

THE HIGH COURT

JUDICIAL REVIEW

CASE NO. 2016 614 JR

TUESDAY THE 1ST DAY OF NOVEMBER 2016

BEFORE MR JUSTICE NOONAN

**IN THE MATTER OF SECTION 50 OF THE PLANNING AND
DEVELOPMENT ACT 2000 AS AMENDED**

BETWEEN

STEPHANIE LARKIN MICHAEL O'DONOVAN DENIS BUCKLEY PAT

SHEEHAN NOELLE SHEEHAN DAN GALVIN PATRICK MANNING

MARIE O'SULLIVAN JOHNNY NYHAN JOHN PAUL O'CALLAGHAN

DENISE O'CALLAGHAN AND NAN O'DONOVAN

APPLICANTS

AND

AN BORD PLEANÁLA

RESPONDENT

AND

CORK COUNTY COUNCIL ARRAN WINDFARM LIMITED

BARNA WIND ENERGY (B.W.E.) LIMITED JEROME COHALAN

AND GERALDINE HANLEY

NOTICE PARTIES

Upon Motion of Counsel for the Applicants made unto the Court this
day pursuant to Notice of Motion dated the 4th day of August 2016 in the presence
of the Solicitor for the Respondent

Whereupon and on reading the said Notice of Motion the Order
herein dated the 29th day of July 2016 giving leave to the Applicants to apply for an
Order of Certiorari by way of application for judicial review and on hearing what is
offered by Counsel for the Applicants and the Solicitor for the Respondent

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And it appearing that a compromise has been reached herein as between the Applicants and the Respondent

The Court doth grant an Order of Certiorari in respect of the decision of the Respondent made on the 8th July 2016 granting the third Notice Party planning permission (Reg. Ref. PL04.245824) for the construction of 6 wind turbines with a maximum tip height of up to 131 m and associated turbine foundations and hardstanding areas; 1 permanent meteorological mast up to 90m in height; upgrade of existing and provision of new site tracks and associated drainage; new access junction and improvements to public road to facilitate turbine delivery; 1 borrow pit; underground electrical and communications cables; permanent signage and other associated ancillary infrastructure in Lackareagh and Garranereagh Lissarda and Barnadivane (Kneevies) Terelton Co. Cork (the "windfarm planning permission") on the fair procedures grounds referred to in the Statement of Grounds namely the Respondent's failure to comply with its own decision made under section 131 of the Planning and Development Act 2000 as amended to circulate the submission dated January 2016 made by the Third Notice Party to the Respondent to all other parties to the appeal the Court noting the Respondent's undertaking to circulate the aforesaid submission pursuant to section 131 to all other parties to the appeal in accordance with its previous decision to that effect

The Court doth grant an Order of Certiorari in respect of the decision of the Respondent made on the 11th July 2016 granting the second Notice Party planning permission (Reg. Ref. PL04.244439) for the construction of an electricity substation compound to replace the substation already granted permission under appeal reference number PL04.219620 and subsequently extended under planning register reference 11/6605 including 3 control buildings

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associated electrical plant and equipment security fencing and ancillary works at Barnadivane (Kneeves) Terelton County Cork (the "substation planning permission") on the basis that the decision was made by the Board of the Respondent at the same meeting as its decision on the windfarm planning permission

And in lieu of directing that an Order of Certiorari do issue **IT IS ORDERED** that the aforesaid decisions and all records and entries relating thereto be quashed without further Order

IT IS ORDERED that the subject-matter of the said decisions in Register Reference PL04.245824 and Register Reference PL04.244439 be remitted to the Respondent to be determined in Accordance with law

~~AND THE COURT noting that Certiorari is hereby granted on the basis that the Respondent failed to comply with its own decision taken pursuant to section 131 of the Planning and Development Act 2000 as amended to circulate the submission dated January 2016 made by the Third Notice Party to all other parties to the appeal further notes that the Board will comply with its previous decision to circulate the submission dated January 2016 made by the Third Notice Party to the Applicants and that the Applicants be entitled to respond to such submission within a period of four weeks of service of such submission on them by the Respondent~~

AND THE COURT noting that Certiorari is hereby granted only on the said fair procedures grounds ~~and basis above described~~

The Court doth DECLARE that the Applicants remain at liberty to raise in respect of any future decision by the Respondent in respect of the decisions in Register Reference PL04.245824 and Register Reference PL04.244439 any of


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the other grounds set out in the Statement to Ground an Application for Judicial Review dated 28 July 2016 whether arising prior to or after the date of this Order

And IT IS FURTHER ORDERED that the Respondent do pay the Applicants their costs (to include reserved costs) of the within proceedings said costs to be taxed in default of agreement

~~Liberty to all parties to apply on seven days notice to all of the other~~
parties

ANGELA DENNING
REGISTRAR
PERFECTED 20-12-2016

A COPY WHICH I ATTEST

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FOR REGISTRAR