



Development

Six turbine wind farm

Location

The townlands of Coor West,
Shanavogh East and Shanavogh
West, County Clare

Planning Authority

Clare County Council

Planning Authority Reg. Ref.

11/360

Applicant(s)

McMahon Finn Wind Acquisitions Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

McMahon Finn Wind Acquisitions Ltd.

Observer(s)

Sallyann & Michael Marron

Kevin Deering & Peter Crossan

Jutta Kruse

Sean Tubridy & Kathleen Connolly &
Others (Coor and Shanavogh
Residents Group)

Michael McNamara TD

Ronan McMahon & Others

Date of Site Inspection

10th & 11th February, 2022

Inspector

Kevin Moore

1.0 Introduction

- 1.1. I note that the Board has requested an addendum report from the Inspector in relation to this proposed development. I am not the Inspector who dealt with the original appeal relating to the proposed development. Having regard to the time that has elapsed since the making of the Board's previous decision in 2014, the existence of a new Clare County Development Plan, and the physical changes in circumstances in the area in which the proposed development seeks to be sited (inclusive of other wind farm development), I consider that this requested addendum report needs to address a range of relevant matters. In my opinion, this report should appropriately address the nature and extent of the proposed development, give consideration to the submissions made to the Board to date, and provide an assessment and recommendation in order to adequately address the request made by the Board for this addendum report. In seeking to undertake the report, I acknowledge that the Supreme Court in its judgement of 2018 did not remit the matter to any point in the process.
- 1.2. Further to the above, I note the grounds of the appeal by the Board as set out before the Supreme Court in contesting the judgement of the High Court. The Board clearly indicated that the redesign of the proposed development during the appeal process had been invited by the Board to meet specific concerns highlighted by the previous Inspector in her report. I also note para. 9.5 of the Supreme Court judgement delivered on 17th July 2018 where this was recognised as follows:

“... It was precisely because of concerns which the Board entertained in the light of the Inspector’s report that further information and an NIS was required. The Inspector’s report forms the backdrop to the further information sought and the further process which occurred before the Board after that information was provided ...”
- 1.3. The need to refer to the relevant concerns as raised in the Inspector’s report would appear to me to be apt. I note that the Supreme Court remitted the matter for the Board to “*determine the planning application in accordance with law as interpreted in this Court.*” (Perfected Judgement 29th August 2018). I am of the view that, even if one was to determine that a “starting point” for this addendum report could commence from the request for further information in accordance with the Board’s

section 132 notice, it appears to me that the issues of concern and recommended reasons for refusal as set out in the previous Inspector's report should be required to be considered by me in this addendum report as these same issues resulted in the issuing of the section 132 notice.

- 1.4. I note that the Board invited submissions from the parties and observers on file since the Supreme Court judgement. I further note that no new public notices were published since the period prior to the previous determination by the Board. With the lapse of time, the changes and differing planning context that now arise since the making of the previous decision, and the restriction of submissions solely to those parties and observers involved previously, I am concerned that the potential clearly exists for the exclusion of other submissions and observations from those who may potentially be affected by the proposed development or have specific relevant interests in it and who have not yet been afforded the opportunity to engage in the process.
- 1.5. Having regard to the above, it is my opinion that it may still be appropriate to request the publication of new public notices from the applicant, permitting the making of further submissions and observations, inclusive of those who heretofore may not have made such submissions or observations. This again is premised upon the changed physical and policy context in which this application now finds itself with the lapse of time and the legislative requirements to permit appropriate third party participation in this application process. This may arise through a requirement to provide up-to-date information and will be considered in my assessment.

2.0 Site Location and Description

- 2.1. The site is located in the townlands of Coor West, Shanavagh East and Shanavagh West in County Clare, approximately 20 km west of Ennis and 5km east of Milltown Malbay. The site is located to the west of Slievecallan. It consists of a mixture of agricultural grassland, wet grassland and conifer plantation. The wider landscape consists of scattered farms and residential holdings. The elevation of the land ranges from approximately 90m OD (Malin Head) to 160m OD (Malin Head). The landholding has frontage onto a minor local road to the south which links with another local road that connects to the R474 at a junction to the east. It also has

frontage onto a minor local road to the north which links with the R474 to the east. Regional Road No. R474 links Miltown Malbay to Ennis via Connolly village. The tributary of the Annagh River runs at the north of the site. There is a stream (Aughaveemagh Tributary) which runs along the southern section of the site. Notable surface water features in this area includes Lough Doo, which is located approximately 3km to the south.

- 2.2. There are a number of sites of conservation interest in the wider area. These include Mid-Clare Coast Special Protection Area (Site Code: 004182) and Carrowmore Point to Spanish Point and Islands Special Area of Conservation (Site Code: 001021), some 6 km west of the site and which encompasses the coastal area from Spanish Point to Doonbeg. Other sites of conservation interest include Slieve Callan Mountain Bog Natural Heritage Area approximately 3km to the north-east, Cragnashinaun Bogs Natural Heritage Area approximately 5km to the south, Lough Naminna Bog Natural Heritage Area approximately 6km to the southeast, and Lough Acrow Bog NHA approximately 8km to the southeast.
- 2.3. There are a number of existing and permitted windfarm developments in the area. The closest existing wind farm is Slievecallan Wind Farm, which is located to the north and east.

3.0 Proposed Development

- 3.1. The original proposed development comprised the construction of a windfarm consisting of 6 wind turbines, each with a hub height of 85m and rotor diameter of 82m, an electrical substation and control building, an internal road system, borrow pits, a temporary construction compound and all associated site and ground works. The proposed output capacity was to have been 13.8 MV. It was envisaged that the development would be constructed over a period of 10 months.
- 3.2. Four of the proposed turbines (T3, T4, T5 and T6) were to be located within coniferous forest area, one (T1) in an area of improved grassland, and one (T2) within an area of wet grassland.
- 3.3. A total of 12,000 sq.m. of new internal roads were to be required to access the turbines. Approximately 73 sq.m. of existing roads were to be upgraded. The majority of the new road was to be within the coniferous plantation. The proposed

access, via a local road to the south, was to involve the removal of two small sections of earth banks and the access was to cross a stream along the southern site boundary. The Aughaveemagh tributary was to be culverted.

- 3.4. Three borrow pits were to be developed, with rock excavated to be used in the construction phase. Borrow Pit 1 was to be partially located within an existing borrow pit and was to be sited close to the top of the entrance to the site. Borrow Pit 2 was to be located close to Turbine 5. Borrow Pit 3 was to be sited near Turbine 1.
- 3.5. Details submitted with the application included an Environmental Impact Statement. The application also included letters from landowners permitting the making of the application and a letter from the owner of an uninhabited house in proximity to the wind farm stating there was no objection to the application.

4.0 Planning Authority Decision

4.1. Decision

- 4.1.1. By Order dated 12th July 2011, Clare County Council decided to refuse permission for the proposed development for seven reasons relating to:
 - Injury to residential amenity by way of noise and visual overbearance,
 - Unacceptable risk to water quality standards,
 - Adverse impact on the Hen Harrier (Annex 1 species),
 - Impact on species and habitats of local diversity value,
 - Adverse impact on bat species,
 - Adverse impact on the haul route R474 and endangerment of public safety, and
 - The inadequacy of the information provided in the submitted Environmental Impact Statement.

4.2. Planning Authority Reports

4.2.1. Planning Report

The Planner noted the planning policy context for the proposal. It was noted that the site was located within an area designated 'Acceptable in Principle' in the Clare County Development Plan 2011-2017 Wind Energy Strategy. Two previous planning applications relating to the site, one of which was incomplete and one which was withdrawn, were noted, as were a range of planning applications relating to wind farm development in the wider area. The reports received and third party submissions on the application were acknowledged. It was considered that a Habitat Directive Assessment Screening was required and it was noted that it was not submitted with the application. The main issues for assessment were set out.

Concerns were seen to relate to:

- clarity on land ownership,
- the principle of the development with regard to development plan provisions,
- adverse impact on avifauna and Hen Harrier in particular (including cumulative impact with other wind farm developments),
- adverse impact on a range of species and habitats contrary to County Development Plan policy,
- adverse impacts on a range of species and on surface water courses arising from proposed clear-felling,
- adverse impacts on water quality and hydrology (including on local wells),
- The inadequacy of information on ground conditions and geology,
- Inadequacy of details on the proposed borrow pits and potential for blasting,
- Aesthetic considerations, with due regard to the visual impact, siting, spatial extent, and cumulative impact,
- Adverse impact on residential amenity, with particular regard to shadow flicker analysis and noise impact,
- Interference with communication systems and the lack of application details pertaining to same,
- The deficiencies associated with the proposed haul route, and
- The lack of consideration of the impact on architectural heritage.

A refusal of permission was recommended for seven reasons.

4.2.2. Other Technical Reports

The Architectural Conservation Officer noted that the site contained two Recorded Monuments, both ringforts (Refs. CL039-011 and CL039-015), and that there were 15 other monuments within a 500m buffer zone around the site. It was considered that all ground works should be archaeologically monitored and the areas to be investigated be agreed with the National Monuments Service. The lack of, and need for, the impact on architectural heritage of the area was referenced and was considered a serious omission.

The Senior Executive Chemist in the Environment Section noted the site is located between two river waterbody catchments and is outside any Natura sites. It was considered that the applicant's EIS did not comprehensively address any survey on water quality or habitats in the vicinity of the turbines close to the Aughaveemagh catchment. It was further considered that the EIS did not provide a reasonable overview of the potential impacts on the receiving environment. The necessity for the understanding of baseline conditions and deficiencies in the EIS were alluded to. It was concluded that the proposed development could not address the pollution potential for watercourses. It was submitted that permission should not be granted due to the likely deleterious effects on receiving waters. It was further considered that an adequate assessment of the effects of the environment had not been carried out and the proposal would contravene statutory requirements under articles 4 and 5 of the Environmental Objectives (Surface Water) Regulations 2009.

The Area Engineer's roads report referred to the proposed haul route as not being satisfactory, with concern raised about negotiating bends on the R474, the need for an autotrack analysis, and the need for upgrades in places. A pavement condition survey on the route was requested prior to construction, with care necessary at entrances to the site. It was submitted that, if haulage from quarries is necessary, then a further permission would be required. Clarity was requested on the proposed widening of minor roads. A special contribution of €240,000 to restore roads after construction was also recommended.

4.3. Prescribed Bodies

Irish Aviation Authority requested, on grant of approval, the developers to contact IAA for an agreed aeronautical obstacle warning lighting scheme, to confirm the coordinates and elevation details of each turbine when the turbines have been put in place, and to notify IAA at least thirty days prior to the erection of the turbines.

An Taisce raised concerns relating to ecology. It was considered that a bat survey should be carried out during the optimal monitoring season. The proximity of proposed Turbine 6 to an existing stream and the impact on water quality was also of concern and it was considered that this turbine should be re-sited or omitted. It was considered that more baseline data on bird species within the site and cumulative effects with other wind farms in the area should be gathered and that there is a need for continued monitoring throughout the lifetime of the wind farm. Cumulative impacts with other wind farms in the area were stated to be a major concern. It was recommended that a Peat & Soil Management Plan and a Sediment Erosion Management Plan should be prepared and submitted before any decision and it was requested that clean and dirty water sources should be kept separate.

The Department of Arts, Heritage and the Gaeltacht noted the importance of the area for Hen Harrier, an Annex 1 bird species, and considered there was a need for further bird surveys, including a specific Hen Harrier survey. Concern about cumulative impacts on Hen Harrier was referenced. A more detailed bat survey was requested to be undertaken also.

4.4. Third Party Observations

Details on the file indicate that third party submissions were received from Kathleen Connolly, Kevin Deering and Peter Crossan, Michele Savage, Eamon McGivney, Jutta Kruse, Sara Foust, Michael and Carmel Hayes, Martin and Mary Sexton, Martin McGuane, Anne and Toby Tovey, Michael and Sallyann Marron, BirdWatch Ireland, Patrick Lafferty, Patrick and Ann Henderson, Thomas and Catherine Corry, Josephine Corry, Martina Corry, Pat and Teresa Murray, Gertrude Donnellan, John Paul and Yvonne O'Brien, Brendan Reddan, Michael Rogan, Michael McNamara

TD, Seán Tubridy, Sean Kennelly, Maura Nugent, Sylvester and Mary Nugent, Derrick Gleeson, Carol Gleeson, Máire Gleeson, Brian and Loraine Gleeson, Cathy Blake, James and Nell Gleeson, Michael Gleeson, Maurice and Sylvie Coyle, Michael and Phil Sexton, Maura Corry, Paul and Geraldine Sexton, Stephen Haigh, Orfhlaithe Keane, and Michael Kinsella.

The submissions formed objections to the proposal and included a wide range of issues of concern. The observations submitted to the Board addressed many of the planning and environmental issues of concern raised.

5.0 **Planning History**

I have no record of any other planning application or appeal relating to this site.

6.0 **Policy Context**

6.1. **Clare County Development Plan 2017-2023**

Renewable Energy

The objective is as follows:

CDP8.40 Development Plan Objective: Renewable Energy

It is an objective of the Development Plan:

- A To encourage and to favourably consider proposals for renewable energy developments and ancillary facilities in order to meet national, regional and County renewable energy targets, and to facilitate a reduction in CO₂ emissions and the promotion of a low carbon economy;
- B To assess future renewable energy-related development proposals having regard to the Clare Renewable Energy Strategy 2017-2023;
- C To assess proposals for wind energy development and associated infrastructure having regard to the Clare Wind Energy Strategy and the associated SEA and AA, or any subsequent updated adopted strategy;
- D To prepare an updated Wind Energy Strategy for County Clare during the lifetime of this Development Plan;

- E To strike an appropriate balance between facilitating renewable and wind energy-related development and protecting the residential amenities of neighbouring properties;
- F To support and facilitate the development of new alternatives and technological advances in relation to renewable energy production and storage, that may emerge over the lifetime of this Plan;
- G To ensure that all proposals for renewable energy developments and ancillary facilities in the County are in full compliance with the requirements of the SEA and Habitats Directives and Objective CDP2.1;
- H To promote and market the County as a leader of renewable energy provision;
- I To support the implementation of 'Ireland's Transition to a Low Carbon Energy Economy 2015-2030'

Water Resources

The objective is as follows:

CDP8.21 Development Plan Objective: Water Framework Directive

It is an objective of Clare County Council:

- A To facilitate the implementation of the Shannon River Basin Management Plan and the Western River Basin Management Plan (together with any subsequent National River Basin Management Plan) for groundwaters and surface waters in the Plan area as part of the implementation of the EU Water Framework Directive;
- B To protect groundwater resources in accordance with the statutory requirements and specific measures as set out in the relevant River Basin Management Plan;
- C To consider proposals for development where it can be clearly demonstrated that the development will meet the requirements of the relevant River Basin Management Plan

CDP8.22 Development Plan Objective: Protection of Water Resources

It is an objective of the Development Plan:

- A To protect the water resources of County Clare having regard to the requirements of the relevant EU Directives;
- B To ensure that developments that would have an unacceptable impact on water resources, including surface water and groundwater quality and quantity, designated sources protection areas, coastal and transitional waters, river corridors and associated wetlands are not permitted;
- C In areas of potable groundwater resources or over vulnerable aquifer areas, development proposals will only be considered if the applicant can clearly demonstrate that the proposed development will not pose a risk to the quality of the underlying groundwater;
- D To protect groundwater resources, in accordance with statutory requirements and specific measures as set out in the Shannon and Western River Basin Management Plans;
- E To ensure that proposals for development which infringe on a river boundary, or an associated habitat, including their connection by groundwater, will only be considered where it can be clearly demonstrated that:
 - The character of the area will be conserved;
 - An acceptable physical riparian zone will be maintained with all natural vegetation preserved;
 - There will be no impact on the ecological, aquatic or fishing potential of the waters or associated waters;
 - All proposals are in compliance with the requirements of the Habitats Directive, where appropriate

Biodiversity

Objectives include:

CDP14.1 Development Plan Objective: Biodiversity

It is an objective of Clare County Council:

- A To implement the County Clare Heritage Plan 2011-2017 and the Clare Biodiversity Action Plan 2014-2017, or any subsequent plans, in partnership with all relevant stakeholders;
- B To review the Clare County Heritage Plan 2011-2017 and to prepare a new Plan, which will be set within the context of the National Heritage Plan, upon the expiry of the existing adopted Plan;
- C To support National Biodiversity Week and events such as Bioblitz in order to increase awareness of biodiversity and its benefits to the community;
- D To ensure that features of importance to local biodiversity are retained as part of developments and projects being undertaken in the County;
- E To identify ecological buffer spaces/zones, where appropriate, in the Plan area.

CDP14.2 Development Plan Objective: European Sites

It is an objective of the Development Plan:

- A To afford the highest level of protection to all designated European sites in accordance with the relevant Directives and legislation on such matters;
- B To require all planning applications for development that may have (or cannot rule out) likely significant effects on European sites in view of the site's Conservation Objectives, either in isolation or in combination with other plans or projects, to submit a Natura Impact Statement in accordance with the requirements of the EU Habitats Directive and the Planning and Development Act, 2000 (as amended);
- C To recognise and afford appropriate protection to any new or modified SPAs or SACs that are identified during the lifetime of this Plan, having regard to the fact that proposals for development outside of a European site may also have an indirect effect

CDP14.4 Development Plan Objective: Natural Heritage Areas (NHAs) and proposed Natural Heritage Areas (pNHAs)

It is an objective of the Development Plan:

- A To actively promote the conservation and protection of areas designated as an NHA (including proposed sites) and to only consider proposals for development within or affecting an NHA where it can be clearly demonstrated that the proposed development will not have a significant adverse effect on the NHA or pNHA;
- B To identify and afford appropriate protection to any new, proposed or modified NHAs identified during the lifetime of this Plan.

CDP14.7 Development Plan Objective: Non-Designated Sites

It is an objective of Clare County Council:

- A To ensure the protection and conservation of areas, sites, species and ecological networks/ corridors of biodiversity value outside of designated sites throughout the County and to require an ecological assessment to accompany development proposals likely to impact on such areas or species;
- B To ensure that available habitat mapping is taken into consideration in any ecological assessment undertaken;
- C To complete the Habitat Mapping of the County (in accordance with A Guide to Habitats in Ireland – The Heritage Council 2000) in order to identify and record the natural habitats of the County at a detailed level and afford appropriate protection to areas of importance, as required

CDP14.11 Development Plan Objective: Habitat Protection

It is an objective of the Development Plan:

- A To protect and promote the sustainable management of the natural heritage, flora and fauna of the County through the promotion of biodiversity, the conservation of natural habitats and the enhancement of new and existing habitats;
- B To promote the conservation of biodiversity through the protection of sites of biodiversity importance and wildlife corridors, both within and between the designated sites and the wider Plan area;

C To ensure that there is no net loss of potential Lesser Horseshoe Bat feeding habitats, treelines and hedgerows within 3km of known roosts.

Landscape

The site is located within a wider area defined as a “Settled Landscape”.

Regional Road No. R747 is a designated ‘Scenic Route’.

Clare Wind Energy Strategy (Volume 5)

The objectives of the Strategy are as follows:

- To reflect and plan for technological advances in wind farms over the next number of years.
- To develop a Wind Energy Strategy having regard to the Wind Energy Development Guidelines, Guidelines for Planning Authorities (DoEHLG, 2006) (the Planning Guidelines issued by the Department of Environment, Heritage, and Local Government).
- To more closely align the County’s wind generation policy to the existing wind energy resources.
- To support a planned approach to wind energy development in County Clare predicated on the optimal harnessing of the County’s wind energy resource, and at a minimum, requiring that 40% of the County’s electricity needs can be met from wind farms.
- To identify strategic areas for wind energy development of Regional and National importance.
- To recommend that a working target of 550 MW of wind energy is harnessed in County Clare, to enable the County to make the initial steps toward a low carbon economy by 2020.
- To support County Clare in reducing the CO 2 emissions associated with energy production, as identified in the Limerick Clare Climate Change Strategy (Limerick Clare Energy Agency 2006) and subsequent Mid West Regional Climate Change Strategy (2008).

- To promote economic development through wind energy and other renewables in the County, underpinning the need for energy security, the promotion and establishment of a low carbon economy and the development of green business within the County.
- To ensure full compliance with the requirements of Directive 2001/42/EC and Statutory Instrument 436 /2004 on the assessment of the effects of certain plans and programmes on the Environment, the SEA Directive, and the associated Planning and Development (Strategic Environmental Assessment) Regulations 2004.
- To ensure full compliance with the requirements of the Habitats Directive Assessment in line with Statutory Instrument 94/1997.
- To ensure the production of wind energy is consistent with and takes account of nature conservation and environmental legislation and targets, including the conservation and protection of the Designated Natura 2000 sites in the County

The site is located within an area designated “Acceptable in Principle”. These areas are considered suitable for wind farm development because of:

- Sufficient wind speeds,
- Access to grid network, and
- Established patterns of inquiries.

Projects within these areas must:

- Demonstrate conformity with existing and approved wind farms to avoid visual clutter.
- Be designed and developed in line with the Planning Guidelines in terms of siting, layout and environmental studies.
- Provide a Habitats Directive Assessment under Article 6 of the Habitat Regulations if situated in proximity to a Special Area of Conservation or Special Protection Area.

Target wind energy generation from Acceptable in Principle areas is 150 MW.

7.0 The Appeal

7.1. Grounds of Appeal

The responses to the planning authority's reasons for refusal may be synopsised as follows:

Reason 1 – Serious Injury to Residential Amenity

- The determination of 'appropriate balance' requires the planning authority to primarily have regard to its own Wind Energy Strategy and to the standards of residential amenity set out in the Wind Energy Guidelines. The site is located in an area where, according to the Clare Wind Energy Strategy, large or medium –sized wind farm projects are 'acceptable in principle'. The project is fully in accordance with the Wind Energy Guidelines as they relate to residential amenity.
- The planning report either ignores or misinterprets the modelling and assessments of impacts and assessments and consequent mitigations contained in the EIS.

Reason 2 – Risk to Water Quality

- Points I to III of the refusal reason refer to an area that the council's own adopted strategy has already decided is an area where large and medium-sized wind farms are 'acceptable in principle'. The reason for refusal describes a fairly typical wind farm location in Ireland, i.e. an upland site with forestry, poorly drained soils and including the headwaters of rivers. Based on the logic of this refusal reason there would be very little wind farm development in the country. The wind industry has been able to develop because there are appropriate engineering solutions available to satisfactorily mitigate impact.
- The project incorporates an engineering approach that is appropriate to site conditions. The appeal submission incorporates further details, including the design of settlement ponds and silt traps.

Reason 3 – Impact on Designated Sites and Species

- Hen Harrier status was a main focus of the EIS. The nearest recorded nest in the national survey of hen harriers in 2010 was 2.5 km from the site.
- Extensive survey work has been carried out during 2010 and 2011, including a breeding season survey this year. Based on these surveys it can reasonably be concluded that the attractiveness of the site for foraging hen harriers is low, that harriers use the site rarely and irregularly and that the site is not part of a regular transit route for harriers between important breeding / foraging areas in the general area.
- The avifauna report in the appendix reports low site use as revealed by a recent survey using a standard methodology.

Reason 4 – Impact on biodiversity

- It is standard practice that issues of this type would be addressed by further information requests or by conditions requiring actions to be undertaken prior to the commencement of development.
- Additional ecological survey work has been carried out and the results are included in this submission.

Reason 5 – Impact on Bat Species

- It is standard practice that this is addressed by a further information request.
- A further bat survey has been carried out, the results of which are included in this submission. It has been concluded that the site is not a significant area for bats including lesser horseshoe bats.

Reason 6 – Impact of Haul Route, Endangering Public Safety

- It is standard practice that these issues are addressed by further information requests or conditions requiring actions to be undertaken prior to the commencement of development.
- The specialist engaged to investigate haul route options considers the route available is particularly suitable compared to those available for most wind farm development sites.

Reason 7 – Information Gaps in the EIS

- The area planner has stated that the EIS is in compliance with the regulations.
- It is inevitable that there will be information gaps in an EIS for a project of the size and complexity of that under consideration.
- It is normal practice to remedy information deficits through further information requests and clarification. Reference is made to a letter in the appendix to the appeal regarding investigation and assessment of site ground conditions.
- The potential impact of the project on domestic wells has been carefully assessed and the risk of pollution assessed as negligible.

The appellant then makes a submission which includes the following:

- The project accords with national and local policy to promote wind farm development. Reference is made to Clare Development Plan policy and to the planning report deficiencies.
- The project will not be seriously injurious to residential amenity. Reference is made to separation distances to houses and the dispersed nature of housing in the area, and the site being within an area ‘acceptable in principle’ and the planning authority’s interpretation of this. Concerns arising from noise, shadow flicker and visual overbearance are each addressed.
- The project does not pose a threat to water quality. The proposed surface water management strategy is outlined and reference is made to mitigation measures and to proposals set out in the appendix relating to drainage at Turbine 6.

- The project does not pose a threat to biodiversity. Reference is made to no designated sites on or adjacent to the site, how the issue was addressed in the EIS, the findings on the Hen Harrier at this location, the findings of a bat survey (attached with the appeal), and to how the appeal submission addresses the Department of Arts, Heritage and the Gaeltacht request for additional information.

The appeal submission includes:

- technical submissions supporting the grounds of appeal on noise, shadow flicker, visual, private wells, water quality, biodiversity and the adequacy of the EIS,
- a haul route report,
- a Screening for Appropriate Assessment,
- a slip circle analysis of internal roads and a non-technical summary of a peat stability assessment,
- an archaeological, architectural and cultural heritage assessment,
- a bird survey report, a bat survey report, and
- a fauna report.

7.2. Planning Authority Response

The planning authority requested the Board to uphold its decision. Its response to the appeal may be synopsised as follows:

Refusal Reason 1

- The Planning Authority had regard to a number of publications in assessing the subject application. The site is located in an area as being “acceptable in principle” in terms of wind energy provision as per the Clare County Council Wind Energy Strategy (WES). The lands are not subject to any specific visual / landscape designation as per the Clare County Development Plan 2011-2017. However Objective CDP 10.3 as contained in the Clare County Development Plan 2011-2017 requires any development to strike an appropriate balance between facilitating wind energy development and

protecting the residential amenity of neighbouring property in respect of noise proliferation and visual impact. Since the subject application was received, planning permission has been granted to West Clare Renewable Energy Ltd to construct a windfarm (p10 9 refers). Having regard to the location of the subject site in relation to the windfarm as permitted under p10 9, and the number of dwellings in close proximity to the subject site, the planning authority does not consider that the subject application is in compliance with Objective CDP 10.3.

Refusal Reason 2

- The site is located between two catchments and is outside any Natura designated areas. The proposed development will require clear felling in the area in which 4 turbines are proposed and re-opening of three disused quarry pits. Site access roads, cable tunnels, concrete stands and a temporary construction compound are also required. The combined impact of clear felling together with borrow pit development, road construction, spoil movement and storage, turbine construction (including concrete management) will give rise to medium to long term deterioration in quality of water in the upper Aughaveemagh catchment (SH_28_414).
- The EIS did not contain any references to the catchments in the vicinity of the site as defined in the Shannon River Basin Management Plan, by way of catchment reference names or status definition. Taking account of the nature of the soils in the area, the scope of works provided and the proximity of a substantial amount of the proposed development to the surface waters, it was considered that there is insufficient space to provide adequate retention for storm water settlement, prior to discharge.
- The submitted application did not contain any information or detailed drawings for the provision of settling ponds for the retention of storm water or the provision of silt traps.
- Based on the location of the borrow pits 1 and 2, and proposed locations of turbines number 4, 5 and 6, and topography in the vicinity of these locations,

the planning authority considered it to be unlikely that adequate infrastructure could be provided on the various sites.

- Taking account of the scope of the development, including borrow pit extraction, road construction, clear felling of forestry, concrete works, spoil management and traffic movement, the planning authority considered the separation distance to be inadequate between the stream and the various elements of the proposed development.
- Serious concerns arose regarding the potential impact of the proposed development on the catchment of the Aughaveemagh headwaters, SH_28_414, as this catchment contains the turbines 3, 4, 5, 6, two borrow pits, road serving the development, all the clear felling, channels for cables, concrete deposition and traffic movement during construction, with the closest turbine being proposed at 20m from this stream, and Borrow Pit 2 located on the bank of the stream. Taking account of the poor (mostly gley and peaty) soils in the area, the local topography, the abundant ditches and drains draining to two main surface water catchments, and the proximity of the proposed development to the Good status headwaters of the Aughaveema catchment, the planning authority considered that the EIS did not address adequately the pollution potential for water courses arising from the proposed development and thus was not considered to be in compliance with objective CDP 8.3 of the Clare County Development Plan 2011-2017.

Refusal Reason 3:

- The planning authority noted that the subject site contained wet heath and wet grassland. As a result, it was considered that the site may be utilised by foraging harriers from territories proximate to the site.
- It was further noted that Dr Barry O'Donoghue (EIS pg. 232) of NPWS stated that the subject site is an important breeding ground and foraging site for hen harriers. He had confirmed breeding in the past.
- It was also noted from the EIS that during the walkover winter survey, the Hen Harrier was recorded both flying through and foraging on the site.

- From the consultation with Dr Marc Ruddock of the Northern Ireland Raptor Study Group relating to hen harrier breeding, it was considered that, as the typical foraging rates for hen harriers can be up to 3-4km from their nest, the subject site was within the foraging range of this territory.
- The planning authority had serious concerns regarding the impact of the development on the local Hen Harrier population, having regard to the lack of clarity regarding the impact of the proposed development and the cumulative impact of the proposed and permitted wind arm developments in the foraging area of the Hen Harrier. The submitted EIS had not identified cumulative impacts of existing and / or permitted wind farm developments on the Hen Harrier and their associated foraging grounds. The planning authority was not satisfied that the applicants had demonstrated that the proposed development was in accordance with objective CDP 17.8 Non Designated Sites, under which it is an objective of Clare County Council to ensure the protection and conservation of areas, sites, species and ecological networks / corridors of local biodiversity value outside the designated sites throughout the County.

Refusal Reason 4:

- In the absence of Habitat mapping, specific mitigation measures with regard to protection of species and habitats, and lack of regard in relation to potential cumulative impact of the proposed development and nearby permitted / proposed developments, it was considered that the planning authority did not have full information in relation to biodiversity considerations and therefore considered that the development would be contrary to objective CDP17.8 and objective CDP17.9 of the Clare County Development Plan.

Refusal Reason 5

- The Wind Energy Development Guidelines require that the planning authority has full regard to biodiversity consideration when making a decision in relation to wind energy developments. In the absence of such information, the

planning authority was not satisfied that the proposed development would not have an undue impact on these protected species.

Refusal Reason 6:

- The R474 has poor vertical and horizontal alignments, and is bog rampant and in poor condition in parts. Given that this was the only haul route proposed by the applicants, and having regard to the poor alignments of the road, it was considered appropriate that planning permission be refused on grounds that the proposed development would adversely affect the use of this road.

Refusal Reason 7:

- There were a number of serious deficiencies contained in the EIS as set out in the reason for refusal and addressed in the reports.

In conclusion, the planning authority noted that the appellant submitted a number of documents in order to address the reasons for refusal as issued by the planning authority and submitted that such documents were not available to the planning authority at the time of assessing the subject application.

7.3. Observations

7.3.1. Sallyann and Michael Marron raised concerns relating to the prematurity of the application and the nature of a petition submitted by the applicant to the planning authority and its acceptance. Reference was also made to the reasons raised by the planning authority, notably in relation to impacts on flora and fauna, impact on house prices, and impacts on residential amenity. Concern was also raised in relation to cumulative impacts in light of a wind farm development permitted by the Board in the area.

7.3.2. Kevin Deering and Peter Crossan agreed with the planning authority's decision, referring to injury to amenity and property, set back distances, the inadequacy of the EIS and the bat survey, and the lack of cumulative impact assessment.

7.3.3. Jutta Kruse supported the planning authority's decision and raised concerns relating to distances of turbines to homes, noise and health effects, shadow flicker, depreciation of property values, cumulative visual impact, the speculative nature of the development, appropriate assessment, and impacts on the Hen Harrier and bats.

7.3.4. Sean Tubridy and Kathleen Connolly and others (hereafter referred to as Coor and Shanavagh Residents Group) supported the planning authority's decision and raised concerns relating to conflict with Clare County Development Plan, impact on Natural Heritage Areas and river catchments, impact on Hen Harrier, injury to visual and residential amenities, and depreciation of property values. Concerns on cumulative impacts, the effects on landscape character, and the need for the proposal were set out. Responses were also given to the appellant's submissions on effects on residential amenity and health, risk to water quality, impact on designated sites and species, on biodiversity, on bats and on the haul route, and information gaps in the EIS. Reference was also made to other Board decisions providing appropriate reasons for refusal. The Observation included letters from residents and former residents of the area in which the development is proposed to be located and papers on health effects of wind farms.

7.3.5. Michael McNamara TD referred to concerns of residents in the area in relation to the effects of turbines in proximity to residential properties and requested the Board to give careful consideration to the issues. A schedule of scientific research was referenced also.

7.4. Further Information

7.4.1. An Inspector's report was prepared and submitted to the Board in November, 2011 with a recommendation to refuse permission for six reasons. The Board decided in January, 2013 to defer the consideration of the case and to issue a section 132 notice. The notice referred to the proposed development being acceptable in

principle but set out “serious concerns” in relation to a number of issues relating to hen harrier, risk of water pollution, and cumulative noise and shadow flicker impact with the permitted Slieve Callan Wind Farm. A schedule of additional information was requested. A section 132 notice was issued in February, 2013. A response to the notice from the applicant was received by the Board on 9th August, 2013. This included the following:

- A hen harrier conservation and habitat enhancement plan,
- A revised EIS chapter describing the proposed wind farm,
- A report on peat stability,
- A summary report on the suitability of rock on site for construction purposes,
- A revised EIS chapter on hydrology and hydrogeology,
- A preliminary construction stage environmental management plan,
- A revised cumulative noise assessment,
- A revised cumulative shadow flicker assessment,
- A potential grid connection route map,
- Revised photomontages,
- A Stage 2 Natura Impact Statement,
- A preliminary drainage design, and
- Longitudinal road sections.

The further information reduced the wind farm to four turbines and sought re-siting of proposed turbines and associated infrastructure, as well as revised access from the north. The site area was revised also.

7.5. Responses to Further Information

The responses to the further information may be synopsised as follows:

Jutta Kruse questioned the validity of the form of the appeal, reiterated a concern about the deterioration of property values and concerns about the landscape and

visual impacts, impacts on surface water, appropriate assessment and impacts on species of conservation value, referenced parts of the proposal being located outside of the zone 'acceptable in principle', and concluded with points on deficiencies of the further information. Third party rights to fully participate in the planning process were emphasised, having regard to the differences between the original proposal and the revisions made.

Coor and Shanavogh Residents Group reiterated the issues set out in their observation. Concerns were raised about the consultation process provided by the Board and inadequacy of public notices, the substantial changes made to the application, inadequacies on surface water drainage, construction impacts, impacts on Natura 2000 sites, aquatic species and bats, shadow flicker, cumulative visual impact, reduction in property values, connection to the national grid, conflict with Clare County Development Plan, and impact on human health.

Ronan McMahon and others made a submission in support of the proposed development.

Sallyann and Michael Marron referred to the appellant's response to the Board as a wholly new proposal and even more lacking in detail than the original proposal. They alluded to the inadequacy of information provided, including in relation to the turbines proposed, the grid connection, ecological assessment, and site drainage. Concerns relating to shadow flicker, noise, and cumulative impacts with other wind farms were raised and issues raised by the planning authority were reiterated.

7.6. New Public Notices and Further Responses

Following receipt of observations, the Board decided that further public notices were required, indicating that a Natura Impact Statement had been submitted with the further information. These notices were then requested in February 2014 and were submitted by the appellant at the end of February 2014. The responses received after the publication of notices may be synopsised as follows:

Coor and Shanavogh Residents Group reiterated the range of concerns set out in their previous submissions. It was submitted that the appellant's NIS confirmed their concern that the proposed wind farm would be in an unsuitable location and should be refused on grounds which include potential adverse consequences to protected species of wildlife.

7.7. Decision of the An Bord Pleanála

Permission for the proposed development was granted by the Board on 6th June 2014, subject to 26 conditions.

7.8. Judicial Review

The observer Kathleen Connolly sought judicial review of the Board's decision and the High Court and judgements were issued on 14th June and 8th November 2016. The Court granted an Order of Certiorari in respect of the Board's decision.

Leave to appeal directly to the Supreme Court was granted. The Supreme Court dismissed an appeal by the Board in its judgement of 17th July 2017 and ordered that the Order of the High Court stand affirmed. It was further ordered that the matter be remitted to the Board to determine the planning application in accordance with law as interpreted by the Court. The Court's Perfected Order was dated 29th August 2018.

7.9. Further Board Considerations

The Board considered the remitted appeal at a meeting held on 6th December 2019. It decided that all parties and observers to the case be invited to make any general submissions/observations on the matters the subject of the appeal, having regard to the quashing of the previous decision and the lapse of time.

7.10. Further Submissions

7.10.1. *The Appellant*

The appellant referred to the Supreme Court judgement, and to paragraphs 13 and 14 in particular. It was submitted that the Court limited its findings to quashing the decision on grounds related to appropriate assessment and remitted the matter back to the Board to deal with this issue. It was further submitted that the Board has before it a detailed analysis of the European sites that have the potential to be affected by the proposed development and they are identified in the appellant's Natura Impact Statement. The findings of that NIS are alluded to and the appellant submits that there remains no doubt in respect of the absence of potential detrimental effects on the Mid-Clare Coast SPA, Carrowmore Point to Spanish Point and Islands SAC and any other European site.

7.10.2. *The Planning Authority*

The planning authority submitted that it remains satisfied that the reasons cited in its original refusal of permission remain applicable. It was stated that the current Clare County Development Plan 2017-2023 contains policy objectives that are equivalent to all of those referenced in the refusal reasons in its decision. It requests the Board to uphold the Council's decision. The considerations of the Environmental Assessment Officer are attached. These refer to:

- the planning authority's environmental concerns still being applicable,
- a risk to surface waters,
- the importance of the area as a foraging habitat for Hen Harrier, the acquisition of significant further information on the importance of the surrounding habitats in the intervening years arising from other wind farm developments in the area, and the conflict with the provisions of Clare County Development Plan, and

- the planning authority's concerns relating to EIA at the time of the original application and that it is not satisfied that the original application would meet the requirements of the 2014 EIA Directive.

7.10.3. *Sallyann and Michael Marron*

Sallyann and Michael Marron expressed concerns about communication from the Board, the lack of transparency and obfuscation thus far, and uncertainty as to what is expected from them. Reference was made to the inadequacy of the application and poor decision-making of the Board and to the Supreme Court determination. It was further submitted that it made no sense that the proposal should be considered again. It was also submitted that the current situation is happening in a different landscape, that there are more parties present in the area who would be affected negatively, and that they would know nothing about the reactivation of the application. It was maintained that there must be a mechanism for new and existing members of the community to be asked for their opinions to make the process fair, democratic, open and accountable. The Board was asked to take the Inspector's advice and refuse the appeal.

7.10.4. *Coor and Shanavogh Residents Group*

Coor and Shanavogh Residents Group submitted that its observations were based upon the understanding that the Board had invited comments or observations to be made on the planning application in its entirety, i.e. the original application and the further information requested by the Board. It was also submitted that the application, in order to be considered, must necessarily include the applicant's Screening Report for Appropriate Assessment and the Natura Impact Statement. The submission referred to a wide range of issues and impacts previously referenced in earlier submissions. It was repeated that the planning application now being considered *de novo* differs substantially from the original planning application that was refused by the planning authority and that the applicant was incorrectly permitted to use the landholding boundary as a way of redefining the site to permit a change in the application boundary, when the application should have been

dismissed, with a new application providing a correct application boundary. The submission also included comments on the process, which may be synopsised as follows:

- Article 98 of the Planning and Development Regulations (request for public notices) should apply in which an EIAR has been submitted.
- The Planning and Development Regulations does not fully transpose into Irish law the requirements of Articles 6(2) and 6(3) of Directive 2011/92/EU. The requirements of the Directive must take precedence.
- The Board's letter of 18 December 2019 does not comply with the requirements of section 239 and section 245 of the Planning and Development Act, requiring the Board to notify members of the public that an NIS is being considered and that observations or submissions may be made to it. This is given that the Board is now reconsidering the planning application and the NIS. The Board could have used section 131 to give notice to a wider group of people. It has discriminated against persons who have a particular interest in the outcome. It has failed to comply with the requirements of Articles 6(2) and 6(3) of Directive 2011/92/EU.
- The Board has allocated a new reference number, leading to the conclusion that it will determine the application *de novo*. The Board should request the applicant to readvertise to correctly inform members of the public.
- By incorrectly implementing the Order of the Supreme Court in a way that excludes members of the public, the Board failed to comply with Articles 6(2) and 6(3) of Directive 2011/92/EU.
- The Board's invitation fails to comply with Directive 2003/35/EC and the Aarhus Convention.
- The planning application now before the Board differs substantially from the original application. It has not received the level of public consultation appropriate for an application accompanied by an EIS and an NIS.

- The Board incorrectly permitted the applicant to use the landholding boundary as a way of redefining the application site to permit a change in the application boundary.

Reference was made to concerns relating to the details provided in the application, the inability to undertake EIA and AA, uncertainty relating to the grid connection, and the need for onshore wind development in light of the potential for off-shore development, solar energy, and community-led renewable energy. Note was made of policy and development changes, the lack of SEA for the Wind Energy Guidelines, prematurity pending new guidelines, the refusal of forestry applications in the area, and the lack of surveys of watercourses downstream of the site.

The Observer considered that the potential impact on the SACs and SPAs at risk may be much more significant than that stated in the further information response. It was also submitted that the applicant's predictions on shadow flicker were out of date as a result of new house construction in the area.

The Observer concluded that the Board cannot comply with the Supreme Court ruling for several serious legal reasons connected with the applicability of proposed mitigation measures as set out in the Observer's final chapter of its observation. It was also concluded that the Board cannot take into account as a mitigation measure the proposed habitat enhancement plan set out in the further information.

8.0 **Assessment**

8.1. Introduction

8.1.1. It is considered that the principal planning issues requiring consideration in this assessment are an understanding of the application process to date, compatibility with wind farm policy and guidance, environmental impact assessment, appropriate assessment, assessing the current context of cumulative development, and addressing the concerns set out in the previous Inspector's report. However, while first outlining the process to date, I must then address the issue of the limitations with the current application. The Board will find that these limitations directly impact on

any reasonable assessment of the referenced principal planning and environmental issues.

8.2. The Application Process to date

8.2.1. I note the progress of the appeal with the Board to date. My synopsis of this is as follows:

- Further to the planning authority's decision, a first party appeal was made on 8th August 2011,
- A response to the appeal was made by the planning authority on 30th August 2011 and observations were made on 1st, 2nd, and 5th September 2011,
- An Inspector's report was prepared and submitted to the Board on 30th November, 2011 with a recommendation to refuse permission for six reasons.
- The Board decided on 25th January, 2013 to defer the consideration of the case and to issue a section 132 notice. The notice stated; "*The Board might consider the proposed development would be acceptable in general principle, but has serious concerns ...*" These concerns related to a number of issues applicable to hen harrier, risk of water pollution, and cumulative noise and shadow flicker impact with Slieve Callan Wind Farm. A schedule of additional information was requested.
- A section 132 notice was issued 13th February, 2013.
- A response to the notice was received by the Board on 9th August, 2013.
- The response was then circulated to the planning authority, the observers and National Parks and Wildlife Service for comment.
- New public notices were received by the Board from the appellant 1st October, 2013.
- Following receipt of observations, the Board decided on 20th December 2013 that further public notices were required, indicating that a Natura Impact Statement had been submitted.

- The notices were requested on 11th February 2014 and were submitted by the appellant on 25th February 2014.
- At a meeting on 9th May 2014, the Board decided to grant permission for the proposed development, subject to 26 conditions.
- Ms. Kathleen Connelly brought judicial review proceedings challenging the decision of the Board. The High Court decided to quash the decision of the Board granting permission (*Connelly v, An Bord Pleanála* (2016) IEHC 322).
- The Supreme Court quashed the Board's decision on appeal and remitted the application back to the Board for a fresh determination. The Perfected Order of the Court was dated 29th August 2018.
- The Board considered the remitted appeal at a meeting held on 6th December 2019. It was decided that all parties and observers to the case be invited to make any general submissions/observations on the matters the subject of the appeal, having regard to the quashing of the previous decision and the elapse of time.
- The Board issued letters on 18th December 2019 in accordance with its decision of 6th December 2019.
- Responses were received from the appellant and Michael and Sallyann Marron on 22nd January 2020 and from Clare County Council and Coor and Shanavagh Residents Group on 23rd January 2020.
- By email dated 11th February 2020, the Board was satisfied that the further submission would not be circulated under Section 131 and requested an addendum report from the Inspector.

8.2.2. I received the file on 12th January 2022 to prepare an addendum report.

8.3. The Limitations with the Application

8.3.1. My principal concern arising from the significant lapse of time since the application was prepared and the further information was submitted is that the information upon which the previous decision was taken, and which the Board must again rely upon, is

greatly outdated. I submit that the information pertaining to the key issues which the Board needs to be assured about is deficient and, thus, the Board cannot be assured about the information that it now relies upon to make an informed decision.

I set out matters relating to these issues as follows:

8.3.2. *The Proposed Turbine Development*

I submit that it is reasonable to determine that there have been significant changes in turbine technology since the making of this application over a decade ago. I note that the original proposal was for Enercon E82 turbines. There is a need to clarify if these remain the turbines now proposed in terms of diameter, height and rated power and whether the swept area would remain the same. There is a need to understand technological changes and to know if there would be functional advancement to mitigate potential adverse effects, e.g. shadow flicker. One would need to query if the output capacity of the wind farm would remain the same and question how potential change in capacity may affect the delivery of the project. Added to this, one would need to be assured about the details of the turbine base provisions and the associated hardstanding areas if the form of the intended turbines is intended to materially alter.

While it could be decided that a decision would be made on what is before the Board at present, I would query whether it is likely that the proposed turbines set out in the application would be the same as those ultimately to be developed based upon technological changes.

8.3.3. *Grid Connection*

I note that the lack of understanding about the grid connection intended for the proposed development as detailed in the original planning application was clarified to a very limited degree in the response to the Board's section 132 notice, with alternative underground cable route options being provided in the form of connectivity to the Slievecallan substation a short distance to the east of the site or to Booltiagh substation south-east of the site, several kilometres away. While the applicant submits that the eventual connection route to the grid would be decided by

ESB Networks, Eirgrid or the CER, it is evident that there are no details provided and no examination carried out by the applicant which would allow for a reasonable understanding of the intended works. Thus, there can be no understanding and assessment of the additional effects this integral part of the overall development may have on the environment. There is clearly a shortfall in information on the grid connection proposal at this stage and such details are required in order that the Board may adequately assess this essential component of the overall development.

8.3.4. *The Site*

One would need to know the up-to-date information on the site, including clarity on the extent of conifer plantation, rotation, felling, any changes to drainage, etc. I note from the applicant's EIS that was submitted to the planning authority in May 2011 that the land use at that time was likely to continue for the next 15 years and beyond with felling likely to take place 15-20 from that time (Section 3.4). Some 11 years have since elapsed since the submission of the EIS and a need for an understanding of the land uses that will prevail in the short to medium term is relevant to the assessment of the effect of the siting of this development into the future. One must also query if there can be a reliance on all of the site investigations undertaken, some more than a decade ago, if changes to the site have occurred. Otherwise, it is essential to confirm changes have not occurred to the site and adjoining lands which would affect previous findings which the Board may rely upon to make its decision.

8.3.5. *The Development Context*

It is evident that new development has occurred in the area in which the development is proposed to be sited since the making of the previous decision by the Board, inclusive of new detached houses in the vicinity. Clearly there is a need to know where new houses have been developed, if any previously vacant houses are now occupied, or if any houses have become vacant or derelict in the vicinity. One cannot ignore what has happened in the interim since the Board's previous decision. The new developments may potentially alter assessments on noise, shadow flicker, overbearing impact, etc., i.e. the issues for residents of the area which the Board

were seriously concerned about when it sought further information from the applicant. Indeed, this raises a concern about the occupants of such new development being left outside of the planning process because they have not been party to the process to date.

8.3.6. Other Wind Farm Development

It is important to emphasise that significant development of wind farms in this area has taken place since the previous decision of the Board. I note that at the time of the making of the planning application there was an existing 15 turbine wind farm at Booliagh (15 turbines) south-east of the site of the proposed development. There were other planned wind farm developments at Booliagh (6 turbines), Glenmore (11 turbines), Cahermurphy (6 turbines), High Street (5 turbines), Boolnagleragh (17 turbines), and Slievecallan (31 turbines). I can confirm for the Board that wind farms have been developed at Slievecallan, Glenmore and Letteragh and that additional turbines have been developed at Booliagh. It is essential that a comprehensive assessment of the cumulative impacts arising from the actual constructed wind farm developments be carried out to allow for a balanced and informed decision by the Board. This can only derive from the applicant providing accurate details on the baseline environment and assessing cumulative impacts to allow for environmental impact assessment by the Board.

I submit to the Board that this other wind farm development in the area greatly changes the context in which a decision must now be made. A clear understanding of the cumulative effect of turbines is critical to allow for adequate assessment of the impacts on residents of this area, to allow for the assessment on the landscape and its visual context, and to assess the likely impact on the habitation and foraging patterns of the hen harrier in this area. It would unquestionably have substantial impacts on the latter. These are issues which were clearly of serious concern to the Board at the time of the issuing of its section 132 notice. The physical environment in which the proposed wind farm would be set has definitively altered since the preparation of information by the applicant, which the Board relied upon for making its previous decision. One is not dealing with the same environmental context.

With regard to the above, one must immediately question is the Board considering the same development, the same site and the same context upon which it made its previous decision. Clearly, the nature, extent and context of the proposed development and the site context have evolved. Therefore, one must reasonably ask are there now too many unknown variables and gaps in information. With the extent of these changes, there would be influences on the assessments of noise, shadow flicker, ecology, water, etc. and there is a need to understand this before any balanced decision can be made on this application.

8.3.7. Construction

I submit to the Board that there is potential also for construction methodologies to alter (or indeed may be required to be altered if there any changes that have occurred at the site) and that the measures proposed to be employed in this application, such as drainage and water management, may now be outdated and may not constitute best practice. If this arises this leaves the Board in a difficult position to undertake adequate environmental impact assessment and to conclude that the current proposal constitutes sustainable development.

8.3.8. Appropriate Assessment

It is apparent from the Board's section 132 notice that it had been determined that appropriate assessment was necessary and not solely a screening for appropriate assessment. Invariably, in response to the need for appropriate assessment, the applicant was likely to address mitigation measures and referred to such in the Natura Impact Statement (NIS). The mitigation measures were unspecified in the NIS but were referred to as the mitigation measures that were incorporated into the EIS, those set out in the revised hydrology and hydrogeology chapter submitted in response to the Board's section 132 notice, as well as the Construction Stage Environmental Management Plan submitted at that time. It is particularly notable that the specific relevant mitigation measures to be employed, to allow for the determination made by the applicant that no significant effects would result for the conservation objectives or integrity of any European site, were not scheduled in the

applicant's NIS. This, in my opinion, is a significant shortfall in information provided by the applicant to allow for a comprehensive understanding of how the applicant proposes to specifically address potential effects on European sites.

I also submit that, when changes to the site and/or surrounding environment are acknowledged to have occurred since the preparation of the applicant's NIS and that proposed mitigation measures at the construction and operational phases may potentially need to respond in some way to such changes (together with an expectation that the developer would employ current best practice and improved methodologies), one needs to be reasonably assured that significant effects are likely to be avoided or adequately mitigated in current circumstances. Ultimately, this goes to the heart of achieving 'sustainability' in decision-making relating to new development proposals. Much of the information upon which this application is founded is more than a decade old and significant new development has occurred in the vicinity of this site, including the wind farm at Slievecallan. This potentially undermines the reliability of an appropriate assessment which is not premised upon up-to-date information. There clearly have been substantial physical changes to the environmental context of this proposed development. Informed decision-making and achieving sustainable development are not likely to be attained when grounded in an application whose information is distinctly outdated.

8.3.9. Environmental Impact Assessment

Due to the lapse of time and the legislative changes that have arisen in the interim one must now ask can the Board rely upon the veracity of the applicant's EIS and further information to meet basic application requirements which would ensure that the Board can meet its current responsibility under the EIA Directive.

The planning application before the Board evidently does not meet with the requirements set out under Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (i.e. the 2014 EIA Directive) because the applicant's EIS predates this Directive. I have examined the information presented by the applicant, including the EIS, and the submissions made during the course of the appeal. I have considered whether the information contained in the EIS

and the supplementary information provided by the applicant to date in the application process adequately identifies and describes the direct and indirect effects of the proposed development on the environment and whether it complies with current legislative provisions. It is obvious to state that the application details do not meet with the requirements set out in the 2014 Directive.

I am satisfied that the applicant's EIS *at the time* was prepared by competent experts to ensure its completeness and quality to allow consideration as to whether the information contained in the EIS and any supplementary information provided by the applicant adequately identified and described the direct, indirect and cumulative effects of the proposed development such that it complied with article 94 of the Planning and Development Regulations 2000, as amended. However, the information on which the EIS is based upon is now outdated. With the passing of time there have been notable changes to the environment as referenced earlier. The context for the proposed development has now changed. One cannot rely on the applicant's EIS and supplementary information and determine that it is complete and that all necessary information is now before the Board to allow it to make a balanced, informed decision.

I propose to outline some of the key matters for consideration by the Board with due regard to the applicant's EIS and further information.

Human Beings

I have already alluded to the fact that there is no understanding of the current up-to-date distribution of the resident population and houses in the vicinity of the site. In discussing siting in Section 2.1.11 of the EIS, it is stated that one of the most significant environmental issues that influenced the siting of the turbines was the avoidance of noise and shadow flicker at private dwellings. The siting and number of turbines ultimately changed after the section 132 notice from the Board. The observers have submitted that new development has occurred in the vicinity of this site since then. There are new houses in the area. Based on the need for up-to-date information and surveys, one would query how the Board could be assured that this

important siting criterion is now being met in light of changes to the environment arising from new development in this area, including wind farms and new houses.

Flora and Fauna

The ecological assessment set out in the applicant's EIS was reliant upon surveys carried out in June and July 2010. The Article 6 screening assessment was also carried out at this time. One is, therefore, relying on data collected over a decade ago. Reliance on consultation with relevant public bodies on this issue to inform the assessment of likely ecological impacts also took place more than a decade ago. Arising from this observation, one cannot be assured that the habitat mapping is completely accurate at this time. It is evident also that the bat survey of November 2010 was not alone carried out at an inappropriate time, i.e. outside the optimal survey season, but that this is clearly outdated today. Furthermore and importantly, monitoring for breeding and wintering birds carried out for the EIS can also reasonably be seen to be outdated. The applicant acknowledges in the EIS that the timing and weather conditions were suboptimal for breeding birds during the second phase of field work (Section 4.1.7). Thus, suboptimal and outdated information add up to be a significant constraint in allowing for adequate assessment of this proposed development today.

Specifically in relation to birds, I note that the baseline avifauna survey of the site to inform the applicant's EIS was conducted in May and July, 2010, i.e. almost twelve years ago. A crepuscular survey and a walkover survey were undertaken between the months of November 2010 and February 2011. It is evident that up-to-date surveys are essential to allow for adequate assessment of impacts on avifauna, particularly in light of the new wind farm developments that have been developed in the vicinity of this site since the making of the Board's previous decision. Clearly, such development would likely impact on the nesting, foraging and transiting of birds in the area. There can be no reasonable reliance on the outdated findings derived from the surveys carried out to inform the applicant's EIS.

Another concern relating to the value of the crepuscular and walkover surveys in order to gauge a basic understanding of the avifauna of this area, and to which the Board now appears to need to rely on in determining impact, is that these surveys

were undertaken over a winter period when the country was experiencing some of the lowest temperatures ever recorded, notably in December 2010, and when snow cover was prevalent throughout the country. Indeed, the applicant's EIS notes the absence and recording of low numbers of small passerine species and the likely dispersal of hen harrier in this period due to the cold weather at this time (Section 5.8.3.1). I question how such surveys could reasonably be understood to be representative and I submit that this also reiterates the need for appropriate up-to-date additional baseline information on avifauna given the passage of time and the significant changed physical circumstances in the area.

I note the specific serious concerns of the Board to date relating to the impact of the proposed development on hen harrier. The applicant's EIS acknowledges that National Parks and Wildlife Service (NPWS) was consulted in February 2011 and that it was submitted that the site was an important breeding and foraging site for hen harriers and that breeding had been confirmed in the past (Section 5.8.1). I note the request for further information from the Board and the applicant's submission. Notwithstanding the submission of a hen harrier conservation and habitat enhancement plan, the surveys pertaining to hen harrier from 2010 and 2011 remain those upon which the Board must rely on and they are significantly outdated. They cannot reasonably be relied upon, given the lapse in time and the very substantial physical changes to the environment, in particular those derived from the extensive development of wind turbines in the vicinity.

Landscape and Visual Impact

I submit to the Board that the development of the wind farm at Slievecallan is a real and significant physical change to the context of the proposed development. I acknowledge that the applicant's photomontages provided for consideration of the proposed development along with permitted development in the area. I consider that the visual assessments set out in the applicant's EIS and in the further information response are outdated and should accurately reflect the existing environment in which the proposed wind farm would be set. This is particularly required when the applicant in the EIS had determined that the cumulative impact of existing and permitted wind farms in the Slievecallan upland area was Moderate, but was approaching Significant (Section 6.14). What has actually been developed and

where turbines are actually sited are critical issues to understand to allow for an informed assessment of cumulative landscape and visual impact.

Soils and Geology

I note that the applicant, in response to the Board's request for further information, changed the proposed layout of the wind farm and reduced the number of turbines from six to four. I acknowledge that this response included an assessment of peat stability. As part of the site walkover for that assessment, in situ peat strength was recorded at various locations across the site. Peat depth probes were carried out at/near to proposed turbine locations and access roads. The applicant stated that up to 5 probes were carried out around the turbine location. The strength testing was carried out using a Hand-Field Vane Tester. The applicant acknowledged that hand vanes give indicative results for in situ strength of peat and that the results should be used with caution when assessing peat strength.

It is important to acknowledge that that the applicant's revisions in its further information submission included material changes to the proposed locations for the turbines and a revision of the road layout within the holding. It is particularly notable that the revised proposals did not provide to the Board any comprehensive geotechnical ground investigations and the results of specific trial pitting at the locations for each of the proposed four turbines. Such baseline information on peat, as well as subsoils and bedrock, is an essential component to allow for an understanding of the conditions in which the turbines are proposed to be placed. The applicant's restricted and limited analysis relating to the revised proposals consequently restricts and limits the ability of the Board to satisfactorily assess the revised scheme and its impacts on soils and geology.

Hydrology and Hydrogeology

Drainage mapping and hydrological baseline monitoring was undertaken in preparation of the EIS in March 2011. Site investigations and a geotechnical assessment were undertaken in March 2011. In response to the Board's further information request, additional site walkovers, drainage mapping and surface water sampling was undertaken in July, 2013. It is understood that drainage in this

location, having regard to the extent of forestry plantation, would be heavily engineered. It is not understood if this drainage network has been in any way altered since the making of the application through diversions, culverting, etc. and this may need clarification. Having regard to the lack of geotechnical investigations on soils and geology as referenced in the previous section on soils and geology above, this also raises some concern about potential impacts on the water environment. For example, excavation seepage could occur with the excavation of turbine bases. Potential impacts could, therefore, arise with groundwater flow. There is a need to have comprehensive information on the conditions at turbine locations. I submit that one clearly requires more up-to-date information on the water environment from the applicant in order for the Board to take an informed decision.

Noise

The observers have submitted that new residential development has taken place in the vicinity of the site. I note that new houses have been developed in the vicinity. It is reasonable that a clear understanding is provided on where such new development has taken place in the vicinity of the site and an assessment of potential noise impact be undertaken accordingly. Furthermore, in light of the Board's serious concern about the cumulative noise impacts resulting in a request for further information on this issue and having regard to the commissioning of the Slievecallan wind farm since the receipt of this further information, a more accurate and up-to-date assessment of the cumulative noise impact is necessary to assess the potential noise impacts on residents of the area. Thus, it is necessary to know whether the baseline noise environment has altered since the preparation of the applicant's further information in order that a relevant understanding can be acquired on the estimated and likely cumulative impact of noise on residents of the area.

Further to the above and as more understanding is gained on wind farm development in more recent times, it is notable that no consideration has been given in the applicant's assessments of this proposal to date on infrasound, on amplitude modulation causing periodic thumping at low frequencies, and the potential negative health effects seen to arise from wind farm development on some people exposed to such development.

Air Quality and Climatic Factors

It is acknowledged that ambient air quality is unlikely to have altered in any significant manner since the Board's previous decision on this application. It is further accepted that wind energy, as a renewable resource, would contribute to a lesser dependence on the production of energy by fossil fuels.

Shadow Flicker

I note for the Board that the applicant predicted in the further information submission relating to the proposed four turbines that the daily guideline limit of shadow flicker of 30 minutes would be exceeded at 22 houses within 1km for the proposed development alone. The applicant also predicted that the daily guideline limit of shadow flicker of 30 minutes would be exceeded at 30 houses within 1km for the proposed development plus the permitted Slievecallan wind farm. I submit that an up-to-date assessment is now required given the commissioning of the latter wind farm, particularly in light of the applicant's further information indicating a distinct potential for shadow flicker resulting for housing in the vicinity and the resultant need suggested for local mitigation which would directly affect residential properties.

Mitigation which may be appropriate to consider in the control of shadow flicker, arising from technological advances, should also be examined in my opinion.

It is reasonable also to determine that clarity is required on the extent of new development in the vicinity of the site since the submission of the applicant's further information in order to gauge an acceptable understanding of potential shadow flicker on newer residential property in the area.

Traffic and Transportation

I note that the applicant's response to the Board's section 132 notice resulted in a revised proposal for a reduced number of turbines and a new internal road network within the site. I also acknowledge that the applicant revised the haul route to the site and the location of the site entrance. The new route is via a local road to the north and the site entrance is at the north-western end of the holding. The original

proposal provided for access via a local road to the south and a site entrance provided at the south-eastern end of the holding. The applicant's EIS assessed these two options and clearly determined the southern approach to be the preferred option. The Board did not request a revised haul road and entrance to the site. It is unclear as to why such a route and entrance is being sought by the applicant. Such a proposed material change requires clarity as to why the new route is now being pursued. Such a material change is likely to have transportation and other environmental impacts on the residents of the area at the construction phase of the proposed development.

Cultural Heritage

I note that there have been no material changes relating to cultural heritage at the location of the site. As there is a high density of recorded monuments and sites in the vicinity, the site itself should reasonably be regarded as being one of archaeological potential. Any wind farm development at this location would require archaeological monitoring at the construction stage.

8.3.10. The Policy Context

It is reasonable to note that the policy context provided for the proposed development in the application is outdated. However, I acknowledge the evolving nature of the policy context. I accept that wind farm development in principle would be compatible with a wide range of international, EU, national, regional and local policies relating to the reduction in greenhouse gas emissions and the promotion of renewable energy. I note for example the provisions of the EU Renewable Energy Directive, the Climate Action and Low Carbon Development Act 2015, the National Mitigation Plan arising from the Act, the Climate Action Plan 2019, the National Renewable Energy Action Plan, the National Planning Framework, and the Regional Spatial and Economic Strategy for the Southern Region. It is reasonable to ascertain that the principle of development such as that now proposed is in keeping with the drive for increased output of renewable energy alternatives promoted at EU, national and regional levels.

Regarding the lapse of time and how the proposed development fits with local policy and the current Clare County Development Plan 2017-2023, I first note the similarity of provisions on wind farm development that pertain today when compared to those at the time of the making of the Board's previous decision. The Wind Energy Strategy remains similar, albeit that the current Plan has an objective to prepare an updated strategy. The site of the proposed development remains within an area designated "Acceptable in Principle". While the objective to prepare an updated strategy may indicate some element of caution (and this may be viewed as applicable having regard to the extent of wind farm development that has now proceeded in the area of the proposed development), the current provisions remain those against which the Board must have due regard to at this time. I acknowledge the wide range of objectives that are otherwise applicable to development in general, including that now proposed. These include ensuring compliance with current River Basin Management Plans, the County's Heritage Plan, and the County's Biodiversity Action Plan, as well ensuring proposed development would, where relevant, be subject to providing a reliable Natura Impact Statement. In my opinion, it is apparent that determining compatibility of a proposed development with current objectives of the County Development Plan can only be provided where it is clear that the details supporting such an application are based on relevant, up-to-date information. It is clear that measuring a proposed development against the achievement of such objectives must be reliant upon up-to-date analyses, a Natura Impact Statement based on reliable information, and other supporting documentation to allow for a comprehensive assessment and an informed decision.

8.4. Conclusion

I note the Board's previous "*serious concerns*" as set out in its section 132 notice forwarded to the applicant. I further note the outdated nature of the information on which the Board is now being asked to make a decision on this proposed development. The deficiencies and gaps in information are such that I cannot reasonably undertake an assessment of the proposed development and make a recommendation based upon the information that is available at present. I suggest that the Board cannot undertake a balanced, informed decision either. The gaps in information are detailed above and include:

The Development and Its Context

- Details on the proposed turbines, the associated technology, and turbine bases;
- An examination of the grid connection and/or options;
- Clarity on physical changes to the site, including drainage, the established land uses, and intended land uses, including post tree felling;
- An understanding of new development in the vicinity, including new houses;
- Information on the nature and extent of constructed wind farm development in the area;
- Confirmation of drainage and water management provisions;

Appropriate Assessment

- Clarity on specific relevant mitigation measures to be employed to allow for an appropriate assessment and a response given to the altered physical changes to the environmental context of this proposed development since the preparation of the applicant's Natura Impact Statement;

Environmental Impact Assessment

- An understanding of the changed physical context for the proposed development, having regard to the details referenced above;
- An up-to-date understanding of the current distribution of the resident population and houses in the vicinity of the site to allow for an informed assessment of noise and shadow flicker;
- Updated and *appropriately timed* ecological surveys, including habitat, bird and bat surveys, with due regard to hen harrier and the commissioning of wind farm development in the vicinity;
- A landscape and visual assessment which accurately reflects the existing baseline environment in which the proposed wind farm would be set;

- A soils and geology assessment which provides comprehensive geotechnical ground investigations and the results of specific trial pitting at the locations for each of the proposed four turbines;
- A hydrology and hydrogeology assessment which clarifies drainage, surface and groundwater conditions, with due regard given to up-to-date geotechnical investigations on the site;
- A noise assessment which provides details on the current existing baseline noise environment, with due regard to new residential development in the area, the existing Slievecallan wind farm and an assessment of potential cumulative noise impact, while giving some consideration to the impact of infrasound;
- A shadow flicker assessment that has due regard to the commissioned Slievecallan wind farm in the vicinity and with clarity on the impact on any recent residential development that may have been developed in the vicinity;
- Reasons for the changed haul route and selected site entrance to the north;

Policy Context

- Clarity on the compatibility of the proposed development with current objectives of the Clare County Development Plan, based upon relevant, up-to-date information.

9.0 Recommendation

In determining this application, one should be able to undertake an environmental impact assessment, an appropriate assessment, and an assessment of the important planning and environmental issues, with due regard given to the “*serious concerns*” the Board had in relation to impact on residents of the area and on the hen harrier and to the effects on European sites. I submit that it is evident that, based upon what is deficient in the application to date, one cannot undertake such necessary assessments. Therefore, at this stage, one cannot come to a rational,

balanced decision, which would be based on an assessment that is founded upon the provision of necessary, comprehensive information from the applicant. I conclude that any assessment of the proposed development, based upon what is at hand at present, would be premised upon speculation without the necessary information from the applicant.

I submit to the Board that the only reasonable manner in which the deficiencies can be met is to request the information necessary to fill the very distinct gaps in information. The preferred way in which such information could be provided by the applicant in an orderly and comprehensive manner would be to obtain an Environmental Impact Assessment Report and a revised Natura Impact Statement, together with supporting accurate, up-to-date drawings. Otherwise, a comprehensive schedule of further information, based on the deficiencies as highlighted above, is a minimum requirement. The provision of such new information must, in my opinion, allow for the provision of public notices and accommodate invitations for submissions, inclusive of those from persons and parties who have not been involved in the process heretofore.

Kevin Moore
Senior Planning Inspector

16th February 2022