

File With _____

SECTION 131 FORM

Appeal NO: PL 03. 239378Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission dated/ received 31/8/11 fromPA. I recommend that section 131 of the Planning and Development Act, 2000be/not be invoked at this stage for the following reason(s): No new issuesE.O.: Paul TurnerDate: 9/9/11

To EO: _____

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

CORRESPONDENCE FORM

Appeal No: PL 03.239378

M 1. June

Please treat correspondence received on

31/8/2011

as follows:

1 Update database with new agent for Applicant/Appellant

2 Acknowledge with BP

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3 Keep copy of Board's letter

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1 RETURN TO SENDER with BP

2 Keep envelope

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3 Keep copy of Board's letter

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Amendments/Comments

PA response to appeal

4. Attach to file

(a) R/S

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(d) Screening

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(b) Mapping

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(e) Inspectorate

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(c) Processing

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RETURN TO EO

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Plans Date Stamped

Date Stamp Filled in

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EO:

[Signature]

AA:

N [Signature]

DATE:

31/8/2011

DATE:

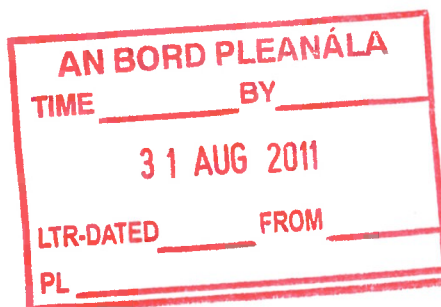
31/8/11



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

30th, August, 2011.

Your Ref: PL03-239378
Ref. No: P11-360



An Bord Pleanála
64 Malborough Street
Dublin 1

Appeal Re: Application for permission for construction of a wind farm. The wind farm will comprise 6 wind turbines, with a hub height of 85 metres and rotor diameter of 82 metres, electrical substation and control building, internal road system, borrow pits, temporary construction compound and all associated site and ground works. The application is accompanied by an Environmental Impact Statement at Coor West, Shanavogh East & Shanavogh West

Dear Sir/Madam,

We refer to your letter dated 11th of August 2011, the Planning Authority's observations are as follows:-

Observations on Grounds of Appeal

The Planning Authority notes the 1st Party appeal to the decision to refuse permission for the proposed development. The Planning Authority notes the various submission in support of the appeal as submitted by the applicant, and in accordance with the provisions of Section 129 of the 2000 Planning and Development Act, as amended, intend to make the following observations on the grounds of appeal for the consideration of An Bord Pleanála.

The Planning Authority has serious reservations about the proposed development and would respectfully request the Board to uphold its decision in this instance.

Pleanáil, Úsáid Talún agus Iompar
Áras Contae an Chláir, Bothar Nua, Inis, Co. an Chláir

Planning, Land Use & Transportation
Áras Contae an Chláir, New Road, Ennis, Co. Clare

☎: 065 6846232 F : 065 6892071 ✉: planoff@clarecoco.ie 🌐: www.clarecoco.ie

*Fostóir comhionannas deiseanna is ea
Comhairle Contae an Chláir,
a chuireann fáilte roimh
iarratais ón bpobal i gcoitinne*



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sections of the Community

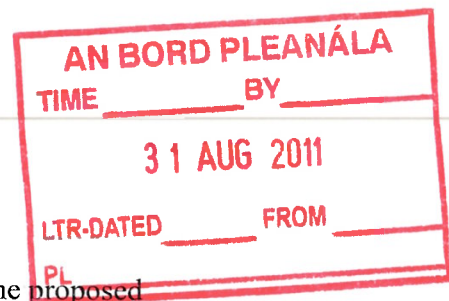
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The Planning Authority decided to refuse permission for the proposed development for the following reasons:

1. Having regard to the scale of the proposed development, the location of the site on relatively open lands in proximity to existing residential properties, the noise generated from the proposed wind turbines and from the construction of the proposed development, the proposed development may seriously injure the amenities of residential property in the vicinity by reason of impact of noise and visual overbearing, and thus depreciate the value of property in the vicinity. The proposed development would therefore be contrary to Objective CDP 10.3 as contained in the Clare County Development Plan 2011-2017 which 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.

2. Having regard to:

- (i) the poorly drained soils in the area,
- (ii) the local topography, and existing ditches and drains which drain into two main surface water catchments,
- (iii) the proximity of the proposed turbines and burrow pits, and the proposed clearfelling, to the Good status headwaters of the Aughaveema catchment,
- (iv) the absence of any information regarding the provision of settlement ponds and silt traps and
- (v) the restricted size of the site

it is considered that the proposed development would pose an unacceptable risk to water quality standards in the receiving watercourse and would militate against the objectives of the Water Framework Directive (2000/60/EC) and the national long term objective as expressed in the European Communities Environmental Objectives (Surface Waters) Regulations, 2009 (S.I. No. 272 of 2009) namely the achievement and maintenance of good status of surface waters by 2015. Therefore, it is considered that the proposed development would be prejudicial to public health, would impact on surrounding surface waters, would be contrary to objective CDP 8.3 of the Clare County Development Plan 2011-2017 the objective of which is to protect surface waters, and to the proper planning and sustainable development of the area.

3. It is an objective under CDP 17.8 of the Clare County Development Plan 2011-2017 to ensure the protection and conservation of site and species of ecological value outside of designated sites throughout the

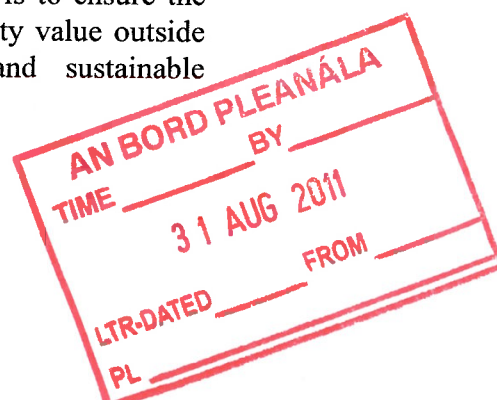
County. The general area is known to be an important foraging habitat for the Hen Harrier, which is afforded protection under Annex I of the EU Birds Directive. Having regard to the information submitted with the application, the Planning Authority is not satisfied that the proposed development, by itself or in conjunction with existing and permitted wind-farm developments in the vicinity, will not have a significant adverse ecological impact on the habitat and / or foraging grounds of the Hen Harrier. The proposed development would therefore be in conflict with the objective as specified under objectives CDP 17.8 of the Clare County Development Plan 2011-2017 and contrary to the proper planning and sustainable development of the area.

4. Having regard to:

- (i) the inadequate habitat mapping submitted with the application,
- (ii) the non specific mitigation measures proposed,
- (iii) the lack of regard to the potential cumulative impact of existing / permitted wind farms in the vicinity of the site,
- (iv) the potential impact on Annex I species (Hen Harrier and Common Frog) and those of "international importance" (Irish Hare and Pine Martin) and those as protected under the Wildlife (Amendment) Act 2000 (Red Squirrel, Common Frog and Smooth Newt)

the Planning Authority is not satisfied that the proposed development will not negatively impact on species and habitats in the area and thus be contrary to objectives CDP 17.8 and CDP 17.9 of the Clare County Development Plan 2011-2017 which are to ensure the protection and conservation of species of local diversity value outside designated sites, and to protect and promote the sustainable management of the natural heritage, flora and fauna of the County through the conservation of natural habitats.

5. All Bats are listed as Annex IV species and protected under of the EU Habitats Directive. Having regard to the bat survey submitted with the EIS, which the Planning Authority notes was carried out on an unspecified date(s) in November 2010, and the absence of information provided on the timing or duration of the survey or on the weather conditions, the Planning Authority is not satisfied that the proposed development would not adversely impact on the bat species in the area, and would be contrary to objective CDP 17.8 of the Clare County Development Plan 2011-2017, the objective of which is to ensure the protection and conservation of species of local diversity value outside designated sites, and to the proper planning and sustainable development of the area.



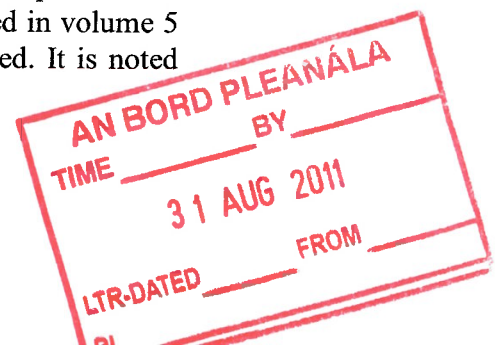
6. Having regard to the width and alignment of the proposed Haul Route and the absence of an autotrack analysis and a pavement condition survey on the proposed route, the Planning Authority is not satisfied on the basis of the information submitted with the Environmental Impact Statement, that the proposed development would not adversely affect the use of the R474 by traffic, and endanger public safety.
7. The Planning Authority is not satisfied that the Environmental Impact Assessment provides adequate information on the potential impacts of the proposed development, and / or the significance of those impacts, on relevant aspects of the environment, to enable it to assess, in a complete manner, the impact on the environment in accordance with the legislative requirements as set out under Article 94 of the Planning and Development Regulations 2001-2010. In particular, inadequate information has been provided regarding
- (i) burrow holes, including the absence of core logs or any other form of investigative methodology on the stated volumes / sizes of the burrow holes
 - (ii) peat depths and the impact of the development on ground stability in the vicinity of the proposed turbines, access roads and associated works, along with site specific mitigation measures
 - (iii) the impact of the proposed development on the Architectural Heritage of the area
 - (iv) the carrying capacity of the Coor Road and the proposed internal access roads which are located on peatlands
 - (v) the potential impact of shadow flicker on the nearby residences
 - (vi) the potential location of wells in the vicinity of the subject site

The Planning Authority is not satisfied that the proposed development would not have significant adverse impacts on the environment and the proposed development would therefore be contrary to the proper planning and sustainable development of the area.

The information submitted in support of the Appeal is noted, and the Planning Authority will discuss each reason refusal along with the appellant's response below.

Refusal Reason 1:

The Planning Authority has regard to a number of publications in assessing the subject application. In particular Wind Energy Development Guidelines - Guidelines for Planning Authorities 2006, the Clare County Development Plan 2011-2017 and the associated Wind Energy Strategy (as contained in volume 5 of the Clare County Development Plan 2011-2017) were assessed. It is noted



that 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 2011-2107. 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.

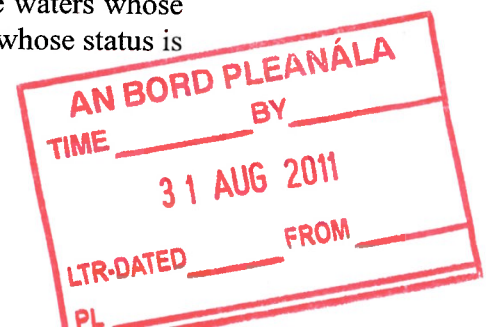
Since the subject application was received, planning permission has been granted to West Clare Renewable Energy Ltd to construct a windfarm (p10 9 refers). Having regard to the location of the subject site in relation to the windfarm as permitted under p10 9, and the number of dwellings in close proximity to the subject site, the planning authority does not consider that the subject application is in compliance with Objective CDP10.3.

Refusal reason 2:

The site is located between the two catchments named above, 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- now designated as "borrow pits". Site access roads, cable tunnels, concrete stands and a temporary construction compound are also required.

It is noted that approx. 4.67ha of the existing plantation forestry was proposed to be felled to allow for the proposed windfarm development. It is noted that aside from the proposed development, the clearfelling of trees will inevitably occur on the site in due course. It is further noted that the older stands of forestry tended to be planted close to streams, and, already Clare County Council has substantial evidence of impact on water courses in the catchment SH_28_242, rated as "poor" status. The upper catchment of SH_28_242 has been clear felled. The area suffers ongoing discharges from rutted areas of the lands, after rainfall (with sediment and pine needles discharging). No improvement in status will be likely in this catchment in the medium term. In the case of this proposed development, it is considered that 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).

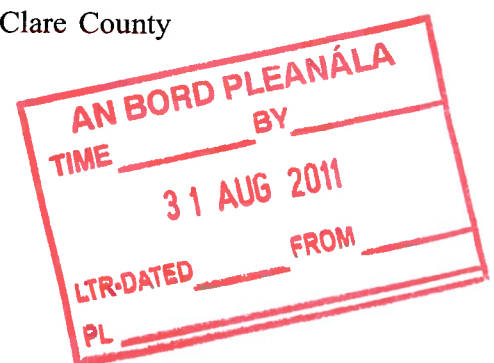
When assessing the subject application, it was noted that the EIS did not contain any references to the catchments in the vicinity of the site as defined in the Shannon River Basin Management Plan, by way of catchment reference names or status definition. Articles 4 and 5 of the Environmental Objectives (Surface Water) Regulations 2009 require the protection of those waters whose status is high or good, (SH_28_414) and improvement of waters whose status is



less than good (SH_28_242). It was noted that the streams and catchments were mapped in the EIS, with details provided (from one field sample) of the conductivity, pH and temperature at sites adjacent to the proposed turbines. The only information this data conveys is that the waters in the area are generally of similar hydrogeological origin. It does not address the presentation of reasonable baseline data on either the hydrochemistry or flora and fauna of the aquatic habitats in the vicinity of the proposed development. In any event, 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.

It was also noted (and discussed above) that 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 slit traps. It was noted that at pre planning stage, consultation had taken place with the Regional Fisheries Board (now known as Inland Fisheries of Ireland) and the applicants were advised that during the construction phase waters being pumped from the site must be allowed the required retention time in settling ponds. However the submitted application did not make provision for settling ponds or silt traps - either by design or location. 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 also 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.



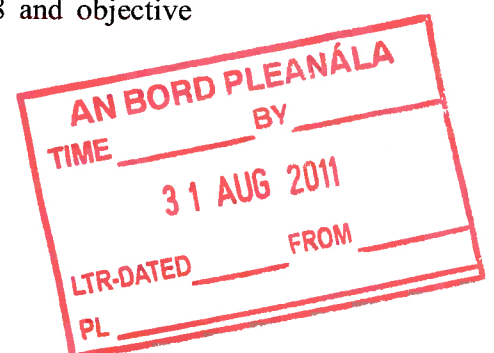
Refusal reason 3:

In the course of assessing this application, the planning authority noted that the subject site contained wet heath and wet grassland, and as a result, it was considered that the site may be utilised by foraging harriers from territories proximal 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 and he had confirmed breeding in the past. It was also noted that the EIS (pg 234) during the walkover winter survey, the hen harrier was recorded both flying through and foraging on the site. While it was noted that the EIS also stated (pg 240) that following consultation with Dr. Marc Ruddock of the Northern Ireland Raptor Study Group, the nearest known breeding attempt to the subject site was identified as c. 2.5km south of the subject site, 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 farm developments in the foraging area of the Hen Harrier) as contained in the submitted EIS. 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. EIS's of other nearby development did not appear to have been reviewed. 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:

The submission states that details within regard to habitat mapping should be addressed by either a further information request and / or by conditions of development. However the Wind Energy Development Guidelines clearly state that Planning authorities should have full regard to biodiversity considerations in determining applications for wind energy developments. In the absence of Habitat mapping, specific mitigation measures within 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:

As noted above, 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 planning authority had serious concerns regarding the proposed haul route along the R474. This road 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:

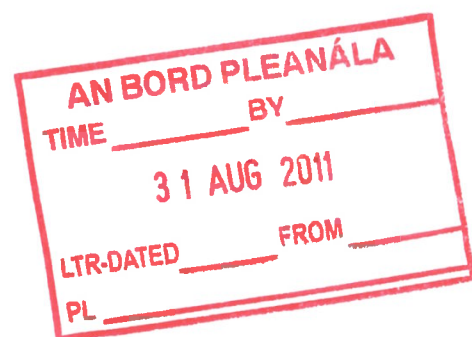
There were a number of serious deficiencies contained in the EIS namely:

Details on proposed burrow pits: it was noted in the application that 3 no burrow pits were proposed. They were identified as being in the location of existing disused quarried areas. However no clear supporting references to indicate how the volumes presented were calculated was submitted. It was further noted that no core logs or any other form of investigative methodology on these stated volumes have been submitted, and thus a full assessment of the extraction and storage volumes could not be made. It was also noted that section 2.7.1 of the EIS referred to the Burrow pits' "potential locations". This suggested that the burrow pits may be relocated which was not considered appropriate.

Peat depth and the impact on ground stability: differing figures were proposed in the EIS regarding peat depths as obtained from the probe results and the as stated in the "Peat Thickness Zonation Plan".

Impact on architectural heritage: The subject site contains two recorded monuments; CLO39-0015 – Ringfort and CLO39-011 – Ringfort. There are 15 other monuments within a 500m buffer zone around the site. the planning authority noted that the submitted EIS did not make reference to the Architectural Heritage of the area i.e. the built environment after the year 1700AD. Additionally it did not assess impact of the proposed development on such features as field systems, river stepping stones, bridges, stone walls, gate piers, wells, old roads and pathways, ordinance survey triangulation stations, cottages or the ruins of old farmyards.

The carrying capacity of the Coore Road: this road is located on a bog. No information on the stability of this road was submitted. It is noted also that this road is relatively well used by local traffic.

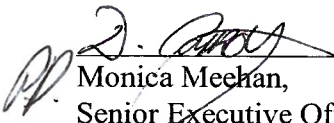


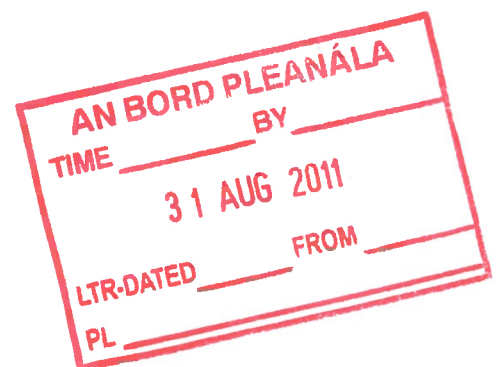
Potential shadow flicker: the planning authority was not satisfied that the proposed development adequately addressed the potential of shadow flicker on nearby residences.

Potential impact on wells: During the course of the application, a number of third party submissions made reference to the location of their wells, which is it was stated were located down gradient of the proposed development. From information available to the Planning Authority there appears to be a limited availability of a piped water supply (GWS or mains) in the area. It was also noted that many of the houses are older dwellings and may traditionally have a bored well. The EIS stated on pg 330 that none of the mapped wells (having regard to the wells as recorded in the GSI wells database www.gsi.ie) were located hydraulically down gradient of the proposed development. However a comprehensive survey of wells in the area was not carried out. In the absence of same (and mitigation measure to protect any potential wells) the planning authority was not satisfied that the proposed development would not negatively impact on wells in the vicinity.

In the submission to the Board, the planning authority notes that the applicants have submitted a number of documents in order to address the reasons for refusal as issued by the planning authority. Such documents were not avail to the planning authority at the time of assessing the subject application.

Yours faithfully,


Monica Meehan,
Senior Executive Officer
PLANNING SECTION



Note: If you have any queries on the appeal, please contact Mary, Planning Section, Clare County Council on telephone number (065) 6821616.

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