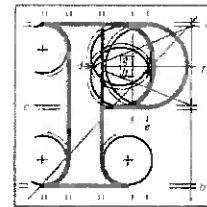


Our Case Number: ABP-317809-23



**An
Bord
Pleanála**

Kiara Geoghegan
35 Oak Lawn
Athy
Co. Kildare

Date: 11 October 2023

Re: Proposed Coolglass windfarm and related works
In the townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill,
Monamantry, Coolglass, Crissard and Kilenabehy, Co. Laois.

Dear Sir / Madam,

An Bord Pleanála has received your recent submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter. Please accept this letter as a receipt for the fee of €50 that you have paid.


The Board will revert to you in due course with regard to the matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the local authority and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: www.pleanala.ie.

If you have any queries in the meantime, please contact the undersigned officer of the Board or email sids@pleanala.ie quoting the above mentioned An Bord Pleanála reference number in any correspondence with the Board.

Yours faithfully,



Evan McGuigan
Executive Officer
Direct Line:

PA04

Teil
Glaio Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel (01) 858 8100
LoCall 1800 275 175
Fax (01) 872 2684
Website www.pleanala.ie
Email bord@pleanala.ie

64 Sráid Maoilbhríde 64 Marlborough Street
Baile Átha Cliath 1 Dublin 1
D01 V902 D01 V902

An Bord Pleanála
64 Malborough Street
Dublin 1
1st October 2023

Case Reference: PA11.317809

Development address; the townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill, Monamanry, Coolglass, Crissard and Kylenebehy, Co. Laois.

Proposed Coolglass Windfarm and related works

Dear Sir/Madam,

I Kiara Geoghegan,

object to the application for Statkraft Coolglass windfarm on based on the following observations.

The proposed windfarm development serves no function if it cannot be connected to the national grid. Connection to the national grid is fundamental to the entire project and the cumulative effect of both must be assessed according to the EIA Directive. The Bord needs to regard this proposal as premature in the absence of a grid connection application.

The location of these two clusters of turbines are on two different sites one on Fossy Mountain

and the other on the townlands of Wolfhill presented by the developer as one site is disingenuous and misleading.

The Bord needs to regard the cumulative effects of both sites of this proposed windfarm on Fossy Mountain and Wolfhill named by the developer as 'Coolglass Windfarm', combined with

the following projects which have already secured planning permission.

a. EirGrid's Laois Kilkenny Reinforcement Project (Coolnabacky 400kv Substation).

a. 18 No. wind turbines in the nearby townlands of Ballinclogh Upper, Garryglass, Clarabarracum, Clontycoe, Dooary, Cloncullane, Crubeen, Cullenagh, Rahanavagh and Raheenduff. Ref.11.242626 (Laois County Council).

a. 11. No. wind turbines Pinewoods Wind Farm Ref. PL11.248518 (An Bord Pleanala).

a. 300 Acre Solar Farm at Bigbog, Coolnabacky, Esker, Money Lower and Loughteeog, Stradbally (ref. 17/532 Laois County Council)

The Bord must consider the cumulative effects of this proposed development along with the other granted developments mentioned above, all of which are within a 10km radius of the subject development. The Bord must consider the visual impact on the rural scenic landscape

close to the Heritage village of Timahoe and the rural scenic uplands of the Coolglass, Aughadrine, Moyad, Scotland, Wolfhill, and Slatt areas. The proposed development alone would

form a visually obtrusive feature in the landscape and negatively impact the nationally significant archaeological, heritage sites and sacred spaces. (2003 Unesco Convention for the Safeguarding of the Intangible Heritage).

The location for the proposed development is in an area not open for consideration by the Laois

County Development Plan and deemed unsuitable for wind development due to the sensitive environment. The proposed development sits in a Water Source Protection Zone (see CDP map

10.4). The Swan public water scheme identified by the EPA as being 'vulnerable and without an

alternative source' is fed by the entire area of the proposed Wolfhill cluster. Water courses and

streams which originate throughout the catchment of the proposed windfarm development, ultimately feed the River Nore and River Barrow, which are both noted for its sensitive stocks of

fresh water pearl mussels and crayfish. The Bord needs to have regard in particular to the cumulative effect with regard to Margaritifera Margaritifera, dwrovcmsis, which requires protection under Directive 92/43/EEC, on the Conservation of Natural Habitats and of Wild Flora

and Fauna.

Laois is well known for its peregrine falcons. The bord must consider the locally known established nesting sites of the identified and documented pairs of ringed peregrine falcons, and

their yearly chicks located between Slatt, Spink and Dunamaise. The nesting site in Slatt is only

meters from the proposed turbines on the Wolfhill site. The hunting ground of the peregrine falcons nesting at Slatt is directly over the proposed turbine area on Wolfhill and the surrounding area (Birdwatch Ireland/NPWS). The bord must consider the cumulative effects of

the Coolglass windfarm project in conjunction with the above mentioned projects already granted permission. I urge in the strongest possible way not to hinder the feeding ground of these protected birds. In accordance with the EU Habitats Directive, these birds must be protected.

According to the guidelines issued by The Bat Conservation Council of Ireland(2012), Wind Turbine/Wind Farm Development a preliminary desktop study should include all details of known bat roosts, bat activity and other records of these animals from within a 10km radius of

the proposed wind turbine development. The bord needs to consider the cumulative effects of

Coolglass windfarm development in conjunction with the above mentioned projects on the locally known bat populations and all wildlife in accordance with EU Habitats Directive. The developer cannot mitigate against the noise of a 180mtr turbine with a setback distance of

approximately 700mtrs to the nearest homes. The developer cannot realistically mitigate how

the uphill/downhill gradient will treat the noise from turbines of this measure and what effect it

will have on the nearest homes. This development is too close to the homes of local people for

turbines of this scale.

The board must consider the cumulative effects of the Coolglass windfarm development in conjunction with the above mentioned projects already granted permission, on the local community and its people. The community has had no meaningful engagement with the developer Statkraft. Glossy brochures delivered through letter boxes does not constitute public

participation. No public meetings were held with the community. Therefore, we were obliged to

have our own public meetings in the local halls of The Swan and Timahoe to discuss our concerns regarding the environment and protection of our homes. (Article 7 Aarhus Convention)

We are a civilised community of people, all with our concerns of climate change and willing to play our part.

See attached rulings which are also relevant.

<https://www.casemine.com/judgement/uk/5da061c84653d07dedfd6d63>

Please find attached a list of names from online petition at Change. Org. which was only started October 5th.

I respectfully urge that planning permission for this development be refused.

I enclose 50 Euro in respect of this objection. All correspondence in this matter can be sent to

me at:

Address:

35 Oak Lawn,

Athy,—

Co. Kildare. _____

Yours sincerely

Kiara Geoghegan

High Court of Ireland

Dec 7, 2018

Judgment

Subsequent

References

CaseIQ

Case Information

CITATION CODES

[2018] IEHC 697

See more information ...

[2018] IEHC 697 THE HIGH COURT [RECORD NO. 2017 999 JR]

BETWEEN

PINEWOOD WIND LTD. APPLICANT AND

THE MINISTER FOR HOUSING, PLANNING AND LOCAL GOVERNMENT

RESPONDENT AND

LAOIS COUNTY COUNCIL

NOTICE PARTY AND [RECORD NO 2017 1000 JR]

BETWEEN

ELEMENT POWER LTD APPLICANT AND

THE MINISTER FOR HOUSING, PLANNING AND LOCAL GOVERNMENT

RESPONDENT AND

LAOIS COUNTY COUNCIL

NOTICE PARTY

JUDGMENT of Ms. Justice O'Regan delivered on the 7th day of December 2018

Issues

1. Both of the above mentioned applicants have identical claims as against the Minister arising from a direction issued by the Minister on the 28th September 2017 save for the fact that Pinewood has a current application pending for planning permission for a wind farm, whereas Element does not.
2. Leave to maintain the within judicial review challenge to the Minister's decision / direction of the 28th of September 2017 was afforded by order of the 18th December 2017.
3. The statement of ground is a 21 - page document with the reliefs claimed therein divided into the following categories: -
 - (i) Failure to consider the applicants' submissions;
 - (ii) Failure to afford reasons for the decision;
 - (iii) Failure to have any reasons for the decision / irrationality;
 - (iv) Failure to carry out a strategic environmental assessment or screening for same;
 - (v) Failure to carry out an appropriate assessment or screening for same;
 - (vi) Failure to have regard to s. 15 of the Climate Action and Low Carbon Development Act, 2015.
4. The respondent Minister issued a direction to Laois County Council (which was enclosed with a letter addressed to the Chief Executive of the County Council bearing date the 28th September 2017) pursuant to s. 31 of the Planning and Development Act 2000 as amended

(hereinafter "P and D Act") requiring the Planning Authority pursuant to s. 31 (2) to comply with the direction and thereby alter, in accordance with the direction, the Laois County Development Plan 2017 - 2023. The text of the direction was to delete the setback distance of 1.5 km from schools, dwellings, community centres and all public roads in all areas open for consideration for wind farm development. In addition, the development plan was to include the yellow map and to remove the red map.

Submissions

Failure to have regard to the applicants' submissions

5. The applicants' arguments are as follows: -

(a) There is an express statutory obligation on the Minister to provide reasons under s. 31 (7) (c) and s. 31 (7) (11) of the P and D Act.

(b) The wording of the section obliges the Minister to "take into consideration" the applicants' submissions and that equates to a higher standard of obligation than "having regard to".

(c) The applicants rely on the decision of Finlay - Geoghegan J. in North Wall Property Holding Company Ltd. v. Dublin Docklands Development Authority [2008] IEHC 305, where, at Para. 60 she considered that a person who has property rights that could be affected by a decision taken should be given the opportunity of making submissions and having those submissions considered.

(d) The applicants argue that there is nothing in the documents relied upon by the respondent to show the submissions were given reasonable consideration.

6. The respondent's response is as follows: -

(a) Reference in s. 31 (7) (c) of the P and D Act provides that not later than two weeks after receipt of a notice by the Minister of intention to issue a direction, the manager of the relevant planning authority is obliged to publish notice of the draft direction which shall state the reasons for the draft direction, that a copy of the direction may be inspected and that written submissions may be made to the planning authority during the two week period which shall be taken into consideration by the Minister before a direction is made. The respondents suggest that this provision should be read in the light of s. 31 (8) which provides that the manager shall prepare a report on any submission under subs. 7 (c) which report is then to be furnished to the Minister. Further, subs. 9 is relevant in that the report is to

summarise the views contained in the submissions. The respondents argue that a very full summary of the submissions was furnished to the minister and no prejudice arose to the applicants by reason of the fact that the full text of the submission had not been furnished and indeed the applicants have not pointed out any specific prejudice. Further, it is for the applicants to establish that the Minister failed to consider the applicants' submissions.

The respondents rely on the following case law: -

(i) In *O'Brien v. An Bord Pleanala* [2017] IEHC 773, Costello J held that the board was not required to expressly engage with each individual submission and suggests that this applies equally to a s. 31 direction.

(ii) In *Langford v. An Board Pleanala* 12th March 1998 (McGuinness J.) the court accepted that there was a rebuttable presumption of validity of a decision and act of a public authority exercising statutory powers and duties, and stated that the onus of proof lies squarely on the applicant.

(b) Under s. 31 (11) the Minister is to consider the report furnished and any submissions made to him by the elected members and as the managers' report did include full submissions on the part of the applicants it was not necessary for the Minister to respond to the views expressed in the submissions.

(c) The Minister was fully engaged in the entirety of the process and accordingly would have been aware of the prior submissions made by the within applicants which were similar in substance to the submissions made by them to the Minister in this portion of the process.

(d) In *McEvoy v. Meath County Council* [2003] 1 IR 208, Quirke J. was discussing the obligation "to have regard to" and expressed himself satisfied that this duty "is to inform itself of and give reasonable consideration to . . ." The respondents therefore argue that the wording of "have regard to" is similar to "take into consideration".

Discussion relating to failure to have regard to the applicants' submissions

7. It is noted from the letter of the 28th September 2017 to the chief executive that the Minister indicated that he had carefully considered the report of the chief executive and by definition therefore he indicated that he had considered the summary as contained in that report of the submissions of the applicants.

8. Given that the onus of proof is squarely on the applicants to demonstrate that notwithstanding that there was no reference to the applicants' submissions in the direction

or cover letter of the Minister and the given jurisprudence referred to in legal submissions, in particular having regard to the fact that a rebuttable presumption of validity exists, I am satisfied that the applicants' burden of proof has not been discharged.

Failure to give reasons

9. The applicants' arguments are: -

(a) The stated reasons within the Minister's direction relate to the deletion of the red map and the setback requirements but there is no mention whatsoever of the yellow map.

(b) The stated reasons amount to the necessary proof to intervene by issuing the draft direction but do not amount to reasons for adopting the yellow map.

(c) The applicants refer to *Connolly v. An Bord Pleanála* [2016] IEHC 624 where the court considered the purpose of reasons which was to understand the decision made, to know whether or not grounds existed to challenge same and to enable the court to engage with the judicial review process. The Supreme Court summarised the fact that it was for the decision maker to take into account relevant matters and to disregard irrelevant matters. In considering reasons, it is the view of the reasonable observer on a reasonable inquiry in determining whether or not the reasons requirement of a decision maker was properly observed.

(d) The fact that the Minister may not have had a problem with the yellow map is not a reason according to the applicants to include the yellow map in the direction to the local authority.

(e) The applicants refer to the judgment of Clarke J. in *Christian & Ors. v. Dublin City Council* (No.1) [2012] 2 IR 506 when the court observed that though there was no general duty to give reasons in respect of general policy the means of implementation of that policy (also referred to as the nuts and bolts of the policy) did give rise to a duty to give reasons as this had the potential to impact on the rights of individuals.

(f) The applicants argue that there is nothing to suggest that reasons were given for adopting the yellow map within the decision of the Minister or indeed within the development plan of the local authority.

(g) By rejecting the red plan, it could not be said that the yellow plan was thereby reinstated.

(h) In *Tristor v. Minister for the Environment, Heritage and Local Government* [2010] IEHC 397, Clarke J, indicated that the respondent must provide reasons not only for its intervention but for the type of intervention selected. During the course of his judgment, Clarke J. indicated: -

"What the Minister is entitled to do is to specify the measures that need to be taken to ensure that any failure to comply with the Act is remedied. . . . The Minister was obliged to afford some appropriate level of ability to make representations to all interested parties as to the precise measures which he ought to have imposed in order to remedy the situation."

(i) The Minister is not constrained by s. 31 to revert to the yellow plan.

(j) The chief executive said that there is an evidence base for the 2011 map. This informed the revisions to be made to the 2017 map, and amendments were made to reflect this policy. There is no similar statement in respect of the yellow map.

(k) The applicants argue that as there was no change in the landscape character then the identity of the areas which could accommodate wind farms should have been similar to the 2011 map. However, the 2017 map was vastly different in that it reduced substantially the areas considered to be preferred areas for wind farm development - there were four areas identified in 2011 whereas there is only one area identified in the yellow map directed to be implemented by the Minister.

10. The respondent resists the applicants' arguments as follows: -

(a) It is necessary to read the Minister's direction together with his two prior submissions to the local authority in connection with the process of formulating the development plan and it is clear from a reading of the direction and cover letter both dated the 28th September 2017, together with the prior submissions made by the Minister bearing date 17th November 2016 and the 5th May 2017, that the Minister did not have a difficulty with the yellow map save insofar as it incorporated the 1.5 km setback.

(b) The Minister has a limit on his powers under s. 31 and he is not a planning authority and cannot engage in policy but rather has a supervisory role. Therefore, the adoption of the yellow map was appropriate given that in the Minister's submissions of the 17th November 2016 when the yellow map was proposed together with the setback of 1.5 km the Minister only objected to the 1.5 km setback.

(c) The respondent referred to the judgment of Clarke J. in *Tristor* and suggests that it is a matter for the Planning Authority to determine which of the range of possible strategies that could be pursued are included in a development plan and relies on this judgment to the effect that the Minister is not entitled to impose an alternate strategy, in particular in the light of the fact that it is clear from the submissions of the 17th November 2016 that his only difficulty at that time was the yellow map incorporating the setback distance. In this regard, in *Tristor*, Clarke J. stated that it is only if the strategy as set out is non - qualifying, that the Minister can intervene.

(d) The respondents say that the test as mentioned in *Connolly* aforesaid and previously in *Christian* is that of the reasonable observer.

(e) The respondent relies on the Laois County Development Plan methodology identified in Appendix 5 of the draft plan as supporting the yellow map.

(f) The applicants' argument relies on a compare and contrast exercise with the 2011 plan which is not justified in the circumstances as the 2017 to 2023 development plan is a standalone document.

(g) In *Sandyford Environmental Planning and Road Safety Group Ltd. v. Dun Laoighaire Rathdown County Council*, [2004] IEHC 133 a judgment of McKechnie J. of the 30th June 2004, the court indicated that the mere fact that stated reasons were a repetition of objective A does not make the reason invalid per se if otherwise that is not the case. (The respondents have fairly identified that the comment was made in an entirely different context to the within context (see Para. 45 of that judgment) nevertheless the rationale that reasons can be valid with respect of two different portions of a given process is relied on).

(h) It is clear from Part 4 of Appendix 5 of the draft development plan and the methodology therein identified, that reasons do exist within the context of the development plan for the yellow map, namely extent of capacity for more wind farms because of the developments to date; the option for solar renewable energy and tourism promotion among other matters (matters which are not included in the 2011 WES). In this regard the respondent argues that this different methodology provides an evidence base which underpins the yellow map.

(i) The respondent points to s. 10 (8) of the P and D Act to the effect that: -

"There shall be no presumption in law that any land zoned in a particular development plan (including a development plan that has been varied) shall remain so zoned in any subsequent development plan."

to support the fact that the applicants have no expectation as to what zoning for wind development would occur in the 2017 - 2023 development plan and the proposed compare and contrast exercise suggested by the applicants is flawed and is made in the face of s. 10 (8) above.

(j) Appropriate reasons are to be found in reason 3 in respect of the yellow map, namely that the planning authority had been advised in the Minister's submissions of the 5th May 2017, of the Minister's opinion in which it is suggested it is clear that the Minister was looking for the Planning Authority to revert from the red map to the yellow map without a setback.

(k) The respondent refers to Christian at Para. 76 where it is indicated that if the formal document refers to other documents then reasons can be contained within those other documents. In addition, Para. 82 of that judgment is relied on where it is stated that a draft development plan is itself a reasoned document.

Discussion of failure to give reasons

11. In *O'Donoghue v. An Bord Pleanala* [1991] ILRM 750, at p. 757, Murphy J. stated that: - " It has never been suggested that an administrative body is bound to provide a discursive judgment as a result of its deliberations ."

12. In my view, it is clear from the Minister's submissions of the 17th November 2016 and the 5th May 2017, when read together that the Minister was in favour of the yellow map and removal of the setback distances for the purposes of compliance with statute and guidelines.

13. Furthermore, I am satisfied that in order to ascertain reasons and the nature of same, it is necessary to read the entirety of Appendix 5 as dealing with the wind energy strategy of Laois County Council rather than highlighting small portions and taking same in isolation. In that appendix, it is mentioned that certain methodology has been used in or about developing the

wind energy strategy and this coupled with the balance of Appendix 5, does in my view, set out a rational basis for the incorporation of the yellow map.

14. Although there may be no change to the landscape character of Co. Laois, nevertheless clearly there is a change to the landscape character assessment policy of Laois County Council and this of itself identifies a change from that which prevailed when formalising the 2011 map.

15. I agree that having regard to s. 10 (8) of the P and D Act, that a compare and contrast approach is not the relevant mechanism to assess the giving of reasons or the rationale behind the wind energy strategy. Notwithstanding that the draft plan refers to the 2011 map, I am not satisfied that reference in the draft development plan to the 2011 map thereby constrains Laois County Council to explain in detail any changes in the 2017 map over the 2011 map, although as aforesaid, I am satisfied that the methodology changes and the matters identified in that section of Appendix 5 do support the view that the policy of Laois County Council has changed over that which prevailed in 2011.

16. In p. 4 of appendix 5 of the draft development plan for 2017 - 2023, it is stated that the document is to clarify the Council's policy towards renewable energy development in the county. The applicants lay considerable stress on p. 22, where it states: - "Having regard to the landscape character assessment policies, amendments have been made to the areas to reflect these policies."

17. The applicants have suggested that there has been no change to the landscape and nevertheless a substantial change to the policies in 2017 over that which prevailed in 2011. It is not in my view possible to rely solely on the quoted sentence above to understand the policies which are included in the development plan for 2017 - 2023, but rather it is necessary to have regard to the entirety of the Appendix to inform oneself as to the policies of Laois County Council with regard to wind energy strategy and this of course includes the fact that it is stated that the methodology has been primarily informed by a number of considerations including existing and approved wind farms, capacity potential for solar energy, available wind data and transmission networks, settlement patterns, population densities, relevant environmental, tourism promotion and landscape policies in the development plan.

18. I am not satisfied that the applicants can succeed in a challenge to the Minister's direction by reason of an assertion that no reason was provided for the adoption of the yellow map (in circumstances where I am satisfied that having regard to the entirety of the Minister's

direction and cover letter as well as his prior submissions of November 2016 and May 2017, sufficient reasons have been furnished to understand the decision and to know whether or not grounds of challenge exist and to enable the court to engage with judicial review).

There are no reasons / irrationality

19. This aspect of the applicants' grounds overlaps substantially with the suggested ground that no reasons were afforded and accordingly the foregoing paragraphs 9-18 remain relevant to the applicants' irrationality argument.

The applicants' arguments

20. Central to the applicants' submissions in respect of a failure to have any reasons for the decision and in particular the incorporation of the yellow map in the Minister's direction is the fact that the yellow map differs from the map which was part of the 2011 - 2017 development plan without an explanation for the changes. The applicants argues that neither the respondent nor Laois County Council provided a rational explanation for the yellow map. Based on the comparisons between the 2011 situation and that of the yellow map in 2017, the applicants identifies the following examples of irrationality:

(i) Four preferred areas were identified in the 2011 map whereas there is only one identified in the 2007 map, notwithstanding the assertion that the maps were drawn up on the basis of the same criteria without explanation.

(ii) There were changes to the areas open for consideration without explanation or without any change to the landscape character assessment.

(iii) The WES (wind energy strategy) policies are identical but the maps have changed.

(iv) There is now available a transmission network which makes wind farming more suitable particular to lands owned by Pinewood, however this availability has not resulted in any increased area identified either as a preferred area or an open to consideration area.

(v) It is argued that there is no explanation in the landscape character assessment identifying changes in the treatment to the maps whether physical policy or designation.

(vi) There is a ban on contour heights of over 225 m OD without explanation.

21. The respondent counters: -

(a) The identification of areas suitable for wind farms is a matter for planning policy with limited scope for intervention by the Minister under Article 31 (1) subs. A - D.

(b) The principles in *O'Keefe v. An Bord Pleanála & Ors* [1993] 1 IR 39 apply to the policy decision of the county council. In that case, the decision impugned was to the effect that the board having considered the evidence submitted was satisfied that the erection and operation of the station and ancillary facilities as proposed would not be contrary to the proper planning and development of the area provided that the development is undertaken in accordance with the conditions specified. The court was satisfied that the decision coupled with the detailed conditions attached and the reasons for each of same was an adequate discharge of the board's statutory duty to state the reasons for its decision. In the course of his judgment, Finlay C.J. stated: -

"What must be looked at is what an intelligent person who had taken part in the appeal or had been appraised of the broad issues which had arisen in it would understand from this document, these conditions and these reasons."

(c) In the 2006 Wind Energy Guidelines (exhibited in the replying affidavit of Neil Cussen on behalf of the respondent of the 30th April 2018 at Para. 12) the objective of the Wind Energy Development Plan should set out objectives to secure the maximum potential from the wind energy resources commiserate with supporting development that is consistent with proper planning and sustainable development. The identification on the maps of the key areas where there is significant wind energy potential and where subject to the criteria such as design and landscape planning, natural heritage, environmental and amenity considerations, wind energy development will be acceptable in principle. The respondent argues that based on this objective it is clear that a development plan is not just for the purposes of maximising wind energy but must have regard to other matters such as permissions already granted and the sustainable development of the county which is in effect a balancing exercise for the Planning Authority. In accordance with *O'Keefe* aforesaid such planning policy can only be set aside if there is no basis for the decision made. At p. 71 of Finlay C.J.'s judgment in *O'Keefe* it was indicated that the court could not interfere with the decision of an administrative decision making authority merely on the grounds that it is satisfied on the facts as found it would have raised different inferences and conclusions or that the case against the decision

made by the authority was much stronger than the case for it. At p. 72, Finlay C.J. indicated that: -

" . . it is necessary that the applicant should establish to the satisfaction of the court that the decision-making authority had before it no relevant material which would support its decision."

(d) The respondent argues that there is no substance to the applicants' argument in respect of irrationality as the rationale and methodology is within the development plan namely Appendix 5.

(e) It is clear from the submissions of the Minister to the local authority during the earlier portion of the process, that the Minister thought that the setback and the red map constituted a breach of the statutory provisions and the guidelines whereas it is also clear that subject to a deletion of the setback, the yellow map did not constitute such a breach.

(f) The Minister's role is confined to remedying the non - compliance with the P and D Act therefore it is not the Minister's function to substitute a map which he would prefer over that which was previously supplied by the planning authority namely the yellow map, subject to the removal of that which offended the statutory requirements and guidelines namely the setback provision.

Discussion of no reasons/irrationality

22. In my view, it is clear from the introduction to Appendix 5 that same was for the purposes of clarifying the policy in respect of renewable energy and therefore it appears to me that it is necessary to review the entirety of Appendix 5 when considering such policy which would therefore include the methodology section of Appendix 5.

23. Furthermore, it appears to me that the applicants are incorrect in their submissions to the effect that there has been no change advised in respect of the landscape character assessment policy of the county council in particular, if one compares the methodology identified in the earlier plan with the 2017 Appendix 5.

24. The applicants' arguments are premised on a review of the identification of the preferred areas by looking solely at the sentence contained in p. 22 of Appendix 5 which states: -

"Having regard to the landscape character assessment policies, amendments have been made to the areas to reflect these policies."

25. The applicants argue that the landscape character assessment has remained the same and that may be the case, however it is clear that the sentence above relates to the landscape character assessment policies as opposed to merely the landscape character or an assessment thereof independently of the policies. It is also clear from the above quoted sentence that in fact there is a change required in the map in the 2011 plan to reflect these policies. Therefore, the sentence identifies a need for a change in the 2017 plan over that in the 2011 plan based on the 2017 policies.

26. As mentioned aforesaid, I am of the view that it is not an appropriate exercise to compare the 2017 plan with the 2011 plan on the basis that it is incumbent upon the development authority to explain any changes. I accept that the development plan of 2017 - 2023 is a standalone document, notwithstanding that, within the development plan there is various reference to the 2011 plan and its map created for the purposes of its wind energy strategy.

27. In the circumstances I am not satisfied that the applicants have discharged the burden of proof identified by Finlay C.J. aforesaid in O'Keefe for the purposes of securing an order of certiorari on the basis that the Minister acted irrationally in directing the incorporation of the yellow map subject to the removal of the setback area.

Failure to have regard to s. 15 of the Climate Change and Low Carbon Act 2015

28. The applicants' complain that the respondent erred in law in failing to have regard to s. 15 of the 2015 Act which requires relevant bodies to have regard to the furtherance of the national transition objective and the objective of mitigating greenhouse gas emissions. It is argued that there is no evidence in the map or the Minister's direction or the associated materials that the Minister had any regard to s. 15 aforesaid and as a consequence it is argued that the yellow map greatly reduces the potential for wind energy production in Co. Laois and therefore flatly contradicts the objectives identified in s. 15.

29. The respondent argues that this is not correct. It is accepted that in s. 15 (1) of the 2015 Act, a relevant body shall in the performance of its functions have regard to the furtherance of the national transition objective and the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State. The respondent refers to reason 2 (a) for making the direction which states: -

"2 (a) The Laois County Development Plan 2017 -2023 does not meet with the requirements of s. 10 (2) (n) of the P&D Act as the effect of the policy EM7, s. 6.1 (Appendix 5) and revised wind energy map 1.6.5, is to severely undermine and negate practical measures to adopt to climate change and reduce reliance on fossil fuels."

30. S. 10 (2) (n) of the P and D Act 2000 aforesaid refers to the promotion of sustainable settlement and transportation strategies including the promotion of measures to reduce energy demand in response to the likelihood of increases in energy and other costs due to long term decline in non-renewable resources, reduce anthropogenic greenhouse gases emissions and address the necessity of adaptation to climate change.

31. The respondent argues that the Minister clearly had regard to greenhouse gas emissions and climate change and therefore it is clear that consideration in accordance with s. 15 of the 2015 Act was incorporated within the Minister's direction.

32. In addition, the respondent argues that in the Minister's submission to the county council on the 5th May 2017, in seeking to move the red map from the proposed development plan it is stated inter alia that the plan identified in the red map: - " . . . would be significantly in conflict with national and regional policy objectives to support the development of wind energy as a crucial component of meeting Ireland's commitments to reducing greenhouse gas emissions and increasing renewable energy resources."

33. In the circumstances, in my view, having regard to the foregoing there is no substance to the applicants' argument that the Minister failed to have regard to s. 15 of the 2015 Act.

34. In accordance with the judgment of Kearns J. in *Evans v. An Bord Pleanála* [2004] WJSC-HC 4037 (7th November 2003) the fact that s. 15 of the 2015 Act was not recited in the direction does not mean that proper consideration was not given. In the *Evans* matter, it was argued that the board had failed to take into account government policy, however, at p.23 of the judgment it was held non-recitation of the guidelines was not sufficient evidence on the part of the applicants to demonstrate that the respondent failed to have regard to the guidelines.

Failure to have conducted a strategic environmental assessment (SEA)

35. The applicants' argue that the respondent erred in failing to carry out a SEA or screening for SEA of the yellow map. In the statement of grounds, it is argued that this requirement arises as a consequence of Directive 2001/42/EC. However, as argued by the respondent, this portion of the applicants' claim herein does not involve an assertion that the Minister failed to transpose the EU directive into Irish law. The respondent further attempts to avoid this ground on the basis of the provisions of Regulation 3 of SI 691 of 2011 dealing with the

content of the grounds in a Statement of Grounds for judicial review, namely that the applicants should state precisely each ground giving particulars where appropriate and identifying in respect of each ground the facts or matters relied upon as supporting the ground.

36. In submissions, the applicants rely on Regulation 9 of SI 435/2004. It is argued by the applicants that in the definition section "competent authority" includes the Minister's direction as competent authority is defined as an authority or authorities which are jointly responsible for the preparation of a plan or programme or modification to a plan or programme. Thereafter there is a mandatory requirement under s. 9 (1) to carry out an SEA of all plans and programmes prepared for agricultural, forestry, fishery, energy, industry, transport, etc. and which sets out the framework for future development. The applicants argue that reference to energy incorporates reference to the Wind Energy Strategy within the Laois County Development Plan and therefore is captured by the requirement in Regulation 9 to conduct an SEA.

37. The respondent's argument is to rely on Regulation 3 (2) of SI 435/2004 which provides inter alia that the provisions of Articles 9 - 17 thereof shall not apply to the making or variation of a development plan under s. 9 - 12 of the P and D Act 2000.

38. S. 10 of the P and D Act 2000 refers to a development plan which should set out the overall strategy for proper planning.

39. S. 31 (17) provides that the Minister's direction is deemed to have immediate effect and its terms are considered to be incorporated into the plan, or, if appropriate, to constitute the plan. The respondent therefore argues having regard to the foregoing that it is clear that Regulation 9 of SI 435/2004 does not relate to the Minister's direction.

40. The applicants counter that if there is any ambiguity in the respondent's argument relative to the non - application of Regulation 9 of SI 435/2004, then the provisions should be read as applying to the Minister.

41. No such ambiguity has been pointed out and in my view the argument presented by the Minister aforesaid is correct.

Appropriate assessment

42. The applicants argue that an appropriate assessment pursuant to Regulation 42 of SI 477/2011 has not been carried out nor has there been a screening for same. It is argued that there is a breach on the part of the Minister to comply with Regulation 42.

43. The respondent argues that in fact this obligation must be read in the light of Regulation 42 (20) which states :-

"For the avoidance of doubt, notwithstanding that the making, adoption and consent procedures relating to plans and projects which fall under the Planning and Development Acts 2000 and 2011 do not come within the scope of these regulations . . .".

Accordingly, SI 477 of 2011 does not apply to the Minister's decision which as aforesaid under s. 31 (17) forms part of the County Council Development Plan.

44. The applicants accept that there is no challenge to the implementation or transposition of the EU Directive and therefore in order to avoid the implications of Regulation 42 (20) as requiring the Minister's directive to be preceded by an appropriate assessment or screening for same, it will be necessary to find some ambiguity in the effective exclusion provided in Regulation 42 (20), however, again, no such ambiguity has been identified by either the applicants or indeed by the court.

Conclusion

45. In the circumstances I am not satisfied that the applicants have discharged the burden required to secure an order for certiorari and other relief, and accordingly the relief claimed in the statement of grounds is refused.

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Petition "No to Coolglass windfarm" change. Org

<https://www.change.org/p/no-to-coolglass-windfarm/dashboard>

Effecting the townlands of Fossy Upper, Aghoney, Gorreelagh, Knocklead, Scotland, Brennanshill, Monamanry, Coolglass, Crissard and Kylenebehy, and surrounds including Wolfhill, The Swan, Timahoe and Luggacurran Co. Laois. Our mission is to put a stop the development of a proposed industrial wind farm Statkrafts Coolglass Windfarm and related works. Co. Laois. There are 13 proposed Wind Turbines with height of 180m each, making this the tallest wind farms in Ireland. Each turbine will stand approximately 180 metres with a blade spin diameter of 80m . Making them 60 metres taller than the Spire.

This project will cause the complete destruction of one of the most historical and environmentally important areas in Laois

Our aim is to protect our beautiful community and the families living within it. Protect our thriving wildlife population which includes Peregrine falcons, Kestrels, Ravens, buzzards, Barn owls ,badger, fox, red squirrel, pine marten, hare , and many species of bats, flora and fauna. We want to raise awareness and give the people a voice.

We are not against renewable energy, however, we will not stand for the environmental and archaeological destruction of our community and areas which are proudly part of Ireland's Ancient East.

Our Concerns include:

Noise Pollution - The proposed turbines will tower a mere 700 meters from the front doors of local residents, The noise of turbines of such scale would be unbearable for the many families who have lived on the peaceful untouched hillside for generations.

Flicker Effect - The flickering shadow cast by the sun shining through the moving turbines would affect houses all across the area over an estimated distance of up to 2km.

Destruction of Historical Sites and Monuments - The proposed development site is 1km from prehistoric sites including the monolithic structure 'The Druids Altar', And within 5km of over a hundred archeological significant sites like the beautiful village of Timahoe with its fantastic Round tower and rolling hills setting and The Dún of Clopook an ancient and mythological significant hilltop fort.

Environmental Impact - The devastation caused in the past by the construction of these gigantic wind turbines in Scotland and Galway, to name a few, has had a detrimental effect on the local environment. Not only was visible damage inflicted on the landscape, but also irreparable damage to the source of natural water supplies, the effects of which are still ongoing.

Property Devaluation - Properties in the area and the surrounding areas will severely suffer as a result of the destruction of our natural environment, making many houses unsaleable.

We need your support. These lands must be protected for our future generations to enjoy as they were for millennium before If we don't put a stop to this now who is to say where this will ever stop.

Name City State Postal Code Country Signed On

Sinead

Delaney Ireland 2023-10-05

John Fleming Ireland 2023-10-05

Colma O'Neill Townsville 4810 Australia 2023-10-05

karen Minchin Athy Ireland 2023-10-05

Sandra

Knowles Athy Ireland 2023-10-05

Kate Knowles Athy Ireland 2023-10-05

Paddy

Fleming Dublin D02 Ireland 2023-10-05

Stephen

Ainsworth Dublin Ireland 2023-10-05

David Day athy Ireland 2023-10-05

Laura O'Brien Kildare 00000 Ireland 2023-10-05

Genie Foley Co.kildare Rep.Ireland Ireland 2023-10-05

Sinead

Bennett The swan Ireland 2023-10-06

Eamon

McGrath Portlaoise Ireland 2023-10-06

Stephen

Murphy athy 0000 Ireland 2023-10-06

Rachel Henry Dublin 0000 Ireland 2023-10-06

Anne Rogan Ireland 2023-10-06

Wilson

Noronha Kilkenny Ireland 2023-10-06

Sarah Tuite Dublin Ireland 2023-10-06

Shirley

Rowan County Laois 2280 NSW Ireland 2023-10-06

Orla Treacy Laois Ireland 2023-10-06

Kiara

Geoghegan Cork Lithuania 2023-10-06

Ciara Moore Dublin Ireland 2023-10-06

melanie

dunne Dublin Netherlands 2023-10-06

Brid Brophy Ballylinan KL 1 Ireland 2023-10-06

John Kennedy Ireland 2023-10-06

Jane

Chanders 2034 Ireland 2023-10-06

Breda

Kennedy Ireland 2023-10-06

Orla Taaffe shoreham by

sea Bn43 5af Ireland 2023-10-06

jennifer kelly Ennistymon Ireland 2023-10-06

Aine Meredith Ireland 2023-10-06

hilary healy Kiltegan - Ireland 2023-10-06

Ken clare Dublin Ireland 2023-10-06

Martin Carroll Ireland 2023-10-06

Caroline

Brennan Ireland 2023-10-06

Rebecca

Clooney Ireland 2023-10-06

Audrey

Chapman Mayo Ireland 2023-10-06

William

Carroll Rathangan Ireland 2023-10-06

Philip Rafter Portlaoise Ireland 2023-10-06

Erin Mchugh Longmont Colorado 80503 US 2023-10-06

Caitlin Walker Dublin Ireland 2023-10-06

Conal

Brennan The Swan Ireland 2023-10-06

Mel Dunne Netherlands 2023-10-06

Siobhan

Glynn Ireland 2023-10-06

Orlaigh

Fennin Kildare Ireland 2023-10-06

-Marilyn -Mc

Gonagle Dublin Ireland 2023-10-06

Kenneth

Cullen Cork Ireland 2023-10-06

Michelle

McCarthy Ireland 2023-10-06

Louise Owens Ireland 2023-10-06

Agnes Doolan Banagher Ireland 2023-10-06

Áine Ní

Cheannabhái

n

- - Ireland 2023-10-06

FLORINA

COSMA Ireland 2023-10-06

Paul Jones St Albans AL3 Ireland 2023-10-06

Beth DuBerry Ireland 2023-10-06

Donna

Donnelly Glasgow G4 UK 2023-10-06

Mícheál

Fleming Greece 2023-10-06

Patricia

Sharkey Donegal d6 Ireland 2023-10-06

Sarah

McEllistrim Co Kildare Ireland 2023-10-06

Aine Hurley Athy Ireland 2023-10-06

Peter Delaney Portlaoise 2000 Ireland 2023-10-06

Deirdre Mc

Donald Carlow Ireland 2023-10-06

Emily

Fitzmaurice Drogheda A92 Ireland 2023-10-06

Sean Clancy Longford default Ireland 2023-10-06

Gwen

Stephens Sydney 2000 Australia 2023-10-06

Richard

Grace Cork Ireland 2023-10-06

Des Elmes Newbridge Ireland 2023-10-06

Bernadette

Kiely

Meelick co

Clare V94 Ireland 2023-10-06

Andrew

Sheppard

Gorey,

County

Wexford

None Ireland 2023-10-06

Daiva

Danilkevicien e

Ireland 2023-10-06

Adam

Kennedy dublin d7 Ireland 2023-10-06

Carmel

Greene Ireland 2023-10-07

Siobhan

Connolly Dublin Ireland 2023-10-07

Àine Nolan Dublin Ireland 2023-10-07

Katya Feeney Kildare 00353 Ireland 2023-10-07

Maeve Quinn Offaly Ireland 2023-10-07

Deirdre Walsh Ireland 2023-10-07

Zach Sherry Ireland 2023-10-07

Matt McGrath Rathangan Ireland 2023-10-07

Marie Lee Wexford 00 Ireland 2023-10-07

Mags Oxley Ireland 2023-10-07

Norma

Gleeson Tipperary Ireland 2023-10-07

Ellen Moloney Clare Ireland 2023-10-07

Carol Kane Ireland 2023-10-07

Mark Walsh Portlaoise Ireland 2023-10-07

Hillary

Meaden Cochrane POL Canada 2023-10-07

Mary Higgins Ireland 2023-10-07

miya

matsushita London nw3 3rx Ireland 2023-10-07

Siobhán Kerry Portlaoise Ireland 2023-10-07

Nicholas

Mulhall Portlaoise R32 Ireland 2023-10-07

Sue Smith Dublin Ireland 2023-10-07

Nikita T Dublin Ireland 2023-10-07

maya A Ireland 2023-10-07

Áine McIntyre Dublin Ireland 2023-10-07

Rebecca

Deegan Portlaoise Ireland 2023-10-07

James Galvin cork Ireland 2023-10-07

Mary Ann

Coyle Glasgow Scotland G73 2DE UK 2023-10-07

Peter DuBerry Dublin Ireland 2023-10-07

Agneis Quinn Bellshill ML4 UK 2023-10-07

Alan smith Ireland 2023-10-07

Greg Long Cork Ireland 2023-10-07

Jessica

DuBerry-

Mahon

Dublin Ireland 2023-10-07

Anastasia

Wilkie Tauranga Ireland 2023-10-07

Gavin Free Ireland 2023-10-07

Claire

McGrath

Lerma de

Villada 52005 Mexico 2023-10-07

Ann Mitchell Bettystown Ireland 2023-10-07

Cathy

McGuinness Laois Ireland 2023-10-07

Megan Ahern Ireland 2023-10-07

Mark DuBerry Ireland 2023-10-07

Peter Joyce Ireland 2023-10-07

Helen Doherty Lucan K78 Ireland 2023-10-07

Joe

O'Donovan Ireland 2023-10-07

Lala Slay Ireland 2023-10-07

Emily

Rainsford Dublin Ireland 2023-10-07

Paul

Robinson Goole England DN14 UK 2023-10-07

Lucy

McNamee Swords Ireland 2023-10-07

Tom Ryan Ireland 2023-10-07

William Oxley Dublin Ireland 2023-10-07

Helen

Schwertl Ireland 2023-10-07

Shannon

Griffin Ireland 2023-10-07

David Duberry Ireland 2023-10-07

marian

knowles portlaois Ireland 2023-10-07

Christina

Fitzgerald Kildare Kildare Ireland 2023-10-07

Christine

McCarthy Brooklyn New York 11234 US 2023-10-07

Regina

Phalangee Ireland 2023-10-07

Kevin

Fitzpatrick Portlaoise Ireland 2023-10-08

Yaroslav

Marunych Ireland 2023-10-08

Sean Wilkie Dublin Ireland 2023-10-08

lorraine nevin Ireland 2023-10-08

Henry

Ainsworth Goole England DN14 UK 2023-10-08

Joey O

sullivan Ireland 2023-10-08

Bridget

Leonard Laois Ireland 2023-10-08

Ciarán Ó

Cearnaigh Bradford BD8 UK 2023-10-08

Emma Dixon Trim Ireland 2023-10-08

Anna

Ainsworth Hull HU9 UK 2023-10-08

Cian Kelly Ireland 2023-10-08

Jimble

Jambles Ireland 2023-10-08

ciara odonnell Ireland 2023-10-08

Aisling Lewis Ireland 2023-10-08

shaun byrne Ireland 2023-10-08

Gav Nev Ireland 2023-10-08

Liam O

Connor Ireland 2023-10-08

Zoë Doyle Carlow Ireland 2023-10-08

Michael

Collins Ireland 2023-10-08

Laura Lanigan Roscommon Ireland 2023-10-08

Una Murphy Ireland 2023-10-08

ARTUR

ZEMAN Dublin Ireland 2023-10-08

Rory Laxton Ireland 2023-10-08

Michaela

Doran dublin Ireland 2023-10-08

Hannah

Cooke Dublin Ireland Ireland 2023-10-08

James

Knowles Ireland 2023-10-08

sandy morris Ireland 2023-10-08

Maureen

Ryan Galway Ireland 2023-10-08

Deirdre

Houlihan Dublin Ireland 2023-10-08

Aleksandra

Schisler-

Grzesiak

Dublin Ireland 2023-10-08

Heidi

Hamilton Dublin Ireland 2023-10-08

Slavomira

Pokorna Ireland 2023-10-08

pikaenerd

1500 Ireland 2023-10-08

Sean clarke Ireland 2023-10-08

Philip Mitchell Ireland 2023-10-08

Ioan

Alexandru

Nedelea

Bacu Ireland 2023-10-08

Stephen

Noonan Galway Ireland 2023-10-08

Alain

González Ireland 2023-10-08

Maria

Loughlin Ballyshannon n/a Ireland 2023-10-08

Grainne