
Planning Authority Decision	No agreement reached
Referred by	Pinewood Wind Ltd.
Date of Site Inspection	13.07.2021
Inspector	Anthony Kelly

1.0 Site Location and Description

- 1.1. The site is located in south Co. Laois, approx. 7km south east of Abbeyleix, and very close to the Kilkenny county boundary.
- 1.2. The site occupies a relatively widespread rural area. None of the permitted turbines are in situ. The site is in a generally elevated area with forestry and agriculture the main land uses.

2.0 Point of Dispute

- 2.1. Permission for 11 no. wind turbines and associated ancillary infrastructure was granted by the Board in 2019. Condition No. 15 stated external finishes shall be agreed in writing and 'precise specifications of the turbines shall be provided to the planning authority prior to delivery'.
- 2.2. In response to the applicant's compliance submission for Condition 15 the planning authority, while accepting the light grey colour specified, considered the turbine proposed was materially different to the turbine as approved in the Board's decision and would, therefore, not be in compliance with the terms and conditions of the permission.
- 2.3. Pinewood Wind Ltd. is now referring the matter to the Board for determination.

3.0 Planning History

The relevant planning application is.

P.A Reg. Ref. 16/260 / ABP Reg. Ref. PL 11.248518 – Permission was granted in 2019 for construction of 11 no. wind turbines each with a maximum height of 136.5 metres and all associated site development and ancillary works including an electricity substation, two single circuit strain towers with a height of 26.5 metres, 5.4km of site access tracks, underground cabling, drainage works, a permanent meteorological mast etc. It is part of a larger development which also extends into Co. Kilkenny.

Condition 15 of the grant of permission states,

15. The wind turbines including masts and blades shall be finished externally in a light grey colour to be agreed in writing with the planning authority prior to commencement of development. Precise specifications of the turbines shall be provided to the planning authority prior to delivery.

Reason: In the interest of visual amenity.

4.0 Submissions

4.1 Applicant's Case

The main points made can be summarised as follows:

- The permitted development is known as Pinewoods Wind Farm. It provides for wind turbines up to a maximum height of 136.5 metres. Condition 15 states the turbines shall be finished in a light grey colour to be agreed with the planning authority and precise specifications of the turbines shall be provided prior to delivery.
- A compliance submission detailed the precise specifications of the turbines including external finish, hub height, rotor diameter and overall tip height which, in accordance with the description of the permitted development, had a maximum height of 136.5 metres.
- The planning authority considered the colour is acceptable but that the turbine proposed is materially different to the approved turbine and it would not comply with the permission.
- The question arises as to whether the proposed turbine type falls within the parameters of the plans and particulars of the permission. Previous similar decisions of the Board are PL04.RP2104 (Esk Wind Farm, Co. Cork) and ABP-304110-19 (Taghart Wind Farm, Co. Cavan).

- The applicant submits that the turbine specifications are fully consistent with the plans and particulars submitted with the planning application, including the Environmental Impact Statement (EIS) and Natura Impact Statement (NIS).
- Appendix 2 contains a copy of the compliance documentation submitted to the planning authority.
 - Following post-consent technical assessment, the turbine specification is a Vestas V117-4.2MW model. Table 1 of the document shows the principal dimensions of this model set against the dimensions of the General Electric GE3.2-103, 'used as the provisional candidate turbine in the EIS submitted with the planning application'. No specific turbine model or component dimensions was proposed in the planning application. 'Instead, permission was sought for the installation of any wind turbine up to a maximum height of 136.5 metres'. For the purpose of the planning application the GE3.2-103 'was provisionally included as the best-available candidate turbine at that time' as clearly stated in the cover letter. The application cover letter included 'it is important to stress that the exact type and manufacturer of this turbine has not yet been chosen and options will remain open until the construction tender stage ... It may therefore be necessary for hub heights and rotor diameters to be immaterially modified but within an overall maximum height envelope of 136.5 metres'.
 - To provide for possible immaterial modifications to dimensions it was specifically requested that a condition be attached to allow for such immaterial modifications within an overall tip height of 136.5 metres, in similar terms to that expressed by the Board.
 - Turbine dimension flexibility was clearly assessed in the EIS which stated the exact model and manufacturer had not been chosen, a number of other models could be potentially suitable, the proposed turbine may not be available at the time of competitive tendering and 'Any immaterial deviations to turbine dimensions caused by a change in the turbine model ... within the overall height envelope of 136.5 metres) will not impact on the substantive conclusions of this EIS'.

- The wind turbine elevation drawing was also specifically annotated.
- Each condition of the grant of permission is set out demonstrating that the precise turbine specification will be fully consistent with each condition.
- A brief environmental screening in respect of each of the environmental topics included within the EIS is set out 'to confirm that the specified turbine model will not impact upon the EIA of likely significant environmental effects undertaken by the Board'. Human beings, flora and fauna, soil and geology, water, air quality and climate, visual impact (the modification 'will go largely unnoticed and will be imperceptible to the casual observer and therefore does not constitute a material deviation'), archaeology, architecture and cultural heritage, noise, shadow flicker ('the specified turbine model is consistent with the EIS and the findings and conclusions of the EIA undertaken by the Board remains entirely valid and undisturbed'), infrastructure, aviation and telecommunications and transport and access (the permitted haul route has been re-evaluated and is confirmed to be capable of accommodating the delivery of turbine components). Further in terms of visual impact, a number of comparative photomontages were prepared illustrating 'the imperceptible visual variation'.
- The specific turbine model does not give rise to any risk of adverse effects on the River Barrow and River Nore SAC and the appropriate assessment undertaken by the Board remains entirely valid and undisturbed.
- Case law recognises that planning permissions must be interpreted in a reasonably flexible manner and a permission encompasses all plans and particulars submitted with the application 'and any immaterial deviation thereof' (O'Connell v Dungarvan Energy Ltd.).

4.2. Planning Authority Response

The planning authority has nothing to add to its initial adjudication.

4.3. Further Responses

A further response was received from the applicant, Pinewood Wind Ltd. This states the applicant has no additional comments to make.

5.0 Statutory Provisions

Planning and Development Act, 2000 (as amended)

The issue has been submitted to the Board under section 34(5) which 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 carrying out the development; if the planning authority and that person cannot agree on the matter the matter may be referred to the Board for determination.'

6.0 Assessment

6.1. The dispute between the planning authority and the applicant centres on Condition 15 of PL 11.248518. Condition 15 states,

15. The wind turbines including masts and blades shall be finished externally in a light grey colour to be agreed in writing with the planning authority prior to commencement of development. Precise specifications of the turbines shall be provided to the planning authority prior to delivery.

Reason: In the interest of visual amenity.

6.2. I note initially that the condition only requires that the 'light grey colour' be agreed in writing with the planning authority prior to commencement of development. A light grey RAL7035 colour 'or similar' was submitted as part of the applicant's compliance submission to the planning authority and the Council stated that 'The light grey colour as specified by the agent is acceptable to the Planning Authority'. However, the second element of the condition, i.e. the precise specifications of the turbines, is a statement. The condition only requires these specifications to be 'provided to the planning authority prior to delivery'. It requires no agreement or approval in writing,

merely that they are specified. Given the applicant has specified a Vestas V117-4.2MW model with a hub height of 78 metres and a blade length of 58.5 metres (a diameter of 117 metres) I consider that the second element of the condition has been fulfilled.

6.3. Notwithstanding, the planning authority's response to the applicant states 'the turbine now proposed is materially different to the turbine as approved in the decision of An Bord Pleanála Reference PL 11.248518. It is considered that the proposed development would **not be in compliance** with the relevant terms and conditions of that permission' (emphasis not added).

6.4. In its submission to the Board the applicant has referred to two Board decisions; PL04.RP2104 (Esk Windfarm in Cork) and ABP-304110-19 (Taghart Windfarm in Cavan).

- In the former reference, the Board decided in 2014 that it was satisfied that the turbine alternatives presented did not exceed the envelope of development assessed and approved under An Bord Pleanála appeal reference number PL 04.240281 and determined that the alternative turbine types were within the terms and conditions of the permission granted. The relevant condition in the parent permission that gave rise to PL04.RP2104 was Condition 6(a). The condition stated, inter alia, 'Details of the permitted turbines and associated structures, including design, height and colour, shall be submitted to, and agreed in writing with, the planning authority'.
- In the latter reference, the Board determined in 2019 that the alternative turbine types, comprising a hub height of 68 metres and a rotor diameter of 114 metres or hub height of 69 metres and a rotor diameter of 112 metres giving rise to an 11% increase in rotor diameter, are not materially different in planning terms. The relevant condition in the parent permission (PL02.247401) that gave rise to ABP-304110-19 was also Condition 6(a) which stated 'The permitted turbines shall have a maximum tip height of 125 metres. Details of the turbine design, height and colour shall be submitted to, and agreed in writing with, the planning authority, prior to commencement of development'.

Both point of detail appeals cited involved alterations to turbines that had been submitted at planning application stage. However, both of these had an inherent

flexibility within the wording of the respective conditions, and they required the written agreement of the planning authority. I do not consider these applications to be particularly relevant to this assessment.

Conclusion

- 6.5. The parent permission granted a windfarm development with wind turbines up to 136.5 metres in height. Condition 15 required the turbines to be finished in a light grey colour to be agreed with the planning authority. This has been agreed. The second element requires precise specifications of the turbines to be provided to the planning authority prior to delivery. This is a statement, not a compliance condition requiring the approval or agreement of the planning authority. As precise specifications were provided the condition has been complied with. Whether or not the specifications are acceptable under the terms of the permission is a separate matter. Given the wording of Condition 15, I consider it is outside the scope of Condition 15.

Recommendation

- 6.6. I recommend the Board concludes that precise specifications of the turbines have been provided to the planning authority, but the point of dispute is outside the scope of Condition 15 of ABP Reg. Ref. PL11.248518.

7.0 Recommendation

WHEREAS by order dated the 3rd day of September 2019 An Bord Pleanála, under appeal reference number PL 11.248518, granted subject to conditions a permission to Pinewood Wind Limited care of Galetch Energy Services of Clondargan, Stradone, Co. Cavan for development comprising 11 number wind turbines, each with a maximum height of up to 136.5 metres, and all associated site development and ancillary works, including a 110kV electricity substation, switch room and equipment compound; two single circuit strain towers with a maximum height of up to 26.5 metres; turbine foundations; crane hardstandings; 5.4 kilometres of site access tracks; underground electricity and communications cabling; site drainage works; seven number site entrances; a permanent meteorological mast with a maximum height of up to 85 metres; and temporary upgrade to the R430/L7800 road junction on lands at

Knockardugar, Boleybawn, Garrintaggart, Ironmills (Kilrush) and Graiguenahown, County Laois. The proposed development is part of a larger development which also extends onto lands in the townland of Crutt, County Kilkenny within the adjoining planning authority administrative jurisdiction of Kilkenny County Council.

AND WHEREAS Condition 15 attached to the said permission required precise specifications of the turbines to be provided to the planning authority prior to delivery:

AND WHEREAS the applicant and the planning authority failed to agree on the above details in compliance with the terms of the said condition and the matter was referred by the applicant to An Bord Pleanála on the 23rd day of March 2021 for determination:

NOW THEREFORE An Bord 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 precise specifications of the turbines have been provided to the planning authority but consideration of changes to the wind turbine dimensions from those set out in the parent permission is outside the specific scope of Condition 15.

Anthony Kelly

Planning Inspector

03.08.2021