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AN BORD PLEANÁLA	
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ABP-	_____
09 SEP 2021	
Fee: €	_____ Type: _____
Time: _____	By: <u>post</u>

email: dan@vpshields.ie

Our Ref: DJS/DO/DER1130001

Your Ref:

Date: 08 September 2021

**Re: Application of Gort Wind Farms Limited made the 21st August 2020 for
Substitute Consent under Section 177 of the Planning and Development Act 2010**

Dear Sirs,

We act on behalf of the Derrybrien Bog Cooperative being a Cooperative Society in the process of formation comprising Turbary Owners, Bog Plot Owners and Turf Cutters at Derrybrien Bog. We are instructed on behalf of this group to make a submission in respect of the current application for Substitute Consent to being made by Gort Windfarms Limited. We make our observations under the following headings:

1. **Notice issued by Galway County Council.** We understand that the current application is being made on foot of notice served on the applicant by Galway County Council in respect of the matter. We understand that a preliminary observation in respect of this procedure has already been lodged with you and that no response has been made. It is noted that previously in 2010 Galway County Council issued a notice to Gort Windfarms in relation to this development which required them to make an application for Substitute Consent. It is noted that this notice was challenged at the time by the solicitors acting for ESB and that subsequently there was communication between the Department of the Environment, Galway County Council and the ESB as a result of which a Statutory Instrument was passed and the said notice was withdrawn. The circumstances in relation to that matter were the subject matter of various applications under the Freedom of Information Act and full and complete disclosure of the correspondence has never been made in relation to that withdrawal of the notice. It is incumbent upon An Bord Pleanála to identify the provisions of the relevant legislation

which permit the service of a second notice in respect of Substitute Consent in the circumstances.

2. **Exceptional Circumstances.** It is noted that the application (albeit not the advertisements of the application) rely on there being exceptional circumstances to justify the making of this application. The nature of those exceptional circumstances has not been made clear to the public. It is also noteworthy that the arguments made by the lawyers acting for the ESB in previous Supreme Court Hearings relied heavily on the proposition that there were no exceptional circumstances which justified the Notice requiring application for Substitute Consent in respect of this development. It is the view of our clients that no exceptional circumstances exist justifying this application.
3. **Public Consultation.** There is a fundamental requirement as reiterated in the recent case of *An Taisce v An Bord Pleanála* that there would be effective opportunity for public consultation in relation to applications of this kind. The entirety of the circumstances in relation to the matter required to be taken into account to assess whether or not public consultation has been provided for. This includes the appropriateness or otherwise of the advertising of the making of the application and ensuring that there is clarity for the public in relation to the nature of the application. It is submitted that having regard to the entirety of what has occurred in relation to this matter that there is no such clarity and that the nature of the public consultation has been vitiated by the failure to address these issues. Specifically we would point out the following:
 - a) In 2004 the ESB issued a document purporting to being preparatory to the making of a Planning Application in relation to the rehabilitation of the environment after the landslide precipitated by their activities. No such consultation ever took place.
 - b) The relevant Local Authority under their obligations belatedly issued the notice requiring Substitute Consent in 2010. This was vehemently resisted by the ESB and they also resisted the making available of their activities around that Substitute Consent. As a result that notice was withdrawn and again no public consultation took place.
 - c) The making of this application was initially advertised almost a year ago and while no luminous documentation was lodged with An Bord Pleanála. Submissions were made to An Bord Pleanála in relation to the appropriateness of entertaining the application at that time and notwithstanding their submissions the application was received and simply put on hold. The legitimacy of this procedure has never been tested. Subsequently when the An Taisce decisions necessitated same legislation was passed as part of completely unrelated legislation endeavouring to solve the problems created by the An Taisce decisions for An Bord Pleanála procedures. It is now proposed that this existing application lodged under the original legislation will be dealt with under the amended legislation. There could scarcely be a procedure

more designed to prevent and obscure the possibility of genuine public participation in the consultation process.

- d) It is submitted that the advertising of the renewal of this current application has served to create further confusion and mistrust among the local population and it is submitted that the advertising is inadequate in the context of the nature of the application currently before the Board.

4. **Adequacy of Environmental Impact Assessment.** It is submitted that the current Environmental Impact Assessment upon which this application is grounded is inadequate and does not address the issues. The technical assessment submitted by the European Commission in respect of the EIA clearly demonstrates this. Insofar as our clients are concerned this is of particular importance with regard to the devastating impact of the recent activities of Gort Windfarms and the ESB in relation to the turbary at Derrybrien Bog. It is submitted that the recent actions of Gort Windfarms in respect of interfering with turf cutting is symptomatic of the arrogance and disregard with which the ESB and their agents have treated the local population since the inception of this Windfarm and the failure of the EIA to address the impact on turbary is only surprising if one ignores the history to date of the actions of the applicant in relation to the local environment. Any risk of slippage and subsidence at Derrybrien Bog can have occurred only as a direct result of the activities in the construction and operation of the Windfarm. Not only did the ESB and its agents create the circumstances which caused the landslide and the devastating consequences that resulted from it but they ignored entirely the rights of local turbary owners at the time and there was multiple trespass on various bog plots which necessitated further proceedings against the applicants in relation to such trespass. There was a complete disregard for the rights of the local and cavalier attitude towards the environment throughout the entire project. As a result of this to date our clients have lost the use of the bog for the current year and their future rights in respect of the cutting of turbary are being placed in severe and grave doubt. In those circumstances the complete failure of the Environmental Impact Assessment to deal in any way with this aspect of the matter is such that the current application cannot proceed and must be rejected.

Our clients consider that there are numerous other matters which arise but in view of the timeframe which they are faced with and having regard to the issues which are pointed out above in relation to public consultation we are making this submission on an emergency basis and reserve the right to raise further issues when we have had an opportunity to consider in detail all of the issues involved.

Yours faithfully,



VP Shields Solicitors