[2026] IEHC 627

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2026.0000501]

TOM MILNER AND CLAIRE MILNER

APPLICANTS

AND
AN COIMISIÚN PLEANÁLA

RESPONDENT

AND
PERIGUS ENERGY IRELAND MIDCO LIMITED (BY ORDER)

NOTICE PARTY

Date of impugned decision:	*16 February 2026*
Date proceedings commenced:	*13 April 2026*
Date of main hearing:	*2 September 2026*
Date draft judgment circulated:	*8 September 2026*

JUDGMENT of Humphreys J. delivered on Friday 18 September 2026

1. The solar farm here was examined and found acceptable on the merits by the council, the inspector and the commission. The underlying legal difficulty for the applicants, who, as personal litigants, presented their challenge to this project with great sincerity and concision, is that solar farms are not EIA projects. As the commission points out: "This is settled - Breen v. An Coimisiún Pleanála [2026] IEHC 338; Moss v. An Coimisiún Pleanála [2026] IEHC 62, [2026] IEHC 175, [2026] IESCDET 91; Cummins v. An Coimisiún Pleanála [2025] IEHC 521, [2025] IEHC 662; Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála [2024] IESC 28; Kavanagh v. An Bord Pleanála [2020] IEHC 259; Sweetman v. An Bord Pleanála [2020] IEHC 39" (and also citing Duffy v. An Coimisiún Pleanála [2026] IEHC 322 at §97(ix) and Reid v. An Bord Pleanála (No.7) [2024] IEHC 27 at §80 on the necessity for listing in the directive). Adding to this albeit in a determination context, leave to appeal on this point was refused in Moss v. An Coimisiún Pleanála [2026] IESCDET 91. The fact that the commission conducted a precautionary EIA screening does not have the effect of rendering the EIA directive applicable if it is not. That follows logically (an example of that is *Carvill v. Dublin City Council* [2025] IECA 84, [2025] 4 JIC 1101 (Unreported, Court of Appeal, Barniville P., 11 April 2025) at para. 259).

Geographical context

2. The project (https://www.pleanala.ie/en-ie/case/500061) is construction of a solar farm with a 40-year operational life on five land parcels in the Townlands of Morett, Killone, Cappakeel, Rossmore and Raheennahown North, Co Laois. It is located at or near the following: https://www.google.com/maps/place/Stradbally,+Co.+Laois/@53.0853815,7.1655923,3a,75y,215.63h,95.99t/data=!3m7!1e1!3m5!1sGm0iWhaR05w7aQmy8cUt4Q!2e0!6shttps:%2F%2Fstreetviewpixelspa.googleapis.com%2Fv1%2Fthumbnail%3Fcb_client%3Dmaps_sv.tactile%26w%3D900%26h%3D600%26pitch%3D5.990231022403421%26panoid%3DGm0iWhaR05w7aQmy8cUt4Q%26yaw%3D215.62543703275543!7i16384!8i8192!4m6!3m5!1s0x485d72881b2435cd:0xa00c7a9973d0a0!8m2!3d53.0157983!4d7.1494716!16zL20vMDN4OWZi?entry=ttu&g_ep=EgoyMDI2MDgwMi4wIKXMDSoASAFQAw%3D%3D.

3. Also relevant to these proceedings is the first instance decision of Laois County Council granting planning permission for the Proposed Solar Farm, available at https://www.eplanning.ie/LaoisCC/AppFileRefDetails/2560148/0.

Parties

4. The applicants reside in Portlaoise and participated in the planning process before the council (at first instance) and the commission (on appeal), objecting to the Proposed Solar Farm. The respondent granted permission for the Proposed Solar Farm and it is this decision which is impugned in these proceedings. The notice party, originally called Ørsted Onshore Ireland Midco Limited, is the applicant for planning permission and developer of the Proposed Solar Farm.

Facts

5. On 24 March 2025, the notice party made an application to Laois County Council for planning permission to construct the Proposed Solar Farm on the five parcels of land. The reference is 25/60148.

6. The applicants made a submission on 1 April 2025, which *inter alia* pointed out issues relating to a lack of assessment on the impact on drinking water supply, environmental concerns and direct impact on their home.

7. On 16 May 2025 the council requested further information from the notice party, including requests to submit a site plan showing the existing and amended field pattern of the site following the proposed development, a glint and glare assessment, a landscape visual assessment, a cumulative impact assessment, an amended NIS if necessary, and comments on submissions by TII and Inland Fisheries Ireland.
8. On or about 29 July 2025 the notice party submitted their response to the request for further information.
9. On or about 18 September 2025 the council granted permission for the proposed development, subject to 18 conditions.
10. On 15 October 2025 the applicants lodged a third-party appeal to the commission.
11. On 9 January 2026 the commission's inspector visited the site and on 14 January prepared a report recommending that planning permission be granted subject to conditions.
12. By order dated 16 February 2026, the commission, on foot of its inspector's report, granted permission for the proposed development subject to 14 conditions.

Procedural history

13. Eight weeks from the decision expired on Sunday 12 April 2026 but in the light of the fact that the Central Office was closed on that day, there was no time objection to the case being commenced the following day. The applicants issued judicial review proceedings on 13 April 2026, and leave was granted on 27 April 2026.
14. The applicants sought to amend their statement of grounds to include a seventh ground. Neither the respondent nor the notice party consent to this application, and as of 18 May 2026, I directed that the amendment be allowed on a *de bene esse* basis. That entitles the opposing parties to come back at the hearing and argue that the amendment should not be allowed, which they have done.
15. Without prejudice to its position on the amendment application, the commission filed its statement of opposition on 16 June 2026 grounded on the affidavit of Robert Brophy.
16. Similarly, without prejudice to its position on the amendment application, the notice party filed its opposition papers on 26 June 2026.
17. The applicants filed a replying affidavit on 30 June 2026.
18. The applicants filed written submissions on 6 July 2026.
19. The respondent filed written submissions on 24 July 2026.
20. The notice party filed written submissions on 31 July 2026.
21. The applicants filed replying submissions on 7 August 2026.
22. The agreed statement of case was uploaded on 10 August 2026.
23. The matter was heard on 2 September 2026. On that date I made an order updating the name of the notice party (the corporate name having been changed in May 2026).
24. Judgment was reserved at the end of that hearing. I would like to record my thanks to the applicants and 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 making or instructed to convey such points, a distinction that most certainly should be, and I believe generally is in fact, self-evident to all concerned.
25. On 8 September 2026, a draft of the present judgment was sent to the parties, pursuant to paragraphs 16, 196 to 199 and 205 of Practice Direction HC 137 issued by the President of the High Court (as amended by the President with effect from 1 August 2026), to give an opportunity to address matters such as errors/ ambiguities on the basis set out below.
26. 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 LJJ. 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 LJJ. concurring); *Itkin v. Wood* [2023] JRC 101 (Unreported, Royal Court of Jersey, 22 June 2023).

27. 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.

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

(i) advising the court in the event that, in the light of the draft judgment, the party concerned is not pursuing any one or more (or all) points of claim or opposition, as the case may be, so that such points do not therefore need to be decided by the court;

(ii) 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;

(iii) 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); and

(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

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

29. 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.

30. 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.

31. The deadline for such comments from the parties was to be 11:00 on Friday 11 September 2026. Responses were as follows:

(i) Applicants: No comments.
(ii) Commission: No comments.
(iii) Notice Party: helpfully pointed out some typos.

Relief sought

32. The reliefs sought are as follows:

"1. An Order of certiorari by way of judicial review quashing the decision of the Respondent of 16th February 2026 in case reference PL-500061-LS, unlawfully granting the Notice Party Planning Permission for their Proposed Development.
2. An Order of Prohibition by way of an application for judicial [review] preventing the respondent from unlawfully granting the Notice Party Planning Permission for their Proposed Development.
3. An Order pursuant to Order 84, Rule 27(4) of the Rules of the Superior Courts, remitting the matter to the Respondent with a direction to reconsider it and reach a decision in accordance with the findings of this Honourable Court.
4) A stay on the operation of the permission pending determination of these proceedings.
5) Such further or other orders or directions this Honourable Court may consider appropriate.
6) The costs of the within proceedings."

Grounds of challenge

33. The core grounds of challenge are as follows:

1. Failure to Adequately Assess the Existing Land Use Criterion under Schedule 7/Annex III of the EIA Directive.
2. The Inspector Incorrectly Treated Aspirational and Non-Committal Language as Established Fact in Assessing the Land Use Criterion.
3. The "Temporary" Characterisation is Legally Inadequate and Internally Contradictory.
4. The Respondent Failed to Adequately Engage with the Development Plan Land Use Policy Criterion.
5. The Cumulative EIA Assessment was Legally Deficient.
6. The Respondent Failed to Assess the Size of the Project as Required by Schedule 7/Annex III of the EIA Directive.
7. The Respondent Failed to Identify or Assess Three Proposed Natural Heritage Areas in the EIA Screening Determination.

34. As regards the extent to which these are pursued, section I of the statement of case records as follows:

"The Applicants confirm that they are pursuing all seven Core Grounds as pleaded in the Amended Statement of Grounds, together will all reliefs set out at Section D thereof. No ground or relief is being abandoned or not pursued."

The impugned decision

35. The impugned decision provides as follows:

"Decision
GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below. Reasons and Considerations In coming to its decision, the Commission performed its functions in relation to the making of its decision, in a manner consistent with Section 15(1) of the Climate Action and Low Carbon Act 2015, as amended by Section 17 of the Climate Action and Low Carbon Development (Amendment) Act 2021, in accordance with the provisions of the Climate Action Plan 2024 and Climate Action Plan 2025, and also had regard to the following:
European Policy/Legislation, including of particular relevance: (a) Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC, as amended by 2009/147/EC (Birds Directive), which set out the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union, (b) EU Renewable Energy Directive 2009/28/EC which aims to promote the use of renewable energy and amending Directive EU/2023/2413 which aims to speed up the EU's clean energy transition as implemented by European Union (Planning and Development) Renewable Energy) Regulations 2025 (S.I. 274

of 2025), (c) Directive 2011/92/EU (The EIA Directive) as amended by Directive 2014/52/ EU as implemented by Article 94 and Schedule 6 (paragraphs 1 and 2) of the Planning and Development Regulations 2001, as amended, and (d) Directive 2000/60/EC, the Water Framework Directive, and the requirement to exercise its functions in a manner which is consistent with the provisions of the Directive, and which achieves or promotes compliance with the requirements of the Directive.

National Policy and Guidance, including: (a) Project Ireland 2040: National Planning Framework ("NPF"), First Revision of the NPF, (b) the National Development Plan 2021-2030, (c) the objectives and targets of the National Biodiversity Action Plan 2023- 2030 (d) the Policy Statement on Security of Electricity Supply (November 2021), (e) the National Energy Security Framework (April 2022), and (D the National Energy and Climate Action Plan (2021-2030).

Regional and Local Planning Policy, including in particular: (a) the Regional Spatial and Economic Strategy for the Eastern and Midlands Region 2019-2031, and (b) the Laois County Development Plan 2021-2027, and the location, nature, scale and layout of the proposed development, the pattern of development in the area and the context of the receiving environment, the range of mitigation measures set out in the Natura Impact Statement, the range of mitigation measures set out in the Environmental Considerations Report, the measures proposed for the construction, operation and decommissioning of the proposed development, as set out in the Construction and Environmental Management Plan, the submissions and observations received in relation to the planning application and the appeal, and the Inspector's report and recommendation.

Appropriate Assessment: Stage 1

In accordance with Section 177U of the Planning and Development Act 2000, as amended, and, on the basis of the information considered in the Appropriate Assessment Screening, the Commission agreed with the Inspector's report and concluded that the only European Site which it is not possible to exclude that the proposed development, alone or in combination with other plans and projects, would give rise to significant effects is the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objectives. Appropriate Assessment (Stage 2) is, therefore, required.

Appropriate Assessment: Stage 2

The Commission considered the Natura Impact Statement and all other relevant submissions and carried out an Appropriate Assessment of the implications of the proposed development for the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objectives. The Commission considered that the information before it was sufficient to undertake a complete assessment of all aspects of the proposed development in relation to the site's Conservation Objectives using the best available scientific knowledge in the field. In completing the assessment, the Commission considered, in particular, the following: (i) the site-specific Conservation Objectives for the European Site, (ii) the current conservation status, threats and pressures of the qualifying interest features, (iii) the likely direct and indirect impacts arising from the proposed development, both individually or in combination with other plans or projects, specifically run-off from the construction works, and (iv) the mitigation measures which are included as part of the current proposal . In completing the Appropriate Assessment, the Commission accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the implications of the proposed development on the integrity of the aforementioned European Site, having regard to the site's Conservation Objectives. In overall conclusion, the Commission was satisfied that the proposed development would not adversely affect the integrity of the River Barrow and River Nore Special Area of Conservation (Site Code: 002162) in view of the site's Conservation Objectives and there is no reasonable scientific doubt as to the absence of such effects.

EIA Screening Determination

Having regard to: (a) the nature and scale of the proposed development, which is not itself a class of development and falls below the thresholds in respect of Class 1 (a) and Class 10(dd) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, (b) the consideration of the cumulative effects of the proposed development, the subject of the screening, and the wider development of solar farms which is not, of itself, a class for the purposes of the EIA Directive, (c) the nature of the existing site and the existing and permitted pattern of development in the surrounding area, (d) the location of the proposed development outside of any sensitive location specified in Article 109(4)(a)(v) of the Planning and Development Regulations 2001, as amended, (e) the guidance set out in the 'Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development' issued by the Department of the Environment, Heritage and

Local Government (2003), (D the criteria set out in Schedule 7 of the Planning and Development Regulations 2001, as amended, and (g) the features and measures proposed by the developer that are envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified to be provided as part of the project, the Planning and Environmental Report, the Flood Risk Assessment, the Natura Impact Statement, the Construction Environmental Management Plan, and the Decommissioning Plan, it is considered that the proposed development would not be likely to have significant direct, indirect or cumulative effects on the environment and that the preparation and submission of an environmental impact assessment report would not, therefore, be required.

Proper Planning and Sustainable Development

It is considered that, subject to compliance with the conditions set out below, the proposed development would be in accordance with European, National and Regional renewable energy policies and with the provisions of the Laois County Development Plan 2021-2027, would make a positive contribution to Ireland's renewable energy and security of energy supply requirements, would not seriously injure the visual or residential amenities of the area or of property in the vicinity, would not have an unacceptable impact on the character of the landscape or on cultural or archaeological heritage, would not have a significant adverse impact on ecology, and would be acceptable in terms of traffic impacts and safety. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 29th day of July, 2025, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to the commencement of development and the proposed development shall be carried out and completed in accordance with the agreed particulars.
   Reason: in the interest of clarity.
2. The period during which the development hereby permitted may be carried out shall be ten years from the date of this Order.
   Reason: Having regard to the nature and extent of the proposed development, the Commission considered it appropriate to specify a period of validity of this permission in excess of five years.
3. (a) The permission shall be for a period of 40 years from the date of the commissioning of the solar array. The solar array and related ancillary structures shall then be decommissioned and removed unless, prior to the end of the period, planning permission shall have been granted for their continuance for a further period. (b) Prior to commencement of development, a Decommissioning Statement, including a detailed restoration plan and a timescale for its implementation, providing for the removal of the solar arrays, including all foundations, anchors, concrete shoes, inverter/transformer stations, control building, CCTV cameras, fencing and site access to a specific timescale, shall be submitted to, and agreed in writing with, the planning authority. (C) On full or partial decommissioning of the solar farm, or if the solar farm ceases operation for a period of more than one year, the solar arrays, including foundations/anchors/concrete shoes, and all associated equipment, shall be dismantled and removed permanently from the site. The site shall be restored in accordance with this plan and all decommissioned structures shall be removed within three months of decommissioning.
   Reason: To enable the planning authority to review the operation of the solar farm in the light of the circumstances then prevailing.
4. The mitigation measures contained in the submitted Natura Impact Statement shall be implemented in full.
   Reason: To protect the integrity of European Sites.
5. All of the environmental, construction and ecological mitigation measures, as set out in the Planning and Environmental Report, the Glint and Glare Assessment Report, the Landscape and Visual Assessment Report, the Flood Risk Assessment, the Construction and Environmental Management Plan, the Archaeology, Architectural and Cultural Heritage Report, the Landscape Mitigation Plan and the Ecological Impact Assessment shall be implemented by the developer in conjunction with the timelines set out therein, except as may otherwise be required in order to comply with the conditions of this order. Where such measures require details to be agreed with the planning authority, the

developer shall agree such details in writing with the planning authority prior to commencement of development.
Reason: in the interest of clarity and the protection of the environment during the construction and operational phases of the development.

6. This permission shall not be construed as any form of consent or agreement to a connection to the national grid or to the routing or nature of any such connection. Reason: in the interest of clarity.
7. Site development and building works shall be carried out only during the hours of 0700 to 1900 Mondays to Fridays, inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays or public holidays. Deviation from these times shall only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.
Reason: in the interest of residential amenity.
8. The construction of the proposed development shall be in accordance with the plans and particulars submitted and managed in accordance with a finalised Construction and Environmental Management Plan, to include a Construction Traffic Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the proposed development, including: (a) details of site security fencing and hoardings, (b) details of on-site car parking facilities for site workers during the course of construction , (c) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site, (d) measures to obviate the queuing of construction traffic on the adjoining road network, (e) measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network, (f) details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels, (g) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained, such bunds shall be roofed to exclude rainwater, (h) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil, (i) details of on-site re-fuelling arrangements, including use of drip trays, a) details of how it is proposed to manage excavated soil, (j) means to ensure that surface water run-off is controlled such that no deleterious levels of silt or other pollutants enter local surface water drains or watercourses, and (1) details of the community liaison officer, including how the developer intends to engage with relevant parties and notify the local community in advance of the delivery of oversized loads and/or Heavy Goods Vehicles deliveries. The finalised Construction and Environmental Management Plan shall also take account of the mitigation measures outlined in the Natura Impact Statement. A record of daily checks that the works are being undertaken in accordance with the Construction and Environmental Management Plan shall be kept for inspection by the planning authority. The Construction Environmental Management Plan (CEMP) shall be finalised and updated to include the location of any and all archaeological or cultural heritage constraints relevant to the proposed development, as set out in the Archaeological Impact Assessment Report, and as may become relevant subsequent to the programme of pre-development Archaeological Test Excavation. The CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.
Reason: in the interest of clarity and the protection of the environment during the construction and operational phases of the proposed development.
9. (a) Existing field boundaries, including trees and hedgerows, shall be maintained and supplemented in accordance with the details submitted, except where removal is proposed to facilitate access to roadways and sightlines. (b) All proposed landscaping and planting shall take place in the first planting season following commencement of development and in accordance with the details proposed. The landscaping and screening shall be maintained at regular intervals. Any trees or hedgerows that are removed, die or become seriously damaged or diseased within five years from planting shall be replaced within the next planting season by trees or hedging of similar size and species, unless otherwise agreed in writing with the planning authority. (C) Additional screening and/or planting shall be provided so as to ensure that there is no glint impact on adjoining dwellings as a result of the proposed development. Upon commissioning of the development, and for a period of two years following first operation, the developer/operator shall provide detailed glint surveys on an annual basis to the

planning authority in order to confirm that no such glint impact has taken place, and shall provide such further mitigation measures, as the planning authority may specify in writing, to ensure that this is achieved.
Reason: in the interest of the visual amenities of the area.

10. (a) No artificial lighting shall be installed or operated on site unless authorised by a prior grant of planning permission. (b) CCTV cameras shall be fixed and angled to face into the site and shall not be directed towards adjoining property or the road. (c) The solar panels shall have driven or screw pile foundations only, unless otherwise authorised by a separate grant of planning permission. (d) Cables within the site shall be located underground.
Reason: in the interest of clarity, visual and residential amenity and in the interest of the long-term viability of agricultural land.
11. All mitigation measures in relation to archaeology and cultural heritage, as set out in the Archaeological Impact Assessment, shall be implemented in full, except as may otherwise be required in order to comply with other conditions. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.
Reason: To ensure the continued preservation of places, caves, sites, features or other objects of archaeological interest.
12. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the satisfactory reinstatement of the site on cessation of the project coupled with an agreement empowering the planning authority to apply such security or part thereof to such reinstatement. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Coimisiún Pleanala for determination.
Reason: To ensure satisfactory reinstatement of the site
13. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or such other security as may be acceptable to the planning authority, to secure the reinstatement of public roads which may be damaged by the transport of materials to the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory reinstatement of the public road. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Coimisiún Pleanala for determination.
Reason: in the interest of traffic safety and the proper planning and sustainable development of the area.
14. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer, or, in default of such agreement, the matter shall be referred to An Coimisiún Pleanala to determine the proper application of the terms of the Scheme
Reason: it is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission."

Some general considerations

36. The way the system is supposed to work is that when questions of principle are decided by appellate courts, the answers are applied in practice to the facts of individual cases by trial courts. In that regard the following are notable:

General approaches to challenges

(i) In *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, 25 March 2026) at para. 1 *per* Donnelly J. (O'Donnell C.J., Charleton and Murray JJ. concurring) (see also *per* Finlay C.J. in *the State (Keegan) v. Stardust Compensation*

Tribunal [1986] I.R. 642 at p. 654 (Hamilton P. concurring); *per* Denham J. in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at p. 743; *Sweeney v. Fahy* [2014] IESC 50 (Unreported, Supreme Court, 31 July 2014) *per* Clarke J. (Dunne J. concurring) at paras. 3.8-3.15), the Supreme Court emphasised that judicial review is concerned with the **legality rather than the merits of the decision**.

(ii) In *Coolglass Wind Farm Ltd v. An Coimisiún Pleanála* [2026] IESC 5 (Unreported, Supreme Court, O'Donnell C.J., 4 February 2026) para. 118(xiv), the Supreme Court emphasised the relevance of the extent to which submissions on a given point were made to the decision-taker, which decision is consistent with the general principle that, apart from autonomous-type obligations, material capable of sustaining the point must have been properly **put before the decision-taker** at the relevant time such as to give rise to a duty to consider it.

(iii) In *A.P. v. Director of Public Prosecutions* [2011] IESC 2, [2011] 1 I.R. 729, [2011] 2 I.L.R.M. 100, [2011] 1 JIC 2501; *Khashaba v. Medical Council* [2016] IESC 10, [2016] 3 JIC 0701, 2016 WJSC-SC 12280 *per* O'Malley J. (Denham C.J. and Clarke J. concurring) at para. 56; *Casey v. Minister for Housing, Planning and Local Government & Ors.* [2021] IESC 42, [2021] 7 JIC 1606 (Unreported, Supreme Court, Baker J., 16 July 2021) (Clarke C.J., O'Donnell, MacMenamin and Dunne JJ. concurring) at §§29 and 31; *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 Supreme Court emphasised that applicants are **confined to their pleadings**.

(iv) In *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024), *per* Murray J. (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring), the Supreme Court emphasised that **complex EU law arguments need to be articulated on the pleadings with particular clarity**.

(v) In *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, 25 March 2026) at para. 96 *per* Donnelly J. (O'Donnell C.J., Charleton and Murray JJ. concurring) (see also *per* Denham J. (Murray C.J. and Fennelly J. concurring) in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 at p. 743; *O'Doherty and Waters v. Minister for Health* [2022] IESC 32, [2023] 2 I.R. 488, [2022] 1 I.L.R.M. 421 *per* O'Donnell C.J. (Irvine P., MacMenamin, O'Malley, Baker and Murray JJ. concurring) at para. 116), the Supreme Court emphasised that an applicant must have discharged the **onus of proof** to establish all facts necessary for relief.

(vi) In An *Taisce v. An Bord Pleanála & Ors*. [2022] IESC 8, [2022] 2 I.R. 173, [2022] 1 I.L.R.M. 281 *per* Hogan J. at para. 124 (O'Donnell C.J., Dunne, Charleton and Woulfe JJ. concurring), the Supreme Court took the approach that in the context of a challenge to an environmental assessment, the **onus of proof to show a defect** generally lies on the applicant. The Supreme Court recently referred to this as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanala* [2026] IESCDET 113 at 9(ii) and 14.

Domestic law - reasons

(vii) In *Oguekwe v. Minister for Justice, Equality and Law Reform* [2008] IESC 25, [2008] 3 I.R. 795, *per* Denham J. (Murray C.J., Fennelly, Kearns and Finnegan JJ. concurring); *per* Clarke J. (Fennelly and MacMenamin JJ. concurring) in *Rawson v. Minister for Defence* [2012] IESC 26 (Unreported, Supreme Court, 1 May 2012) at para. 6.9, the Supreme Court approached the question of reasons on the basis that there is no obligation to provide a **discursive, narrative consideration** of submissions or to "engage with" submissions in such a sense, or to provide an issue-by-issue or submission-by-submission response. The Supreme Court recently referred to the finding of a lack of obligation to "engage with" submissions, as opposed to the giving of reasons to the appropriate standard, as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanala* [2026] IESCDET 113 at 9(ii) and 14.

(viii) In *Connelly v. An Bord Pleanála* [2018] IESC 31, [2018] 2 I.L.R.M. 45 (Clarke C.J.) (O'Donnell, Dunne, O'Malley and Finlay Geoghegan JJ. concurring); *per* Finlay C.J. (Griffin, Hederman and Lynch JJ. concurring) in *O'Keefe v. An Bord Pleanála* [1993] 1 I.R. 39, [1992] I.L.R.M. 237 at p. 76; *Faulkner v. Minister for Industry and Commerce* 1997 WJSC-SC 962, [1996] 12 JIC 1007 (Unreported, Supreme Court, 10 December 1996) *per* O'Flaherty J. (Hamilton C.J. and Barrington J. concurring), the Supreme Court approached the standard as to reasons in a way that can be reasonably summarised as an obligation to provide the **main reasons on the main issues**.

(ix) In *Connelly v. An Bord Pleanála* [2018] IESC 31, [2021] 2 I.R. 752, [2018] 2 I.L.R.M. 453, para. 9.2 *per* Clarke C.J. (O'Donnell, Dunne, O'Malley and Finlay Geoghegan JJ. concurring); *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, 11 April 2024) *per* Woulfe J. (Charleton, O'Malley, Baker and Murray JJ. concurring) at para. 129, the Supreme Court approached the question of reasons on the basis that **reasons may be found anywhere**, not necessarily in the decision itself, for example in an inspectors report, or in documentation before the decision-taker: *Killegland Estates Ltd v Meath County Council* [2023] IESC 39 (§71), *Lanigan v Barry* [2016] IESC 46; [2016] 1 I.R. 656.

Domestic law - consideration of submissions and other relevant matters

(x) In *G.K. v. Minister for Justice, Equality and Law Reform* [2002] 2 I.R. 418, [2002] 1 I.L.R.M. 401 *per* Hardiman J. (Geoghan and Denham JJ. concurring), the Supreme Court decided that there is a presumption (the onus to rebut which falls on a judicial review applicant) that **material has been considered** if the decision-taker says so (see also *Rana v. Minister for Justice* [2024] IESC 46 (Unreported, Supreme Court, O'Malley J., 18 October 2024), para. 91 (Dunne, Hogan, Collins and Donnelly JJ. concurring); *An Taisce v. An Bord Pleanála & Ors.* [2022] IESC 8, [2022] 2 I.R. 173, [2022] 1 I.L.R.M. 281 *per* Hogan J. (O'Donnell C.J., Dunne, Charleton and Woulfe JJ. concurring) at para. 137). The Supreme Court recently referred to this as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanala* [2026] IESCDET 113 at 9(i) and 14.

Domestic law - reasonableness

(xi) In *Sherwin v. An Bord Pleanála* [2024] IESC 13 (Unreported, Supreme Court, Woulfe J., 11 April 2024) (Charleton, O'Malley, Baker and Murray JJ. concurring) (see also *per* Keane C.J. (Denham, Murphy and McGuinness JJ. concurring) in *Baby O. v. Minister for Justice* [2002] IESC 44, [2002] 2 I.R. 169, [2003] 1 I.L.R.M. 24), the Supreme Court decided that **evaluative judgements** involving a significant degree of planning judgement and not tainted by other procedural, legal or factual errors are reviewable on an irrationality standard.

EU law - assessments generally

(xii) Where there is a conflict of admissible evidence, in the absence of cross-examination such a conflict must generally be **resolved against the party carrying the onus of proof**: *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 Supreme Court recently referred to the need for an applicant to displace the validity of assessment methodology as accepted by a planning decision-taker as "well-established" in a determination context in *Rural Residents Wind Aware and Environmental Group v. An Coimisiún Pleanala* [2026] IESCDET 113 at 9(vi) and 14.

EU law - EIA directive

(xiii) In *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28 (Unreported, Supreme Court, Murray J., 4 July 2024) (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring), the Supreme Court emphasised that Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA directive) **does not apply to projects that are not listed**.

(xiv) Relatedly, projects that do not otherwise come within the directive do not require EIA merely because they have internal access tracks that are not shown to be of road quality. The application of the latter distinction was referred to by the Supreme Court as "well-established" in a determination context in *Moss v. An Coimisiún Pleanala* [2026] IESCDET 91 at 11. The question as to whether any given development may amount to urban development, is a fact-sensitive one and an applicant has an evidential onus in that regard: see in a determination context *Doyle v. An Coimisiún Pleanala* [2026] IESCDET 102 at 23.

(xv) In the judgment of 17 March 2011, *Brussels Hoofdstedelijk Gewest and Others v Vlaamse Gewest*, C-275/09, ECLI:EU:C:2011:154, para. 24; judgment of 19 April 2012, *Pro-Braine ASBL and Others v Commune de Braine-le-Château, intervener: Veolia es treatment SA*, C-121/1, ECLI:EU:C:2012:225, para. 31, the CJEU decided that **environmental impact assessment (EIA) only applies to physical interventions not changes of use**.

(xvi) In Judgment, 01/08/2025, Asociación Petón do Lobo, C-461/24, ECLI:EU:C:2025:620, the CJEU held that the EIA directive must be interpreted as not precluding legislation of a Member State under which, in the context of an environmental impact assessment procedure in respect of a project subject to that directive, the authorities likely to be concerned by that project by reason of their specific environmental responsibilities or local and regional competences are consulted at the same time as the public concerned, **without the public concerned then being entitled to express its comments and opinions**, to the authority or authorities competent for granting development consent for the project, on the opinions given in that connection by the consulted authorities.

Discretion and harmless error

(xvii) In *Carrownagowan Concern Group v. An Bord Pleanála* [2025] IESCDET 9 (Charleton, Collins and Donnelly JJ., 27 January 2025) and *Massey v. An Bord Pleanála* [2025] IESCDET 126 (Woulfe, Murray and Donnelly JJ., 16 October 2025) at 12, the Supreme Court referenced, non-precedentially but consistently with the judgment of 7 November 2013, *Gemeinde Altrip and Others v Land Rheinland-Pfalz*, C-72/12, ECLI:EU:C:2013:712 regarding grounds that amount to **harmless error**, that it is "well-established" as a matter of Irish law that where a decision is challenged in judicial review proceedings, not every error on the part of a decision-maker will result in a quashing of that decision.

(xviii) In *G. v. DPP* [1994] 1 I.R. 374 *per* Finlay C.J. (Blayney and Denham JJ. concurring) at p. 378 and subsequent cases, the Supreme Court decided that judicial review is a **discretionary remedy** within established doctrinal boundaries (see also *De Róiste v. Minister for Defence* [2001] IESC 4, [2001] 1 I.R. 190, [2001] 2 I.L.R.M. 241 at 204 *per* Denham J.; *Kenny v. Dublin City Council* [2009] IESC 19 (Unreported, Supreme Court, 5 March 2005) at 79 *per* Fennelly J. (Macken and Peart JJ. concurring); *Kelly v. Minister for Agriculture* [2021] IESC 62, [2023] 1 I.R. 38 *per* O'Donnell J. (Clarke C.J. and Dunne J. concurring); *Save Cork City Community Association CLG v. An Bord Pleanála* [2022] IESC 52, [2024] 1 I.R. 205 at 60 *per* Woulfe J. (Dunne, Charleton, O'Malley and Hogan JJ. concurring); *Ballyboden Tidy Towns Group v. An Bord Pleanála* [2024] IESC 4 (Unreported, Supreme Court, Donnelly J., 22 February 2024) (O'Donnell C.J., Woulfe, Hogan and Collins JJ. concurring); *S. v. Minister for Justice and Equality* [2025] IESC 48 (Unreported, Supreme Court, 25 November 2025) *per* Dunne J. (Charleton, Woulfe, Collins and Donnelly JJ. concurring) at 98; *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton and Murray JJ. concurring).

37. It is the function of a trial court to apply such principles here. While I appreciate the sincerity of the applicants as local residents beside the development, the legal question here is whether any sufficiently convincing legal reason has been demonstrated to displace the foregoing.

Preliminary issues

38. The parties' positions on preliminary issues as recorded in the statement of case are summarised as follows:

> "Applicant's Position
>
> 35. The sole preliminary issue identified by the Applicants is the proper characterisation of the EIA screening exercise conducted by the Commission in this case. The Commission and Notice Party contend in their respective Statements of Opposition that the screening was conducted only on a precautionary basis in respect of ancillary works potentially falling within Class 1(a) (restructuring of rural landholdings) and Class 10(dd) (private roads exceeding 2,000 metres) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001.
>
> 36. The Applicants submit that this characterisation is directly and demonstrably contradicted by the Commission's own process documents. The EIA Pre-Screening Form (Form 1) at page 72 of the Inspector's Report records that the ancillary works fell below the Class 1(a) and Class 10(dd) thresholds and that accordingly "No Screening required." Notwithstanding this finding, the Inspector proceeded to conduct a full Schedule 7/Annex III screening examination of the entire 249-hectare solar farm development, as recorded in Form 3 at pages 77–81 of the Inspector's Report, applying every criterion to the solar farm development as a whole. The Commission's Order of 16th February 2026 at items (a) through (g) of pages 6–7 confirms this: item (a) records the below-threshold finding for the ancillary works; items (b) through (g) then apply the full Schedule 7 criteria to the proposed

development as a whole. Furthermore, at paragraph 9 of its own Statement of Opposition, the Commission concedes that 'the screening assessment… considered the entirety of the proposed development.'

37. The Applicants submit that the resolution of this preliminary issue is dispositive of the Commission's and Notice Party's foundational argument that any deficiencies in the screening can have no legal consequences. Once it is established that a full Schedule 7/Annex III screening was conducted, the legal standards applicable to such a screening applied in full, and each Core Ground falls to be assessed on its merits.

Respondent's Position

38. The Applicants' EIA case (which is advanced across all seven Core Grounds) is legally misconceived. A solar farm is not an EIA project because it does not fall within Annex I or Annex II of the EIA Directive: Breen v. An Coimisiún Pleanála [2026] IEHC 338; Moss v. An Coimisiún Pleanála [2026] IEHC 62, [2026] IEHC 175, [2026] IESCDET 91; Cummins v. An Coimisiún Pleanála [2025] IEHC 521, [2025] IEHC 662; Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála [2024] IESC 28; Kavanagh v. An Bord Pleanála [2020] IEHC 259; Sweetman v. An Bord Pleanála [2020] IEHC 39. That accepted position is fatal to all seven Core Grounds as they are all tied to EIA screening. The Commission's precautionary EIA screening did not convert the solar farm into an Annex II project or create obligations that did not arise; and any alleged flaw in that voluntary screening is therefore nihil ad rem: Carvill v. Dublin City Council [2025] IECA 84 at §259. Read as a whole, Form 1, Form 3, the Inspector's Report and the Commission's Order show that the solar farm was not Schedule 5 development, the ancillary works were below the respective thresholds in Classes 1(a) and 10(dd) of Part 2 of Schedule 5 to the Planning and Development Regulations 2001 (as amended), and that the Inspector nevertheless properly considered context, scale, location, Schedule 7 criteria, submissions and expert material submitted by the Notice Party, before finding no likely significant environmental effects.

39. The Applicants case also fails on the basis of inadequate particularisation contrary to Order 84 rule 20(3) and Order 103 rule 14(3) of the Rules of the Superior Courts, and a clear failure to discharge the onus of proof. The Applicants are confined to the grounds for which leave was granted. Their case provides no route-map from the complaints made to the relief sought, and is in substance an impermissible, inexpert merits-based challenge. It is settled law that the onus of proof lies on the Applicants, but mere assertion, legal submission, non-expert opinion, argumentative affidavits and comment are not evidence and do not establish inadequacy, irrationality, evidential deficiency, likely significant effects or entitlement to relief. The Applicants have not shown that the Commission lacked supporting material for its Decision; and adequacy of planning and EIA-screening information is primarily for the Commission: Heather Hill [2022] IEHC 146 at §232; St. Margaret's Recycling [2024] IEHC 94 at §71; Coyne [2023] IEHC 412 at §414; Grafton Group [2023] IEHC 725 at §166; Minoa [2024] IEHC 704 at §323. Further, there is no internal contradiction in the Decision or Statement of Opposition; the Applicants' case depends on reading them "in the most erroneous way possible": Eco Advocacy [2025] IEHC 15 at §63(vii).

Notice Party's Position

40. The difficulty for the Applicants is that their seven Core Grounds are all predicated on the false contention that the permitted Solar Farm is subject to the requirements of the EIA Directive. As has been repeatedly held, a solar farm is not a category of EIA project and it is not subject to the requirements of the EIA Directive – per Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála [2024] IESC 28; Cummins v An Coimisiún Pleanála [2025] IEHC 521; Sweetman v An Bord Pleanála [2020] IEHC 39; Kavanagh v An Bord Pleanála [2020] IEHC 259; Moss v An Coimisiún Pleanála (No.1) [2026] IEHC 62; and Breen v An Coimisiún Pleanála [2026] IEHC 338.

41. Moreover, insofar as the Applicants contend that the EIA Screening carried out by the Commission was flawed as it referred to the solar farm, such complaints are wholly otiose – noting that the permitted Solar Farm was not required to be subject to EIA Screening. Insofar as sub-elements of the solar farm potentially comprised sub-threshold EIA development, they were screened for EIA (no pleaded issue is taken with this respect) (see Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála [2024] IESC 28). As the Inspector's Report (§6.4) and Commission's Order provide:

'EIAR is not required having regard to'

- The nature and scale of the proposed development, which of itself is not a class of development and falls below the thresholds in respect Class 1(a) and Class 10(dd) of Part 2 of Schedule 5 of the [PDRs]…

…

… the wider development of solar farm which is not, of itself, a class for the purposes of the EIA Directive …'

42. Even taking the Applicants' case at its height, if there was any error with the Inspector and Commission's EIA Screening (which is denied) – insofar as the Applicants contend same comprised the entire solar farm – such an error is of no legal consequence as no EIA Screening of the Proposed Solar Farm was required. Such findings 'are, as matter of law, nihil ad rem…', per Carvill v Dublin City Council [2025] IECA 84 (§254 et seq), and would not justify the granting of relief – see Ryan v An Bord Pleanála [2025] IEHC 111 (§214):

'…It would be disproportionately prejudicial to [the Developer's] interests to quash the Impugned Decisions as if the Proposed Developments were EIA projects when they are not – to quash them for failure to comply with legal obligations which did not apply. Certiorari and remittal to the Board merely to have it inevitably decide, in accordance with the law as I have found it, that EIA is unnecessary as the Proposed Developments do not fall into any Annex I or Annex II Classes would be formalistic and serve no useful, substantive, environmental or legal purpose.' See also Reid v An Bord Pleanála (No. 7) [2024] IEHC 27 (§80 et seq).

43. Even if the Applicants are correct in their complaints of retrospective characterisation of the EIA Screening as precautionary, this is of no moment. An administrative body such as the Commission simply cannot unilaterally expand the scope of the EIA Directive to create a parallel legal world, with real world legal consequences. The role of the Court is to apply the rule of law not to spiral down legal wormholes. An alleged error in a matter which is irrelevant, cannot make the matter and the alleged error relevant.

44. Finally, and leaving aside all of the foregoing (which should be dispositive of the Applicants' challenge), regarding EIA Screening, the Applicants' Submissions confirm that their case is about 'the adequacy of the screening that was conducted…'. Again, taking this challenge at its height, the Applicants fall considerably short of the mark in terms of identifying any error and, importantly, discharging the burden of proof which rests on them to bring home such a challenge – noting the complete absence of any expert evidence adduced on their behalf and the uncontroverted expert evidence adduced against them."

39. These points can be resolved as follows:

(i) The complaint that the whole basis of the applicants' position is misconceived is unfortunately valid and is dealt with below under each core ground.

(ii) The complaints about adequacy of the commission's analysis and/or failure to discharge the burden of proof in that regard can also be dealt with below under each core ground.

(iii) The complaint about inadequate particularisation contrary to Order 84 rule 20(3) and Order 103 rule 14(3) RSC is well-founded. Caselaw is clear that complex EU law points in particular need to be pleaded with specificity and the applicants' pleadings generally lack a clear road map from the pleaded complaint to the relief sought via a chain of robust reasoning. In particular, the law on pleadings is clear that if pleadings are ambiguous, the pleader cannot have the benefit of that. On such a basis, all grounds are effectively subtended by the EIA argument and stand or fall (in fact, fall) on the basis of that premise. If I am wrong about that I will consider the points on the merits in any event.

(iv) As the commission points out, the pleadings have to stand or fall in themselves, and subsequent documents such as affidavits are not sufficient to rectify any omissions. Relatedly I accept the submission that "insofar as the affidavits filed by the Applicants involve or contain comment, submissions and argument, they are inadmissible and/or such averments are of no evidential weight (per Kennedy v. An Bord Pleanála [2024] IEHC 570 at §57,§58; Pierse v. An Bord Pleanála [2018] IEHC 669 at §15-§16)".

Whether the points were made at the appropriate time

40. The parties' positions on whether the applicant's points were made at the appropriate time as recorded in the statement of case are summarised as follows:

"Respondent's Position

54. The Applicants did not contend during the planning process that unidentified significant effects on the pNHAs triggered an EIA requirement; no such effects exist. In any event, as outlined above, a solar farm is not an EIA project and is not subject to EIA requirements. The Applicants' pleaded complaint alleging failure to apply the correct legal framework to the solar farm and EIA screening by reference to pNHAs is legally incorrect and was not raised during the planning process. The Applicant's response to these points (set out below) do not address same and constitute a straw man argument in responding to

a different point instead of the one being made. While the Applicants may have referred to the three pNHAs in their Council submission and appeal materials, that does not meet the point made by the opposing parties: no issue was raised that any unidentified significant effects on those pNHAs required EIA screening or rendered the solar farm subject to EIA requirements.

Notice Party's Position

55. The Applicants did not contend that a requirement for EIA arose because of unidentified significant effects on the pNHAs during the planning process – there are no such significant effects. Moreover, as outlined above, a solar farm is not an EIA project and is not subject to the requirements of EIA. The Applicants pleaded complaint alleging a failure to apply the 'correct legal framework' (inter alia, §29) in respect of the solar farm and EIA Screening by reference to pNHAs, whilst misconceived, was not raised during the planning process.

Applicants' Position

56. The Commission at paragraph 13 of its Statement of Opposition and the Notice Party at paragraph 102 of its Statement of Opposition, and in the Affidavit of Jim Hughes at paragraph 10, assert that the Applicants failed to raise any issue with the three proposed Natural Heritage Areas (pNHAs) during the planning process. This assertion is factually incorrect.

57. The Applicants raised the pNHA issue, specifically and by reference to all three NPWS designation codes, in their joint submission to Laois County Council on planning application ref. 25/60148. That submission identified pNHA 000416 (Derries Wood), pNHA 000881 (The Great Heath of Portlaoise) and pNHA 000865 (Emo Court) by code, described the geographical relationship between the proposed development and each designated site, identified the impact of approximately 23 kilometres of boundary security fencing as a barrier to animal migration between the three sites, and expressly requested that the Ecological Impact Assessment be reassessed with all three pNHAs in mind.

58. The said Council submission is exhibited at Tab 1 of Exhibit RB1 in the Affidavit of Robert Brophy sworn on 15th June 2026 on behalf of the Commission. The Applicants' Third Party Appeal to the Commission incorporated that submission and is exhibited at Tab 6 of Exhibit RB1. The Inspector therefore had the Applicants' pNHA submissions before him when preparing his Inspector's Report and when completing the EIA Screening Determination. The factual basis for the Notice Party's and Respondent's objection to Core Ground 7 on process grounds is contradicted by documents exhibited by the Respondent itself.

59. The Applicants further note that Core Ground 7 was the subject of an amendment to the Statement of Grounds for which leave was sought and obtained. The merits of that amendment are not properly revisable by way of a plea of opposition in the Statements of Opposition.

60. Insofar as the Respondent and Notice Party characterise the Applicants' response as a 'straw man' on the basis that the Applicants raised the existence of the three pNHAs but did not, during the planning process, articulate the specific legal contention that this engaged a mandatory Schedule 7 criterion, that characterisation is not accepted. A third-party objector is not required to articulate a precise legal theory, or to invoke Schedule 7 by name, during the planning process. It is sufficient that the underlying facts — the identity, site codes and proximity of the three pNHAs, and a request that the ecological assessment be revisited to take account of them — were squarely put before the decision-maker, as they were. It is the decision-maker's own obligation to correctly apply the statutory screening framework to the facts before it; that obligation is not discharged by an objector's failure to anticipate, in lay terms, exactly which mandatory criterion the decision-maker's own document would ultimately fail to engage with."

41. These points can be resolved as follows. The applicants' failure to contend before the decision-taker that alleged significant effects on the pNHAs triggered an EIA requirement does not preclude the argument being made, but any such argument can only be assessed by reference to the material actually before the commission. Furthermore, the failure to make this point would be relevant to discretion, if the point counterfactually had substance. But we don't need to get to that stage because the point suffers from the overall misconception already referred to. It is not enough to trigger EIA that a project has significant effects on the environment. It must also be listed in the directive. Hence even if a non-EIA project has significant effects, that is *nihil ad rem* as far as the application of the directive is concerned.

Taxonomy of grounds

42. Contrary to O. 103 RSC and Practice Direction HC137 as amended, the grounds are not specifically described in terms of core grounds and are not classified as between domestic and EU grounds. In fact, EIA is referenced in all of the grounds or sub-grounds so in fact all grounds are effectively EU law-related. Unfortunately, that means that there is a one-line response that is fatal to all of these arguments – this is not an EIA project. If I am wrong that the grounds are pleaded as EU points either expressly or implicitly, I will consider the points as general complaints in any event.

EU law issues

Core ground 1 – lack of assessment of existing use under EIA directive

43. Core ground 1 is:

1. Failure to Adequately Assess the Existing Land Use Criterion under Schedule 7/Annex III of the EIA Directive.

44. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position

65. The Applicants submit that the EIA Screening Determination failed to substantively engage with the mandatory criterion of existing and approved land use under Schedule 7/Annex III Heading 2. The proposed development site comprises approximately 249 hectares of active agricultural land across five townlands, used for dairy farming, beef farming and arable operations.

66. The only engagement with the land use criterion in the formal Screening Determination was the bare characterisation of the proposed change as 'temporary.' This is not a legal or factual assessment of the existing land use criterion. It is the developer's own characterisation of the development, adopted by the Inspector without independent analysis. The obligation under Connelly v An Bord Pleanála [2018] IESC 31 to give reasons specific to the facts of the case was not discharged. The significance of a 40-year change from agricultural use to solar energy use in terms of likely significant environmental effects was never assessed.

Respondent's Position

67. As set out above, a point made by the Commission in respect of all seven Core Grounds is that all of the Core Grounds are predicated on the legally incorrect contention that the permitted solar farm is subject to the requirements of the EIA Directive when it is not.

68. Core Ground 1 is not made out. The Inspector did not omit existing land use from the EIA screening assessment. The Commission addressed location and existing land use for EIA screening purposes (see e.g. Commission's Order, item (d), p.6; Inspector's Report, pp.21, 49, 77–79 and 82), recognising that the lands were moderately productive agricultural lands, that such land was not a scarce resource, that sheep grazing would continue, and that the development was time-limited, reversible and would not permanently remove the lands from agriculture. The Applicants therefore mischaracterise the reasoning by isolating the word 'temporary' and ignoring the Inspector's wider assessment of reversibility of the development, operational duration of same, continuing agricultural use, land quality, planning context and the material in the Notice Party's Third Party Responses Report.

69. Core Ground 1 is in substance an impermissible merit-based challenge. The proposed solar farm was not itself an Annex I or Annex II EIA project; the Commission undertook only a precautionary EIA screening because certain ancillary works might potentially engage Classes 1(a) and 10(dd) of Schedule 5, Part 2 of the 2001 Regulations. Annex IV of the EIA Directive is irrelevant to that screening exercise, and the Commission was not required to provide micro-reasons on every sub-issue: it gave the main reasons on the main issues in accordance with 100 Meter Tall Group [2025] IEHC 42 at §76. Read as a whole and validly, consistently with Keogh [2026] IEHC 339 at §43(iv)–(vii), the Decision discloses no error of law; the Applicants' reliance on subsidy or tax regimes is irrelevant to Schedule 7 of the 2001 Regulations and cannot and does not establish any defect in the EIA screening determination.

Notice Party's Position

70. This Core Ground alleges a failure to address or adequately assess the "existing land use" for the purposes of EIA Screening – it is framed by reference to the entire solar farm (which is not an EIA project). For the reasons set out above, this Core Ground fails as the Proposed Solar Farm is not subject to the requirements of EIA.

71. A complaint is also made about the description of the Proposed Solar Farm as 'temporary' under this Core Ground – this is addressed under Core Ground 3 and, for the reasons set out below, this complaint is misconceived and based on a completely erroneous interpretation of the Commission's Decision.

72. There is a certain unreality to this Core Ground – the Inspector (with whom the Commission agreed), as with the Council's Decision and the application documentation, expressly identified the existing agricultural use of the lands and considered the reversibility

of, the defined operational duration of, and agricultural continuity associated with the Proposed Solar Farm. The Applicants' disagreement with this assessment is not evidence of any legal error and merely comprises impermissible, merits-based complaints. Judicial review is not an appeal on the merits. The Commission was fully aware of the existing land use of the site, including for the purposes of assessing same – as the Inspector's Report and Commission's Decision expressly record.

73. There is no merit to the complaint that the Inspector / the Commission did not identify the current land use of the site – it was expressly acknowledged by the Inspector (see, pg.49, 77 and 78). The approach of the Inspector and the Commission in this regard was consistent with the application documentation submitted on behalf of Perigus (which Perigus relies on in full to oppose this Core Ground), including the Third Party Response Report and the reports of the planning authority. In this respect, the Inspector / the Commission assessed the impact of the works and found same to be acceptable.

74. The substance of this complaint appears (implicitly) to be that alleged significant effects arising from the Proposed Solar Farm (noting that same is not a category of EIA project) have been overlooked as a result of the alleged inadequate assessment of the existing land use – such assertions are without substance. Noting the Applicants' subjective, non-expert views regarding the significance of any effects arising. The development does not give rise to any such significant effects and the Applicants have not demonstrated any evidential basis, by way of appropriate expert evidence, to suggest anything to the contrary – noting that the burden is on them to do so.

75. In terms of the reasons-based complaint, as detailed below, this is not made out – the main reasons were provided for the main issues. The claim here is that reasons need to be provided for not finding there to be significant effects – the Applicants have not established the existence of such effects, therefore the premise of the complaint is ill-conceived."

45. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the precautionary EIA screening does not render the decision invalid. This point is going to have to be repeated under all subsequent grounds, as it provides the laconic answer to what the notice party in para. 1 of submissions calls the "proton pseudos" (πρῶτον ψεῦδος/ false premise) of the entire case (a term from Aristotle's *Prior Analytics/ Ἀναλυτικὰ Πρότερα* (c 350 BCE)).

46. The rudimentary internal access tracks do not constitute road projects for the purpose of the directive as outlined in the authorities quoted at the outset. Nor do the works constitute rural land restructuring given the absence of changes to field configurations or boundaries, as specified in condition 9(a):

9. (a) Existing field boundaries, including trees and hedgerows, shall be maintained and supplemented in accordance with the details submitted, except where removal is proposed to facilitate access to roadways and sightlines.

47. A total of 75m of hedgerows are being removed for access purposes. The distinction between field reconfiguration and hedgerow removal is that the latter is more a matter of degree (on a spectrum between merely providing access to materially changing the structuring of the land). Any change to field configuration – say, amalgamation of fields by removing a boundary, or subdivision of a field by erecting a new boundary - inherently constitutes restructuring, albeit perhaps at a small scale. However partial removal of a hedge does not necessarily constitute rural land restructuring unless it changes the structure of the land, characteristically by changing the field or land parcel shape and/or boundaries. The limited removal here has not been shown to cross the EIA threshold but in any event the applicant has not pleaded that the partial hedge removal that was proposed here in itself was enough to trigger EIA – rather the thrust of the point is that the existence of precautionary screening is enough. That is misconceived on a similar basis to the argument rejected in *Carvill*. In the absence of a change to the land structure, there was no restructuring and thus the EIA was merely precautionary. The decision cannot be invalid on EIA grounds on that basis (as in *Carvill*).

48. If this ground can be reconfigured as making a general point about lack of consideration of the existing use, it is clear from the material before the commission that the existing use was actually considered. No error has been demonstrated, the applicants carrying the onus of proof in that regard. So the factual premise for this point is absent.

49. The alleged lack of reasons has not been made out. The decision gives the main reasons on the main issues.

Core ground 2 – incorrect assessment of land use

50. Core ground 2 is:

2. The Inspector Incorrectly Treated Aspirational and Non-Committal Language as Established Fact in Assessing the Land Use Criterion.

51. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position
76. The Applicants submit that the Inspector erred in treating the developer's aspirational statements about continued sheep grazing as established operational facts in conducting the screening assessment. The Inspector recorded at page 28 of his Report that 'it is proposed to maintain the lands for sheep grazing' and that \there is no proposal to remove lands permanently from agriculture.' These are statements of what the developer proposed, not findings of what would occur. There was no mandatory condition requiring sheep grazing and no enforceable mechanism for its delivery.
77. The EIA screening legal standard requires assessment of what the development is, not what the developer promises. To treat an unenforceable aspiration as an established operational characteristic of the development in a screening determination is to apply the wrong legal standard, as confirmed in Case C-2/07 Abraham and Others v Région Wallonne.
Respondent's Position
78. Core Ground 2 is not made out. The Applicants incorrectly seek to elevate the absence of a planning condition requiring sheep grazing into an error of law. The Inspector was entitled to characterise the proposed solar farm development by reference to the planning application and operational material before the Commission, including pages 56, 137 and Appendix 1 of the Notice Party's Planning and Environmental Report, which stated that the lands were to be maintained for sheep grazing. There was no factual error: page 28 of the Inspector's Report accurately recorded that proposal.
79. The Applicants' reliance on Case C-2/07 Abraham is misplaced: the development was assessed as it was proposed, including its intended operational land management. The Applicants identify no authority requiring the Commission to disregard proposed operational characteristics unless each is separately secured by condition, and they demonstrate no materiality even if grazing ultimately occurred to a lesser extent. Core Ground 2 is therefore only a non-expert merits-based disagreement with the weight attributed to one operational feature and provides no basis for certiorari or other relief.
Notice Party's Position
80. For the reasons set out above, this Core Ground fails on the basis that the Proposed Solar Farm is not subject to the requirements of EIA. The Applicants' assertions under this Core Ground are difficult to follow as pleaded, but they appear to be aggrieved with the fact that some form of agricultural use may be compatible or capable of being carried out with the solar farm development – mainly sheep grazing. It is not entirely clear how they say this is a legal error – the pleadings make no attempt to link same to the relief of certiorari.
81. The Applicants' allegation – premised on a selective, erroneous and subjective understanding of the evidence before the Commission and the Commission's approach – that there was a material error of fact in the Commission's Decision and/or that there was an error in the assessment of the existing land use is not correct and falls away on an objective reading of the Commission's Decision. In this regard, consistent with the evidence before the Commission (which Perigus relies on in full), the Inspector correctly stated that 'it is proposed to maintain the lands for sheep grazing' and that there was 'no proposal to remove lands permanently from agriculture' (pg.28). This reflects the details contained application documentation, including the Planning and Environmental Report (for example, see pages 56 and 137, as well as Appendix 1 of that Report). The Inspector was entitled to rely on that material in characterising the development. The Applicant's complaints in this respect do not disclose any legal error. It also a factual matter beyond the knowledge of the Applicants who are not in a position to controvert.
82. Moreover, there is no requirement, and the Applicants have not identified any, for concrete plans in terms of continued agricultural activity. In this regard, the Applicants have misunderstood and/or mischaracterised the Inspector's reference to maintaining land for sheep grazing and not permanently removing the land from agriculture. The Inspector was referring to the land in land use planning terms and was not referring to concrete and/or specific plans. Perigus was not seeking any form of permission relating to sheep grazing (and indeed none would be required) and so there was no requirement for 'concrete' plans. There was therefore no error of fact and/or material error of fact.
83. The Applicants' reliance on agricultural subsidy and taxation regimes is irrelevant to the planning assessment undertaken by the Commission, and the Applicants' pleaded case in this regard comprises merits-based assertions. Same does not establish or demonstrate any deficiency in the Commission's Decision. Such matters arise under entirely different statutory and/or administrative schemes, and have no relevance to the assessment of land use consideration for planning purposes."

52. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

53. *The judgment of 28 February 2008, Paul Abraham and Ors v. Région wallonne and Ors,* C-2/07, ECLI:EU:C:2008:133 is not directly relevant because that concerned airport construction/ improvement, which is an EIA project (Annex I class 7(a)). This is not an EIA project.

54. For similar reasons (insofar as relevant to the grounds of challenge generally), the commission is correct to submit that:

> 7. "The Applicants' reliance on Connelly [2018] IESC 31, [2021] 2 IR 752 and Klohn [2007] IEHC 244 is misplaced. They both concerned projects to which the EIA regime applied."

55. In any event insofar as *Abraham* required consideration of impacts of future use of the project, that does not require certainty or anything like it. Prediction is always inherently uncertain but that does not mean that it should be characterised as speculation. There is nothing inherently unlawful about a planning decision-taker having regard to the proposed use of given land, assuming such use would be inherently lawful. So no error or illegality has been made out. The judgment of 24 October 1996, *Kraaijeveld and Others v. Gedeputeerde Staten Van Zuid-Holland*, C-72/95, ECLI:EU:C:1996:404 does not contradict that conclusion either. That concerned works coming within the notion of "canalization and flood-relief works" in point 10(e) of Annex II to Council Directive 85/337/EEC. It provides no support to this case where the project falls outside the annexes. Likewise, the judgment of 7 January 2004, *R. (Wells) v. Secretary of State for Transport, Local Government and the Regions* C-201/02, ECLI:EU:C:2004:12 related to class 2(c) of Annex II. So all of this caselaw is just irrelevant.

56. If this ground can be reconfigured as making a general point about incorrect assessment of use, no such error has been demonstrated, the applicants carrying the onus of proof in that regard. So the factual premise for this point is absent.

Core ground 3 – incorrect temporary characterisation in EIA screening

57. Core ground 3 is:

> 3. The "Temporary" Characterisation is Legally Inadequate and Internally Contradictory.

58. The parties' positions as recorded in the statement of case are summarised as follows:

> "Applicants' Position
>
> 84. The Applicants submit that the characterisation of a 40-year land use change as 'temporary' is legally inadequate as a basis for dismissing the significance of the land use change criterion in EIA screening. A 40-year period encompasses multiple generations of agricultural practice and the full operational lifetime of the solar panels as acknowledged by the developer's own planning documentation. The Inspector acknowledged the tension himself with the parenthetical qualifier 'although 4 decade.'
>
> 85. Furthermore, Annex IV of the EIA Directive expressly requires that the description of likely significant effects must cover both permanent and temporary effects. Temporary effects are not excluded from assessment. The use of 'temporary' as a reason to diminish the significance of the land use change is contrary to the express requirements of the Directive. The Irish state's own treatment of solar farm land as non-agricultural for the purposes of agricultural subsidies (BISS scheme) and tax reliefs (Finance Act 2017) further contradicts the 'temporary' characterisation as applied in the screening context.
>
> Respondent's Position:
>
> 86. Core Ground 3 is not made out. The Applicants' written submissions do not substantively answer the Commission's pleaded opposition to the ground, save to accept at §58 that it is related to Core Ground 4. In any event, there is no legal error in describing the proposed solar farm as temporary notwithstanding its 40-year operational life: 'temporary' in this planning context turns on the legally limited duration, reversibility, decommissioning obligation and restoration requirements, not elapsed time alone.
>
> 87. The Inspector correctly relied on the permission's 40-year operational limit, the Decommissioning Statement and restoration obligations, the CEMP decommissioning plan, and the Notice Party's Planning and Environmental Report, which explained the technological, financing and sustainability rationale for a 40-year lifespan and confirmed removal of infrastructure and restoration to agricultural use. As is from the information that was before the Commission, particularly section 1.5 of the Planning and Environmental Report, the 40-year operational lifespan is necessary to ensure sustainable development. The Applicants' contention that a 40-year use cannot be temporary impermissibly equates long duration with permanence and is no more than a merits-based disagreement with the Commission's planning judgment. Further, Annex IV of the EIA Directive is irrelevant: it concerns the content of an Environmental Impact Assessment Report (EIAR) where an EIA is required. The present case concerns a precautionary EIA screening.
>
> Notice Party's Position
>
> 88. For the reasons set out above, this Core Ground fails on the basis that the Proposed Solar Farm is not subject to the requirements of EIA.

89. This Core Ground, as pleaded, takes issue with the description of the Proposed Solar Farm as 'temporary' in nature. The Applicants seek to make much of this – inferring, for example, that same means the assessment of the solar farm was flawed in some unspecified sense. In truth, there is no basis to this ground and it comprises a complaint over the language used, as opposed to being relevant to any substantive planning or environmental issue. The assessment was based on a 40 year use; whether this is properly characterised as temporary or not, is merely a complaint about labelling which does not impact on the substantive assessment of the proposed 40 year operational use which was conducted.

90. In any event, noting the provisions of the PDA, including s.39(1) and s.34(4)(n), the description of the permission – being a permission confined (in terms of operation) to a period of time of 40 years – as temporary was entirely reasonable and lawful. Here, the time limit governs the length of time for which the development is permitted to remain in situ / operational – it is temporary in that sense.

91. Moreover, there was a clear basis for the 40-year operational period in the evidence before the Commission – as set out in the Planning and Environmental Report and as noted by the Inspector. There is no complaint – nor could there be, noting the evidence before the Commission – that it was not open to the Commission to impose Condition 3.

92. The Applicants' reliance on Annex IV of the EIA Directive is misplaced – same concerns the content of an EIAR, which is not relevant in this case."

59. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

60. If this ground can be reconfigured as making a general point about incorrect characterisation of the use as temporary, no such error has been demonstrated, the applicants carrying the onus of proof in that regard. It is not irrational, illogical or contradictory to characterise a totally reversible use as temporary, even if it is for some decades. Putting solar panels on grasslands is totally different from, say, knocking down a historic structure, degrading a habitat or damaging a species or any life form specimen, which actually or potentially does irreversible damage. The factual premise for this point is thus absent.

61. The power to impose conditions has been made clear by the Supreme Court: *Boland v. An Bord Pleanála* [2006] IEHC 102, 4 I.R. 112, [2006,] [2007] 1 I.L.R.M. 125, [2006] 3 JIC 2901. No basis to question either the validity or enforceability of condition 3, which imposes the 40 year duration, has been made out. Therefore, the development is in fact temporary, in the sense of being for a defined period, albeit a long period.

Core ground 4 – lack of engagement with development plan in EIA screening

62. Core ground 4 is:

4. The Respondent Failed to Adequately Engage with the Development Plan Land Use Policy Criterion.

63. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position

93. The Applicants submit that the Screening Determination failed to engage substantively with Policy DM RE 1 of the Laois County Development Plan 2021–2027 as a component of the mandatory 'existing and approved land use' criterion under Schedule 7/Annex III Heading 2. Policy DM RE 1 states a preference for siting solar farms on brownfield or non-productive agricultural land. The proposed development is sited on approximately 249 hectares of active, productive agricultural land.

94. The development plan represents the approved land use framework for the area. A screening determination that fails to engage substantively with the applicable land use policy in assessing the land use criterion fails to address a mandatory element of Schedule 7. The Applicants submit this is an independent ground of challenge that does not depend on the outcome of Core Ground 3, though the two grounds are related.

Respondent's Position

95. Core Ground 4 is not made out. The Applicants' submissions proceed on the false premise that Policy DM RE 1 of the Laois County Development Plan 2021–2027 is incorporated into the 'existing and approved land use' criterion in Annex III to the EIA Directive. No such legal linkage exists: that criterion requires regard to the factual characteristics of the receiving environment, not a separate EIA-screening assessment of compliance with each development plan policy. In any event, the Inspector expressly considered existing agricultural use and Policy DM RE 1, noting the planning authority's conclusion that the proposal was generally consistent with that policy and agreeing with it, having regard to the lands' agricultural use, continued grazing, grid proximity, renewable-energy objectives, mitigation, reversibility and restoration.

96. Further, Policy DM RE 1 is not a rigid prohibition on solar development on productive agricultural land: it states a preference for brownfield, contaminated or non-productive land

while also recognising the importance of proximity to electricity infrastructure. The Inspector's assessment reflected that balance and was supported by the Notice Party's site-selection and Third Party Responses material, including the temporary and reversible nature of the development and continued agricultural use. Core Ground 4 is therefore an artificial reformulation of Core Ground 3 and an impermissible invitation to substitute the Applicants' planning assessment for that of the Commission; no misinterpretation, irrationality or legal error is pleaded or established.

Notice Party's Position

97. The Applicants' pleaded case concerned an alleged failure to engage with the Development Plan. In Submissions, this appears to have been altered and proceeds on the basis that the Development Plan objectives inform EIA Screening concerning 'existing and approved land use' criterion under Schedule 7 – although no actual legal basis for this proposition is identified.

98. As such, as pursued in Submissions, this Core Ground appears to be a reiteration of the previous Core Grounds concerning 'existing and approved land use' and should be dismissed for the reasons set out above – a solar farm is not an EIA project. It also involves a misinterpretation of the reference to 'existing and approved land use' as used in Schedule 7, which concerns specific projects which exist or have been approved, as opposed to general strategic policies.

99. Insofar as the Applicants maintain that the Commission failed to adequately consider Policy DM RE 1 of the Laois County Development Plan 2021-2027 ("the Development Plan"), this is factually unsustainable. The obligation on the Commission under the PDA was to 'have regard' to the Development Plan – which, as per the Commission's Decision and Inspector's Report (inter alia, pg.8, pg.18-19, and pg.30-34), it expressly did – including by reference to Policy DM RE 1.

100. As apparent from its wording, Policy DM RE 1 is not a rigid prohibition and confers a degree of flexibility/evaluative judgment. There was no misinterpretation or misapplication of this policy – nor is any case pleaded to the contrary. The Commission's position aligned with that of the Developer, the Council and the Inspector. The Applicants have not established, and do not plead, that the Commission's consideration of the policy was irrational – it was not.

101. The Applicants also fail to properly describe the Commission's consideration of this matter – this further evidences their selective and incorrect approach to interpreting the Commission's Decision. The Commission expressly considered this policy, as well as other policies in the Development Plan as set out at Section 6.3 of the Inspector's Report – including CM RE 2; CM RE 3; CM RE 4; CM RE 8; CM RE 17; LCA 1; LCA 2; LCA 3; LCA 4; LCA 12; LCA 13; LCA 14; LCA 15; AGP1; AGP3, AGP5, and BNH 39. In particular, this included policies in the Development Plan which positively support solar farm developments."

64. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

65. If this ground can be reconfigured as making a general point about incorrect consideration of the CDP, no such error has been demonstrated, the applicants carrying the onus of proof in that regard. The CDP is expressly considered. So the factual premise for this point is absent.

66. This complaint is not a plea of contravention. But if it was, a provision expressing a "preference" for a particular type of site, interpreted in line with *Re XJS Investments Limited* 1986 WJSC-SC 1935, [1986] I.R. 750, [1987] I.L.R.M. 659, [1986] 12 JIC 1102, clearly involves appreciable discretion. A conclusion that locating a solar farm on agricultural land was acceptable is well within the spectrum of lawful evaluative judgement. Indeed, any hypothetical plan-based attempt to sterilise significant amounts of land from renewable projects would be likely to impede the making of decisions consistent with climate goals within the sense of *Coolglass*. The council did not do that here or anything like it.

Core ground 5 – deficient cumulative screening

67. Core ground 5 is:

5. The Cumulative EIA Assessment was Legally Deficient.

68. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position

102. The Applicants submit that the cumulative effects assessment in the Screening Determination was legally deficient. The Inspector's Form 3 at Section 3.1 dismissed cumulative effects with the bare statement that 'no significant cumulative impacts have been identified,' without any reasoning as to how that conclusion was reached. Both the Inspector's Report and the Commission's Order reference the fact that solar farms are not a

class of development for EIA purposes in the context of the cumulative assessment, which the Applicants submit improperly coloured the cumulative assessment.

103. The obligation to assess cumulative effects under Schedule 7/Annex III arises regardless of whether individual projects are classified under the EIA Directive. The question is whether the combined effects of the proposed development together with other plans or projects are likely to be significant. The Inspector's Report recorded a number of solar farms and wind farms permitted in the wider area. The cumulative conversion of productive agricultural land in the area required substantive engagement with the Heading 3 criteria of magnitude, spatial extent and duration of cumulative impact. That engagement was absent from the Screening Determination.

Respondent's Position

104. Core Ground 5 is not made out. The EIA screening expressly addressed cumulative effects, including other solar farm developments in the wider area. The Inspector's and Commission's references to solar farms not constituting a development 'class were legally correct and concerned project classification only; they did not exclude cumulative assessment. The Inspector considered other permitted solar farms (including at pages 78 and 80), and the conclusion that no significant cumulative impacts would arise was an expert planning judgment reviewable only for irrationality, which is neither pleaded nor established: Minoa [2024] IEHC 704 at §274; Shadowmill [2023] IEHC 157 at §55.

105. The reasons were also adequate. The Decision, Inspector's Report and planning application materials, including the Notice Party's Planning and Environmental Report, disclose the main reasons on the main issues and explain why significant environmental effects, including cumulative impacts, were not likely: 100 Meter Tall Group [2025] IEHC 42 at §76. Connelly [2018] IESC 31, [2021] 2 IR 752 and Case C-2/07 Abraham do not assist the Applicants; their complaint conflates lack of narrative discussion with lack of reasons, contrary to Duffy [2026] IEHC 46 at §§8, 53, Wild Ireland Defence CLG [2025] IEHC 726 at §§134, 160(v), and O'Donnell [2023] IEHC 381 at §39 et seq.

Notice Party's Position

106. The submissions set out previously herein in response to the previous Core Grounds regarding the fact that a solar farm is not an EIA project and the burden of proof apply equally to this Core Ground.

107. Moreover, the complaint is factually unsustainable – in carrying out a cumulative assessment, the EIA Screening by the Inspector / the Commission expressly addressed cumulative effects, including other solar farm developments in the wider area. In terms of the assessment of cumulative impacts more generally, the evidence before the Commission addressed same – see, inter alia, the Ecological Impact Assessment; Planning and Environmental Report (with includes an assessment with other solar farm developments); and further information submitted to the Council. The Applicants have failed to refer to this evidence – which is relevant to understanding the Commission's Decision and the context to same

108. The Commission's EIA Screening expressly addressed cumulative effects, including other solar developments in the wider area. The Inspector's reference and the Commission's reference to solar farms not constituting a 'class of EIA project is legally correct (as outlined previously herein). The Commission's cumulative assessment did not exclude the consideration of solar farms on the basis that same are not an EIA project but considered whether the combined effects of such developments in light of the works under consideration for the purposes of its EIA Screening would likely be significant – contrary to the Applicants' complaints. The Commission did not rely on the fact that solar farms are not a class of EIA project as the basis for determining an absence of environmental effects. The conclusion by the Commission and the Inspector that no significant cumulative impacts would arise is a matter of expert planning judgement and was not irrational, nor is irrationality pleaded.

109. In addition, the reasons provided by the Commission in its Decision for EIA screening purposes and otherwise are adequate and comply with the relevant legal principles on reasons, with the Commission having provided the main reasons on the main issues."

69. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

70. If this ground can be reconfigured as making a general point about incorrect consideration of cumulative effects, no such error has been demonstrated, the applicants carrying the onus of proof in that regard. Cumulative effects were expressly considered. So the factual premise for this point is absent. A lack of reasons has not been made out – main reasons on main issues were given.

Core ground 6 – lack of consideration of size of the project for EIA screening

71. Core ground 6 is:

6. The Respondent Failed to Assess the Size of the Project as Required by Schedule 7/Annex III of the EIA Directive.

72. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position

110. The Applicants submit that the Screening Determination failed to substantively engage with the mandatory criterion of the size and design of the whole project under Schedule 7/Annex III Heading 1. The proposed development covers approximately 249 hectares across five land parcels. The Inspector described the development as 'extensive' at several points in his Report.

111. The Applicants submit that the word 'extensive' is an observation, not an assessment. The question Schedule 7 requires to be answered is not 'is this development large?' but 'what are the likely significant environmental effects arising from a development of this size in this location? That question was never answered in the Screening Determination. The Form 3 Section B.1 records the bare description temporary establishment of extensive solar farm on 180 hectares' without any analysis of what effects flow from a development of that scale. As required by Connelly, reasons must demonstrate genuine engagement with the criterion specific to the facts of the case. That engagement is absent.

Respondent's Position

112. Core Ground 6 is not made out. The Applicants mischaracterise the screening exercise: the nature and scale of the proposed development were expressly identified and considered by the Inspector, including at the first bullet point on page 21 and page 63 of the Inspector's Report, and by the Commission in item (a), page 6 of the Order, while the criteria in Schedule 7 of the 2001 Regulations were expressly recorded as having been considered item (f), page 7. The Inspector's description of the proposal as an "extensive" solar farm was not a substitute for assessment but part of the factual project description informing the screening analysis.

113. Further, neither Annex III of the EIA Directive nor Schedule 7 of the 2001 Regulations requires a standalone comparative analysis of project size, or a separate explanation of each alleged scale-related effect; the issue is whether the competent authority considered the relevant criteria and rationally concluded that significant effects were not likely. That evaluative judgment is primarily for the Commission and is reviewable on the merits only for irrationality, which is not pleaded and is plainly not made out: Minoa [2024] IEHC 704 at §274; Shadowmill [2023] IEHC 157 at §55; Friends of Killymooney Lough [2025] IEHC 407 at §§183–186. Core Ground 6 is therefore no more than a non-expert merits disagreement and discloses no basis for certiorari of the Commission's Decision.

Notice Party's Position

114. The Submissions made previously herein regarding the fact that a solar farm is not an EIA project apply equally here, as do the Submissions which address the burden of proof – including where one seeks to raise issues which require expert evidence. This is a burden which the Applicants have failed to discharge.

115. Thus, insofar as this complaint comprises the Applicants' non-expert assertions of alleged environmental effects, same are not made out. The Applicants' contentions in this regard comprise impermissible, merits-based assertions, unsupported by any expert evidence, which do not provide any basis for challenging the legality of the Commission's Decision.

116. In this respect, the Applicants have not established, by reference to the totality of the evidence before the Commission (which they largely ignore and/or misunderstand), that there was anything irrational or unreasonable about the Commission's Decision in this respect.

117. The Commission and the Inspector were fully aware of the size of the Proposed Solar Farm, with the Inspector setting out at Section 2.0 that the site covers five parcels of land totalling c.249 hectares and such size being further stated at pg.1 of the Commission's Order. The Commission's Order, at pg.4, expressly refers to '…the location, nature, scale and layout of the proposed development'.

118. There is no substance to this complaint which, in truth, appears to be an attempt to reargue the merits on the misconceived basis that the whole solar farm should have been subject to the requirements of EIA."

73. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

74. If this ground can be reconfigured as making a general point about incorrect consideration of the size of the project, no such error has been demonstrated, the applicants carrying the onus of proof in that regard. The size of the project was expressly considered and outlined. It is not up to a judicial review applicants to dictate the terminology to be used by a decision-taker or the structure of her decision. So the factual premise for this point is absent.

Core ground 7 – lack of consideration of proposed NHAs in EIA screening

75. Core ground 7 is:

7. The Respondent Failed to Identify or Assess Three Proposed Natural Heritage Areas in the EIA Screening Determination.

76. The parties' positions as recorded in the statement of case are summarised as follows:

"Applicants' Position

119. The Applicants submit that the Screening Determination failed to identify or assess three proposed Natural Heritage Areas (pNHAs) in the immediate vicinity of the proposed development, in response to the specific question in Form 3, Section 2.1 which asked whether the proposed development is located on, in, adjoining or having the potential to impact on any NHA or pNHA. The Inspector answered that question by reference to the River Barrow and River Nore SAC only. Three pNHAs were not identified: pNHA 000416 Derries Wood (directly adjacent to the eastern boundary), pNHA 000881 The Great Heath of Portlaoise (approximately 1.3 km to the west), and pNHA 000865 Emo Court (approximately 2.5 km to the north).

120. The Applicants' challenge is a process challenge, not a merits challenge. It is not contended that the development will in fact cause significant harm to the pNHAs. The challenge is to the failure to identify those sites as designated ecological sites in the formal Screening Determination in response to a direct question that asked about them. The mandatory criterion under Schedule 7 Heading 2 — requiring assessment of the environmental sensitivity of the area with particular regard to areas classified or protected under Member State legislation — was not engaged with in respect of the three pNHAs. The Applicants further note that the Ecological Impact Assessment at §3.1.2 itself acknowledged that the development is immediately adjacent to Derries Wood pNHA and identified potential disturbance impacts and migration barrier effects, confirming the relevant information was before the Commission but was not carried into the formal Screening Determination.

121. As to the Notice Party's contention that the proposed amendment should be refused: as set out at Section F above, the amendment was addressed at a contested hearing on 18 May 2026 at which the Respondent and Notice Party were both present and represented by Counsel, and was allowed on a de bene esse basis following a compromise proposed by the Court and accepted by all parties. The Notice Party has since filed a full Statement of Opposition addressing Core Ground 7 on its merits and adduced expert evidence in the Affidavit of Jim Hughes responding to it in detail. That is not consistent with any real prejudice arising from the timing of the amendment. The question of whether the amendment should be finally confirmed is a matter for determination by the trial judge at the substantive hearing together with the remainder of the case, and is not appropriately resolved by way of summary assertion in this Statement of Case.

Respondent's Position

122. Core Ground 7 is not made out. The Applicants incorrectly contend that the Inspector and Commission failed to identify or consider ecological sensitivities, including pNHAs. Read as a whole, the Inspector's Report referred to Ballyshaneduff/The Derries, The Heath and Emo Court, while the EcIA addressed Derries Wood pNHA (000416), The Great Heath of Portlaoise pNHA (000881), Emo Court pNHA (000865), relevant pathways, proximity, mitigation and biodiversity measures. EIA screening does not require every pNHA code to be repeated in the screening form itself (an appendix to the Inspector's Report) where the relevant sensitivities, pathways and effects were in substance assessed.

123. The Applicants have produced no expert evidence showing any realistic pathway for likely significant effects on those pNHAs. The EcIA (submitted by the Notice Party) identified no relevant ecological or hydrological connectivity to pNHAs other than the Barrow Valley at Tankardstown Bridge pNHA downstream, where no impact pathway was identified, and assessed Derries Wood with mitigation and monitoring before concluding residual biodiversity impacts would range from imperceptible to not significant. The Commission was entitled to rely on that expert material. Further, the Applicants have not controverted the Affidavit of Jim Hughes (filed by the Notice Party) and what is said in that affidavit relevant to Core Ground 7. It is insufficient for the Applicants merely to join issue with that affidavit evidence via legal submission. Core Ground 7 is therefore an impermissible merits-based challenge and discloses no error of law.

Notice Party's Position

124. The Applicants introduced this Core Ground after commencing proceedings – they have not explained their failure to advance same at the outset. The proposed amendment

should be refused (see, inter alia, Save Roscam Peninsula v An Bord Pleanala CLG [2024] IEHC 156).

125. Without prejudice to the foregoing, the Applicants complain about an alleged failure to consider pNHAs as part of the Commission's EIA Screening – again, the point is underpinned by the flawed contention that the Proposed Solar Farm was required to be subject to the requirements of EIA.

126. As outlined above, the identification and assessment of effects, including on any pNHA, comprises the exercise of evaluative judgment. The Applicants have not demonstrated, by way of evidence, any flaw in the approach of the Commission in this respect – noting that the burden is on them to do so.

127. The Applicants purport to raise issue by reference to three pNHAs – namely: Derries Wood (pNHA – 000416); The Great Heath of Portlaoise (pNHA – 000881); and Emo Court (pNHA – 000865). The Applicants contend that the Commission failed to consider these pNHAs and appear to assert, implicitly, that the Proposed Solar Farm will give rise to significant effects on same. Noting again that the solar farm is not an EIA project, the Applicants' complaints here are incorrect – same are made without any evidential foundation and are not premised on a consideration of the evidence before the Commission. In respect of the foregoing, the Ecological Impact Assessment ("EcIA"), prepared by Fehily Timoney, inter alia:

- Identified that the EcIA was prepared by a number of qualified experts (§1.2) – the Applicants have not adduced any evidence from persons with similar qualifications.
- Identified a methodology which informed, inter alia, the identification of relevant pNHAs – including by reference to the Zone of Influence (§2.2 and §4.1.1). The Applicants fail to deal with this in advancing Core Ground 7 and have adduced no evidence to suggest that there was any error in this approach (there was not). The Applicants' Submissions purport to question this methodology on the basis that it was adopted by the Developer's consultants – this is totally inappropriate. In any event, it usefully illustrates the non-expert nature of the assertions, and only assertions, made by the Applicants in this regard.
- Outlined in respect of NHAs and pNHAs that (§3.1.2):

"The Proposed Development is immediately adjacent to Derries Wood pNHA (000416). This site is a refuge for sika deer, pine marten, mute swan and various duck species. Due to the close proximity, works at the Proposed Development Site could cause disturbance to these species via noise/presence of humans and machinery. Infrastructure at the Site could also create a barrier to migration for these species.

There is one pNHA, Barrow Valley at Tankardstown Bridge (000858), hydrologically connected to the proposed site via the Dunrally stream and river Barrow and is located 23.7km downstream. This pNHA consists of alluvial woodland, which cannot be impacted by pollution or siltation of the connecting watercourse.

There are no NHA's within the ZoI of the Proposed Development."

As appears, and whilst not addressed by the Applicants, The Great Heath of Portlaoise and Emo Court do not fall within the Zone of Influence – noting the approach to identifying / defining same in the EcIA. The Great Heath of Portlaoise is located c.1.3km south west of the site and Emo Court is located c. 2.5km north of the site and were not considered to fall within the "Zone of Influence", utilising the 'Source-Pathway-Receptor' model.

- The EcIA proceeded to assess potential impacts on Derries Wood (see, inter alia, §4.1.1 and §4.2.1). The EcIA expressly identified and assessed Derries Wood pNHA (000416), noting that it bordered the Proposed Solar Farm to the north-east over approximately 400 metres, that it was designated for woodland habitats, and that no significant impacts on pNHAs or NHAs were envisaged – having regard to the absence of habitat overlap, the absence of hydrological or ecological connectivity, and the mitigation measures proposed.

128. The Applicants have failed to engage with this evidence in advancing this Core Ground – which the Inspector and the Commission accepted (Carrownagowan). When the said evidence is properly understood, the Applicants' various complaints about a lack of engagement with the pNHAs are without substance.

129. Moreover, there was no failure on the part of the Inspector and / or the Commission to consider pNHAs as alleged or at all (including in respect of EIA Screening). The Applicants have failed to establish such a complaint evidentially – noting that the burden of proof rests on them to do so."

77. The basic reason why this point fails is that this is not an EIA project so any alleged shortcoming in the EIA screening does not render the decision invalid.

78. If this ground can be reconfigured as making a general point about failure of consideration of pNHAs, no such error has been demonstrated, the applicants carrying the onus of proof in that regard.

79. The complaint is:

Three pNHAs were not identified: pNHA 000416 Derries Wood (directly adjacent to the eastern boundary), pNHA 000881 The Great Heath of Portlaoise (approximately 1.3 km to the west), and pNHA 000865 Emo Court (approximately 2.5 km to the north).

80. As regards these pNHAs:

(i) 000416 Derries Wood was considered in the EcIA which was part of the developer's material implicitly adopted by the commission – there is no legal obligation to set out all reasoning in the decision itself;

(ii) 000881 The Great Heath of Portlaoise was considered not to be within the zone of influence, and the applicant has not evidentially displaced that;

(iii) 000865 Emo Court which is even further away was also considered not to be within the zone of influence and the applicant has not evidentially displaced that.

81. The failure to address the notice party's evidence as to proper analysis of the pNHAs by way of cross-examination is fatal: *RAS Medical Ltd* [2019] IESC 4, [2019] 1 I.R. 63.

82. So the factual premise for this point is absent.

83. As the ground fails anyway, I don't need to formally decide on the opposing objection to the amendment being allowed, but the failure to provide an evidential or indeed any explanation for not having made the point originally appears fatal. However, as I say I don't need to rest the decision on that.

Lack of basis for reference to the CJEU

84. The parties' positions as recorded in section K of the statement of case are that all parties were of the view that the question of a reference to the CJEU was not applicable.

85. For the avoidance of doubt, I have in any event (and as always when an EU law point is argued) considered any potential relevance of Art. 267 TFEU. But the obligation to refer (even for an apex court) does not apply if a point is *acte clair/ acte éclairé*: judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi SpA v Rete Ferroviaria Italiana SpA,* C-561/19, ECLI:EU:C:2021:799 (Grand Chamber) at para. 33. No point raising real doubt on a properly pleaded issue of EU law, adequately grounded in the evidence, has been identified or otherwise arises here.

Discretion

86. Some issues regarding discretion established by the caselaw are as follows:

(i) **Judicial review is a discretionary remedy**: *per* Murray J. (Whelan and Pilkington JJ. concurring) in *O'Connell v. Behan* [2021] IECA 186 (Unreported, Court of Appeal, 1 July 2021) at 43 (see also *per* Charleton J. (diss.) in *Dun Laoghaire Rathdown County Council v. Westwood Club Ltd* [2019] IESC 43, [2020] 3 I.R. 417 at 10). This historically arose from the development of judicial review out of the power to grant equitable relief.

(ii) Discretion applies **both at the leave stage and at the substantive stage**: *per* Finlay C.J. (Blayney and Denham JJ. concurring) in *G. v. DPP* [1994] 1 I.R. 374 at p. 378; *De Róiste v. Minister for Defence* [2001] IESC 4, [2001] 1 I.R. 190, [2001] 2 I.L.R.M. 241 at 204 *per* Denham J.; *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton and Murray JJ. concurring).

(iii) The effect of the doctrine of discretion is that even if there was a "jurisdictional" infirmity such as in planning application documents, AA, or other such requirement the process is **not automatically void *ab initio*** and *certiorari* is not automatic: *Byrnes v. Dublin City Council* [2017] IEHC 19 (Unreported, High Court, Baker J., 18 January 2017); *Pembroke Road Association v. An Bord Pleanála* [2021] IEHC 403 (Unreported, High Court, Owens J., 16 June 2021); *Ballyboden Tidy Towns Group v. An Bord Pleanála* [2023] IEHC 722 (Unreported, High Court, Holland J., 21 December 2023) (§102 *et seq*.); and *Reilly v. An Coimisiún Pleanála* [2025] IEHC 659 (Unreported, High Court, 28 November 2025) (§81 *et seq*.).

(iv) The court can exercise discretion **of its own motion** because the court itself has to be satisfied as to the correctness of granting relief: *Ballyboden Tidy Towns Group v. An Bord Pleanála* [2024] IESC 4 (Unreported, Supreme Court, Donnelly J., 22 February 2024) (O'Donnell C.J., Woulfe, Hogan and Collins JJ. concurring). That implies that the court has an entitlement to exercise such discretion itself even if a party doesn't plead discretion as such or pleads it on limited grounds.

(v) The appropriate **two-stage inquiry** is (a) Did the legislature intend total invalidity to result from failure to comply with the statutory time limit? (noting that "in many if not most cases it may not be possible to infer an intendment of invalidity, in the absence of an express statement to that effect" *Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36 per Woulfe J. at 114). If so, the inquiry ends there: "As part of ensuring observation of the rule of law, it is the duty of the Court to give effect to that which the Oireachtas has ordained should be done" (per Woulfe J. at 115). (b) If not, should discretion be exercised against relief "having regard to all the relevant circumstances ... These relevant circumstances include (but are not limited to) whether there has been substantial compliance with the statutory requirement, whether the breach is trivial or technical or de minimis, whether any prejudice has been caused to the applicant and/or the public and if so the extent of same, and also the possible public interest pointing against invalidity for breach" (*Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36 per Woulfe J. at 114).

(vi) Therefore in exercising that discretion the court is **bound by established principles as to the exercise of such discretion**: *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton and Murray JJ. concurring) at 60. As Donnelly J. pointed out in that case at 27, the use of the term discretion is strictly delineated. O'Donnell J. (Clarke C.J. and Dunne J. concurring) said in *Kelly v. Minister for Agriculture* [2021] IESC 62, [2023] 1 I.R. 38 that the court is not "at large", or is free to take into account "its views on the underlying merits" (the contrast with *Christian* below indicates that what is envisaged is merit in some general sense separate from the "constitutional or legal value[s]" concerned). Rather, "the circumstances which allow the court not to make an order which would otherwise be justified must be such as to derive from an important constitutional or legal value of sufficient weight to warrant not making an order otherwise justified" (Clarke J. in *Christian v. Dublin City Council* [2012] IEHC 163, [2012] 2 I.R. 506, at 567) as cited with approval by Donnelly J. in *Amariei* at 27. Thus the court must be conscious of the need for statutory requirements to be observed, see *e.g. Protect East Meath v. Meath County Council* [2026] IESC 1 (Unreported, Supreme Court, 22 January 2026).

(vii) The established principles as to the exercise of discretion fall into three broad categories: **conduct of the applicant, the practical value of the remedy, and disproportionality**. Under these headings the following points emerge:

(a) "[T]he **action or inaction of the claimant** (such as a failure to exhaust an alternative remedy, delay, laches, waiver, acquiescence or misconduct in connection with the proceedings)" is relevant (*O'Connell v. Behan* [2021] IECA 186 (Unreported, Court of Appeal, Murray J. (Whelan and Pilkington JJ. concurring) 1 July 2021) at 43). In particular:

1. **Failure to exhaust remedies** as the general rule: *Amariei v. Chief Appeals Officer* [2026] IESC 22 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton and Murray JJ. concurring), save where for example there is a fundamental failure of justice: *A.B. v Chief International Protection Officer & Ors* [2026] IESC 23 (Unreported, Supreme Court, Donnelly J., 25 March 2026) (O'Donnell C.J., Charleton, Woulfe and Murray JJ. concurring). "It is a long-standing principle of the law relating to judicial review that the court asked to quash an administrative decision has a discretion to refuse to do so if there is an alternative remedy available to put right the wrong complained of in the proceedings." *per* Dunne J. (Charleton, Woulfe, Collins and Donnelly JJ. concurring), *S. v. Minister for Justice and Equality* [2025] IESC 48 (Unreported, Supreme Court, 25 November 2025) at 98.
2. This can include **failure by an applicant to take action** to protect their position: *Baile Bhruachlain Teoranta v. Galway County Council* [2024] IEHC 604 (Unreported, High Court, 1 November 2024); *Voyage Property v. Limerick City and County Council* [2025] IEHC 696 (Unreported, High Court, Holland J., 16 December 2025) at 263-264.
3. The **failure by the applicant to make the point in the process** is relevant: Costello J. in *Friends of the Irish Environment CLG v. Government of Ireland* [2021] IECA 317 (Unreported, Court of Appeal, 26 November 2021) at 277.

4. Unwarranted **failure to prosecute the proceedings**: *Delaney v. An Coimisiún Pleanála* [2025] IEHC 621 (Unreported High Court, 13 November 2025).

(b) Grounds relating to "**the practical value of the remedy** (such as mootness or futility) (see *Independent Newspapers (Ireland) Ltd v. IA* [2020] IECA 19, [[2021] 1 I.R. 384] at para. 78)" are relevant: *O'Connell v. Behan* [2021] IECA 186 (Unreported, Court of Appeal, Murray J. (Whelan and Pilkington JJ. concurring), 1 July 2021) at 43. Thus for example a remedy is not required where the order sought would be futile and inappropriate: *Protect East Meath v. Meath County Council* [2026] IESC 12 (Unreported, Supreme Court, 19 February 2026) at 8.

(c) The **proportionality** of *certiorari* (as opposed for example to either no order or declaratory relief only) may also be a factor: in *Save Cork City Community Association CLG v. An Bord Pleanála* [2022] IESC 52, [2024] 1 I.R. 205 at 60, Woulfe J. (Dunne, Charleton, O'Malley and Hogan JJ. concurring) said (without needing to decide the point) that there was "a great deal of force" in the submission that it would be disproportionate to quash a decision on the basis of a "technical procedural error". As noted above, the factors relevant to proportionality include "whether there has been substantial compliance with the statutory requirement, whether the breach is trivial or technical or de minimis, whether any prejudice has been caused to the applicant and/or the public and if so the extent of same, and also the possible public interest pointing against invalidity for breach" (Pat O'Donnell & Co. v. Dublin City Council [2026] IESC 36 per Woulfe J. at 114). In particular:

1. Whether there was **substantial compliance** is a factor: *Monaghan Urban District Council v. Alf-a-Bet Promotions Ltd* [1980] ILRM 64. *Gillen v. Commissioner of An Garda Síochána* [2012] 1 IR 574 per Finnegan J. and O'Donnell J., *Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36.
2. Looking at that issue from another point of view, the importance of the provision not complied with is a factor – the process requires "consideration of whether the matter concerned is one of importance or of **triviality**": *per* Finlay C.J. (Blayney and Denham JJ. concurring) in *G. v. DPP* [1994] 1 I.R. 374 at p. 378 (emphasis added). Thus an "inconsequential" breach was not a basis for the grant of relief as a matter of discretion in *Kenny v. Dublin City Council* [2009] IESC 19 (Unreported, Supreme Court, 5 March 2009) at 79 *per* Fennelly J. (Macken and Peart JJ. concurring).
3. Likewise the **public interest in or importance of the countervailing legal value** being protected by the impugned decision is a factor in the balance, whether that be a value enshrined in law generally, the ECHR as transposed, the Constitution or EU law – as cited above, the court can consider whether there is "an important constitutional or legal value of sufficient weight to warrant not making an order otherwise justified" (Clarke J. in *Christian v Dublin City Council* [2012] IEHC 163, [2012] 2 I.R. 506, at 567) as cited with approval by Donnelly J. in *Amariei* at 27. A conclusion by a statutory decision-taker as to the acceptability of a project may have weight in this context.
4. **Prejudice** or the lack of it to the applicant or anyone else is a factor. This includes both any demonstrated prejudice caused by the breach itself (discussed in *Gillen v. Commissioner of An Garda Síochána* [2012] 1 IR 574 per Finnegan J. and O'Donnell J., *Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36) and any prejudice caused by invalidating the impugned decision in the particular circumstances (see *O'Connell v. Behan* [2021] IECA 186 (Unreported, Court of Appeal, 1 July 2021) at 43: "grounds relating to the impact a remedy will have on others (such as where the grant of relief would represent an unwarranted interference with the settled rights or expectations of third parties)").
5. Looking at that issue from another point of view, if there is **harmless error**, that is equivalent to saying that no prejudice is

thereby caused: *Pat O'Donnell & Co. v. Dublin City Council* [2026] IESC 36 at 112.

6. More generally, it follows that the factors relevant to discretion include the **seriousness of any error** such as the extent of the non-compliance, whether the error was once-off, whether the issue is purely historic and cannot reoccur, the level of deliberation involved in the error and the extent to which reasonable steps were taken to prevent or identify such an error, whether the error was rectified promptly when it came to light (if capable of rectification), whether there is a pattern of non-compliance, and any other relevant circumstances may be relevant (see also *Reid v. An Bord Pleanála (No. 7)* [2024] IEHC 27, [2024] 1 JIC 2401 (Unreported, High Court, 24 January 2024) para. 134).

87. Applying the foregoing here, even if counterfactually the applicants had established a breach, I would as a matter of discretion have refused relief, having regard to the matters raised by the opposing parties within the contours of the foregoing jurisprudence.

88. In that regard I generally endorse the submission of the commission:

DISCRETION

"76. At §4, §6, §32, §64-§66 of the Commission's Statement of Opposition, the Commission has pleaded that relief should be refused in the exercise of the Court's discretion. It is settled law that relief is discretionary (Connolly [2026] IEHC 224 at §47; Save the South Leinster Way (No.2) [2025] IEHC 541 at §53, §88, §119, §152(i),(ii); Reilly [2025] IEHC 659 at §71; Breen [2026] IEHC 338 at §67 and Busher (No.2) [2026] IEHC 434 at §50(xii), §97, §101; O'Donnell v. Dublin City Council [2026] IESC 36 per Woulfe J. at §§109-§114 and Hogan J. at §19). Applying such law to the facts here, it would be inappropriate to quash the Decision.

77. There are compelling discretionary factors - including the absence of evidence of tangible environmental harm, the urgent legally recognised need for renewable energy infrastructure due to the climate emergency, and the fact that the Decision would not likely have differed, given the Commission's consideration of the relevant Development Plan and national and regional planning policy and the granting of permission based on the planning-merits of the proposed development in accordance with proper planning and sustainable development - that all militate against certiorari or any relief (see Keogh [2026] IEHC 339 at §§123-125, §126(xiii), (xiv)).

78. A further significant consideration that militates against certiorari here is the point, directly relevant by analogy, made by Holland J. in Ryan v. An Bord Pleanála [2025] IEHC 111 at §214, wherein the Court considered that it would have been disproportionately prejudicial to the Notice Party's interests "to quash the Impugned Decisions as if the Proposed Developments were EIA projects when they are not" and further that it would "serve no useful, substantive, environmental or legal purpose" to quash the impugned decisions in that case "for failure to comply with legal obligations which did not apply". The Applicants here, in comparable circumstances, advocate for the very outcome that Holland J. rejected – they seek that the Decision be quashed as if the proposed development was an EIA project when it is not and for failure to comply with legal obligations that did not apply, rendering the certiorari and remittal sought by the Applicants being a course of action that would serve no useful, substantive, environmental or legal purpose."

89. I also generally endorse the submission of the notice party:

"IV. Discretion & Conclusion

90. Noting the discretionary nature of the reliefs sought in the within proceedings, and relevant to the exercise of that discretion (in terms of weighing in favour of refusing relief), as found by the Commission and not otherwise disputed in these proceedings, the Proposed Solar Farm is consistent with European, national, regional and local renewable energy and policy – including the extant Climate Action Plan which is expressly referred to in the Reasons and Considerations of the Commission's Decision/Order (pg.2). As the Commission's Decision states, the Proposed Solar Farm:

"…would make a positive contribution to Ireland's renewable energy and security of energy supply requirements…[and] would, therefore, be in accordance with the proper planning and sustainable development of the area."

91. Noting the foregoing and absence of any evidence of any substantive environmental concern arising from the assessment and granting of the Proposed Solar Farm; the expert evidence as to the absence of any substantive environmental effects; and the public importance of the project – having regard to the discretionary nature of the reliefs sought in these proceedings – this Honourable Court should exercise its discretion to refuse relief.

See O'Donnell v Dublin City Council [2026] IESC 36 (Woulfe J. and Hogan J.); Doyle v An Bord Pleanála [2025] IEHC 158; Case C-72/12, Altrip; and Ryan v An Bord Pleanála [2025] IEHC 111 (§214); Moss v An Coimisiún Pleanála (No.1) [2026] IEHC 62; and Breen v An Coimisiún Pleanála [2026] IEHC 338.

92. The Applicants' challenge should be dismissed.

Summary

90. For the avoidance of doubt, preambular matters prior to the first heading of this judgment, and the following summary, do not take from the operative parts of the judgment and must be read in a sense consistent with those. In outline summary, therefore:

(i) applying settled law that applicants are **confined to their pleadings** and that **complex EU law arguments need to be articulated on the pleadings with particular clarity** to the facts here, the applicants' pleadings are generally not in conformity with pleading requirements and not a proper basis for relief, and in particular not a basis for advancing any point not premised on the EIA screening argument;

(ii) applying settled law that Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the EIA directive) **does not apply to projects that are not listed** to the facts here, this is not an EIA project so the complaint as to EIA screening fails *in limine*, irrespective of the separate issue of effects on the environment;

(iii) applying settled law that an applicant must have discharged the **onus of proof** to establish all facts necessary for relief and that in the context of a challenge to an environmental assessment, the **onus of proof to show a defect** generally lies on the applicant to the facts here, this onus has not been discharged;

(iv) applying settled law that **evaluative judgements** involving a significant degree of planning judgement and not tainted by other procedural, legal or factual errors are reviewable on an irrationality standard to the facts here, no error in the commission's reasoning has been made out;

(v) applying settled law that a planning decision-taker is required, where it relevantly arises, to **address the text of development plans** and enjoys a zone of evaluative judgement in relation to development plan provisions that involve flexibility to the facts here, the development plan provision on a preference for brownfield sites involved appreciable flexibility and was not contravened by the decision, even if contravention had been properly pleaded;

(vi) applying settled law that the standard as to reasons can be summarised as an obligation to provide the **main reasons on the main issues** to the facts here, such reasons were provided;

(vii) applying settled law that **reasons may be found anywhere**, not necessarily in the decision itself, for example in an inspectors report or developer's material to the facts here, the developer's ecological assessment which was implicitly adopted provides a rationale for the absence of any finding of impact on proposed NHAs; and

(viii) applying settled law that judicial review is a **discretionary remedy** within established doctrinal boundaries to the facts here, relief should be refused in any event.

Order

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

(i) the proceedings be dismissed;

(ii) unless any party applies otherwise by the time and in the manner set out below, the foregoing order be perfected forthwith thereafter on the basis of no order as to costs (including no order as to any reserved or adjourned costs or costs not otherwise dealt with, having regard *inter alia* to O. 103 r. 38(1)(b) and/or (c) RSC);

(iii) the foregoing proposed order as to costs be subject to contrary written legal submission or any consequential application supported by a written legal submission, such submission to be delivered within 7 days, with replies by other parties within a further 7 days;

(iv) for the avoidance of doubt, any unsuccessful application to vary any provisional order as to costs proposed in this judgment may be addressed by an adverse costs order pursuant to O. 103 r. 40(4) RSC; and

(v) the matter be listed at 12:00 on Monday 5 October 2026 to confirm the foregoing.