



[2026] IEHC 453

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2026.0000074]

IN THE MATTER OF SECTION 50, 50A AND 50B OF THE PLANNING AND
DEVELOPMENT ACT 2000

BETWEEN

STEPHEN KEOGH, TOM QUIRKE AND RURAL RESIDENTS WIND AWARE AND
ENVIRONMENTAL GROUP

APPLICANTS

AND
AN COIMISIÚN PLEANÁLA

RESPONDENT

AND
EDF RENEWABLES IRELAND LIMITED

NOTICE PARTY

(No. 2)

<i>Date of impugned decision:</i>	<i>27 November 2025</i>
<i>Date proceedings commenced:</i>	<i>20 January 2026</i>
<i>Date of main hearing:</i>	<i>27 April 2026 & 5 May 2026</i>
<i>Date of principal judgment:</i>	<i>29 May 2026</i>
<i>Date of leave to appeal hearing:</i>	<i>6 July 2026</i>
<i>Date draft judgment circulated:</i>	<i>7 July 2026</i>

JUDGMENT of Humphreys J. delivered on Friday 10 July 2026

1. Non-binding ministerial guidelines provide that turbine layout and separation distances should “ensure that any proposed layout of wind turbines takes into account the development potential of an adjoining site for a similar development”. The inspector here, correctly, did not view this clause as relevant where there was no proposed adjoining wind development. The applicants implausibly attempt to read the guidelines out of context to impose a need for separation distances even when this is **not** required to “ensure that any proposed layout of wind turbines takes into account the development potential of an adjoining site for a similar development”. The question now is whether a reading that is so completely at variance with the text, in the context of guidelines that are non-binding to begin with, and that are phrased in non-mandatory language (“in general”), gives rise to any basis to pursue a failed claim for *certiorari* further at appellate level.

Judgment history

2. In *Keogh v. An Coimisiún Pleanála* [2026] IEHC 339 (Unreported, High Court, 29 May 2026), I upheld the validity of the permission and dismissed the proceedings with no order. The applicants now seek leave to appeal.

Procedural history

3. Following the substantive judgment, the applicants delivered legal submissions seeking leave to appeal, dated 17 June 2026. The opposing parties delivered replying submissions and the matter was heard on 6 July 2026.

4. Judgment was reserved at the end of that hearing. I would like to record my thanks to all of the lawyers involved for their unfailingly courteous, professional and helpful assistance. As I have previously sought to make clear, insofar as any points advanced are not being accepted in this or any other given judgment, that is solely to do with the inherent merits of such points and is no reflection on those instructed to convey such points, a distinction that most certainly should be, and I believe generally is in fact, self-evident to all concerned.

5. On 7 July 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 15, 195 to 198 and 204 of Practice Direction HC 137 issued by the President of the High Court, to give an opportunity to address matters such as errors/ambiguities on the basis set out below.

6. Parties are required to:

- (i) Read the draft or have their legal representatives if applicable do so on their behalf.
- (ii) Identify any matters falling within the below.
- (iii) Positively communicate with the court in writing in response to the draft by the deadline specified, such responses to be emailed to the court and uploaded to ShareFile, either stating that they have no comments or setting out the comments.
- (iv) Carry out the foregoing without delay – the draft judgment procedure is a concession which parties can engage with but must do so with immediate dispatch, discipline

and focus – it is not the opening of a new phase of the litigation that gives rise to “an entitlement to elaborate procedures at every point” (to use a phrase of O’Donnell C.J. (Dunne, Charleton and Baker JJ. concurring) in *O’Sullivan v. Health Service Executive* [2023] IESC 11 (Unreported, Supreme Court, 10 May 2023) at para. 39); and still less should the procedure invite the perhaps “serious error, to which lawyers are prone, to approach any such case on the tacit assumption that only procedures which approximate to a criminal trial are fair, and anything which departs from that is somehow dubious” (O’Donnell J. (Clarke C.J., McKechnie, MacMenamin, Dunne JJ. concurring) in *O’Sullivan v. Sea Fisheries Protection Authority* [2017] IESC 75, [2017] 3 I.R. 751, [2018] 1 I.L.R.M. 245, 780).

- (v) Keep the draft confidential. Draft judgments are not public domain materials and, while they can be shared between the lawyers concerned and their clients, subject to the following, it is inappropriate for any person to refer to them for any purpose other than to assist the court in relation to the finalisation of the formal judgment. Therefore anyone with information as to the text, content or proposed outcome of any draft is required not to publish or transmit such information to others save solely by way of private transmission for the legitimate purposes of assisting in the finalisation of the judgment and subject to a similar restriction on any recipient. Trial participants should take reasonable steps to keep drafts confidential. On this topic, see *Attorney General v. Crosland (No. 2)* [2021] UKSC 58, [2022] 1 W.L.R. 367, [24/01/2022] T.L.R. 1 (Briggs, Kitchin, Burrows, Rose, Arden SCJJ) which discusses why restriction on publication of draft judgments is in the interests of the administration of justice; see also *Baigent v. Random House Group Ltd* [2006] EWHC 1131 (Ch), [2006] 5 WLUK 45, (2006) 150 S.J.L.B. 603 (Smith J.); *R. (Counsel General for Wales) v. Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181, [2022] 1 W.L.R. 1915, [2022] 4 All E.R. 599 (Sir Geoffrey Vos MR; Davies and Dingemans LJ. concurring); *Public Institution for Social Security v. Banque Pictet & Cie SA and others* [2022] EWCA Civ 368, [2022] 3 WLUK 291, [2022] B.L.R. 349 (Carr LJ; Jackson and Simler LJ. concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

7. The foregoing constitutes an immediately effective direction of the court to the parties and anyone having notice of the draft judgment with effect from the date of circulation of the draft.

8. The responses should not be to reargue the substance (submissions to that effect will be disregarded) but are confined to matters such as:

- (i) informing the court as to whether the party prefers an alternative to a formal written judgment as proposed, and if the party so considers, whether that party considers that the entire matter or some specified part of it can be disposed of (a) by order without a reasoned judgment, or (b) by *ex tempore* reasons without a written judgment;
- (ii) informing the court, assuming that the court proceeds with a formal judgment, as to whether the party wishes to propose any corrections to the draft such as:
 - (a) any apparent typographical, factual, legal or other errors in the draft;
 - (b) any apparent ambiguity or other matter in the draft that could unnecessarily multiply issues or complicate the further processing of the matter;
 - (c) any redaction of personal or other information that a party wishes to request;
 - (d) in the event that the court proposes to refer to any matter (whether factual, legal (including reference to authorities or other legal material), *obiter* comment or otherwise) not referred to at the hearing, any submission as to why such reference is not relevant or otherwise should not be included or as to why such matter if included should not lead to the proposed conclusion;
 - (e) any other matter in the draft judgment that the party considers should be omitted;
 - (f) any matter not included in the draft judgment that the party considers should be added to it (including where the party considers that procedural, factual or legal points not set out in the judgment should be addressed or where the party considers that reasons for any aspect of the decision are not set out or where an overall ground is disposed of but detail of the ground or sub-ground is not expressly addressed, or where an issue arose the disposition of which would be *obiter* but on which the party concerned considers that there would be a benefit in the court expressing a view);
 - (g) any other proposals as to the wording (as opposed to substance) of the decision if the proposed wording causes any issue for a party for any identified reason; and

- (iii) assisting the court by providing views on such matters if any on which views are specifically invited in the draft judgment.

9. In particular, parties should draw the court's attention to any apparent error or ambiguity whether they have been successful on the point or not.

10. The rules of engagement in such a situation are that the draft is without prejudice to the right of the court ultimately to issue a judgment in whatever form or with whatever content it considers appropriate. It is then entirely a matter for the court as to whether to give judgment with or without amendment including any amendment that appears appropriate to the court whether arising from submissions or not. Any judgment may be given without further notice following the expiry of the specified period, whether comments are made or not. That period will not be extended save in exceptional circumstances.

11. The deadline for such comments from the parties was to be 11:00 on Thursday 9 July 2026. Responses were as follows:

- (i) applicants: no comments;
- (ii) commission: helpful pointed out a typo; and
- (iii) notice party: helpful pointed out some typos.

Leave to appeal

12. The statutory criteria for leave to appeal are familiar. Some of the major elements required for the grant of leave to appeal are as follows:

(i) The point must properly arise

- (a) The question **must fall within the pleadings**: *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála & Ors.* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024) *per* Murray J. at paras. 39 *et seq.* (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring). The issue of whether a point falls within the pleadings, as determined by the trial court, does not normally raise a point of law suitable for an appeal: see *Leech v. An Bord Pleanála* [2025] IESCDET 106 (O'Malley, Murray and Donnelly JJ., 30 July 2025) at 30 "The essential point made by the Applicant is that the trial judge granted relief quashing the decision of the Board on a basis that was not pleaded, that misinterpreted the decision of the Board granting the permission in question, and that failed to properly apply the general presumption that a decision of an administrative body is lawful. Issues of pleading and of an alleged misinterpretation of a specific administrative decision will usually be case specific and will not present issues of law of public importance. While the presumption of validity attaching to administrative decisions represents an important legal principle, the fact of that presumption and its effect are not the subject of any uncertainty and the application of the presumption to a particular decision will not usually involve an issue of law of public importance".
- (b) The question **must actually arise on the facts** and should not be launched in the abstract: see analogously *Minister for Justice and Equality v. Andrzejczak (No. 2)* [2018] IEHC 11, [2018] 1 JIC 1603 (Unreported, High Court, Donnelly J., 16 January 2018), para. 10.
- (c) The question raised **must actually have been argued** by the would-be appellant and must not be a new issue formulated for the purposes of an appeal: *GOCE Limited v. An Bord Pleanála* [2025] IEHC 43 (Unreported, High Court, Farrell J., 31 January 2025).
- (d) While not an absolute rule, the question should be determinative in some sense and **should make a difference to the outcome** – generally it should not be one which, if answered in a sense favourable to the would-be appellant, would leave the result unchanged: *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646, 2016 WJSC-HC 439, [2016] 11 JIC 1404 (Unreported, High Court, 14 November 2016); *Morehart v. An Bord Pleanála* [2025] IEHC 701 (Unreported, High Court, Farrell J., 8 December 2025) at 9. This is part of a broader principle that prolonging the process by recourse to a further instance can't be based on just identifying some shiny and interesting point – the whole thing has to be going somewhere. O'Donnell J. (Clarke and Dunne JJ. concurring) put this vividly in *Rooney v. Minister for Agriculture and Food* [2016] IESC 1 (Unreported, Supreme Court, 28 January 2016) at para. 3: "Some litigants, and not just those who represent themselves, prefer the comfort of focusing exclusively on the debatable ruling or judicial comment reinforcing a sense of grievance

rather than recognise the forest of problems in the overall case. The cycle continues and becomes almost a form of litigious perpetual motion”.

- (e) The question **must accurately reflect the judgment and must not be an addition, exaggeration or distortion** launched for the purposes of creating a case for appeal: *Monkstown Road Residents Association v. An Bord Pleanála* [2023] IEHC 9, [2023] 1 JIC 1907 (Unreported, High Court, 19 January 2023) *per* Holland J. at §9(d); *Stapleton v. An Bord Pleanála* [2025] IEHC 178 (Unreported, High Court, 1 April 2025) *per* Holland J. As put more generally by the Supreme Court in *Cooper v. An Bord Pleanála* [2025] IESCDT 96 (O'Malley, Collins and Donnelly JJ., 28 July 2025) at 15, “The applicant’s misunderstanding of the legal situation does not amount to a matter of general public importance”.
 - (f) The application for leave to appeal **should be made within time**, generally within 28 days from the order to be appealed against: *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646, 2016 WJSC-HC 439, [2016] 11 JIC 1404 (Unreported, High Court, 14 November 2016).
 - (g) The question should be specific and should identify something specific that makes a difference – it **should not be an invitation to an appellate court to write an essay** on a particular topic or engage in a discursive, roving response: *S.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 646, 2016 WJSC-HC 439, [2016] 11 JIC 1404 (Unreported, High Court, 14 November 2016); *Stapleton v. An Bord Pleanála* [2025] IEHC 178 (Unreported, High Court, 1 April 2025) *per* Holland J.
- (ii) **The point must be one of law**
- (a) The point **cannot be an essentially factual question** such as construing the import and effect of a particular decision: *Leech v. An Bord Pleanála* [2025] IEHC 157 (Unreported, High Court, 24 March 2025) *per* Farrell J.
 - (b) Relatedly, the question **should not be one of application of law to particular facts** but rather one of the substance, content and interpretation of law. Questions about the application of established principles to particular facts are not pure questions of law and are at best mixed questions of fact and law, and are generally unsuitable for appeal in such a context: *B.S. v. Director of Public Prosecutions* [2017] IESCDT 134 (Clarke C.J., O'Donnell, McKechnie, MacMenamin, Dunne, Charleton and O'Malley JJ., 6 December 2017); *per* Simons J. in *Halpin v. An Bord Pleanála* [2020] IEHC 218, [2020] 5 JIC 1501 (Unreported, High Court, 15 May 2020), para. 60; *per* Barniville J. in *Rushe v. An Bord Pleanála* [2020] IEHC 429, [2020] 8 JIC 3101 (Unreported, High Court, 31 August 2020); *per* Phelan J. in *Stanley v. An Bord Pleanála* [2022] IEHC 671, [2022] 11 JIC 2805 (Unreported, High Court, 28 November 2022); *Eco Advocacy CLG v. An Bord Pleanála, Keegan Land Holdings Limited, An Taisce - The National Trust for Ireland and Client Earth AISBL* [2024] IESCDT 62 (Charleton, Woulfe and Collins JJ., 27 May 2024); *per* Farrell J. in *Leech v. An Bord Pleanála* [2025] IEHC 157 (Unreported, High Court, 24 March 2025).
- (iii) **The point of law must be of public importance**
- (a) The question **must not be fact-specific** arising in the particular context of a particular case – rather it must transcend the facts in order to create a point of public importance: see analogously and albeit non-precedentially, *Patrick McCaffrey & Sons Limited v. An Bord Pleanála* [2024] IESCDT 145 (Dunne, Hogan and Collins JJ., 29 November 2024). See also *Leech v. An Bord Pleanála* [2025] IESCDT 106 (O'Malley, Murray and Donnelly JJ., 30 July 2025) at 30: “The essential point made by the Applicant is that the trial judge granted relief quashing the decision of the Board on a basis that was not pleaded, that misinterpreted the decision of the Board granting the permission in question, and that failed to properly apply the general presumption that a decision of an administrative body is lawful. Issues of pleading and of an alleged misinterpretation of a specific administrative decision will usually be case specific and will not present issues of law of public importance. While the presumption of validity attaching to administrative decisions represents an important legal principle, the fact of that presumption and its effect are not the subject of

- any uncertainty and the application of the presumption to a particular decision will not usually involve an issue of law of public importance”.
- (b) Advancing the proposed question **should resolve doubt rather than create doubt where none exists** – this is consistent with the views of Baker J. in *Ógalas v. An Bord Pleanála* [2015] IEHC 205, [2015] 3 JIC 2008 (Unreported, High Court, 20 March 2015) that an appeal may be necessary in the public interest to resolve doubt. But if no doubt exists, the function of the appeal mechanism is not to introduce new uncertainty into the system. *Nagle View Turbine Aware Group v. An Bord Pleanála* (No. 2) [2025] IEHC 3 (Unreported, High Court, 10 January 2025) endorsed a submission that “where the law is not uncertain, the public interest suggests an appeal is not warranted”.
 - (c) The application for leave to appeal should **engage with the rationale of the judgment being appealed against and provide a plausible basis as to why that judgment is wrong** to the level that meets the criteria for an appeal. While a leave to appeal application is in one sense premised on the view that the decision may be incorrect, that does not relieve a would-be appellant from actually engaging with the logic and reasoning of the judgment as opposed to merely repeating his or her position: see analogously and non-precedentially, *Nagle View Turbine Aware v. An Bord Pleanála* [2025] IESCDT 41 (O’Malley, Murray and Donnelly JJ., 10 March 2025).
 - (d) The fact that an official body is seeking leave to appeal is a relevant factor (*Sherwin v. An Bord Pleanála* (No. 2) [2023] IEHC 232, [2023] 5 JIC 0802 (Unreported, High Court, 8 May 2023)) but **the mere fact that the request for leave to appeal is made by an official entity does not convert a point into one being suitable for appeal** if it would not otherwise be so. As pointed out in *Stapleton v. An Bord Pleanála* [2025] IEHC 178 (Unreported, High Court, 1 April 2025) *per* Holland J., a body concerned that it is bound by a decided issue is the whole point – the system is not a one-way ratchet whereby only applicants are bound by caselaw.
 - (e) The fact that a point is “novel” is not determinative as to whether a point is suitable for the granting of a certificate, or to put matters another way, **the mere fact that a point is novel does not render it a suitable basis for appeal if it would not otherwise be so**: *Callaghan v. An Bord Pleanála* [2015] IEHC 493, [2015] 7 JIC 2405 (Unreported, High Court, Costello J., 24 July 2015). And as Hyland J. observed in *Maguire T/A Frank Pratt & Sons* (No. 2) [2023] IEHC 209, [2023] 3 JIC 1307 (Unreported, High Court, 13 March 2023) at §27: “the mere fact that an applicant for leave disagrees with a conclusion in the judgment cannot be relied upon to characterise the state of the law as being uncertain”.
 - (f) The **mere inclusion of a request for a reference to the CJEU does not convert a point into one suitable for appeal** if it is otherwise unsuitable for appeal by reason of being abstract, or not arising having regard to the findings of fact, or being an issue of application of law rather than interpretation, or due to lacking sufficient factual foundation or due to there not being any demonstrable reasonable doubt, for example: see analogously *Carrownagowan Concern Group v. An Bord Pleanála* [2025] IESCDT 8 (Charleton, Collins and Donnelly JJ., 27 January 2025); *Carrownagowan Concern Group v. An Bord Pleanála* [2025] IESCDT 9 (Charleton, Collins and Donnelly JJ., 27 January 2025).
- (iv) **The public importance must be exceptional**
If the would-be appellant establishes that there is a point of law of public importance, it **must also be established that the importance is exceptional**.
 - (v) **An appeal must be in the public interest**
 - (a) The context is the objective of the Oireachtas in seeking finality, certainty and expedition in challenges brought by way of judicial review in planning cases (*Cork Harbour Alliance for a Safe Environment v. An Bord Pleanála* [2022] IEHC 231, [2022] 4 JIC 2601 (Unreported, High Court, 26 April 2022) *per* Barniville J. at para. 32; *Freeney v. An Bord Pleanála* [2025] IEHC 36 (Unreported, High Court, 24 January 2025) *per* Bradley J.). The nature of the project and the risks of further delay are factors going to the

requirement that **an appeal must be in the public interest**: see *per* McGovern J. in *Dunnes Stores v. An Bord Pleanála* [2015] IEHC 387, [2015] 6 JIC 1805 (Unreported, High Court, 18 June 2015) at §15 and §16. See also analogously and non-precedentially *Eco Advocacy CLG v. An Bord Pleanála, Keegan Land Holdings Limited, An Taisce - The National Trust for Ireland and Client Earth AISBL* [2024] IESCDet 62 (Charleton, Woulfe and Collins JJ., 27 May 2024) at para. 24: “The Court must have regard to the potential impact upon the notice party of any further delay in these proceedings”.

- (b) Any assertion of problems in practice caused by a judgment **must be backed up with evidence**: see *Stapleton v. An Bord Pleanála* [2025] IEHC 178 (Unreported, High Court, 1 April 2025) *per* Holland J.; *Phoenix Rock Enterprises v. An Bord Pleanála & Ors.* [2023] IESCDet 97 (Dunne, Baker and Donnelly JJ., 20 July 2023) at §22 and §30 which dealt with an argument that alleged uncertainty in the law was creating alleged difficulties in practice, but rejected this on the basis that there was “no evidence before the High Court that the quarry industry was being seriously affected by the issues in the case”, and that “[t]he decision in this case was fact-specific to this quarry and it must be recalled that the role of the Supreme Court on an Article 34 appeal is not to give advisory opinions but to deal with the controversy at issue between the parties once the constitutional thresholds have been met”. See also *McCaffrey v. An Bord Pleanála* [2024] IEHC 476 (Unreported, High Court, Gearty J., 26 July 2024) at §3.7, leave to appeal refused *McCaffrey v. An Bord Pleanála* [2024] IESCDet 145 (Dunne, Hogan and Collins JJ., 29 November 2024).

13. Contextually, perhaps I can point out that if there is a solid case for leave to appeal, it will presumably be granted – see *R.A. v. Refugee Appeals Tribunal* [2015] IEHC 830 (Unreported, High Court, 21 December 2015); *B.W. v. Refugee Appeals Tribunal* [2015] IEHC 833 (Unreported, High Court, 21 December 2015); *K.R.A. v. Minister for Justice and Equality (No. 2)* [2016] IEHC 421 (Unreported, High Court, 24 June 2016); *S.T.E. v. Minister for Justice and Equality* [2016] IEHC 544 (Unreported, High Court, 14 October 2016); *R.A. v. Refugee Appeals Tribunal (No. 3)* [2016] IEHC 671 (Unreported, High Court, 21 November 2016); *B.S. (India) & Anor. v. Minister for Justice and Equality & Ors. (No. 3)* [2020] IEHC 485, [2020] 10 JIC 1202 (Unreported, High Court, 12 October 2020); *Dublin City Council v. An Bord Pleanála (No. 2)* [2021] IEHC 34 (Unreported, High Court, 28 January 2021); *Waltham Abbey Residents Association v. An Bord Pleanála* [2021] IEHC 597, [2021] 10 JIC 0702 (Unreported, High Court, 7 October 2021); *Sweetman v. An Bord Pleanála (Sweetman XVII) (No. 2)* [2021] IEHC 662, [2021] 10 JIC 2601 (Unreported, High Court, 26 October 2021); *Save Roscam Peninsula CLG v. An Bord Pleanála (No. 2)* [2022] IEHC 328, [2022] 6 JIC 0903 (Unreported, High Court, 9 June 2022); *Joyce-Kemper v. An Bord Pleanála (No. 5)* [2022] IEHC 349 (Unreported, High Court, 10 June 2022); *Kerins v. An Bord Pleanála (No. 5)* [2023] IEHC 280 (Unreported, High Court, 25 May 2023); *Coolglass Wind Farm Ltd v. An Bord Pleanála* [2025] IEHC 1 (Unreported, High Court, 10 January 2025); *Heavey v. An Bord Pleanála (No. 2)* [2025] IEHC 311 (Unreported, High Court, 30 May 2025). It does not necessarily assist matters to certify superfluous issues that do not meet the necessary criteria.

The proposed question of alleged exceptional public importance

14. The applicants’ proposed question is as follows:

“Whether the provisions of §.5.13 of the Wind Energy Development Guidelines 2006 (WEDG 2006) provide guidelines for the separation distances as between turbine-to-turbine on a specific development site.”

The guidelines

15. It will be useful to recall the provisions of the guidelines. The context, as with any planning instrument, is *In re XJS Investments Ltd* 1986 WJSC-SC 1935, [1986] I.R. 750, [1987] I.L.R.M. 659, [1986] 12 JIC 1102 (McCarthy J., *nem., diss.*), where it was held that “Certain principles may be stated in respect of the true construction of planning documents ... They are to be construed in their ordinary meaning as it would be understood by members of the public, without legal training as well as by developers and their agents, unless such documents, read as a whole, necessarily indicate some other meaning”.

16. The full text of section 5.13 is (emphasis added):

“5.13 Windtake

The question of windtake should be dealt with at scoping stage and/or during pre-application discussions, **to ensure that any proposed layout of wind turbines takes into account the development potential of an adjoining site for a similar development.**

In general, to ensure optimal performance and to account for **turbulence and wake effects**, the minimum distances between wind turbines will generally be three times the rotor diameter (=3d) in the crosswind direction and seven times the rotor diameter (=7d) **in the prevailing downwind direction**. Bearing in mind the requirements for optimal performance, a distance of not less than two rotor blades from adjoining property boundaries will generally be acceptable, **unless by written agreement of adjoining landowners to a lesser distance**. However, where permission for wind energy development **has been granted on an adjacent site**, the principle of the minimum separation distances between turbines in **crosswind and downwind directions** indicated above should be respected."

17. The context of there being an adjoining wind development is alluded to in para. 17.17 which in turn expressly links back into para. 5.13 (emphasis added):

"Conditions with regard to windtake could be included to ensure that wind turbines are located in a manner that **respects the development potential of the adjoining site** for a similar development. Where such conditions apply they should generally allow **a distance from adjoining site boundaries** of not less than two rotor blades having regard to the wind resource at the site, **save with the written agreement of the adjoining landowner(s)**. This issue is more appropriately addressed before an application is made (see paragraph 5.13)."

18. Everything about the text of these provisions screams that they are related to the wind energy potential of adjoining sites. Literally every sentence contains express language tying the rationale of the provision to the impact on adjoining lands in the context of the level of kinetic energy potentially available on such lands in the context of wind energy developments to be located there. The section of the guidelines is not, on the proper or indeed any reasonable interpretation, a demand that the specified separation distances in the section must apply whether there are adjoining sites to be developed for wind energy or not.

19. That is not to say that there may not be an argument for separation distances in general whether by reference to international practice, or minimisation of noise, as argued by the applicants, or for some other reasons. But any such arguments arise by way of consideration of submissions or in the evaluative process, not under section 5.13 of the guidelines as pleaded.

20. The applicants argue that if section 5.13 does not cover separation distances for the sake of separation distances as opposed to for the sake of other wind farms, then there is no control over separation distances. That is obviously a misconception. There is nothing stopping the commission or any other planning decision-taker from considering separation distances as part of its general function to assess proper planning and sustainable development. But that does not warrant shoe-horning this question into the quite different language and context of section 5.13 of the guidelines.

21. What is noteworthy about the applicants' current approach is that having relied (counterproductively) on section 17.17 at the substantive hearing and again in response to the draft judgment, they now barely refer to this provision and do not dispute the finding that this relates to the development potential of adjoining sites. They have in essence painted themselves into a corner on the interpretation question, and their point can only survive on the basis of taking fragments of text completely out of context and reading them contrary to their obvious sense. The notice party points out the difficulty:

"4. During the draft judgment procedure, the Applicants signalled their views in respect of the Court's consideration of section 5.13 of the WEDG in the following terms as recorded at §110 of the Judgment:

'The Applicants disagree with the Court's conclusion regarding their contention that the Inspector and the Commission were in error in their interpretation of the 2006 Wind Energy Guidelines section 5.13 and paragraph [17.17]. The Applicants have been advised and believe that section 5.13 and paragraph [17.17] are rooted in engineering and scientific understanding of the effect of wake in the operation of windfarms where turbines are sighted at what is considered to be too closely together. The Applicants believe that the Inspector's misinterpretation creates a precedent which is contrary to scientific understanding and that will have consequences which cannot be predicted yet.'

5. It is noteworthy that, on this certificate application, the Applicants have not pursued any question or issue in respect of section 7.17 of the WEDG, nor is that provision of the WEDG referred to in the Applicants' written submissions, notwithstanding that section 7.17 of the WEDG expressly references section 5.13 of the WEDG.

...

17. The Applicant's submissions at §15 appear to consider the Judgment out of context. At §108 of its judgment, the High Court considers sections 5.13 and [17.17] of the WEDG – it is noteworthy that the Applicants do not reference, still less take any issue with, the Court's consideration of section [17.17]. However, the Court's statement at §108 is made in the context of considering the provisions of section [17.17]. Furthermore, the Court's comments

at §108 are not inconsistent with section 1.1 of the WEDG. The fact that the Applicants contend that §5.13 of the WEDG applies internally to one site – does not make it so, or result in an error on the part of the High Court.”

22. Insofar as the applicants at leave to appeal stage tried to rely on the noise provisions of section 5.6 of the guidelines this was not a pleaded point and should not properly be considered further. In any event, a differently worded clause about a different subject doesn’t get the applicants very far. As the notice party correctly points out:

“16. Furthermore, not only is the belated suggestion that section 5.13 must be read consistently with section 5.6 not pleaded, moreover, such contention is not supported by an objective reading of those provisions of the WEDG. As referenced above, section 5.6 of the WEDG makes no reference to adjacent sites and is focused on noise generated from a turbine and its impact on noise sensitive properties.”

The judgment under proposed appeal

23. The judgment under proposed appeal upheld the interpretation of the guidelines adopted by the inspector which was to the effect that the provision of the guidelines did not apply because there was no proposed wind development of adjoining lands. Implicit in that is the view that a reasonably intelligent and well informed person without legal expertise would read the guidelines in the way the inspector did (XJS).

24. In the absence of anything suggesting that there was any similar development consented or proposed, or even envisaged, for an adjoining site, the inspector was correct in holding that this was not relevant to this particular project. To put it another way, the issue was academic in the absence of any other relevant wind energy development that could be affected by this permission.

25. The judgment went on to say that in effect even if the inspector misinterpreted the guidelines, that and the other pleaded EIA complaints did not give rise to an entitlement to *certiorari*:

- (i) The second paragraph is not mandatory – it begins “In general”.
- (ii) It would be inappropriate and counterproductive to use the guidelines, which are a basis for encouraging more wind developments, as a basis to stymie a consented development such as this one. It makes no sense to use a provision designed to encourage maximum wind energy as a justification for an outcome that replaces one consented wind project with no consented wind projects.
- (iii) Insofar as a complaint was made about defects in this regard in the EIAR, that was largely unpleaded and in any event had not been made out evidentially. The applicants failed to overcome the onus or proof in that regard.
- (iv) The applicants’ complaints about the separation distances were not factually established. As regards the replying affidavit of Mr Huson, the principal judgment says that even assuming for the sake of argument that this is admissible (and thus avoiding the need to formally rest matters on the obvious problems of its original and non-replying content, its appearance far outside the time allowed in directions, and the failure to explain why any information was not put forward earlier in the proceedings), no weight should be attached to it because the decision cannot generally be condemned by reference to matters not put before the commission, and insofar as any of the averments are relevant to the scientific robustness of the commission’s assessments, the court has affidavit evidence supporting the assessments and so any conflict must be resolved in favour of the opposing parties in the absence of cross-examination, on the basis of *RAS Medical Ltd v. Royal College of Surgeons in Ireland* [2019] IESC 4, [2019] 1 I.R. 63, [2019] 2 I.L.R.M. 273 (Clarke C.J.) (O’Donnell, MacMenamin, Dunne and Finlay Geoghegan JJ. concurring). The applicants have not engaged with that problem.
- (v) Consistent with that, the applicants have failed to engage with the detailed analysis in the EIA actually carried out and have failed to establish evidentially a route-map between any alleged defect to a conclusion of illegality or any entitlement to the relief sought.
- (vi) In particular, the noise-related issues of central concern to the applicants are dealt with in the EIAR at Chapter 12 and related Appendices, which were expressly considered by the inspector.
- (vii) Insofar as reliance is placed on the HSE submission of 14 June 2024, that submission did not seek refusal of the application. It suggested further assessment and mitigation. The commission was not obliged to accept that submission but rather to determine in the light of the material the effects of the project and whether they were acceptable. That involves a degree of evaluation and judgement and does not commit the decision-taker to accepting any particular material in favour of other material. The commission was permitted to prefer the developer’s EIAR and lawfully did so. The conclusion of lack of significant noise effects is set out at para. 9.13.8.

Furthermore, the commission also had the developer's first-party appeal report which addresses the HSE submission at pp. 67-71. Not accepting a submission cannot be equated with ignoring or reformulating a submission and any assertion to that effect would be unstateable.

- (viii) Merits-based disagreement with an otherwise lawful decision by the commission to prefer one position to another does not give rise to grounds for *certiorari*.
- (ix) As regards reasons there is no obligation to give reasons for rejecting a legally incorrect point – a valid decision does not become invalid because an incorrect submission as to invalidity is not addressed. That would be a boot-strapping procedure destined to create procedural chaos. In any event it is not up to a process participant making submissions to determine what are the major issues. This is a matter for the decision-taker in the first instance subject to certain objective features of the process such as where institutional actors are being disagreed with and thus where reasons for that need to be specified. And in any event, there are reasons for the decision.

Does the point properly arise?

26. The point does arise in the limited sense that I agreed with the commission that it had not misinterpreted the guidelines. However that doesn't get the applicants very far given the forest of other problems with it (as stated above).

27. That said, one overarching difficulty with the point arises from the fact that the entire original pleaded case of the applicants has now fallen away and we are left with a point introduced by amendment at the very last minute. As noted at para. 65 of the principal judgment, a pragmatic solution was devised, which was to allow the amendment on a *de bene esse* basis. Since the point failed in any event, it was not necessary to formally determine whether the amendment should properly be allowed.

28. The alternative to that approach would have been to have a complex argument about amendment at the last minute which might even have had the potential to derail the existing arrangements for the hearing. All I need to say right now is that where the whole original case has fallen away, and the only point left is perching on the highly precarious ledge of a *de bene esse* eleventh-hour amendment, it is far from clear that the point properly arises at this stage.

29. Nor is it saying very much to say that there is a question as to the interpretation of the guidelines. The Department of Housing (<https://www.gov.ie/en/department-of-housing-local-government-and-heritage/collections/planning-guidelinesstandards/>) lists 82 national guidelines currently in operation:

"Planning Guidelines/Standards

From: Department of Housing, Local Government and Heritage

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1. Section 28 Guidelines - NPF Implementation: Housing Growth Requirements (2025)
2. Design Standards for Apartments, Guidelines for Planning Authorities (2025)
3. Section 28 Ministerial Guidelines - Rezoning Economic Activity (2024)
4. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)
5. Section 28 Guidelines for Planning Authorities - Regulation of Commercial Institutional Investment in Housing (July 2023)
6. Sustainable Urban Housing Design Standards for New Apartments Guidelines for Planning Authorities (2022)
7. Development Plans - Guidelines for Planning Authorities (July 2022)
8. Residential Zoned Land Tax - Guidelines for Planning Authorities (June 2022)
9. Regulation of Commercial Institutional Investment in Housing – Guidelines for Planning Authorities (May 2021)
10. Ministerial Letter to Local Authorities - Updated Apartment Guidelines to give effect to restrictions on Co-living Development (Dec 2020)
11. Ministerial Letter to Local Authorities - Structural Housing Demand in Ireland and Housing Supply Targets (Dec 2020)
12. Section 28 Guidelines for Planning Authorities - Enforcement of certain planning conditions during the Coronavirus (COVID-19) outbreak
13. Guidance Note for Local Authorities for Regulating Short Term Letting
14. Urban Development and Building Height Guidelines for Planning Authorities
15. Guidelines for Planning Authorities and An Bord Pleanála on carrying out Environmental Impact Assessment (August 2018)
16. Urban Development and Building Heights – Guidelines for Planning Authorities – Consultation Draft

17. Design Standards for New Apartments (DSFNA) (2018)
18. Design Standards for New Apartments - Guidelines for Planning Authorities - Draft Update (Dec. 2017)
19. Design Standards for New Apartments - Guidelines for Planning Authorities (Dec. 2015)
20. Design Standards for New Apartments - Information Note Current
21. Tree Preservation Guidelines
22. Guidance Notes - General
23. Part II - Plans & Guidelines
24. Part V - Housing Supply
25. Part IX - Strategic Development Zones
26. Part XVIII – Miscellaneous
27. Part XIX - Commencement, Repeals and Continuance
28. Framework for Co-operation Spatial Strategies of Northern Ireland and the Republic of Ireland
29. Local Area Plans - Guidelines for Planning Authorities (June 2013)
30. Local Area Plans Manual (June 2013)
31. Guidelines for Planning Authorities & An Bord Pleanala on carrying out Environmental Impact Assessments (March 2013)
32. Design Manual for Urban Roads and Streets - 2019 (Low Res)
33. Development Contribution Guidelines - January 2013
34. A Guide to Planning Enforcement in Ireland
35. INSPIRE Protected Sites Pilot Report
36. Draft Environmental Impact Assessment Guidelines (July 2012)
37. Section 261A of Planning and Development Act, 2000 Supplementary Guidelines (July 2012)
38. Development Contributions - Draft Guidelines for Planning Authorities
39. LAP Draft Guidelines - June 2012
40. LAP Draft Manual - June 2012
41. Retail Planning Guidelines (April 2012)
42. Retail Design Manual April 2012
43. Section 261A of Planning & Development Act 2000 - Guidelines (January 2012)
44. Spatial Planning and National Roads Guidelines (Jan 2012)
45. Guidance for Planning Authorities on Drainage and Reclamation of Wetlands - consultation draft
46. Implementing INSPIRE Regulations in Public Bodies
47. Collaborative Spatial Framework
48. Implementing Regional Planning Guidelines-Best Practice Guidelines
49. The Planning System and Flood Risk Management - Guidelines for Planning Authorities - Technical Appendices (Nov 2009)
50. The Planning System and Flood Risk Management - Guidelines for Planning Authorities (Nov 2009)
51. Sustainable Residential Developments in Urban Areas-Guidelines for Planning Authorities (May 2009)
52. Best Practice Urban Design Manual (May 2009) Part 2
53. Best Practice Urban Design Manual (May 2009) Part 1
54. The Provision of Schools and the Planning System - Code of Practice for Planning Authorities
55. Development Management Guidelines
56. Development Plan Guidelines (2007)
57. Extension of Tax Relief Schemes - Certification Guidelines for Local Authorities
58. Redevelopment of Certain Lands in the Dublin area
59. Wind Energy Development Guidelines (2006)
60. Sustainable Rural Housing Development Guidelines
61. Strategic Environmental Assessment (SEA) Guidelines
62. Revised Certification Guidelines
63. Quarries and Ancillary Activities
64. Architectural Heritage Protection Guidelines for Planning Authorities
65. Guidance for Consent Authorities regarding Sub-Threshold Development
66. Further Guidelines on Part V of the Planning and Development Acts 2000 - 2002 - Circular HMS 9/03
67. Further Guidelines on Part V of the Planning and Development Act 2000-2002 - Guidelines

68. Further Guidelines Part V of the Planning and Development Acts 2000-2002
69. URS Consolidated Certification Guidelines
70. TRS Monitoring Guidelines
71. LOTS Monitoring Guidelines
72. Implementation Manual Part V of Planning and Development Act 2000
73. Part V of the Planning and Development Act, 2000 - Implementation Issues
74. LOTS Certification Guidelines
75. Certification Guidelines (Commercial Industrial)
76. Childcare Facilities Guidelines
77. Guidelines for Planning Authorities - Part V of the Planning and Development Act, 2000
78. Landscape and Landscape Assessment
79. Town Renewal Scheme guidelines
80. Urban Renewal Scheme 1999 Monitoring Guidelines
81. Telecommunications Antennae and Support Structures 1996
82. Guidelines on Residential Developments in Urban Renewal Designated Tax Incentive Areas 1995"

30. Those are only the national guidelines – running to thousands of pages. One can add further tens of thousands of pages of regional and county/city plans. The interpretation of every sentence of every one of these documents is a matter of law. But the mere fact that a case raises the interpretation of a couple of sentences in a non-binding policy instrument does not in itself give rise to a conclusion that appellate procedures need to be invoked.

Is the point one of law?

31. As noted above, the interpretation of planning documents is a matter of law – I will also give the applicants that much. But that doesn't get the applicants very far in itself.

Is the point of public importance?

32. The reason this matter is not of public importance is relatively straightforward:

- (i) The point fails on the plain meaning of the guidelines as appears from the face of the text used.
- (ii) Nothing in the context or purpose commands a contrary conclusion. The interpretation of section 5.13 is not in doubt particularly when we place it in context with section 17.17, a problem the applicants shied away from as noted above.
- (iii) No conflict of jurisprudence arises and nor has other legal uncertainty been demonstrated.
- (iv) The guidelines in any event enjoy only a "have regard to" status. The commission is not required to comply with them.
- (v) As noted above, the text of section 5.13 is not highly prescriptive – it refers only to the position "in general".
- (vi) There is no evidence of a practical problem caused by the interpretation in the principal judgment. The developer's evidence is that the separation distances were determined by industry standard software and the applicants have not discharged the onus of proof to show any scientific, technical or industry-wide defect with that.
- (vii) The applicants' assertions do not constitute evidence. Nor can their legal submissions be confused with evidence. Their attempt to impugn the commission's approach by way of affidavit failed on established principles of the burden of proof and lack of cross-examination.
- (viii) Despite their obvious lack of standing to do so, they even complain that the developer will suffer a financial loss/ energy loss due to alleged inadequate spacing between the turbines, and contend that the permission should be quashed in its entirety on that basis. This is an obviously implausible posture.
- (ix) In any event, as set out above, the point is not in any way determinative of the outcome. Even if the inspector did in fact misinterpret the guidelines, that should not lead to *certiorari*. Most notably, it would be perverse to quash a wind energy permission on the basis of defective interpretation of a provision designed to promote wind energy, especially where there are no other adjacent proposals which would benefit from the hypothetical quashing.
- (x) Furthermore the exercise of discretion militates against quashing the permission on the basis of this complaint. While decided before *Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36 (Unreported, Supreme Court, 2 July 2026) *per* Woulfe J. (O'Donnell C.J., Hogan, Murray and Donnelly JJ. concurring), the principal judgment is consistent with that. The statutory scheme does not provide (or imply) that failure to have regard to guidelines as properly interpreted leads automatically to nullity, and nullification of the decision on such a basis as arises here (assuming

counterfactually that the inspector's interpretation was erroneous) would be disproportionate, as understood within existing doctrinal bounds.

- 33.** Ms Costello's third affidavit for the notice party confirms the lack of adjoining developments and the fact that windtake was covered in the EIAR:

"6. I confirm for context that, as referenced in the Amended Statement of Opposition, it is the position of EDF that the pleas at §§E(21)(a) to (g) of the Amended Statement of Grounds are based on an incorrect premise that the Commission's Inspector erred in interpreting the provisions of sections 5.13 and 7.17 of the WEDG 2006.

7. Again, for context, I note the assertion pleaded at §E(21)(a) that, at section 8.5.2 of her report, the Inspector addressed scale and layout, including by reference to Chapters 3 and 4 of the EIAR, and by expressly referring to sections 5.13 and 7.17 of the WEDG 2006 and stating that:

'...the reference to windtake in Section 5.13 and 7.17 relates to the development potential of adjoining sites'.

8. As a matter of fact, having conducted planning searches, including searches of planning application files and records which are publicly available, including on the websites maintained by Carlow County Council, Kilkenny County Council and An Coimisiún Pleanála, I confirm that permission for wind energy development has not been granted on an adjacent site to the site comprising the Seskin wind energy development which forms the subject-matter of these proceedings.

9. In circumstances where, to the best of my knowledge and belief, the provisions of sections 5.13 and 7.17 of the WEDG 2006 apply to development potential of adjoining sites and/or where permission for wind energy development has been granted on any adjacent sites, there was no requirement for the EIAR submitted with the planning application in respect of the Proposed Development to have considered the issue of wind-take. However, for the sake of completeness, I confirm that 'wind-take' (or 'wake effects') within the Proposed Development site was referenced in the EIAR, including in sections 3.2.6.2 and section 4.4.1.1.1.

10. I also note that section 5.13 of the WEDG 2006 does not set out specific separation distances between turbines within the Proposed Development. Rather, section 5.13 states that:

'...where permission for wind energy development has been granted on an adjacent site, the principle of the minimum separation distances between turbines in crosswind and downwind directions indicated above should be respected.'

11. As confirmed above, permission for wind energy development has not been granted on any sites adjacent to the Proposed Development."

- 34.** Section 3.2.6.2 of the EIAR as referenced above states:

"3.2.6.2 Turbine Layout

The final proposed turbine layout takes account of all site constraints and the distances to be maintained between turbines and from houses, roads, etc. The layout is based on the results of all site investigations that have been carried out during the EIAR process. As information regarding the Proposed Project was compiled and assessed, the proposed layout has been revised and amended to take account of the physical constraints of the Proposed Wind Farm and the requirement for buffer zones and other areas in which no turbines could be located. The selection of turbine number and layout has also had regard to wind-take, noise and shadow flicker impacts and the separation distance to be maintained between turbines. The EIAR and Proposed Project design process was an iterative process, where findings at each stage of the assessment were used to further refine the design, always with the intention of minimising the potential for environmental impacts.

The development of the final Proposed Wind Farm layout has resulted following feedback from the various studies and assessments carried out as well as ongoing negotiations and discussions with landowners and the local community.

There were several reviews of the specific locations of the various turbines during the optimisation of the Proposed Wind Farm site layout. The initial constraints study identified a significant viable area within the overall study area of the site. The initial turbine layout comprised 10 no. turbines within a larger study area. The proposed 7-turbine final layout has been refined following feedback from the project team, landowners, neighbours and the need to ensure sufficient separation distances are maintained for on-site constraints. The Proposed Wind Farm went through 5 separate iterations. All 5 turbine layout iterations have not been included, but Plate 3-1 to Plate 3-4 below gives an indication of how the design of the turbine layout evolved during the design process.

...

Iteration No. 1 which is presented in Plate 3-1 is the initial turbine layout which was based on a preliminary constraint mapping exercise and identification of a viable area for turbine siting. A larger viable area for a 10-no. turbine layout was identified within the overall study area during the constraints mapping process. This included for two clusters, a larger 7 no. turbine array near the Ridge, and a smaller 3 no. turbine array approx. 4.6km to the south near the Carlow-Kilkenny border. It was determined that it would be more environmental sensitive and efficient to have a single cluster of turbines at the larger viable area.

...

Iteration No. 2 which is presented in Plate 3-2 comprised of 7 No. turbines, hardstands, access roads on-site substation and grid connection, met mast, and a temporary construction compound. The alternative grid connection electrical cabling routes are further detailed in Section 3.2.8 below.

Layout Iteration No. 2 was presented to the project team for detailed investigations and assessment. These investigations included habitat mapping, ecological surveying, hydrological and geotechnical investigations of the Proposed Wind Farm.

...

Iteration No. 3 which is presented in Plate 3-3 comprised of 7 No. turbines, hardstands, access roads, onsite substation and battery storage, grid connection, met mast, temporary construction compound, and potential borrow pit locations that underwent site investigative work. Iteration No. 3 was subject to detailed investigations which led to further refinement of the layout.

For Iteration No. 3 the following changes were made:

The turbines underwent renumbering.

The met mast was relocated to an adjacent field to accommodate a realignment of Turbine No. 6 and its associated hardstand, with the temporary construction compound being realigned accordingly.

The road layout near Turbine No. 1 was realigned to avoid sensitive ecological receptors.

Turbine No. 7 (previously numbered Turbine No. 5) was moved north-east in order to avoid marsh fritillary supporting habitat.

A battery energy storage compound was included adjacent to the onsite substation. Turbine delivery site entrance and junction options were also included for consideration by the EIAR team and subject to site investigations.

...

Iteration No. 4 as presented in Plate 3-4 comprised of 7 No. turbines with a maximum overall ground-to-blade tip height range of 179.5m – 180m, a rotor diameter range of 149m – 155m, and a hub height range of 102.5m to 105m, one met mast (36.5m), two temporary construction compounds, one onsite substation and battery storage compound, and one grid connection underground electrical cabling route which is further detailed in Section 3.2.8.

When considering the site characteristics, including topography, ground conditions, ecological receptors, sensitive noise receptors and surface features, it was determined not to develop an onsite borrow pit. For this layout, peat and spoil management areas were identified throughout the site.

The revisions to the layout were found to have no greater environmental, ecological, and hydrological effects when compared to the other layout iterations considered (Iteration No. 1 to 3).

The final proposed turbine layout as presented in Plate 3-4 takes account of all site constraints (e.g., ecology, ornithology, hydrology, etc.) and design constraints (e.g., setback distances from houses and distances between turbines on-site etc.). The layout also takes account of the results of all site investigations and baseline assessments that have been carried out during the EIAR process.

The final chosen turbine layout is considered the optimal layout given it has the least potential for environmental effects.

A comparison of the potential environmental effects of initial iterations of the turbine layout as compared against the final turbine layout are presented in Table 3-4 below."

35. Section 4.4.1.1.1 of the EIAR referred to states as follows (emphasis added):

"4.4.1.1.1 Turbine Locations

The proposed wind turbine layout has been optimised using wind farm design software (WindPro) to maximise the energy yield from the Proposed Project site, while maintaining sufficient distances between the proposed turbines so as to ensure turbulence and wake effects do not compromise turbine performance, and maintain the minimum setbacks from neighbouring properties set out in the DoEHLG 2006 Guidelines and Draft 2019 Guidelines. The Grid Reference coordinates of the proposed turbine locations are listed in Table 4-1 below.

The final Top of Foundation Level of the turbine foundations will be determined by the actual ground conditions at each proposed turbine location and may differ but not materially from those levels listed in Table 4-1. Also, in accordance with the 'Wind Energy Development Guidelines for Planning Authorities' (Department of the Environment, Heritage and Local Government (DOEHLG), 2006) micro-siting of the turbine positions may be required within the criteria set out in the guidelines."

36. The above is in effect simply more detail as to why it is fatal for the applicants that they did not evidentially displace the commission's acceptance of the developer's material, *inter alia* on a *RAS Medical* basis. The commission were entitled to accept the proposal regarding turbine layout, and did so. It was not an unscientific stab in the dark, but a methodical proposal based on alternatives, reasoning, and industry standard software. To put it another way, the applicants haven't shown that it was defective. The applicants' technical arguments about separation distances are academic and not of public importance when placed against such a background.

37. Under this heading I would generally endorse the commission's submission (emphasis added):

"12. There are number of insuperable problems with this proposed point that make it inappropriate for certification.

13. First, **there is no uncertainty as to what the answer to this question is. It is 'no'** as the Court has held in the principal judgment (see §105-§112). §5.13 of the WEDG 2006, as the Court found, provides non-binding guidance focused on protecting the development potential of adjoining lands. There is nothing exceptional or novel about the Court's finding in this regard. It is an example of a provision being interpreted on conventional principles of interpretation, namely: the XJS principles, and read as a whole and in context and not legalistically parsed and decontextualised in the way the wording of the proposed point does. **The Applicants' interpretation of §5.13 of the WEDG is incorrect on a plain reading of that paragraph. That error is compounded when §5.13 is read together with the plain words of §7.17 of the WEDG 2006 (which cross refers and links to §5.13 and is notably not referred to the Applicants' certificate submissions,** though relied upon by them in the hearing).

14. In short, the only basis for this question is the Applicants' already-rejected misinterpretation of §5.13 of WEDG 2006.

15. At §19(i) and (j) of their written submissions in support of the application for leave to appeal, the Applicants assert that the law in relation to the proper interpretation of §5.13 is in a state of uncertainty. However, **that is mere assertion.** In contravention of the established Glancré principles, the Applicants impute uncertainty in the law where none exists. **No evidence of uncertainty is identified. They do not, for example, point to conflicting High Court judgments or to divergent planning practice or to conflicting interpretations adopted by planning authorities or by the Commission or, indeed, to any evidence of any practical difficulty whatsoever** arising in the administration of the planning system. Nothing is advanced to support the mere assertion or imputation of uncertainty via legal submission.

...

27. Fourth, any assertion of problems in practice caused by a judgment must be backed up with evidence: there is no such evidence in this case – which is a further reason as to why certification is not appropriate (per Massey (No.4) [2025] IEHC 30 at §6(v)(b)). The Applicants, based only on their already-rejected misinterpretation of §5.13 of WEDG 2006, repeatedly advance the hyperbolic and speculative assertion that the point affects every wind farm development in the State (see §19(g), §21, §24 and §28, Applicants' certificate submissions). The Applicants' assertions (see §20, §24, §25, §26, §27, Applicants' certificate submissions) concerning future consequences for windfarm design are entirely hypothetical and baseless. There is simply no evidence for anything asserted in this regard. It also merits recalling that **the Applicants' legal submissions are not evidence** (McGowan [2025] IEHC 405 at §79). There is no basis for the mere assertion (advanced by the Applicants via legal submission) that the Court's interpretation of §5.13 of the WEDG 2006 will give rise to any issue or problems in practice. There is no evidence demonstrating any wind energy industry concern or any planning uncertainty or any regulatory difficulty or any inconsistency in planning decision-making or any consequences arising from the Court's principal judgment. The Applicants rely solely on assertion, which is insufficient.

28. Further, whereas there is no evidential basis for what the Applicants assert via legal submission in this regard, it is conceptually misconceived to contend that the Court's interpretation of §5.13 of the WEDG 2006 (which reflects the literal text, context and purpose of the paragraph) could give rise to problems in practice. As per Friends of Killymooney Lough (No.2) [2025] IEHC 576 at §28(iv) **'The alleged practical**

ramifications are typically hypothetical or speculative and/or the proceedings are not a suitable vehicle to explore them.’ Equally relevant on this point is the observation of Gearty J. made in a similar context in McCaffrey & Sons [2024] IEHC 476 at §3.7 ‘an evidence-free submission cannot be a basis for the certification of questions of law to an appeal court.’

29. Fifth, the proposed point does not accurately reflect the Court’s principal judgment. It is appropriate in this regard to note that it is a necessary implication of the principle that ‘The point of law must arise out of the decision of the High Court...’ (inter alia: Monkstown Road Residents Association [2023] IEHC 9 at §9(d)). That is particularly important in this case in circumstances where the Applicants’ certificate submissions proffer and/or are premised on mischaracterisation and/or misinterpretation of the Court’s judgment and without properly engaging in same or the actual basis upon which the Court determined to refuse relief and, more particularly, the multi-factorial analysis upon which the Applicants’ misinterpretation of the §5.13 of the WEDG 2006 was rejected.

30. More particularly as regards the foregoing, the Applicants effectively mischaracterise the issue as being solely whether §5.13 of the WEDG 2006 provides guidance on turbine-to-turbine spacing within a wind farm (see §12-§18, Applicants’ certificate submissions). That narrow question does not accurately reflect what the Court decided in the principal judgment. The Court’s conclusions at §105-§111 of the principal judgment were broader, holding that the Applicants’ interpretation of §5.13 was incorrect (§105-§106), that §5.13 must be read in light of its opening reference to adjoining-site development potential (§105-§106), that the issue was irrelevant on the facts because no adjoining development existed or was proposed (§106), that **§5.13 was not mandatory in any event** (§107), that the WEDG 2006 are **merely ‘have regard to’ guidelines** (§111) (meaning that same are not binding and allow for flexibility and planning judgment and are not strict statutory rules: Jennings [2023] IEHC 14 at §331), that no evidential challenge to the EIAR had been established (§109) (relevant in circumstances where chapters 3 and 4 of the EIAR demonstrate that **turbine layout and spacing were carefully modelled and optimised using industry-standard software**, taking into account wind conditions, wake effects, environmental constraints, and iterative design refinements - **this expert analysis was not challenged by the Applicants**), that the Applicants had not displaced the **Commission’s scientific assessment** (§111), and that discretionary factors militated against relief in any event (§111). The proposed point therefore ignores most of the Court’s relevant findings, isolates only one aspect of its reasoning, and does not accurately reflect the basis on which the challenge was dismissed. Accordingly, the proposed point fails to satisfy the requirement identified in Monkstown Road Residents Association [2023] IEHC 9 at §9(d)) that a certified question reflect a correct understanding of the judgment. The Applicants’ certificate submissions (at e.g. §12-§20) merely repeat the same interpretation argument expressly rejected by the Court.

31. Sixth, the proposed point of law is not determinative of the proceedings and would not make a difference to the outcome. The Applicants assert (§19(d), Applicants’ certificate submissions) that the proposed point is determinative of the proceedings. That is demonstrably incorrect. Even if the Applicants’ interpretation of §5.13 of WEDG 2006 were correct, the result of the proceedings would remain unchanged, as the Court identified multiple reasons in the principal judgment as to why the Applicants’ challenge on this point failed. In particular: (i) §5.13 of WEDG 2006 is not mandatory (§107); (ii) the WEDG 2006 are not binding (§111); (iii) no defect in the EIAR was established and the complaint about same was largely unpleaded (§109); (iv) no evidential basis was advanced demonstrating any deficiency in the EIA carried out by the Commission (§109, §111); (v) the Inspector expressly considered and addressed the issue (§105-§109); (vi) the Applicants’ complaints are essentially an (impermissible) merits disagreement (§111); and (vii) in any event, discretionary considerations arose that militated against relief even if, counterfactually, the Applicants’ complaint had been made out (which it wasn’t) (§111). The Applicants do not engage with these alternative and independent bases for the Court’s rejection of the Applicants’ arguments regarding the proposed point.

32. The Applicants seek certification of a question **directed only to the Court’s primary interpretative finding at §105-§106 of the principal judgment, while leaving entirely unchallenged the multiple alternative holdings at §107-§111 which independently sustain the dismissal of the ground** and, therefore, render the proposed point non-determinative and inappropriate for certification.”

Is the point of exceptional public importance?

38. This does not arise having regard to the foregoing.

Is an appeal in the public interest?

39. An appeal is not in the public interest. I would generally endorse the submissions of the commission in this respect:

"PUBLIC INTEREST

34. There is no public interest in an appeal on the proposed point. The Applicants have failed to establish how certification of the point is in the public interest. No actual affirmative public benefit or public interest has been identified or relied upon by the Applicants in this regard. In this connection, the Applicants' submissions consist of reagitating already rejected arguments, advancing mere assertion as to uncertainty in the law, and failing to engage meaningfully with relevant findings in the Court's judgment. Where, as here, the law that was actually applied by the Court in determining this particular case is not uncertain, the public interest suggests an appeal is not warranted. No genuine legal uncertainty exists therefore no appellate clarification is necessary.

35. It is further submitted that in the context of the project at issue here, the public interest militates against allowing an appeal, for the same reasons as set out in Carrownagowan (No.3) [2024] IEHC 549 at §83 to §92, and §93(vii). As the Court concluded in that case at §93(vii) and apposite here:

'...the public interest militates against allowing further appeal - there is a significant public interest, now legally enshrined in various ways, in the expeditious determination of the lawfulness of renewable energy infrastructure, and an enshrined EU law provision affording a presumed overriding public interest in the provision of such infrastructure in some circumstances where that conflicts with the habitats directive, and in any event, the facts of the present case are an extremely poor basis for a proposed appeal, given the lack of evidence on crucial points.'

36. See also Massey (No.4) [2025] IEHC 309 at §29-§34, Rural Residents (I) (No.3) [2026] IEHC 300 at §49-§53 and Rural Residents (II) (No.3) [2026] IEHC 301 §34-§37 which are all consistent with the above and supportive of the Commission's position herein that an appeal in the present case is not in the public interest. As the Court stated in Rural Residents (I) (No.3) [2026] IEHC 300 at §51 and applicable here 'the urgent public interest in renewable energy infrastructure militates in favour of this matter not going further.' The public interest in certainty and the timely delivery of consented renewable energy infrastructure weighs heavily against certification.

37. It is also not in the public interest to certify the point, noting the point made in Nagle View (No.2) [2025] IEHC 3 at §9(vii) ('The nature of the project and the risks of further delay are factors going to the public interest'). The Applicants' assertion (§23(a), Applicants' certificate submissions) that no substantive delay will arise is unsupported by evidence and is inaccurate on any objective analysis.

38. Further, certain points made by the Court in refusing leave to appeal in Condon (No.2) [2026] IEHC 136 at §63 apply equally to the present certificate application:

'63. An appeal that is based on a misunderstanding of the principal judgment in a way that seems to "spread maximum confusion" (Hellfire Massy Residents Association v. An Bord Pleanála [2022] IESC 38, [2024] 1 I.R. 386, [2022] 10 JIC 2402 per O'Donnell C.J. at para. 22 (Dunne, Woulfe, Hogan and Murray JJ. concurring)) is not in the public interest.'

39. In addition, per Hoctor (No.2) [2026] IEHC 174 at §§27-30 and directly relevant in the circumstances of this case:

'28. An appeal is clearly not in the public interest particularly having regard to the public interest in infrastructure and renewable energy and to the non-compensatable financial prejudice to the developer.

29. The project here was found acceptable by the inspector and the commission. The applicants have also had a full hearing at trial level and in all of the circumstances there is no public interest in further agitation of the applicants' complaints given the statutory policy of finality.

30. As regards the imperative public interest in major infrastructure including particularly the generation of renewable energy in the context of the climate emergency, I endorse the submission of the notice party on this issue:

"46. Fourth, there are countervailing public interest considerations at issue. The development is an onshore wind farm which, upon completion, will provide significant renewable energy in line with local, regional, national and EU policy. In that connection, it is directly relevant that EU law has recognised renewable energy projects as being in the overriding public interest (see, e.g., the discussion in Carrownagowan Concern Group v An Bord Pleanála [2024] IEHC 549, §86 et seq.). [...]"

40. I also generally endorse the submission of the notice party in this respect:

"(2) Appeal is not in the Public Interest

22. The Applicants characterise the public interest requirement (at §22 to 29 of their submissions) as being met on the basis of a series of claims which are either unpleaded and/or unsupported by any evidence before the High Court and/or fall outside of the scope of the Proposed Question.

23. While the Applicants advance the case that a certificate is in the public interest on the grounds that 'there appears a clear legal uncertainty as to the correct applicability of same' and 'that there is a clear public interest in requiring clarity on the applicability of Section 5.13 WEDG 2006', for the reasons set out above there is no lack of clarity as to the meaning of section 5.13 of the WEDG. As such, the Applicants cannot establish that an appeal would be in the public interest.

24. Furthermore, the Applicants baldly state that an appeal to the Court of Appeal will cause no substantive delay in the implementation of the EDF Scheme. However, that contention is incorrect and the Applicants advance no substantiation in that respect. As a matter of fact, planning permission was granted by the Commission on 27 November 2025. As such, and notwithstanding the expeditious manner in which the proceedings have been progressed in the Planning & Environment List, the implementation of the permitted development has been delayed by seven months, as at the date of filing these submissions. Further delay in this matter would cause additional significant non-compensable financial prejudice to EDF. Of particular concern to EDF is securing a connection for the project to the electricity grid. EDF applied under the ECP-GSS-1 process for a connection in September 2025. In April 2026 the System Operator, ESB Networks, published the list of projects it intended to process as part of the ECP-GSS-1 process which included a connection for the permitted development. It is understood that ESB Networks intend to complete the ECP-GSS-1 process and issue connection offers to qualifying projects between July and September 2026. EDF anticipates that it will receive a connection offer as part of this process, at which point EDF will be required to pay a substantial connection offer acceptance fee. In these circumstances, further delay to the implementation of the permitted development in the event of an appeal would prejudice EDF in the delivery of this renewable energy development, including in circumstances where EDF may have to forego the connection offer, in which case the implementation of the project will set back by a minimum of 12 months.

25. The High Court in Glancré Teoranta acknowledged that it was the intention of the legislature that most planning cases will be determined in the High Court and that an appeal will remain the exception:

'It is clear that the statutory regime which has been devised by the legislature indicates an interest to ensure that the planning process is not to be hampered by a completely unrestricted access to the court which may cause harmful delays. I am satisfied that it is a restriction to be lifted only in exceptional cases.'

26. As set out by Humphreys J in *Massey v An Bord Pleanála* (No.4) [2025] IEHC 309 at §6(v)(a) when considering the principles which apply to the 'public interest' criterion and delay:

'An appeal must be in the public interest (a) The context is the objective of the Oireachtas in seeking finality, certainty and expedition in challenges brought by way of judicial review in planning cases... The nature of the project and the risks of further delay are factors going to the requirement that an appeal must be in the public interest: see per McGovern J. in *Dunnes Stores v. An Bord Pleanála* [2015] IEHC 387, 2015 WJSC-HC 6876, [2015] 6 JIC 1805 (Unreported, High Court, 18th June 2015) at §15 and §16. See also analogously and non-precedentially *Eco Advocacy CLG v. An Bord Pleanála*, *Keegan Land Holdings Limited, An Taisce - The National Trust for Ireland and Client Earth AISBL* [2024] IESCDT 62 (Charleton, Woulfe and Collins JJ., 27th May 2024) at para. 24: "The Court must have regard to the potential impact upon the notice party of any further delay in these proceedings".' [Emphasis Added]

27. The nature of the project, in this case a renewable wind energy development, and the risks of further delay are factors going to the public interest, as was considered by the High Court (Humphreys J.) in an application for a certificate for leave to appeal that arose in the case of *Nagle View Turbine Aware Group No. 2 v An Bord Pleanála* [2025] IEHC 3):

'26. On the contrary, the public interest is strongly the other way. The development will provide significant renewable energy in line with local, regional, national and EU policy, backed up by legal instruments referred to in the No. 1 judgment. In the context of the climate emergency and of the need for energy independence in the light of the Russian Federation's full-scale criminal war of aggression against Ukraine, I agree with the notice party that "it is directly relevant that EU law has recognised renewable energy projects as being in the overriding public interest" as stated in Directive (EU) 2023/2413 of the European

Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652. So public interest in favour of such projects has a legal and not merely a policy basis.

27. These proceedings have delayed the project by almost a full year so far (with further delay a virtual certainty as a result of the inevitable application for leapfrog leave to appeal, an application that will take time to determine either way). There is no convincing counterbalancing reason why an appeal would be in the public interest at all, let alone in such a way as to outweigh the damage to the public interest of further delay in the matter.’ [Emphasis added]

28. The same consideration applies with equal force to this case, and the application for a certificate for leave to appeal should be refused on the basis that an appeal is not ‘desirable in the public interest’.

29. While the Applicants state that there is a greater degree of public interest in ensuring that the development of wind energy projects is assessed in accordance with correctly interpreted guidance, that is what happened in this case. In any event, the Applicants have presented no evidence (nor even argued) that there is a series of cases in which this issue arises (*Stapleton v. An Bord Pleanála* [2025] IEHC 178).

30. The Applicants’ submissions at §25 amount to an unpleaded and unargued point which simply cannot form part of an application for a certificate for leave (*GOCE Limited v. An Bord Pleanála* [2025] IEHC 43). The Applicants contend that there was evidence before the High Court which ‘demonstrated that international engineering best practice adopts criteria and formulae for the distancing of wind turbines in the same wind farm to ensure the turbulence created by the operation of wind turbines does not effect and negatively impact the efficiency of other wind turbines in the same wind farm development. It is in the national public interest that the laws and regulatory guidance of the state relating to wind farm development are not to be interpreted as being at odds with best practice.’ It is noteworthy that this ‘evidence’ is not identified, but moreover, there was no pleaded case that section 5.13 of the WEDG was required to be interpreted to be consistent with international best practice.

31. The Applicants fail to point to any evidence before the High Court to support the proposition that:

‘The interpretation of Section 5.13 WEDG as confirmed by the High Court gives rise to a situation where Irish national guidance for the design and siting of wind turbines will be perceived as ignoring the recognised negative consequences of clustering wind turbines too closely.’

32. Indeed, that point does not even come within the Proposed Question, which is solely concerned with whether section 5.13 of the WEDG provides guidelines for separation distances between turbines on a development site. Even if the Applicants are correct and section 5.13 of the WEDG gives rise to a perception of ‘ignoring the recognised negative consequences of clustering wind turbines too closely’, the Applicants did not (but could have) challenged the WEDG in these proceedings, as such that issue will simply not be resolved by certifying an appeal.

33. EDF does not understand the Applicants’ reference to ‘discretion’ at §29 of their submissions. The Court’s findings as to discretion at §§123-126 (which the Applicants do not address) were mere obiter as the Court clearly states that:

‘[i]f counterfactually the applicants had otherwise established an entitlement to relief, I would have refused such relief as a matter of discretion’

[...]

‘As stated above however the applicants’ points fail on their merits in any event. But in summary I would exercise discretion, had it been necessary, against such points having regard to the following which come within the bounds of factors to which regard can be had, judged against the doctrinal constraints applicable to the court’s discretion and in the light of the caselaw cited earlier in this judgment...’.

[...]

‘Applying such law to the facts here, even if counterfactually the applicants were otherwise entitled to relief, such relief should be refused particularly having regard to the applicants’ failure to make many of the points in the administrative process and/or by reference to the overriding public interest in renewable energy infrastructure as recognised in national and EU law in order to address the urgent requirements of the climate emergency. In addition the lack of tangible environmental harm and the absence of any basis to conclude that the decision would have been different are relevant, especially in a context where the

development plan overall was in fact considered and a conclusion as to the requirements of proper planning and development was arrived at by the commission.'

34. So, in this case, the Court did not refuse relief on discretionary grounds – rather, the Court refused relief on the merits of the grounds of challenge."

41. It would be hard to improve on the above list of reasons why the public interest leans in favour of not permitting this matter to go further. The appellate architecture for planning law is designed to facilitate expedition and finality, so that only points of real significance ordinarily proceed to a further tier of review. There is nothing to show that the inspector's interpretation of the plan here is either problematic or contrary to the ministerial intent, or causing difficulties in practice.

42. And in the contrary sense, there is a massive body of national, European and international law that is predicated on an urgent need for delivery of renewable energy infrastructure at scale. By way of example one could mention in particular the presumption of "overriding public interest" under art. 16(f) of Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (RED III). Case C-325/25, Eneco Wind Belgium is pending regarding whether this principle goes beyond the context of the directives referenced (that case arose under the predecessor instrument, Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy. This concept of overriding public interest in favour of renewable energy plays out against the wider backdrop of the climate emergency, to which a number of key measures are relevant, including the EU Charter, art. 191(2) TFEU, the polluter pays principle, and the European Climate Law (Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999).

43. None of these matters do much to advance any argument that an appeal on this rather technical point of interpretation of one fragment of one of a vast number of non-binding guidelines, which in any event flies in the face of the ordinary meaning of the text concerned, would be in the public interest.

Summary

44. In outline summary, without taking from the more specific terms of this judgment:

- (i) there is no public importance in advancing the question, particularly because:
 - (a) the answer is not properly in doubt having regard to the express language of the guidelines;
 - (b) the guidelines enjoy only a "have regard to" status, and are by their terms general rather than prescriptive;
 - (c) there is no actual evidence of a practical problem caused by the interpretation in the principal judgment; and
 - (d) in any event, the point is not in any way determinative of the outcome in this case; and
- (ii) there are significant public interest considerations against the matter going further.

Order

45. For the foregoing reasons, it is ordered that:

- (i) the application for leave to appeal be dismissed;
- (ii) in the event that an application for leapfrog leave to appeal is made and acceded to by the Supreme Court, the costs of the leave to appeal application be costs in that appeal;
- (iii) otherwise, there be no order as to the costs of the leave to appeal application; and
- (iv) the foregoing order and the order already pronounced in the substantive judgment, *i.e.*, that:
 - (a) the proceedings be dismissed;
 - (b) there be a recital to the order confirming that the second named applicant's property is not a participating property (including for the purposes of the exclusion in condition 9(a)) and therefore that the mitigation measures at conditions 5 and 9 apply to that property; and
 - (c) there be no order as to costs (including no order as to any reserved or adjourned costs or costs not otherwise dealt with);

be perfected forthwith with no further listing as the final order of the High Court in the proceedings.