

Shane Fahy, Curlawn, Caberlistrane, Co Galway
Michael Farren, Derrymore, Caberlistrane, Co Galway
John Browne, Navan, Caberlistrane, Co Galway

To: An Coimisiun Pleanala

64 Marlborough Street

Dublin 1 D01 V902

We are writing to express our concerns and objections regarding Planning Application No: 323699 submitted by RWE Renewables Ireland Limited, with offices at Unit 5 Desart House Lower New Street County Kilkenny. for the development of Shancloon windfarm, in various townlands in County Galway.

On planning application No:323699 to An Coimisiun Pleanala by RWE Renewables Ireland Limited, with offices at Unit 5 Desart House Lower New Street County Kilkenny. for a Grid Connection for Shancloon Windfarm. in the townland of Derrymore and Curlawn. RWE have outlined on the Maps submitted on the planning application that they will Lay cables on rosd number L-6225 for a total distance of 116 metres.

We wish to emphasise that we are the beneficial owners of the lands on and adjacent to which the planned development intends to excavate and lay ducts and cables with the removing of excess soil from the road

We must stress that as beneficial owners of lands through which the grid connection is proposed to pass through, we have not once been contacted by RWE Renewables Ireland about this development demonstrating that public consultation has not adequately been carried out.

We, the landowners of Folio numbers GY24514F, GY47804F, GY20918F own the land extending to the centre of the road as indicated on the maps available at Landdirect.ie. (Reference high court ruling Daly v Kilronan windfarm on ownership of land beneath the road and trespass)

We the owners of these Folio's have not and will not give permission to RWE to lay conduit or cables on the road adjacent to these plots of land

We also want to emphasise that we have not provided our consent to the applicant for the excavation, ducting and cable laying, or any activities that involve our lands, or for the erection of site notices. As the landowners, it is essential for us to protect our rights, and we believe that granting permission for this development will constitute a trespass on our property.

The property rights of landowners are protected under the Constitution, and these rights are further protected under tort law. The tort of trespass to land is committed where a person, without lawful reason or justification, intentionally or negligently enters onto, or remains on, land in the possession of another person.

Therefore, we urge An Coimisiun Pleanala to be satisfied that by granting permission for this development that they are facilitating a wrongdoing in the form of a trespass.

RWE have not acquired the lands in question nor obtained consent to lodge this planning application. WE would like to note, inter alia, there is case law establishing that the principle of ownership beside or under a public road or river "owns the soil to the middle part of the road or river unless the soil has been acquired by the local authority..."(Kenny J In Holland v Dublin County Council [1979] 113 ILTR.

Even if the applicant obtains a road opening license, it does not confer any right or interest in the soil, as clarified by Baker J In Daly V Kilronan wind farm limited, [2017] IEHC 308. As the purpose of the licence is to provide consent for an action which would otherwise be an offence under the roads Act 1993. The statutory body is the only identity in Ireland that can legally carry out this project by following strict procedures laid out in law. For example, one tool that may be used is accruing the rights to the lands is via compulsory purchase orders. In this regard ESB should be the named applicant.

If the applicant plans on using powers of the statutory body to avoid trespassing our lands, and in addition to the fact that this development in essence is an electricity generating facility, this application is therefore a component of a government public plan or programme for energy to which the SEA Directive applies. This is also compounded by the fact that this development will receive payments for any electricity produced by Renewable Energy Feed in Tariff which is administered under the control of the Electricity Supply Board (ESB) being the system owner and Eirgrid the System operator. This application is therefore further demonstrated to be a component of a government public plan or programme for energy to which the SEA Directive applies. (Ref. ECJ ruling C24/19 and European Parliament Directive 2001/42-en-eur-Lex) This would mean there should be an environmental assessment including examination of the need for this development and which must be subject to public participation under Article 6. The public have the right to be informed of all options and reasons given for the decision made.

In conclusion, Planning Application 323699 should be refused as it cannot be considered by the Coimisiun Pleanala at this time for the reasons outlined above.

Signed:-

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