Noonan Linehan Carroll Coffey LLP

SOLICITORS
54 North Main Street
Cork

T12WY2D
www.nlcc.ie
DX 2044 Cork

Telephone: 021 4270518
Fax: 021 4274347
Email: jnoonan@nlcc.ie

The Secretary,
An Coimisiún Pleanála,
64 Marlborough Street,
Dublin 1.

~ *By Email – appeals@pleanala.ie & Post* ~

23rd July 2025
Our ref: 23408-24/JN/PW
Your ref: PL04.322787

RE: **Applicant:** Tullacondra Wind Energy Ltd
Our clients: Tullacondra Turbine Awareness Committee

Dear Sir/Madam,

We thank you for your letter dated 30th June 2025 enclosing copy Appeals and wish to respond on behalf of our client.

Noise
A number of the appeals received are concerned about noise nuisance. We support them in those concerns.

For that reason we wish to bring the Commission's attention to directly relevant findings of the High Court regarding the 2006 Wind Energy Development Guidelines ("WEDG 2006"), given the Applicant's reliance on that document.

The High Court has found that WEDG 2006

- does not assess nuisance risk from wind turbine noise,
- does not assess Amplitude Modulation ("AM")
- does not assess or control for other characteristics likely to cause nuisance such as low frequency noise.

It is furthermore clear from the judgments in the cases of *Webster and Rollo & Shorten and Carty v Meenacloghspar (Wind) Ltd* [2024] IEHC 136 and *Webster and Rollo & Shorten and Carty v Meenacloghspar (Wind) Ltd* (No.2) [2025] IEHC 300 and in *Byrne & Moorhead v ABO* [2025] IEHC 330, copies of which were submitted with our appeal, that AM is a common feature of wind turbine noise ("WTN").

We submit that it is unsafe for the Commission therefore to accept assurances to the contrary offered by the Applicant.

For a clear setting out of the Court's findings on the limitations and inadequacies of WEDG 2006 please see the following quotations taken from the second judgment of the Ms Justice Egan delivered in the two linked cases *Webster and Rollo & Shorten and Carty v Meenacloghspar (Wind) Ltd* (No.2) dated 27th May 2025:

Judge:

Lacuna: WEDG 2006 does not address thump AM

84. Second, even within its own four corners, the Carr comparative exercise contains a serious lacuna. It addresses only one of the two omissions just discussed. It addresses only the failure of WEDG 2006 to account for AM values. It does not address the second omission, the failure to take account of the added intrusion of thump AM.

WEDG 2006 was not drafted with nuisance in mind

85. Third, the principal judgment does not state that were it not for these two specific omissions, the WEDG 2006 noise limits (with which, for the sake of argument, the principal judgment accepted the WTN complied), would be the determinant of nuisance. WEDG 2006 was not drafted with nuisance in mind.

WEDG 2006 was not drafted with AM in mind

86. Fourth, WEDG 2006 was also not drafted with AM in mind. The IOA RM and Phase 2 Reports, postdate WEDG 2006 by a decade. The IEC, upon which the defendant now places reliance, postdates WEDG 2006 by almost two decades. There is no logic in bolting penalties for AM developed 10 to 20 years later onto the noise limits set out in WEDG 2006. Indeed, this is clear from the IEC itself, which states that any adjustments to noise limits "are typically defined in local regulation" (emphasis added). WEDG 2006 does not define, or even contemplate, adjustments to noise limits by reference to AM values. WEDG 2006 is an entirely different methodology. WEDG 2006 is a round hole into which the defendant seeks to force a square peg, the Phase 2 penalties scheme.

WEDG 2006 is under review and takes no account of low frequency WTN

87. Fifth, if the Phase 2 penalty scheme is to be bolted on to any methodology as the determinant of nuisance, then why logically should that methodology be WEDG 2006? The defendant's answer to this question appears to be: WEDG 2006 is still relied upon in the planning and development of windfarms. I accept that s. 28 of the Planning and Development Act 2000 continues to require planning authorities and An Bord Pleanála to have regard to ministerial guidelines such as WEDG 2006. However, that does not imbue WEDG 2006 with talismanic significance for the purposes of a nuisance assessment.

88. WEDG 2006 is currently under review. There is evidently a range of potential methodologies that the Government might adopt to replace it for planning and development purposes. There is no reason to assume that new Guidelines will ape the "flat" night time noise limit of 43 dB (whether including AM penalties or not). Still less can one assume that new Guidelines will apply this noise limit irrespective of the frequency of the WTN or of background noise levels. Indeed, I would have thought that this is unlikely.

89. *There is therefore no reason why this court should accept that a "flat" night time noise limit of 43 dB (whether including AM penalties or not) is the determinant of nuisance. The principal judgment observes that the current direction of travel in wind energy planning guidance ("the modern planning approach") is towards setting decibel limits, combined with a penalty for character such as AM. I accept that the Carr comparative exercise, which combines WTN levels and AM penalties, reflects this aspect of the modern planning approach. However, the principal judgment goes on to observe that the modern planning approach incorporates limits on low frequency noise. For example, unlike WEDG 2006, draft WEDG 2019 limits low frequency noise. This important criterion is absent from the Carr comparative exercise.*

WEDG 2006 takes no account of night time background noise levels

90. *Sixth, the modern planning approach in publications such as draft WEDG 2019, is to take background noise levels into account in setting WTN limits. Draft WEDG 2019, notes that the principle of a 5 dB emergence has been regarded as good practice for many years.*

91. *WEDG 2006 appears to consider that WTN should assessed by reference to background noise levels. It provides:*

"Noise impact should be assessed by reference to the nature and character of noise sensitive locations.... Noise limits...should reflect the variation in both turbine source noise and background noise with wind speed."

92. *Ultimately, however WEDG 2006 appears to allow the planning authority to select a higher WTN day time noise limit of up to 45dB if considered appropriate (save in "low noise environments"). It also imposes a "flat" 43dB noise limit at night, regardless of background noise levels.*

93. *By contrast, draft WEDG 2019 generally limited WTN to 5 dB above background noise levels at night time as well as during the day time (irrespective of whether the windfarm is in a low noise environment). In a typical quiet rural site this would tend to limit night time WTN to levels below 43 dB for low to moderate windspeeds. However, this modern planning approach is not reflected in the defendant's comparative exercise.*

94. *In short, the Carr comparative exercise translates AM values into an estimated decibel level for regulatory purposes but ignores all other important characteristics of the WTN such as low frequency noise, emergence over background noise and the time of occurrence of the AM. I am not convinced that such a methodology remotely accords with the modern planning approach or with best practice in the assessment of WTN nuisance.*

S. 28 is not the yardstick of nuisance

95. *Seventh, the defendant relies on Nagle v. An Bord Pleanála [2024] IEHC 603 ("Nagle") as endorsing WEDG 2006 for all purposes, including nuisance assessment. I cannot see how Nagle greatly assists the defendant. It is true that Humphreys J. held that WEDG 2006 remains the relevant ministerial guideline for the purposes of s. 28. However, he also stated in the course of his judgment at paras. 99-101, that a planning permission granted in accordance with WEDG 2006 would not be immune to a nuisance action by virtue of that fact.*

96. *I agree with Humphreys J., Planning guidelines, such as WEDG 2006 (and individual planning permissions) predict that, as regulated, WTN will not be an unwarranted intrusion on amenity. However, that prediction may transpire to be incorrect in a given location. This may be because the WTN displays unanticipated characteristics such as substantial low frequency noise or thump AM. It may be because low background noise at a sheltered location such as this has not been fully considered in the noise limits set. The WTN nuisance in this case is attributable to a combination of factors, only some of which have been assessed by the comparative exercise now undertaken by the defendant. Although I repeat that a plaintiff who asserts nuisance will bear a heavy burden if the WTN is in accordance with up to date and robust planning guidelines, which are responsive to the relevant WTN characteristics complained of, none presently exist, and the Carr comparative exercise is a world away from meeting that lacuna.*

WEDG 2006 does not address most of the Defra criteria

97. *Eighth, the defendant argues that because neither this court nor the plaintiffs have identified a specific WTN decibel limit (whether combined with AM penalties or otherwise) as marking the boundary of nuisance, it had "no option" but to devise a comparative exercise which applies the "flat" night time limit of 43 dB set out in WEDG 2006.*

98. *As stated in the principal judgment a robust assessment of a WTN nuisance complaint cannot be conducted without reference to factors such as those discussed in the Defra methodology. In all its evidence in the course of module 1, the defendant addressed only three of the ten criteria derived from Defra ("the Defra criteria"): the level of WTN, the time of day or night when the WTN occurs and, to a limited extent, the sensitivity of the complainant. The disputed new evidence partially addresses one of the ten Defra criteria, the "type of noise", by presenting average AM penalties. However, this evidence does not address other important aspects of the noise "type" such as variability, regularity and predictability of the noise. Further, the defendant has not considered at all the following seven important Defra criteria: whether any aggravating characteristics are present in the WTN (the spectral content of the WTN and whether thump AM is present); the characteristics of the neighbourhood where the WTN occurs; the exceedance of WTN over background noise; the impact of the WTN on basic needs such as sleep; how easily the WTN can be avoided; what measures could reduce or modify the WTN; and finally the duration and how often the WTN occurs.*

End of quotations.

These findings of the High Court must inform and guide the assessment of potential noise impacts from the proposed development by the Commission.

Archaeology

We note the comments on archaeology in the appeal by Donal and Sheila Gayer. Our clients endorse what they say and wish also to bring to the attention of the Commission several enclosed photographs taken from the 1832-37 Historic Environment Viewer, National Monuments on Archaeology.ie.

Neither the megalithic tomb or cairns around it were mentioned in the EIAR report or the Cork County Council Archaeology report.

These historic monuments are located within 2km of the proposed site and less than 250 metres from the local road L5523 (Proposed HGV and LGV haul route). The ringfort as stated on the appeal is hugging this local road.

This omission of historical sites is surprising. These monuments are very well documented in history books and are clearly evident on the attached maps which the developers and the archaeologists would have had access to.

We ask the Commission to take these photographs and the location of this historic site into account when making a decision on the above appeal.

Conclusion
For these reasons and for the reasons and on the grounds set out in our Appeal, in the referenced materials and in other observations and appeals sent to you, our clients ask the Commission to refuse the application.

Yours faithfully,

Joe Noonan
NOONAN LINEHAN CARROLL COFFEY LLP