

## Submission

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My name is Christina Burke, and I live in Tygreenan Barnaderg, Tuam Co Galway and approx. 1.6 kms from a host of turbines.

- I am a Barrister since 2005, and Law Lecturer. I am also local land owner, and racehorse breeder, and my lands are directly proximate to significant density of wind turbines proposed.
- On my lands at Barnaderg, in the quiet unspoilt countryside I raise my family of three with my Husband Martin Durack, who is also a Barrister.
- We also at our farm breed and raise national hunt horses, our horses are registered with Wetherby's Ireland. My family farm has been passed own though generations.
- Developments such as this prevent my right to divest my property, so that, any of my children cannot in the future apply for planning permission and are therefore contrary to the proper planning and sustainable development of the area, in accordance with Chapter 4 of the Rural Living and Development Guidelines of the County Galway Development Plan.
- It should be noted at the outset that Developments that fall under the SID criteria, have a direct impact on the quiet and peaceful enjoyment of my property and further represent a direct attack on my property rights under Art. 40.3 and 40.5 of the Constitution. In addition any such development, in the absence of statutory and legislative underpinning would most certainly give rise to a successful nuisance action in the High Court, and I refer the decision in *Byrne and Moorhead 2025 IEHC 330*, in that particular decision, the Applicants, were forced to bring nuisance actions and seek injunctive reliefs as against ABO Energy Ireland and Wexwind Ireland<sup>1</sup>. That action was successful.
- The Order of the High Court saw an award of significant compensation to the Applicants for the adverse and the permanent shutdown of the wind turbines at para 3, the High Court held, that there was undisputed evidence of the direct impact of the turbines, and the nature of that interference impacted on the Applicant/Plaintiff's use, comfort and enjoyment of their property rights namely their home.
- The annoyance, discomfort inconvenience, and distress suffered as a result of the nuisance of the turbines were comepesatable. At para 306 of the decision "*there was no real escape from the noise for the reasons described earlier by the experts. Secondly the interference was particularly acute, in terms of the sleep disturbance, ..... next they both experienced the loss of substantial enjoyment of their garden as a place to rest and relax and carry out the ordinary tasks of maintaining and enjoying a garden*"

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<sup>1</sup> Byrne and Moorhead 2025 IEHC 330

- At para 307 Mr. Stigwood described the noise as *“extreme and one of the worst cases of wind turbine noise, he had come across”*. At Para 308, the Judge held *“there is substantial interference in the ordinary use and enjoyment of a person’s home for a sustained period of time”*
- I urge the Board to have regard to the decision in Byrne and Moorhead 2025 IEHR, as being a recent decision of the High Court, which is cognisant and accepting of the expert evidence on wind turbine noise and the nuisance they pose when located in close proximity to individuals’ houses uses.
- I also refer the Board to Chapter 4 of the Rural Living and Development Guidelines. The Guidelines support the role of rural areas, in maintaining, a stable population base, through a strong network of villages and small towns and the policy outlined envisages the strengthening local communities, by supporting a resilient rural economy and the sustainable management of land and resources. It is my respectful submission that the imposition of this development in the local area will have the complete opposite effect and contra outcomes.
- The proposed development is in one of the most rural Counties in Ireland, with over 78 % of the population living in rural areas.
- In Chapter 2. Of the aforementioned Guidelines at the heading Core Strategy. The Settlement Hierarchy identifies a number of villages, and further the general rural countryside of Galway County Council’s objective that the settlement hierarchy will facilitate the rural housing requirements of the local rural community.
- The balance between reinforcing, and strengthening, sustainable rural communities whilst protecting the rural community from over development is the key policy balance. The imposition of this development will completely distort this harmony and destroy for such a balance being feasible.
- With changing work practice, more remote working, there is an opportunity to provide alternatives for people to live and work in a rural community. The imposition of this development will adversely effect the potential that this development offers
- The Cooloo / Barnaderg area is home to a diverse range of rural pursuits and activities including but not limited to agricultural, horticultural, equine industries and local food production.
- I refer to Board to the National Planning Framework and strengthened rural economies and communities. The regional spatial and economic strategy, highlights the importance of smaller towns and villages play in the region.
- Barnaderg is a rural village providing a key function, in the provision of facilities such a places of worship, educational, housing and sport. The open countryside and the swelling hill

of Barnaderg , where one looks as far away as Croagh Patrick in Mayo, and in the Village below a region of karstic limestone, raised bog , turloughs and the ancient o Kelly Castle surrounded in Winter by a Turlough.

- 185 m turbines, would not be in the character of the proper planning and sustainable development of the area. Any turbines would tower above the hill of Killereerin, and most certainly give rise to a spate of successful nuisance actions in the High Court, but at what cost to the environment to shut down, when vast amounts of damage would already be caused to the fragile karstic landscape and its people.
- The proposed development is contrary to the existing deficiency in the roads network serving the area of the proposed development, and contrary to the proper planning and sustainable development of the Barnaderg/ Cooloo area.
- The proposed development would be partially located within habitats of high conservation value, a significant raised bog area, wet heaths a karstic limestone region , numerous turloughs and watercourses running into Lough Corrib, all part of the County ecological network .
- The County Development plan of Galway has a stated objective to minimise the impact of new developments on habitats of natural value that are the key features of the ecological network of the County.
- The proposed development would materially contravene the County Development Plan and would be contrary to the proper planning and sustainable development of the area.
- The proposed development is located within the zone of influence of areas of ecological sensitivity.
- In essence what is imposed on APC is an obligation to reach a conclusion, as a matter of certainty that the proposed development will not adversely affect the integrity of the ecological network of the Cooloo/ Barnaderg area.
- The standard to support such a conclusion is that the planning authority or the board , must satisfy itself on the basis of the complete , precise and definite findings and conclusions that no reasonable scientific doubt remains as to the absence of such effects <sup>2</sup>.
- I have examined the extensive report submitted on behalf of the Cooloo / Barnaderg Committee and there is substantial and overwhelming evidence in that report, that there are massive and insurmountable doubts and lack of scientific evidence that this proposed development would have a significant impact on the proper planning and sustainable development of the area.

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<sup>2</sup> Klaus Baltz and Hannah Heubach and An Bord Pleanála and Ors 2016 IEHC 1

- This proposed development was swept through to the Board, in the absence of SEA, as part of the Development Plan of Galway Co Co. The developer in addition has deliberately split the project, so that this board is now, in light of recent High Court case, precluded from considering any application, without considering the whole of the projects direct and indirect impact on the environment.
- There is a requirement to carry out an EIA in accordance with Irish Law and in particular the obligations imposed by Art 3 of Directive 2011/192 /EU on the assessment of the effects of certain public and private projects on the environment.
- This is a significant project, and has a direct and significant impact on the sensitive environment of the Coonoo/ Barnaderg area.
- There is also a requirement to carry out an appropriate assessment as required by Art 6 ( 3) of the Habitats Directive as implemented by Part x AB of the Planning and Development , for such developments .
- The nature and the extent of the obligation imposed by Art 3 was considered by the EJEU in commission v Ireland Case C - 50/09 at Para 37<sup>3</sup> , " In order to satisfy the obligation imposed by Art 3 , the competent authority may not confine itself to direct and indirect effects on certain factors , but must also access the in an appropriate manner , in light of each individual case . This obligation involves and examination of the substance of the information gathered as well as a consideration of the expediency of supplementing it, if appropriate with additional data .
- In accordance with Art 4 , the direct and indirect effects of the proposed development on
  - Human Beings , Flora and Fauna
  - Soil, water, air, climate, and landscapes .
  - Material Assets and cultural heritage.
- It is further submitted that the construction of the wind turbines, themselves and the connection to the grid connection and associated works and ancillary projects such as substation and battery station, is a single project and not two separate projects and that before planning consent for the former it is necessary that the cumulative effects of the combined or single project ought to have been carried out. In circumstances where that has not happened no decision to grant permission should be granted.
- The developer did not include an assessment of the cumulative effects of stage 2 of the development namely but not limited to the connection to the national grid and the application submitted the EIA in particular as part of its application does not include a statement of the environmental effects associated with the second stage .<sup>4</sup>
- " In that way the , connection to the National Grid is fundamental to the entire project , and in principle at least the cumulative effect of both must be accessed in to comply with the Directive ( para 27 )

<sup>3</sup> Commission v Ireland EJEU C – 50/09

<sup>4</sup> O Grianna and An Bord Pleanala 2015 IEHC 248

- The objective of SEA is to provide a broader or more holistic or systematic approach to environmental assessment of the effects of certain plans and programmes on the environment, which include development plans such as the development plan of Galway County Council.
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- Art 3 of the SEA directive requires an SEA to be carried out for plans and programmes which are likely to have significant effects. This assessment should be carried out in accordance with Art 4-9 of the directive.
- In Thybaut it was held that the fundamental objective of the SEA Directive is to ensure that plans and programmes, which are likely to have significant effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption.
- The Galway County Development plan 2022 to 2028 contains a "Local Authority Renewable Energy Strategy"
- The project sets out detailed provisions for renewable energy development in the County including wind and sets out details of how the county will contribute to and is consistent with national renewable energy policies.
- The assessment and detailed spatial distribution of wind energy in the county was developed by reference to a wide range of environmental factors.
- Wind Energy, has a myriad of legal challenges to face, and in the first instance was not subject to a ministerial direction and therefore must be presumed to comply with applicable national and regional policies, and best international practice.
- Wind energy is also subject to a Supreme Court determination, where the Supreme Court in *Coolglass v An Bord Pleanala*, currently before the Supreme Court to possibly overturn the Judgment of Justice Humphries, where he improperly applied EU law, as applying to a private Wind Energy Company and in the same Judgment seeks to usurp the unique function of the Board as being the guardians of the proper planning and sustainable development of the area. In addition, the Supreme Court will most certainly guard against attack the right to unjust attack the right to the peaceful enjoyment of the right to property and be cognisant of the recent High Court decision of *Byrne and Moorehead v ABO Ireland 2015 IEHC* and wind energy stopped in light of severe impact on public health and the peaceful enjoyment of property.
- The project was subject to strategic environmental assessment and as such it sets the framework for future development consents under the EIA Directive for projects falling within the sectors set out in Article 3(2)(a) of the SEA Directive which includes energy, industry, and town and country planning.

- The current project clearly falls within the scope of the type of development consents which must apply the framework set out in the development plan as a matter of EU law.
- Table 11 envisages that no new wind energy projects will be developed in areas designated as “generally discouraged” up to 2030 and that 38 MW of capacity will be permitted for the repowering of existing sites in these areas.
- First while the project may in principle be compatible with national policies, it is not compatible with the development plan. The Board must not grant permission in material contravention of the Development Plan and no function exists to comply with S 15 of the Climate Action Development Act 2015 as amended . In fact a stricter requirement falls upon the board to not grant permission in material contravention of the Development Plan having before it not having clear , complete, and definite findings and conclusions, from examinations and analysis that this project would not be in material contravention of the development plan and a direct impact on the environment.
- The development plan is compatible with national policies, since this is a statutory requirement. There was no intervention from the OPR or Minister in relation to the LARES nor did the applicant (or group company Neon in the preparation of the development plan), neither was there any judicial review of the development plan for being inconsistent with national policy.
- The Board does not have jurisdiction to determine such a matter and is bound by the development plan.
- The developer cannot simply state that they disagrees with the policies and objectives of a development plan including zoning objectives.
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- The zoning objectives of the development plan cannot be set aside, in the absent of complete and unchallenged scientific evidence that Wind Energy does not have a direct impact on the environment, this is put beyond doubt in recent decisions of the High Court.
- In light of the above the Board is precluded from granting permission since it is contrary to and materially contravenes the Galway County Development Plan 2022 to 2028, including a material contravention of the zoning objective for the area.
- The Board is also precluded from granting permission by the SEA Directive and the AA Directive.
- It is contrary to the SEA directive to apply a plan or programme which sets the framework for development consents under the EIA Directive which was adopted in breach of the SEA Directive. The SEA directive is directly applicable to Irish Law and Policy and can be relied upon in legal proceedings as an against this development .

- The 2006 Wind Energy Guidelines were not subject to SEA and are therefore inapplicable.
- The 2019 Draft Revised Wind Energy Guidelines are irrelevant as a matter of Irish law and in any event the conclusion of the SEA remains pending. Therefore these guidelines are also inapplicable.

### **Conclusion**

**I would strongly urge the board to refuse this permission .**

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