[2026] IEHC 631

THE HIGH COURT
PLANNING & ENVIRONMENT

[H.JR.2026.0000520]

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

BETWEEN

LEAMLARA PRESERVATION GROUP AND CALIFF DELANEY

APPLICANTS

AND

AN COIMISIÚN PLEANÁLA

RESPONDENT

AND

BALLYSALLAGH SOLAR FARM LIMITED

AND

CORK COUNTY COUNCIL

NOTICE PARTIES

Date of impugned decision:	*19 February 2026*
Date proceedings commenced:	*15 April 2026*
Date of main hearing:	*8 September 2026*
Date draft judgment circulated:	*14 September 2026*

JUDGMENT of Humphreys J. delivered on Friday 18 September 2026

1. The renewable energy development in this case was found acceptable by the inspector and the commission following a consideration of the relevant legal and policy context and submissions by stakeholders. The applicants as representative of local residents naturally have a merits-based disagreement with the outcome, but the question for consideration is whether their objections give rise to grounds rendering the decision a nullity.

Judgment history

2. Two members of the Leamlara Preservation Group, Gretta Connolly and Michael Connolly, previously brought a failed challenge to the permission relating to the Substation associated with this project: *Connolly & Another v An Coimisiún Pleanála*, [2026] IEHC 224, [2026] J.I.C 1704 (Unreported, High Court, 17 April 2026).

Geographical context

3. The project (https://www.pleanala.ie/en-ie/case/323747) is a ten-year permission for a solar farm and associated works. It is located at or near the following: https://maps.app.goo.gl/chcj729GQApf46Rz8.

4. The first instance decision of Cork County Council refusing planning permission for the proposed solar farm is available at https://planning.agileapplications.ie/corkcoco/application-details/991543.

5. The project, the Ballysallagh Solar Farm, involves a 220kV substation (already consented and upheld in *Connolly*). It is proximate to a separate development, the Ballinure Solar Farm, which application was declared invalid. The arrays are c. 2.7 km apart.

Parties

6. The applicants are Leamlara Preservation Group, an unincorporated group of residents who participated in the planning process, and Califf Delaney, a resident of the area affected by the proposed development and chairperson of the first named applicant.

Facts

7. On 28 August 2024, HW Planning (on behalf of the notice party developer) submitted an application to Cork County Council for planning permission for the proposed development. The reference is 24/05630.

8. The second named applicant made a submission to the council on 26 September 2024, and the first named applicant made a submission dated 30 September 2024.

9. On 21 October 2024 the first planner's report was issued and the council issued a request for further information. The notice party responded to this request on 19 February 2025.

10. On 15 April 2025 the council issued the second planner's report and a request for clarification to the response to the request for further information. The notice party responded to this request on 8 July 2025.

11. A number of internal reports were prepared by the council relating to the planning application, including Conservation Reports dated 16 October 2024, 27 March 2025 and 25 August

2025, Environment Reports (Water) dated 11 October 2024, 20 March 2025 and 7 August 2025, and Ecology Reports dated 15 October 2024, 9 April 2025, and 26 August 2025. An external consultant provided technical input to Coastal and Flood Projects Department Reports, dated 28 August 2025.

12. On 18 December 2024, the developer applied to the commission for permission for the Substation (ACP-321518-24) which was described as:

> ""[A] 220kV AIS tail-fed electricity substation (with 33kV customer compound) (including two control buildings, associated electrical structures and apparatus, lightning protection, telecom pole, perimeter security fencing, security lighting, water and drainage infrastructure, temporary construction compound) to connect to and serve a solar farm; associated grid connection between the proposed substation and the existing Knockraha 220kV substation comprising 220kV underground electricity cables of c.10.2 km in length to be provided in an excavated trench including associated fibre cable and ducting, and all associated site development and reinstatement works; temporary construction and operational access from the L7691, vehicular entrance and access track from this public road; all ancillary site development, landscaping and earthworks. The development subject to this application forms part of grid connection and access arrangements which will facilitate the connection of the proposed Ballysallagh Solar Farm (Cork County Council Reference 24/05630) to the national grid."

13. Submissions were provided on the substation application between February and April 2025. Following a site inspection on 24 March 2025, the Inspector prepared a report dated 30 May 2025, in which he recommended that approval be granted for the substation subject to twelve conditions. The application was considered by the commission at a meeting held on 15 July 2025, at which the commission decided to grant approval for the substation, subject to eleven conditions. The commission made its order granting approval for the substation on 17 July 2025 and subject to eleven conditions.

14. The council's planner prepared a third planner's report dated 29 August 2025, recommending that permission be refused for three reasons, which were as follows:

> "1. In the absence of a comprehensive archaeological impact assessment it is considered that the applicant has failed to demonstrate that the proposal would not be seriously injurious to the archaeological/cultural heritage of the area. It is considered that the proposal would materially contravene objectives HE 16-9 and HE 16-13 of the County Development Plan.
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> 2. In the absence of sufficient mitigation measures it is considered that the proposal would be a visually incongruous and overbearing feature in the rural landscape, would adversely impact on the visual amenities of the area, would materially contravene objective Gl 14-9 of the County Development Plan and would depreciate the value of property in the vicinity.
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> 3. It has not been demonstrated that there will be no net increase in discharge rates or runoff volume from the site and, therefore, it has not been demonstrated that the proposal would not have an adverse impact on the wider hydrological regime of the area and/or contribute to flood risk elsewhere."

15. The council refused permission for the proposed development on 1 September 2025.

16. On 26 September 2025 HW Planning submitted a first party appeal to the commission on behalf of the notice party developer, accompanied by a first party appeal report, a Landscape and Visual Response and a Surface Water Response.

17. On 22 October 2025 the second named applicant made a submission to the commission on this appeal, and on 23 October 2025 the first named applicant made a submission.

18. On 25 November 2025 the notice party applied to the council for another solar farm. That application was deemed to be incomplete.

19. On 8 January 2026 the commission's inspector carried out a site inspection. The inspector by report dated 28 January 2026 recommended that permission be granted, subject to conditions.

20. The commission issued its Direction on 3 February 2026, recommending that permission be granted generally in accordance with the inspector's recommendations, subject to 21 conditions. This was followed by commission's order of 19 February 2026, granting permission subject to 21 conditions.

Procedural history

21. The applicants issued judicial review proceedings on 15 April 2026 and leave was granted on 20 April 2026. Following the grant of leave, on 26 and 27 April 2026 respectively, the applicants' filed affidavits from Pamala Bartley and Patrick Moran.

22. The respondent filed its statement of opposition and verifying affidavit on 5 June 2026.

23. The notice party developer filed its statement of opposition on 24 June 2026.

24. On 6 July 2026 the matter was listed and the applicants informed the court that an issue as to expertise had arisen and it may be necessary to apply for directions on the issue. The matter was let stand to allow the commission to consider its position but was not reached and ultimately adjourned to 9 July 2026.

25. The applicants filed a replying affidavit on 8 July 2026.

26. On 9 July 2026 the respondent informed the court that it would deliver an affidavit addressing the expertise issue raised by 17 July 2026. That affidavit was delivered on 17 July 2026 filed on 20 July 2026.

27. Also, on 17 July 2026 the council was joined as a notice party on consent pursuant to PD HC137. The council has indicated that it is not actively participating in the proceedings.

28. The applicants filed submissions on 23 July 2026.

29. On 23 July 2026, the applicants issued a notice of motion seeking an order granting leave to cross-examine the inspector and certain members of the commission. That motion was returnable to 27 July 2026 before Farrell J. and was refused on that date.

30. The notice party developer's submissions were served on 27 July 2026.

31. The respondent's submissions were served on 28 July 2026.

32. The matter was heard on 8 September 2026.

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

34. On 14 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.

35. 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).

36. 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.

37. 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 pressing any one or more (or all) points of claim or opposition, as the case may be, such that such points do not therefore need to be decided by the court;

(ii) advising 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) advising 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.

38. 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.

39. 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.

40. The deadline for such comments from the parties was to be 16:00 on 16 September 2026. Responses were as follows:

(i) Applicants:

(a). "At paragraph 18 of the draft judgement, it is recorded that the application for the Ballinure Solar Farm was made on 2nd November 2025. This should be corrected to the 25th of November 2025." - This has been corrected.

(b). "In respect of paragraph 88 of the draft judgement, the Respondent and Notice Party accepted a level of overlap in the infrastructure beyond the shared substation and grid connection and the Applicant respectfully submits that this accepted overlap should be recorded in the Court's judgment, see for example paragraph 49 of the Statement of Opposition of the Notice Party the acceptance that cables which comprise a part of the Ballinure Solar Farm

Development will traverse the lands of the Proposed Development." - The text on this issue has been clarified.

(ii) Commission:

(a). "We suggest the insertion of the following text at the end of paragraph 21 (in light of the Court's conclusion at s 54(ii)): 'Following the grant of leave, on 26 and 27 April 2026 respectively, the Applicants' filed affidavits from Pamala Bartley and Patrick Moran'." - This amendment has been included.

(b). "At paragraph 44 the Court has included the text of the impugned decision and at the top of page 6 there appears to be the inclusion of '@' in error '@ the measures proposed for the construction, operation and decommissioning of the development'." - This has been corrected.

(c). "Separately, we refer to the Applicants' comments on the draft judgment, circulated at 14:25 this afternoon. In terms of the Applicants' second comment, paragraph 88 of the draft judgment quotes from paragraph 33 of the Commission's Statement of Opposition. We do not agree that there was an acceptance by the Commission of a 'level of overlap of the infrastructure'." - The text has been clarified.

(iii) Notice Party:

(a). "We also note the typo at §18 of the draft judgment and agree with the Applicant that the correct date is 25 November 2025." - Text corrected.

(b). "In respect of the Applicant's comment at §2, it is the NP's position that it is entirely a matter for the Court as to whether any change is made to the judgment, but that we do not consider that there is anything inconsistent between what is set out at §88 of the draft judgment and what was pleaded by the NP at §49 of its SOO." - The text has been clarified.

Relief sought

41. The reliefs sought are as follows:

"1. An Order of Certiorari quashing the decision of An Coimisiún Pleanála ('the Commission') dated 19th February 2026 bearing case reference number ACP-323747-25 to grant the Notice Party planning permission ('the Permission') in respect of a proposed development consisting of a 10 year planning permission for a solar far with a total area of circa 179 hectares and ancillary development ('the Proposed Development').

2. Such declarations as to the legal rights and position of the Applicants, Commission or persons similarly situated as the Court considers appropriate.

3. An Order that Section 50B of the Planning and Development Act 2000 (as amended) and/or Section 3 and 4 of the Environmental (Miscellaneous Provisions), Act 2001 and/or Article 9 of the Aarhus Convention apply to the above-entitled proceedings.

4. An Interim order and/or stay, pursuant to Order 84 Rule 26(1) of the Rules of the Superior Court, 1986 (as amended) and/or pursuant to the inherent jurisdiction of this Honourable Court or otherwise staying the effect of the Permission, or the taking of any steps, commencing any works or placing any reliance on the Permission pending the determination of these proceedings.

5. Such interim or interlocutory relief as may be necessary.

6. Further or other Order.

7. The costs of these proceedings."

Grounds of challenge

42. The core grounds of challenge are as follows:

"1. The Commission in granting the Permission erred in fact and in law in that it failed to identify as a matter of fact that the Proposed Development was part of a larger overall project with associated planning and environmental effects which includes the proposed Ballinure Solar Farm which is located adjacent to the Proposed Development and is connected to it means of underground cabling and a shared substation and grid connection.

2. The impugned decision is invalid in that it contravenes art 103(1B)(b) of the Planning and Development Regulations 2001 and the EIA Directive (as amended) because the Commission failed to make a lawful screening determination or an Environmental Impact Assessment in circumstances where (i) it failed to assess the interaction between the Proposed Development and the Proposed Ballinure Solar Farm as required by the EIA Directive and (ii) the screening determination contains two material errors and is irrational and

unreasonable resulting in an incorrect and unlawful screening determination (iii) the number of solar panels and the energy output of the Proposed Development was unknown to the Commission as of the date of the screening determination.
3. The Appropriate Assessment conducted by the Commission was flawed and invalid and in breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive because the Commission did not have available to it sufficient information or expertise to enable it to determine beyond reasonable scientific doubt that the Proposed Development would not adversely impact on the integrity of the European Sites.
4. The EIA screening and Appropriate Assessment conducted by the Commission do not adequately assess the impact of the Proposed Development on bats and thus are in breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive and are unlawful and invalid."

43. As regards the extent to which these are pursued, section H of the statement of case records as follows: all grounds are being pursued.

The impugned decision

44. 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 The Commission reached its decision in accordance with its duties under Section 15(1) of the Climate Action and Low Carbon Development Act 2015, as amended, and the requirement to, in so far as practicable, perform its functions in a manner consistent with inter alia the Climate Action Plan 2025 and the furtherance of the national climate objective. In coming to its decision, the Commission had regard to the following:

European Policy/Legislation including: • Directive 92/43/EEC (Habitats Directive) and Directive 79/409/EEC as amended by 2009/147/EC (Birds Directive) which set the requirements for Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. • 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. 1. 274 of 2025). • 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. • 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: • national policy with regard to the development of alternative and indigenous energy sources and minimisation of emissions from greenhouse gases, particularly the National Planning Framework First Revision 2025 and National Policy Objective 70, • • National Development Plan 2021-2030, the objectives and targets of the National Biodiversity Action Plan 2023- 2030, • Policy Statement on Security of Electricity Supply (November 2021) and the National Energy Security Framework (April 2022), • National Energy and Climate Plan (2021-2030):

Regional and Local Planning Policy, including in particular: • • Regional Spatial and Economic Strategy for the Southern Region (2020-2032), and the Cork County Development Plan 2022-2028:

and also having regard to: • the nature, scale and extent of the proposed development, the pattern of development within the area and 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 Ecological Impact Assessment and the Construction and Environmental Management Plan, • the measures set out in the Surface Water Management Plan, the Landscape and Visual Impact Assessment and the Archaeological, Architectural and Cultural Heritage Impact Assessment, • the measures proposed for the construction, operation and decommissioning of the development, • the submissions received in relation to the appeal, the documentation submitted with the application and the appeal and, • the Planning Inspector's report and recommendation.

Appropriate Assessment Stage 1

The Commission considered the Natura Impact Statement and all the other relevant submissions and carried out an appropriate assessment screening exercise in relation to the potential effects of the proposed development on designated European Sites. The Commission agreed with and adopted the screening assessment and conclusion carried out in the Inspector's report that the European sites in respect of which the proposed development has the potential to have significant effects are Great Island Channel Special Area of Conservation (Site Code 001058) and Cork Harbour Special Protection Area (Site Code 004030) in view of the Conservation Objectives for these sites and that Stage 2 Appropriate Assessment is, therefore, required.

Appropriate Assessment Stage 2

The Commission considered the Natura Impact Statement and all other relevant submissions including expert submissions received and carried out an Appropriate Assessment of the implications of the proposed development on Great Island Channel Special Area of Conservation (Site Code 001058) and Cork Harbour Special Protection Area (Site Code 004030), in view of the sites' 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 conservation objectives of the sites using the best available scientific knowledge in the field. In completing the assessment, the Commission considered, in particular, the following: (a) the likely direct and indirect impacts arising from the proposed development both individually or in combination with other plans or projects, (b) the mitigation measures which are included as part of the current proposal, and (c) the conservation objectives for the European Sites. In completing the Appropriate Assessment, the Commission accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the sites' conservation objectives. In overall conclusion, the Commission was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites in view of their conservation objectives. This conclusion is based on a complete assessment of all aspects of the proposed project and there is no reasonable scientific doubt as to the absence of adverse effects.

Environmental Impact Assessment Screening

Having regard to the nature and scale of the proposed development, while not itself a class specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended, includes a limited extent of field boundary removal (55 linear metres), thereby coming within Class 1 (a) of Part 2 of Schedule 5 of the Regulations and below the threshold set out in the class, • • the nature of the existing site and the existing and permitted pattern of development in the surrounding area, • • the location of the development outside of any sensitive location specified in Article 109(4)(a)(v) of the Planning and Development Regulations 2001, as amended, 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), • • the criteria set out in Schedule 7 and 7A of the Planning and Development Regulations 2001, as amended, and, 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 - Landscape and Visual Impact Assessment, Ecological Impact Assessment, Biodiversity Management Plan, Archaeology and Architectural Heritage Impact Assessment, Flood Risk Assessment, Surface Water Management Plan, Noise Impact Assessment, Glint and Glare Assessment, Construction and Environmental Management Plan, and Decommissioning and Restoration Plan. The Commission 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.

Conclusions on 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 renewal energy policies and with the provisions of the Cork County Development Plan 2022-2028, would not seriously injure the visual or residential amenities of the area or otherwise of property in the vicinity, nor have an unacceptable impact on the character of the landscape or the cultural or archaeological heritage of the site, would not give rise to flood risk on site or exacerbate flood risk downstream of the site, would not result in adverse impacts on water quality, would not have a significant adverse impact on ecology, would be acceptable in terms of traffic impacts and safety and would make a positive contribution to Ireland's renewable energy and security of energy supply requirements. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the planning application, as amended by the further information and revised plans and details received by the planning authority on the 19th day of February 2025 and 8th day of July 2025 and the details accompanying the appeal received by An Coimisiún Pleanala on the 26th day of September, 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. Prior to commencement of development, the developer shall submit details to the planning authority confirming the anticipated megawatt capacity and annual electricity generation of the solar farm.
   Reason: in the interest of clarity.
3. The mitigation and monitoring measures identified in the Natura Impact Statement submitted with the application shall be implemented in full.
   Reason: in the interest of protecting the environment, the protection of European Sites and in the interest of public health.
4. 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
5. 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.
6. (a) The permission shall be for a period of 40 years from the date of the commissioning of the solar array. All structures, including foundations, shall then be removed and the site reinstated unless, prior to the end of that period, planning permission shall have been granted for their retention for a further period.
   (b) Prior to commencement of development, a detailed Site Restoration Plan and a timescale for its implementation, providing for the removal of the solar arrays and all ancillary structures and a timescale for its implementation, 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, and all ancillary structures shall be dismantled and removed permanently from the site. The site shall be restored in accordance with the agreed Site Restoration Plan, and all decommissioned structures shall be removed from the site within three months of decommissioning.
   Reason: To enable the planning authority to review the operation of the solar farm over the stated time period, having regard to the circumstances then prevailing, and in the interest of orderly development.
7. All of the environmental, construction and ecological mitigation measures, as set out in the Ecological Impact Assessment, Natura Impact Statement, Glint and Glare Assessment and the updated landscape and visual impact assessment, the Archaeological, Architectural and Cultural Heritage Impact Assessment, Flood Risk Assessment, Noise Impact Assessment, Construction and Environmental Management Plan and the Surface Water Management Plan submitted by way of further information, and other plans and particulars submitted with the application 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
   Reason: in the interest of clarity.
8. The developer shall engage a suitably qualified (license eligible) archaeologist to carry out an Archaeological Impact Assessment (AIA) following consultation with the National Monuments Service or Local Authority Archaeologist in advance of any site preparation works and groundworks, including site investigation works/topsoil stripping/site clearance/dredging and/or construction works. The AIA shall involve an examination of all development layout/design drawings, completion of documentary/cartographic/ photographic research and fieldwork, the latter to include, where applicable - geophysical survey, metal detection survey and archaeological testing (consent/licensed as required under the National Monuments Acts). The archaeologist shall prepare a comprehensive report, including an archaeological impact statement and mitigation

strategy, to be submitted for the written agreement of the planning authority in advance of any site preparation works, groundworks and/or construction works. Where archaeological remains are shown to be present, preservation in-situ, establishment of 'buffer zones', preservation by record (archaeological excavation) or archaeological monitoring may be required and mitigatory measures to ensure the preservation and/or recording of archaeological remains shall be included in the AIA. Any further archaeological mitigation requirements specified by the Local Authority Archaeologist, following consultation with the National Monuments Service, shall be complied with by the developer. The planning authority and the National Monuments Service shall be furnished with a final archaeological report describing the results of any subsequent archaeological investigative works and/or monitoring following the completion of all archaeological work on site and the completion of any necessary post-excavation work. All resulting and associated archaeological costs shall be borne by the developer. Reason: To ensure the continued preservation, either in situ or by record, of places, caves, sites, features or other objects of archaeological interest.

9. (a) Existing field boundaries, including trees and hedgerows, shall be maintained and supplemented in accordance with the details submitted save where removal is proposed to facilitate access roadways and sight lines.
   (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 hedgerow 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) All solar panels within the permitted development shall include an Anti-Reflective Coating (ARC). 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 to confirm the effectiveness of the proposed mitigation once implemented.
   Reason: in the interest of the visual and residential amenity of the area.
10. Prior to commencement of development, the developer shall submit an Invasive Species Management Plan (ISMP), which shall be carried out by a suitably qualified individual for the review of the planning authority. No works shall commence on-site until the developer has received the written agreement of the planning authority with regard to this assessment.
   Reason: in the interests of public safety and biodiversity.
11. (a) All road surfaces, culverts, verges and public lands shall be protected during construction and, in the case of any damage occurring, shall be reinstated to the satisfaction of the planning authority.
   (b) Prior to the commencement of construction, a road condition survey shall be taken along the full extent of the construction haul routes to provide a basis for further reinstatement works. Details in this regard shall be submitted to, and agreed with, the planning authority prior to the commencement of development.
   (c) Where any of the proposed entrances to the site are widened to facilitate access/egress by HGV's, adequate drainage measures shall be installed.
   Reason: in order to ensure a satisfactory standard of development.
12. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and shall be carried out strictly in accordance with the details provided in the Surface Water Management Plan and the amended plans and particulars submitted by way of further information.
   Reason: in the interest of clarity.
13. (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) Each fencing panel shall be erected such that for a minimum of 300 millimetres of its length, its bottom edge is no less than 150 millimetres from ground level;
   (d) The solar panels shall have driven or screw pile foundations only, unless otherwise authorised by a separate grant of planning permission; and
   (e) Cables within the site shall be located underground.

Reason: in the interest of clarity, visual and residential amenity, to allow wildlife to continue to have access to and through the site, and to minimise impacts on drainage patterns and surface water quality.

14. The construction of the development shall be managed in accordance with a finalised Construction and Environmental Management Plan (CEMP), 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 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 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,
(j) details of how it is proposed to manage excavated soil,
(k) 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,
(l) details of the material to be used for the access tracks, which shall comprise permeable stone,
(m) the community liaison details, 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 HGV deliveries, and
(n) the finalised CEMP shall take account of the mitigation measures outlined within 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 available for inspection by the planning authority.
The finalised CEMP shall include the location of any and all archaeological or cultural heritage constraints relevant to the proposed development, as set out in the Archaeological, Architectural and Cultural Heritage Impact Assessment and as may become relevant subsequent to the programme of pre-development test trenching and 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 interests of clarity and the protection of the environment during the construction and operational phases of the development.

15. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.
Reason: in order to safeguard the residential amenities of property in the vicinity.

16. (a) Details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
(b) The invertor/transformer stations, spare parts containers and all fencing shall be dark green in colour or other dark colour that shall be agreed with the planning authority prior to the commencement of development.
Reason: in the interest of the visual amenity of the area.

17. Prior to commencement of development, the developer shall satisfy the requirements of Uisce Eireann in relation to their requirements for working in the vicinity of Uisce Eireann assets.

Reason: in the interest of protecting the public water infrastructure at this location.

18. Prior to the commencement of development, the developer or any agent acting on its behalf, shall prepare a Resource Waste Management Plan (RWMP) as set out in the Environmental Protection Agency’s Best Practice Guidelines for the Preparation of Resource and Waste Management Plans for Construction and Demolition Projects (2021) including demonstration of proposals to adhere to best practice and protocols. The RWMP shall include specific proposals as to how the RWMP will be measured and monitored for effectiveness; these details shall be placed on the file and retained as part of the public record. The RWMP must be submitted to the planning authority for written agreement prior to the commencement of development. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.
Reason: in the interest of proper planning and sustainable development.
19. 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, 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 the satisfactory restoration of the site in the interest of visual and residential amenity.
20. 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 interests of traffic safety and the proper planning and sustainable development of the area.
21. 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

45. 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) As regards interpretation of planning instruments it was held in *In re XJS Investments Ltd* 1986 WJSC-SC 1935, [1986] IR 750, [1987] ILRM 659, [1986] 12 JIC 1102, that "Certain principles may be stated in respect of the true construction of planning documents ... They are to be **construed in their ordinary meaning** as it would be understood by members of the public, without legal training **as well as by developers and their agents**, unless such documents, read as a whole, necessarily indicate some other meaning."

(vi) 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.

(vii) 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.

(viii) In *Waltham Abbey/Pembroke Road Association v. An Bord Pleanála* [2022] IESC 30, [2022] 2 I.L.R.M. 417 (§43 *per* Hogan J.; MacMenamin, Charleton, O'Malley and Baker JJ. concurring); *Heather Hill Management Company CLG v. An Bord Pleanála* [2022] IESC 43, [2024] 2 I.R. 222, [2022] 2 I.L.R.M. 313 (§106 *et seq. per* Murray J.; O'Donnell C.J., O'Malley, Woulfe and Hogan JJ. concurring); *Save Cork City Community Association CLG v. An Bord Pleanála* [2022] IESC 52, [2024] 1 I.R. 205 (*inter alia*, §47 *per* Woulfe J.; Dunne, Charleton, O'Malley and Hogan JJ. concurring), *Ashbourne Holdings Ltd v. An Bord Pleanála* [2003] IESC 18, [2003] 2 I.R. 114, [2003] 2 I.L.R.M. 446 *per* Hardiman J. at para. 30, the Supreme Court proceeded on the basis that the law does not favour **unworkable** interpretations.

(ix) In *Heather Hill v. An Bord Pleanála* [2022] IESC 43, [2024] 2 IR 222 the Supreme Court set out the appropriate approach to **statutory interpretation** having regard to a holistic view of text, context and purpose, to the effect that the words of the section are the first port of call in its interpretation, to be construed having regard to the context of the section, of the Act in which the section appears, the pre-existing relevant legal framework and the object of the legislation insofar as discernible. The onus is on those contending that a statutory provision does not have the effect suggested by the plain meaning of the words chosen by the legislature to establish this.

Domestic law - reasonableness

(x) 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

(xi) 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

(xii) 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**.

(xiii) 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.

(xiv) 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**.

(xv) 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

(xvi) 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.

(xvii) 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).

46. It is the function of a trial court to apply such principles here. While I appreciate the sincerity of the applicants as representing local residents, and the very considerable expenditure of imagination and effort made to present the case on their behalf, the legal question here is whether any sufficiently convincing legal reason has been demonstrated to displace the foregoing.

Whether the points were properly pleaded

47. The parties' positions on whether the applicant's points were properly pleaded as recorded in the statement of case are summarised as follows:

"(i) not pleaded adequately or at all;

Commission's Position

Core Ground 1 - The Applicants have failed to adequately particularise the pleas at §8 of the Statement of Grounds. This refers to maps which the Applicants claim demonstrate that the Ballinure Solar Farm is adjacent to the Proposed Development and that 'it will be connected to the site of the Proposed Development by underground cables'. The Applicants also plead (§13 of the Statement of Grounds) that it 'would connect to the site of the Proposed Development via shared underground cables'. It is not permissible to plead in such a general way, without identifying the specific map or material which the Applicants are relying on, and the Commission is unable to respond to this plea in the manner as framed.

Core Ground 2 - The Applicants have failed to adequately particularise how it is alleged the Commission's Decision contravenes Art 103(1B)(b) of the PDR and / or the EIA Directive and have failed to identify the provision(s) of the EIA Directive that the Commission is alleged to have contravened.

The Applicants have failed to adequately particularise the plea (§26) of the Statement of Grounds) that the 'Proposed Ballinure Solar Farm' is part of a larger project with the Proposed Development having regard to 'their geographical proximity, their similarities and their interactions and functional interdependence', contrary to the requirements of Order 84, rule 20(3) RSC and Order 103, Rule 14 RSC, and are not entitled to relief on the basis of those unparticularised pleas. The Applicants have not established that that 'Proposed Ballinure Solar Farm' is part of a larger project with the Proposed Development for the purpose of the EIA process.

The Applicants have also failed to adequately particularise the allegation of 'project splitting' contrary to the requirements of Order 84, rule 20(3) RSC and Order 103, Rule 14 RSC.

Core Grounds 3 –

In response to §§57 and 58 of the Statement of Grounds, the Inspector addressed the fact that neither the MW output of the solar farm nor the number of panels to be installed are provided in the application at §8.2.9 and §8.2.10 of the Report. 2. The Applicants have failed to particularise how this gives rise to any alleged flaw or invalidity in the AA or results in a breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive.

The Applicants have failed to adequately particularise the plea at §57 that this information was necessary to enable the Commission to lawfully conduct an AA and / or that in the absence of same there was a lacuna in the information available so as to invalidate the AA carried out

Core Ground 4

The Applicants have failed to adequately particularise the plea at §74 of the Statement of Grounds contrary to the requirements of Order 84, rule 20(3) RSC and Order 103, Rule 14 RSC and are not entitled to relief on the basis of those unparticularised pleas. The reference to 'avifauna' and the 'criticisms' referred to in Core Grounds 2 and 3 are unclear and the Applicants are not entitled to any relief based on those unparticularised pleas.

Notice Party's Position

Ballysallagh adopts the same position as the Commission.

Applicant's Position

Core Ground 1

The Applicants case has been adequately pleaded in the Statement of Grounds. The Applicant specifically referred to and cited extracts from the application for the Proposed Ballinure Solar Farm at paragraph 6 which identifies the unground cabling pleaded. The Applicant pleaded that the Notice Party submitted maps as part of the application for the Proposed Development and those maps are contained within the exhibit CD1 Tab 16 to the affidavit of the Second Named Applicant. The Commission plainly understood the case being made against it and its statement that it is 'is unable to respond to this plea in the manner as framed' is not accepted.

Core Ground 2

Paragraphs 22 to 50 of the Statement of Grounds explain how it is alleged the Commission's Decision contravenes Art 103(1B)(b) of the PDR and the EIA Directive. The pleadings as to the geographical proximity, their similarities and their interactions and functional interdependence between the two solar farms and the fact of project splitting is particularised under Core Ground 1 in addition to Core Ground 2 and it is not necessary to repeat statements under each core ground. The argument made that: 'The Applicants have not established that that "Proposed Ballinure Solar Farm" is part of a larger project with the Proposed Development for the purpose of the EIA process' is an argument as to the merits not a pleadings based objection.

Core Ground 3

The significance and import of the plea at paragraph 57 of the Statement of Grounds is sufficiently clear as to be adequately pleaded.

Core Ground 4

The plea at paragraph 74 is a reference to pleas made earlier in the Statement of Grounds and it is sufficiently clear when read in the context of the overall Statement of Grounds and it is not necessary to repeat statements under each heading."

48. Some relevant legal principles concerning pleading requirements which have been rehearsed in previous caselaw include the following:

(i) **Applicants are confined to their pleadings**: *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 of Ireland* [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); *Eglington Residents Association v. An Bord Pleanála* [2025] IEHC 209 (Unreported, High Court, Farrell J., 15 April 2025) at 11. The rules of pleading are well-established, clear and mandatory, and are of particular importance in a context of special complexity such as technical EU-heavy areas of planning law; while exact specification of every jot and tittle of a case is an impossible standard, an applicant can only be permitted to advance at a hearing a point that is acceptably clear from the express terms of the statement of grounds, subject to the grant of any order allowing an amendment: *Reid v. An Bord Pleanála (No. 7)* [2024] IEHC 27, [2024] 1 JIC 2401 (Unreported, High Court, 24 January 2024).

(ii) **Pleading requirements in judicial review are "stringent"**, allowing "little room for manoeuvre": *People Over Wind & Anor. v. An Bord Pleanála & Ors. (No. 1)* [2015] IEHC 271, [2015] 5 JIC 0106 (Unreported, High Court, Haughton J., 1 May 2015). "It shall not be sufficient for an applicant to give as any of his grounds for the purposes of paragraphs (ii) or (iii) of sub-rule (2)(a) an assertion in general terms of the ground concerned, but the applicant should state precisely each such ground, giving particulars where appropriate, and identify in respect of each ground the facts or matters relied upon as supporting that ground": Order 84 r. 20(3) RSC. "If on the Grounds pleaded there is genuine 'doubt, ambiguity or confusion' an Applicant in Judicial Review cannot have the benefit of it", *per* Holland J. in *Ballyboden Tidy Towns Group v. An Bord Pleanála & Ors.* [2022] IEHC 7, [2022] 1 JIC 1001 (Unreported, High Court, 10 January 2022) at para. 308.

(iii) **Complex EU law arguments need to be articulated with particular clarity**. It is particularly important, in the case of an allegation of a failure properly to transpose an obligation under EU law, that the requirements of O. 84, r. 20(3) be observed: *Sweetman v. An Bord Pleanála (Sweetman XV)* [2020] IEHC 39, [2020] 1 JIC 3104 (Unreported, High Court, 31 January 2020) *per* McDonald J. at para. 103 (cited with approval by Murray J. (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring) in *Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024]

IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024); *Rushe v. An Bord Pleanála* [2020] IEHC 122, [2020] 3 JIC 0502 (Unreported, High Court, 5 March 2020) *per* Barniville J.; attempts to launch for example non-transposition claims not set out on the pleadings are impermissible: *Alen-Buckley v. An Bord Pleanála* [2017] IEHC 311, [2017] 5 JIC 1211 (Unreported, High Court, Costello J., 12 May 2017).

(iv) Recital of high-level principles does not create *certiorari* by osmosis – an applicant **must specify a route-map** connecting the particular factual problem alleged with the particular relief sought *via* a chain of reasoning: *Ballyboden Tidy Towns v. An Bord Pleanála* [2021] IEHC 648 (Unreported, High Court, 7 January 2022), para. 20; *Foley v. Environmental Protection Agency* [2022] IEHC 470 (Unreported, High Court, Twomey J., 24 January 2023), paras. 71-72; *Stapleton v. An Bord Pleanála & Savona* [2024] IEHC 3 (Unreported, High Court, Holland J., 13 February 2024), para. 124.

(v) **Scattergun pleadings** are liable to be viewed as "a witch's brew designed to spread maximum confusion and to permit any argument to be made at the hearing that ingenuity can suggest": *Hellfire Massy Residents Association v. An Bord Pleanála* [2022] IESC 38, [2024] 1 I.R. 386, [2022] 10 JIC 2402 *per* O'Donnell C.J. at para. 22 (Dunne, Woulfe, Hogan and Murray JJ. concurring). MacMenamin J. (Fennelly and Clarke JJ. concurring) in *Babington v. Minister for Justice Equality and Law Reform & Ors.* [2012] IESC 65 (Unreported, Supreme Court, 18 December 2012) referred to the pleading requirements in judicial review and said at para. 7: "Regrettably, these explicit stipulations are frequently not complied with, and the same grounds are set out in as many different, varying, (and wearying) reformulations of the same point as can be conceived. Practitioners should realise that, in this entirely counterproductive and unnecessary process, there is a real risk of not being able to see the wood for the trees. A good point does not gain force by repetition".

(vi) While the court has jurisdiction to grant unpleaded reliefs it **can allow such relief only within the contours of the case as defined by the pleaded grounds**: *Concerned Residents of Treascon and Clondoolusk v An Bord Pleanála* [2024] IESC 28, [2024] 7 JIC 0402 (Unreported, Supreme Court, 4 July 2024), para. 42 *per* Murray J. (O'Donnell C.J., Woulfe, Collins and Donnelly JJ. concurring). Therefore a court can't grant relief if there is no supporting ground for it.

(vii) **It is not necessary that the specific provisions of national or EU law relied on are expressly enumerated** if they are implicitly identifiable with acceptable clarity: *Eco Advocacy CLG v. An Bord Pleanála (No. 4)* [2023] IEHC 713 (Unreported, High Court, 18 December 2023); *Kennedy & Anor. v. An Bord Pleanála* [2024] IEHC 570 (Unreported, High Court, 7 October 2024), para. 132; *Leech v. An Bord Pleanála* [2024] IEHC 599 (Unreported, High Court, Farrell J., 12 November 2024); *Mount Salus Residents' Owners Management Company Limited by Guarantee v. An Bord Pleanála & Ors.* [2025] IEHC 14 (Unreported, High Court, Holland J., 15 January 2025), para. 39. The standard is acceptable clarity, not express enumeration.

(viii) As noted by the Court of Appeal in *Carvill v. An Bord Pleanála* [2025] IECA 84 (Unreported, Court of Appeal, Barniville P., Collins and Faherty JJ., 11 April 2025) at para. 148, where a developed pleading objection is made, **the court should not accept the point made by the applicant without first addressing the objection**. That said, the court can reject a point without deciding the pleading objection if it fails either way.

49. The contested points can be resolved as follows insofar as concerns pleadings:

(i) The plea at sub-ground 8 is unduly vague. The rules of pleading require specificity, and given the large volume of documentation submitted by the developer, a generalised plea that somewhere in that ocean of material there are unspecified "maps" of the type described is not a proper basis for relief. Insofar as the applicants rely on sub-ground 6, the quoted application form does not say what is pleaded at sub-ground 8. Connecting to the sub-station or running under the solar farm the subject of this case is not the same as connecting to this project.

(ii) The assertion at sub-ground 13 that the commission ought to have been aware of the other solar farm is inadequately pleaded in the absence of any facts or matters set out as to how or why it ought to have been so aware. Insofar as there is a plea that the developer ought to have referred to it, no legal basis for that alleged obligation is pleaded.

(iii) The plea of breach of the 2001 regulations in Core Ground 2 is adequately pleaded by reason of the word "because", which exhaustively sets out the rationale for that plea.

(iv) The plea of breach of the directive is sub-optimally pleaded in the absence of any provision of the directive said to have been breached, but read in tandem with the other particulars the point is acceptably clear.

(v) The plea at sub-ground 26 insofar as it relates to "interactions and functional interdependence" is inadequate as these are asserted rather than identified or particularised in any meaningful terms by reference to the required facts or matters to be specified - rather the plea merely recites the language of the CJEU jurisprudence without any specifics that tie that into this particular case. Insofar as the applicants reply by reference to an unparticularised *mixum gatherum* of the text in sub-grounds 22 to 50, that reinforces the point that the basis for the alleged interactions and functional interdependence is not specified.

(vi) The claim that "The Applicants have not established that that 'Proposed Ballinure Solar Farm' is part of a larger project with the Proposed Development for the purpose of the EIA process" goes to the merits.

(vii) The claim of project splitting would be acceptably clear but for the lack of any facts or matters relied on as to why the two projects constitute a single project.

(viii) The pleas at sub-grounds 57 and 58 are inadequate in the absence of identification of any facts or matters relied on that causally connect the relevant alleged omissions with anything relevant to a defect in reasoning as to impacts on European sites. Instead the sub-grounds merely assert such a defect arising from the lack of information without any facts or matters specifying any rationale or basis relied on in that regard.

(ix) Sub-ground 74 purports to be repetition but without any particulars of how the matters so repeated relate to avifauna. This is clearly inadequate.

Whether the points were made at the appropriate time

50. Assuming I am wrong as to the foregoing I will go on to consider whether the points were made at the appropriate time.

51. 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:

> "(ii) not made by the applicant in the process, being points that it is contended should have been made in the process;
>
> Commission's Position
>
> Core Ground 3: The Applicants did not raise any issue in their submission to the Planning Authority or observation to the Commission by reference to an alleged lack of expertise on the part of the Commission.
>
> Core Ground 4: the Applicants have no standing and/or are not entitled to rely on Core Ground 4 of the Amended Statement of Grounds in circumstances where they did not take issue with the Notice Party's Ecological Impact Assessment in their observations submitted to the Commission dated 23 October 2025, and the pleas under this ground should be dismissed.
>
> Notice Party's Position
>
> It is Ballsallagh's position that the Applicants did not make submissions to the Commission which they now advance in these proceedings in respect of each Core Ground of challenge. The subject matter of each Core Ground is raised by the Applicants for the first time in these proceedings, and no explanation has been provided for why such issues were not raised before the Commission. In such circumstances, the Applicants are precluded from challenging the Impugned Decision by reference to matters not previously raised by them as part of the statutory public consultation process. Further, and/or in the alternative, in these circumstances, if this Honourable Court determines that this ground of challenge should be upheld, it should exercise its discretion to refuse the relief sought.
>
> Applicant's Position
>
> Core Ground 3
>
> The Applicant is not required to raise the issue of the Commission lacking expertise in its submission to the Commission, and is not precluded from raising this issue in the within proceedings per *Rogers v An Coimisiún Pleanála* [2026] IEHC 257 at 56.
>
> Core Ground 4
>
> Members of the Leamlara Preservation Group did take issue with the Notice Party's Ecological Impact Assessment and the Applicant is not precluded from raising this issue in the within proceedings."

52. These points can be resolved as follows insofar as concerns raising issues at the appropriate time:

(i) The failure by the applicants to properly make, during the process, any developed case regarding the EIA obligations now contended to have been breached, during the process renders relief on such a ground inappropriate (see further below).

(ii) The alleged lack of expertise on the part of the Commission relates to an autonomous obligation which in any event has to be judged by reference to the decision actually made (not knowable by a judicial review applicant during the process), so not raising this in the process is not disqualifying *per se*.

(iii) The failure to take issue with the Notice Party's Ecological Impact Assessment during the process renders relief on that issue inappropriate (see further below). The fact that individual members of the first named applicant may have raised issues does not answer this point.

(iv) The failure by the applicants to properly make, during the process, any bat-related complaint in respect of AA obligations now contended to have been breached, during the process renders relief on such a ground inappropriate (see further below).

Other preliminary issues

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

> "Applicants Position
>
> 35. It is the Applicants Position that the second Affidavit of Robert Brophy comprises hearsay evidence and should not be admitted. In the alternative insofar as the Court finds the Affidavit as admissible it should be accorded little weight.
>
> Commission's Position
>
> 36. The Commission does not accept that the second Affidavit of Robert Brophy comprises hearsay evidence and should not be admitted. This is now raised as an objection for the first time and appears to be a further attempt to challenge the Commission's expertise following the Applicants' (unsuccessful) application for cross-examination which was predicated on an attempt to cross-examine individual Commissioners and the Inspector who had not sworn Affidavits. When that application failed, the Applicants then sought to cross-examine Mr. Brophy as well as directions compelling further Affidavits. Both applications were refused. Without prejudice to the foregoing, the Applicants have not identified how the evidence in the second Affidavit of Robert Brophy constitutes hearsay. Furthermore, the Affidavit includes case file references for Commission files which are in the public domain and which the Applicants are able to verify. Furthermore, the Commission agrees with the Notice Party that the Affidavits of Patrick Moran and Pamela Bartley should not be admitted or, in the alternative, no weight should be placed on them.
>
> Notice Party's Position
>
> 37. It is Ballysallagh's position that the Affidavits of Patrick Moran and Pamela Bartley should not be admitted for the following reasons:
>
> (i) both Affidavits were filed after the date upon which the High Court (Humphreys J.) granted leave to apply for judicial review, in circumstances where the information contained in both Affidavits was available to the Applicants at the date upon which the application for leave to apply for judicial review was made to the High Court, and no explanation has been provided for the failure of the Applicants to file such Affidavits on the application for leave (see *Reid v. An Bord Pleanála* [2021] IEHC 230); and
>
> (ii) both Affidavits raise matters which were not before the Commission and which could (and should) have been made to the Commission in the course of the appeal process (see *Hoctor v. An Coimisiún Pleanála* [2026] IEHC 65 at §55).
>
> 38. In the alternative, insofar as the Court finds that these Affidavits are admissible, then they should be given very little weight in light of the objections set out above."

54. These points can be resolved as follows:

(i) The issue of hearsay is best dealt with under the substantive heading of expertise, below.

(ii) the affidavits of Patrick Moran and Pamela Bartley should not be admitted or alternatively should not be afforded any significant weight because:

 (a). no explanation was provided for not producing this evidence when proceedings were instituted, but more fundamentally;

 (b). the affidavits include factual matters that could have been put before the commission but were not, and no adequate explanation was provided in that regard.

55. Assuming I am wrong as to the foregoing I will go on to consider the merits. In fact all core grounds have an EU law overlap so are best addressed under that heading.

56. While core ground 1 is perhaps somewhat phrased in domestic terms, the assertion of a single overall project is clearly designed to take advantage of EU law on project splitting in the EIA context. The discussion will make more sense if I view it from that perspective. If one were to narrowly view it from a purely domestic perspective, the answer is simply that the applicants have not evidentially demonstrated error on a relevant matter. So it will be more illuminating to go on to look at this from an EU law point of view.

EU law issues

Core ground 1 – alleged factual error

57. Core ground 1 is:

58. "The Commission in granting the Permission erred in fact and in law in that it failed to identify as a matter of fact that the Proposed Development was part of a larger overall project with associated planning and environmental effects which includes the proposed Ballinure Solar Farm which is located adjacent to the Proposed Development and is connected to it by means of underground cabling and a shared substation and grid connection."

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

"Applicant's Position

56. The fact that the Developer applied for permission to develop a further 51 hectare solar farm, the Proposed Ballinure Solar, which is part of a larger overall project with the Proposed Development is a material fact.

57. In particular, having regard to; the Developers own materials confirming both solar farm developments will take place in part on the same lands, that both solar farms and the substation will be constructed at the same time, the Developers material in respect of each solar admits of in-combination effects with the Sub-station, each solar farm shares the use of the Substation and grid connection and cable interface, the cables from the Proposed Ballinure Solar Farm interact with the infrastructure contained within the Proposed Development. The failure of the Commission to consider this material fact at all invalidates the decision.

Commission's Position

58. At the time of the Inspector's Report and at the time of the Commission's Decision there was no error of fact where the factual circumstances were that there was no valid live pending application for the 'proposed Ballinure Solar Farm'. The Commission was not required to refer to or to expressly consider or assess the invalidated application before granting permission for the Proposed Development. No authority has been identified which requires the Commission to consider invalidated applications. The 'Ballinure Solar Farm' referred to by the Applicants was neither a permitted development nor a proposed development the subject matter of a pending planning application for permission. The Applicants have not identified any legal basis or obligation for the Commission to consider hypothetical or speculative applications for planning permission where no such applications have been formally proposed by way of a valid planning application and were not pending at the time of the Commission's decision.

59. The Applicants have not discharged the onus of proof or established that there is in fact a functional or legal interdependence between the proposed development and the Ballinure Solar Farm, so as to give rise to an obligation on the Commission to assess cumulative effects of the Proposed Development and a hypothetical 'future' or 'proposed' development. Further the Applicants have not established that the 'Ballinure Solar Farm' is part of 'a larger project' with the Proposed Development and would not be a standalone project other than a shared substation and grid connection.

Notice Party's Position

60. The pleas made in respect of Core Ground 1 are subtended by the mistaken assertion that the Commission erred in failing to assess the previously proposed Ballinure Solar Farm. However, there was no pending application for the previously proposed Ballinure Solar Farm as at the dates of the Inspector's report or Commission Decision, in circumstances where the planning application submitted in respect of the Ballinure Solar Farm was invalid, deemed incomplete and returned to Ballysallagh by the Council on 16 January 2026. Moreover, the Proposed Development and the previously proposed Ballinure Solar Farm are functionally and legally independent of each other. A planning application may be made at a future date in respect of the development of the Ballinure Solar Farm and, upon any such application, the competent authority/authorities will be enabled to carry out all assessments as required by law. In the premises, the Impugned Decision does not contain and/or is not premised upon any material error of fact and the factual bases subtending the pleas at Core Ground 1 are misconceived and, as a matter of law, the matters pleaded in respect of Core Ground 1 are incapable of vitiating the Impugned Decision."

60. There are a number of insuperable problems for the applicants with this complaint as follows.

Problem I - this is not an EIA project

61. The inspector correctly held that solar farms and internal tracks are not EIA projects. As regards hedge removal, she said (emphasis added):

> "Rural Re-structuring
> Rural restructuring is listed as development for the purposes of Part 10 under the heading of Agriculture, Silviculture and Aquaculture, Class 1 of Part 2 of the 5th Schedule, with the following stated under subsection (a) 'Projects for the restructuring of rural land holdings, undertaken as part of a wider development, and not as an agricultural activity that must comply with the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, where the length of field boundary to be removed is above 4 kilometres, or where re-contouring is above 5 hectares, or where the area of lands to be restructured by removal of field boundaries is above 50 hectares.' The proposed development involves the removal of a limited extent of hedgerow, in total comprising c. 55 metres linear metres. Such removal is associated with access requirements and **does not result in the amalgamation or enlargement of existing fields**. **This proposed removal of hedgerow is significantly below the EIA threshold of 4km. The development would, however, constitute sub-threshold development for rural restructuring.** I refer to Appendices 3 and 4 which contain the pre-screening and EIA screening determination."

62. The problem with this reasoning is that the category in the domestic regulations is **not** 4km of field boundary removal but "projects for the restructuring of rural land holdings … where the length of field boundary to be removed is above 4 kilometres …".

63. Hence the removal of 55m of hedges for access purposes does not constitute a sub-threshold project unless it also constitutes rural land restructuring – the inspector doesn't actually find that and in fact says the contrary. The decision on any reasonable view simply reads across from the fact that 55m is sub-4 km to a conclusion of sub-threshold development without also finding that this project is land restructuring.

64. On the contrary the inspector said:

> "The proposed development would include the removal of c 55 linear metres of hedgerow to facilitate access between fields, which is significantly below the 4km threshold and **does not relate to the enlargement of fields.** Re-contouring is not proposed as a part of the development. It is considered that the development does come within the scope of this class on the basis that it involves the removal of field boundary hedgerows but that it is subthreshold."

65. As noted above the inspector finds that it did not relate to amalgamation of fields either. Those two findings are impeccable. In such a situation it can hardly be viewed as rural land restructuring. The asserted conclusion that this is a sub-threshold project does not follow from the premises. Rural land "restructuring" requires some change to the land **structure** as opposed to features - i.e., increase, reduction, or amendment of the structure, particularly the boundaries, of any one or more pieces of land. So on the inspector's actual reasoning (as opposed to her unfortunately incorrectly premised asserted conclusion of sub-threshold) this is not an EIA project under any heading.

66. The commission were conceding the applicability of EIA here. But with all due respect, that was an illogical concession (which contrasts with the more jurisprudentially coherent approach adopted by the commission in *Milner v. An Coimisiún Pleanála* [2026] IEHC 627 (Unreported, High Court, 18 September 2026) where a similar situation arose). More fundamentally concessions of opposing parties do not bind the court, on the clear authority of *Ballyboden Tidy Towns Group v. An Bord Pleanála & Ors.* [2024] IESC 4 (Unreported, Supreme Court, 22 February 2024) *per* Donnelly J. (O'Donnell C.J., Woulfe, Hogan and Collins JJ. concurring). The court itself must be satisfied to grant relief – which I most certainly am not. The EIA argument can't arise if there is no demonstrated logical basis for EIA to apply in the first place.

Problem II - the applicants failed to make the case now made

67. If I am wrong about that I will go on to consider the next problem.

68. In an EIA interaction-of-projects situation there are in essence two basic obligations:

(i) If the project is part of a larger overall project, having regard, in the context of the elements concerned, to "their geographical proximity, their similarities and their interactions" judgment of 25 July 2008, *Ecologistas en Acción-CODA v Ayuntamiento de Madrid*, C-142/07, ECLI:EU:C:2008:445, para. 45, the project as a whole needs to be assessed;

(ii) In any event, the cumulative and in-combination effects of the project need to be assessed in tandem with any other relevant project.

69. Experts retained by the first named applicant, and the second named applicant, made two submissions to the commission running to 267 pages. In this landslide of material, no developed case is made under either of the above headings.

70. The second named applicant states as follows:

"Key Solar Farm Development Considerations
The applicant mentions the access to the grid network. East Cork is currently being bombarded with planning applications for solar farms. Please see this google map overview that I created. Ballysallagh Solar Farm is in yellow and other proposed solar farm developments are shown, as well as the existing Lysaghtstown Solar Farm — which is, of course, being expanded. Interestingly, the applicant has just recently announced their plans for Ballinure Solar Farm (see appendix 1 for brochure). This will link into the Ballysallagh Solar Farm and is yet another example of the applicant's arrogance:
• It is a clear example of 'project splitting' as the brochure references Ballysallagh Solar Farm;
• They have issued a brochure referencing Ballysallagh Solar Farm which was refused planning permission by CCC. This shows the presumptive nature of the applicant, which is visible in their inadequate application to CCC.
At some point, a 'joined up' approach to renewable energy development must be taken. We cannot have private companies, approaching landowners and leasing land from them, deciding where these massive infrastructure structure projects are placed. County Councils should zone land for them and stop this 'gold rush' by companies like the applicant."

71. This submission does not, unfortunately, provide a basis for treating the Ballysallagh and Ballinure solar farms as a single project. All that the second named applicant says of relevance to this is that "the brochure references Ballysallagh Solar Farm", therefore "It is a clear example of 'project splitting'". Such an asserted conclusion obviously does not follow merely from a reference in a brochure. In short, no actual concrete factual basis was advanced to the commission as to why the two solar farms constitute a single project. The commission are not required to address every assertion made without any demonstrated basis – that would be an impossible obligation.

72. It would be inappropriate to grant *certiorari* on the basis of material not put forward by an applicant during the decision-taking process, in circumstances such as these.

Problem III - no reasonable basis was set out by other process participants for the "single project" thesis

73. If I am wrong about that, I will consider the points made by others.

74. A submission is made by Mr Liam O'Mahony and others which includes the following:

"6.0 Cumulative Development and Project Splitting
6.1 The Ballysallagh proposal must also be viewed alongside the Ballinure Solar Farm, now at pre-planning stage with Cork County Council and promoted by the same developer (Ballysallagh Solar Farm Ltd) on contiguous lands.
6.2 This duplication specifically in the case of Ballinlure and Ballysallagh who are proposed by the same developer raises a serious risk of project splitting, where interconnected developments are assessed separately to avoid full environmental scrutiny.
6.3 The O'Grianna v ABP [2014] IEHC 632 judgment confirmed that related projects promoted by the same developer must be assessed together under the EIA Directive (2011/92/EU as amended).
6.4 Given the existing nearby solar developments at Lysaghtstown and the approved Ballysallagh Substation, the Board must treat Ballysallagh and Ballinure as a single cumulative project.
6.5 Without this integrated assessment, the combined environmental and community impacts cannot be lawfully or meaningfully assessed."

75. This is misconceived in principle because solar farms are not EIA projects. Therefore, dealing with solar farms separately cannot constitute avoidance of EIA obligations.

76. Generally, the concept of project-splitting is severely misunderstood. There is nothing inherently wrong with project-splitting as such – a project can lawfully by applied for and consented in parts (*Concerned Residents of Treascon and Clondoolusk v. An Bord Pleanála* [2024] IESC 28 (Unreported, Supreme Court, Murray J., 4 July 2024)). What is objectionable is the outcome if project-splitting results in the non-application of EU law obligations. To avoid that, the principle is that thresholds need to be considered by reference to the overall project. No breach of that applies here. No relevant thresholds have been evaded by sub-division of the project because there are no such thresholds for solar farms.

77. It should therefore be apparent as to why the following plea is fundamentally misconceived:

"28. In this regard the Applicants rely on the decision in McGowan v An Coimisiún Pleanála [2025] IEHC 405 to the effect that if consent is sought for a EIA sub-threshold project which is part of a supra-threshold project (whether already part-consented in successive phases, or involving separate consent applications in process or yet to be made) then the project for which consent is sought must be treated as supra-threshold if an EIA was not carried out initially and thus an EIA that would otherwise be required would be avoided by the splitting."

78. There are no thresholds relevant to this so the premise of the analogy fails from the outset.

79. *Ó Grianna* does not decide that "related projects promoted by the same developer must be assessed together under the EIA Directive" as some sort of blanket rule - there must be a basis to consider that the two or more projects are elements of the same overall project, or a basis for the possibility of cumulative or in-combination effects. Mr O'Mahony's submission does not set out such a basis, merely asserting a "single cumulative project" (conflating the two concepts) based on the fact that they are "related" (in an unspecified manner) and from the same developer, and allegedly on contiguous lands – which may be technically correct although the arrays are 2.7 km apart.

80. There are additional submissions on cumulative effects but these are even more vague than the foregoing.

81. A submission from Mr Noel O'Mahony does not take matters much further:

"The presence of other solar farms and developments in the vicinity, namely Lysaghtstown development of 378 Acres and the Ballnaclashy Development of 47.2 hectares and the recently approved Rathcoursey Development, the report does not adequately assess the cumulative impacts of these projects in combination with the proposed solar farm. The potential for significant environmental degradation due to the collective effects of multiple developments is a critical consideration that has been overlooked."

82. A submission from Mr Seamus Ahearne states:

"7. Cumulative and Long-Term Effects

7(a) This project, together with other energy infrastructure nearby (including the Celtic Interconnector), will impose cumulative noise, traffic, and visual burdens for up to so years — including construction, operation, maintenance, and decommissioning.

7(b)The community's goodwill during previous infrastructure works has already been exhausted; further disruption would be unreasonable and disproportionate.

7(c)The long-term and cumulative nature of these impacts warrants ACP's application of the precautionary principle under both Irish and EU law. We note that further applications for more solar farms in the immediate area are being proposed further increasing the cumulative impacts on our area."

83. Mr Waltraud Khosrawi states:

"6. Cumulative Impact

Several solar farm proposals have been submitted or granted permission within East Cork. This proposal adds to a growing cluster of large-scale solar installations in the area, resulting in significant cumulative visual and environmental impacts that have not been adequately assessed."

84. Ms Catherine Platts submitted as follows (again the foregoing points apply):

"2.2 Project Splitting?

As the Commission is surely aware, since the introduction of the plans for Ballysallagh Solar Farm, there have been multiple other solar farms put forward for planning permission in the locality, in particular in neighbouring areas of Ballinure (Bartlemy) (170 acres), Tibbotstown (279 acres) as well as extensions to the already-built Lysaghtstown solar development in near Carrigtwohill. These are all within a 13 minute drive of the planned site for Ballysallagh Solar Farm, some only 5 minutes away. While not all are with the same developer, several are, which suggests very much that project splitting is happening here to disguise the overall cumulative impact of such plans. The brochure that landed on the doorsteps of residents in Bartlemy for the Ballinure Solar Farm (just one day after CCC's refusal of Ballysallagh Solar Farm), bears the name `Ballysallagh Solar Farm Ltd', so it is without any veil of disguise that they are linked projects — with connecting underground cabling – but entered as separate applications for planning purposes. Research (Enriquez-de-Salamanca, 2016) has shown that project splitting can have a negative environmental impact, and to avoid it there should be specific regulations prohibiting such behaviour, and a strengthening of strategic environmental assessments. We know that regulations do not exist in Ireland yet for solar farms, so it is incumbent on organisations such as the Commission to ensure that in the absence of regulation, considered and reasonable choices are made regarding planning permissions."

85. Eamonn and Clare Daly submitted:

"4.3 Assessment:

• Proposed planting would take decades to mature and cannot screen elevated panels (up to 3.25 m high).

• The proposal's scale, dictated by land availability rather than landscape capacity, directly breaches Development Plan policy.

4.4 Cumulative Impacts & Project Splitting:

There is clear evidence of related or sequential projects forming an industrial cluster in the Leamlara—Ballysallagh area, including:

• The Tibbotstown Solar farm currently in CCC planning department
• The Lysaghtstown Solar Farm and its four extensions;
• The Ballysallagh Substation (recently permitted); and
• The Ballinure Solar Farm, currently at pre-planning with Cork County Council, proposed by the same developer (Ballysallagh Solar Farm Ltd) on lands directly adjacent and contiguous to the present appeal site.

Together, these projects create a continuous energy corridor in the Leamlara Valley. Under the EIA Directive (2011/92/EU as amended 2014./52/EU) and O'Grianna v ABP [2014] IEHC 632, the combined effects require assessment as a single cumulative project. Failing to do so in the context of Ballinlure and Ballysalagh constitutes impermissible project-splitting.

It is therefore respectfully submitted that An Coimisiun Pleanála require a consolidated Environmental Impact Assessment Report (EIAR) and Appropriate Assessment (AA/SEA) covering Ballysallagh and all other local solar farm clustering before any determination."

86. The notion of requiring an SEA is fundamentally misconceived – that does not apply to projects. No reasonable basis for suggesting that the four projects in question are a single project is set out.

Problem IV - insofar as the obligation to consider projects applies to live applications, there was no live application

87. Assuming I am wrong about the foregoing, the next issue is that there was no live application for Ballinure as of the date of the EIA screening. The applicants could not succeed therefore save on a very extensive view of the law, to which I will return. As the commission pleads, "the Commission was not aware of any notification of the planning application (Ref: 25/6573) having been submitted on 25 November 2025 at the time it made its decision for the Proposed Development."

Problem V - it is not evidentially established that this is a single project

88. Insofar as the complaint is that the project was part of a single project with Ballinure, an applicant bears the onus of proof in that regard, an onus that has not been discharged in the proceedings. As the commission pleads in its statement of opposition, "The Applicants have not established that the 'Ballinure Solar Farm', if even applied for, is part of 'a larger project' with the within Proposed Development and would not be a standalone project other than a shared substation and grid connection and the Applicants have not established any functional or legal interdependence with the Ballysallagh Solar Farm itself." The reference to a sharing of the substation and grid connection does not constitute an acceptance of a level of overlap of the infrastructure sufficient to make this a single project. Many independent projects can share a substation.

89. Insofar as reliance is placed on the notice party's plea in this regard, that is also not an admission of a single project:

> "49. Furthermore, no shared underground cables were proposed. The fact that sections of the proposed underground cabling for the previously proposed Ballinure Solar Farm were proposed to 'traverse' the Proposed Development does not demonstrate any interdependence between the Proposed Development and the previously proposed Ballinure Solar Farm."

90. Many projects share something physically with other projects – say an access road or services of some kind – that doesn't make them a single project.

Problem VI - whether non-live applications need to be factored in to EIA

91. Having regard to the foregoing I don't need to decide the question lurking at the end of the applicants' broken chain of reasoning, which is whether projects that are likely or reasonably foreseeable need to be included in the EIA assessment. The applicants do not have direct authority on that – the caselaw they rely on e.g., *Marktgemeinde Straβwalchen and Others v. Bundesminister für Wirtschaft, Familie und Jugend*, C-531/13, ECLI:EU:C:2015:79, is more general.

92. The EIA directive, as amended in 2014, has set out what needs to be considered. Annex IV para. 5 provides:

> "5. A description of the likely significant effects of the project on the environment resulting from, inter alia:
> (a) the construction and existence of the project, including, where relevant, demolition works;
> (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
> (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
> (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);

(e) the cumulation of effects with **other existing and/or approved projects**, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
(g) the technologies and the substances used."

93. Existing literally means built. In *Ratheniska Timahoe and Spink (RTS) Substation Action Group & Anor v. An Bord Pleanála & Anor* [2015] IEHC 18, 2015 WJSC-HC 24479, [2015] 1 JIC 1402 (Unreported, High Court, 14 January 2015), Haughton J. thought that applications made but not yet authorised did not generally need to be considered as part of EIA cumulative and in-combination assessment. That is a debatable conclusion, but we don't need to have the debate in this case.

94. The commission thinks that the wording of the directive is a slam-dunk in their favour. That is a plausible interpretation on one view. Such a logic would exclude not only foreseeable projects but live undecided applications. Alternatively, it could be a mistake to interpret EU law too literally - purposive interpretation is of particular resonance in such a context. Material from other current or former member states can be helpful by analogy.

95. UK guidance, Nationally Significant Infrastructure Projects: Advice on Cumulative Effects Assessment (https://www.gov.uk/guidance/nationally-significant-infrastructure-projects-advice-on-cumulative-effects-assessment), states:

"In this advice, 'other existing and/ or approved development' is taken to include existing developments and existing plans and projects that are 'reasonably foreseeable'.
...
The ZOI for each aspect should support a desk study exercise to identify the long list of other existing and/ or approved development in the form of **planning applications**, relevant development plans and any other available and relevant sources, such as information from a relevant planning authority."

96. Development is set out in tiers in the guidance:

Assigning certainty to other existing and/ or approved development
Tier 1
Other existing and/ or approved development

- under construction
- permitted applications under the Planning Act or other regimes but not yet implemented
- **submitted applications under the Planning Acting or other regimes but not yet determined**
- **all refusals subject to appeal procedures not yet determined**

Tier 2
Other existing and/ or approved development

- projects on the Planning Inspectorate's programme of projects

Tier 3
Other existing and/ or approved development

- projects on the Planning Inspectorate's programme of projects where a scoping report has not been submitted
- identified in the relevant Development Plan and emerging Development Plans, with appropriate weight given as they near adoption, recognising that there will be limited information available on the relevant proposals
- **identified in other plans and programmes**, as appropriate, which set the framework for future development consents or approvals, **where such development is reasonably likely to come forward**

97. European Commission guidance in the AA context, currently Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC (2021/C 437/01) [Brussels, 28.9.2021 C(2021) 6913 final, Commission notice] at p. 21 states: "The in-combination provision concerns other plans or projects that have been already completed, approved but uncompleted, or proposed **(i.e. for which an application for approval or consent has been submitted)**."

98. I considered referring this point in an AA context in *Toole v. Minister for Housing I (No. 4)* [2023] IEHC 403, [2023] 7 JIC 1301 (Unreported, High Court, 13th July 2023), *Toole v. Minister for Housing II* [2024] IEHC 610 (Unreported, High Court, 1st November 2024), *Toole v. Minister for Housing (No. 7)* [2023] IEHC 716 (question 4). That case was settled before the reference was actually sent.

99. The applicants valiantly tried to postulate a legal difference between an invalid and an incomplete application, albeit not a distinction reflected in their pleadings (see para. 20 of statement of grounds), but this seems to be a bespoke distinction designed to produce *certiorari* rather than one based on real principle.

100. That said, if problems I-V above did not apply, I would consider whether to refer the question of whether foreseeable (as opposed to consented) future projects should be included in the EIA (or for that matter AA) cumulative/ in-combination consideration. But that will have to await another case. Such a question, albeit interesting, concerns an *obiter* matter in this case, so a reference is not "necessary" within Art. 267 TFEU and a reference would therefore be inadmissible.

101. Finally, I might be forgiven for suggesting that pending the arrival of a case in which this point is decisive it would be appear prudent for planning decision-takers to paint with a broad brush when considering cumulative and in-combination effects for EIA/AA purposes, to include not just consented or built projects but additionally both live applications and those not currently applied for but which appear to the decision-taker to be reasonably foreseeable. Such an approach may reduce the scope for disagreement and might promote better decision-making.

Conclusion on this core ground

102. For the above reasons there is no analogy with *Baile Eamoinn Teoranta v. An Bord Pleanála* [2020] IEHC 642, [2020] 12 JIC 0405 (High Court, 4th December 2020) where there was a mistake about a relevant issue. Here there is no evidentially demonstrated mistake and no evidential demonstration that any issue to which the alleged mistake related was relevant in any sense warranting *certiorari*.

Core ground 2 – alleged EIA screening error

103. Core ground 2 is:

"The impugned decision is invalid in that it contravenes art 103(1B)(b) of the Planning and Development Regulations 2001 and the EIA Directive (as amended) because the Commission failed to make a lawful screening determination or an Environmental Impact Assessment in circumstances where (i) it failed to assess the interaction between the Proposed Development and the Proposed Ballinure Solar Farm as required by the EIA Directive and (ii) the screening determination contains two material errors and is irrational and unreasonable resulting in an incorrect and unlawful screening determination (iii) the number of solar panels and the energy output of the Proposed Development was unknown to the Commission as of the date of the screening determination."

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

"Applicant's Position

61. The EIA screening carried out by the Commission is invalid as it fails to consider the Proposed Ballinure Solar Farm. This is particularly significant where the Developers own material acknowledges that there are cumulative environmental effects between the Ballinure Solar Farm and the Sub-station and the Developer and Inspector acknowledged that there were cumulative impacts and in-combination effects between the Proposed Development and the Sub-station.

62. The EIA is also invalid as it contains two further material errors of fact and was concluded without knowledge of the number of solar panels or the energy output of the Proposed Development.

Commission's Position

63. There is some overlap with the issues in Core Grounds 1,2, and 3 and the Commission also relies on the pleas and submissions in response to those Grounds and the relevant caselaw referred to. The Applicants' written submission did not address the alleged 'two further material errors of fact' and it was therefore not clear whether the Applicants intend to pursue those pleas. Core Ground 2 is based on an underlying misconception that the proposed Development, a solar farm, was required to undergo an EIA and the Applicants appear to assert that an EIA was avoided by reason of alleged 'project splitting'. Solar Farms are not listed as a class of development for the purposes of EIA in Annex I or II of the EIA Directive or under Part 2 of Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Any allegation of 'project splitting' so as to avoid an EIA simply does not arise where it is not required for a solar farm. It is evident that the Inspector considered EIA screening from the perspective of hedgerow removal and had concluded that solar farms did not fall within the scope of the EIA Directive. This is consistent with the case-law.

64. The Applicants' reliance on the 'proposed Ballinure Solar Farm' is misconceived where the application dated 25 November 2025 was deemed incomplete and invalid on 16 January 2026. There was no live, valid or pending application for a proposed 'Ballinure Solar Farm' at the time of the Inspector's Report or the Decision the subject matter of the within proceedings. It is not existing or permitted or the subject of a current application. The Commission was not required to consider the possibility that in the future permission might be sought for a separate solar farm in the area and this would amount to the Commission engaging in speculation. The Applicants have not established that that 'Proposed Ballinure Solar Farm' is part of a larger project with the Proposed Development for the purpose of the EIA process.

Notice Party's Position

65. In relation to Core Ground 2, as a matter of law, the Commission was not required to take account of the invalidated planning application in respect of the previously proposed Ballinure Solar Farm. However, the statement made by the Inspector that there was no planning application for a solar farm development on adjoining lands was and remains factually correct. The Commission was not required to carry out an EIA or EIA screening in respect of the proposed solar farm development the subject matter of these proceedings and, as a matter of law, the Commission fulfilled its obligation to consider the cumulative effect of other projects in making its EIA screening determination.

66. Moreover, the issue of 'project splitting' cannot arise in circumstances where this is not a case in which there was any question of splitting a development to avoid EIA thresholds. In addition, the EIA Screening Determination of the Commission did not contain material errors and is not incorrect, irrational, unreasoned and/or unlawful as alleged. The statements made by the Inspector as to the nature of the surrounding environment, in her EIA Screening Determination (Appendix 4), are not inconsistent with statements made elsewhere in her report or in other reports prepared by other Inspectors, and are incapable of giving rise to a justiciable ground of judicial review. The Inspector did not make a second purported material error in respect of assessment of Electro Magnetic Fields. Thirdly, the Commission did not err in making an EIA screening determination in circumstances where information in relation to the solar panels and electrical energy output of the Proposed Development was provided to the Commission."

105. This point largely falls based on the disposition of the previous ground.

106. Insofar as there is a residual point about other alleged errors, the basic reason why this point fails is that the applicants have not overcome the onus of proof to show any error on any of the matters referred to. No error has in fact been evidentially established, particularly having regard to the lack of cross-examination of the opposing deponents: *RAS Medical*.

107. In relation to the claimed lack of information, there will always be more information that can be provided about anything. The applicants claim that the material did not show the number of panels for example or the ultimate energy output. But the exact number of panels has not been shown to be material, and likewise as to any dispute about the calculation of the energy output. Indeed Mr Fennessy deposes that the relevant information is the spatial footprint of the array rather than the number of panels as such – that has not been controverted. An applicant bears the onus of proof to show that any such lack of data gives rise to a legal infirmity. That onus has not been discharged here.

Core ground 3 – lack of information and expertise

108. Core ground 3 is: "The Appropriate Assessment conducted by the Commission was flawed and invalid and in breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive because the Commission did not have available to it sufficient information or expertise to enable it to determine beyond reasonable scientific doubt that the Proposed Development would not adversely impact on the integrity of the European Sites."

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

"67. The AA is invalid as it does not consider in-combination effects of the Proposed Development with the Proposed Ballinure Solar Farm. The Developers own material submitted with the Ballinure Solar Farm application admitted that the Proposed Development was the most likely project to have in combination effects with the Proposed Ballinure Solar Farm. The Developer stated that mitigation measures would effectively minimise the risk of in-combination effects. The AA does not consider these admittedly necessary mitigation measures because the Inspector was not aware of the Proposed Ballinure Solar Farm.

68. The AA is invalid as the Commission did not have or have access to sufficient expertise in the areas of ecology and hydrology, for the reasons explained in the affidavits of Patrick Moran dated 16th April 2026 and Pamala Bartley dated 17th April 2026. The AA is also invalid as it was completed without knowledge of the number of panels or electrical output of the Proposed Development.

Commission's Position

69. There is some overlap with this issue in Core Grounds 1,2, and 3 and the Commission also relies on the pleas and submissions in response to those Grounds and the relevant caselaw referred to. As of the date of the Commission's Decision there was no pending application for a solar farm development on adjoining lands in 'existence' given that planning application dated 25 November 2025 had been deemed incomplete and invalid on 16 January 2026. The 'Ballinure Solar Farm' referred to by the Applicants was neither a permitted development nor a proposed development the subject matter of a pending planning application for permission.

70. The Inspector addressed the fact that neither the MW output of the solar farm nor the number of panels to be installed are provided in the application at §8.2.9 and §8.2.10 of the Report. The Applicants have failed to particularise how this gives rise to any alleged flaw or invalidity in the AA or results in a breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive. The Applicants have not established that this information was necessary to enable the Commission to lawfully conduct an AA and / or that in the absence of same there was a lacuna in the information available so as to invalidate the AA carried out.

71. The overarching allegation that the Commission did not have sufficient expertise to carry out the AA or to reach the conclusions reached is denied. The Applicants did not raise any issue in their submission to the Planning Authority or observation to the Commission by reference to an alleged lack of expertise on the part of the Commission. The Affidavit of Pamela Bartley does not establish a lack of expertise of the Commission and a difference in conclusion or opinion does not substantiate the Applicants' allegations in Core Ground 3 or definitively establish a lack of understanding on the part of the Commission.

72. Without prejudice to the foregoing, the Inspector considered the issue of drainage, flood risk and hydrology at §8.6 of the Inspector's Report and considered at §8.6.5 - §8.6.7 the Surface Water Management Plan submitted and the mitigation measures proposed. The Inspector concluded at §8.6.18 that the application was accompanied by sufficient detail including a Site Specific Floor Risk Assessment and site specific Surface Water Management Plan. The Inspector noted in the Appropriate Assessment at page 110 of the Report that the operational phase could give rise to increased surface water run off and discharge to watercourses but at pages 111 and 112 the Inspector indicated that she was satisfied that the mitigation measures proposed to prevent adverse effects have been assessed as effective and that any adverse effects arising can be excluded.

73. The Commission's Order dated 19 February 2026 is clear that the Commission had regard to the range of mitigations measures set out, including those contained in the Surface Water Management Plan. The Commission imposed Condition 7 which provides that all of the mitigation measures set out, including in the Surface Water Management plan shall by implemented by the developer. Condition 12 also provides that drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services and shall be carried out strictly in accordance with the details provided in the Surface Water Management Plan.

74. The Applicants have failed to engage at all with the Statement of Opposition and Affidavits filed on behalf of the Notice Party in the within proceedings or challenge the documentation submitted to the Commission by the Notice Party. The Second Affidavit of Robert Brophy has outlined the qualifications, expertise and experience of the Commission's Inspector and the Planning Commissioners who determined the application. The Court has refused the Applicants' motion to cross-examine the Inspectors and the Commissioners and also refused the belated attempt to cross-examine Mr. Brophy even though this was not sought as a relief in the Notice of Motion that issued on 24 July 2026.

Notice Party's Position

75. Contrary to the pleas made by the Applicants at Core Ground 3, the Appropriate Assessment ('AA') is not invalid on the basis that the Commission did not have sufficient information or expertise to make its AA determination. In carrying out the AA, there was no obligation on the Commission to take account of the previously proposed Ballinure Solar Farm, in circumstances where the planning application in relation to that development had been invalidated before the dates of the Inspector's report and the Commission Decision. Ballysallagh also denies that the AA carried out by the Commission is invalid on the basis that the number of solar panels and the electrical energy output was not detailed in the planning application. In addition to the NIS and EcIA report submitted on behalf of Ballysallagh with the planning application, an RFI response was submitted to the planning authority, which also addressed issues in relation to ecology which were relevant to the AA carried out by the Commission and Inspector on the appeal. Ballysallagh denies that the documentation before the Commission failed to consider ex-situ impacts on birds foraging within the survey area at night and that a deficient survey effort was undertaken to establish whether the Golden Plover or Lapwing utilise the Proposed Development site or its environs post-sunset.

76. Moreover, the assertion that the winter bird survey was deficient and flawed is incorrect. Whilst principally a matter for response by the Commission, it is denied that the Commission lacked understanding of hydrological issues or engaged in 'blind acceptance' of the materials submitted on behalf of Ballysallagh. The Applicants have failed to challenge the conclusions reached in the documentation submitted to the Commission on behalf of

Ballysallagh, or to identify any deficiency in the assessment carried out on behalf of the developer in this respect. The Applicants have failed, evidentially, to establish any deficiency in relation to hydrology in the AA carried out by the Commission and its Inspector."

110. This core ground fails by reference to the disposition of the previous core grounds.

111. Insofar as there is a lack of expertise issue, the general concept is that an applicant has the onus of proof to establish her case including to show a lack of expertise. Bearing in mind however that a question on this is pending on appeal from *Rogers v An Coimisiún Pleanála (No. 2)* [2026] IEHC 437, [2026] JIC 0303 (Unreported, High Court, Nolan J., 3 July 2026) the commission has sensibly put forward evidence about the expertise of the members of the commission. The applicants in reply complained that this was hearsay.

112. The questions in *Rogers* are:

"Does a public body owe a duty of candour as a respondent in judicial review proceedings concerning compliance with an autonomous EU law obligation to disclose the expertise it has or has access to when that point is a properly pleaded issue in dispute and/or the information was requested in the proceedings?

Does the presumption of validity of the decision of the Commission apply when the issue in dispute in the proceedings is a jurisdictional requirement imposed by Article 5(3)(b) of Directive 2011/92/EU, as amended?"

113. *Rogers* is primarily about candour rather than evidence as such. Insofar as the commission draws attention to public records of public bodies, such records are admissible in accordance with the general law of evidence. For example, involvement of an individual in deciding previous cases is obviously relevant to demonstrating expertise through experience rather than merely by qualifications.

114. Even assuming for the sake of argument that elements of the commission's affidavit are technically inadmissible, it constitutes information which has been provided in discharge of any obligations of candour. Such disclosure of information is more than enough to meet any hypothetical obligation on the commission to show how the jurisdictional requirement of expertise was met.

115. Demanding affidavits from the commission members would be unseemly. When judges are sued in their official capacity, generally officials swear to whatever transpired in court, or the DAR is relied on, not least because cross-examination of judicial decision-takers would be inappropriate. The same logic applies to for example ministerial decision-takers, or tribunal members, or other statutory decision-takers. Such officer-holders should not be generally liable to be required to give evidence or subjected to cross-examination absent compelling reasons. The courts should not impose undignified procedures that potentially undermine public confidence in the various branches of government, merely because of some abstract (and, in my own view totally outdated – hearsay should be a matter of weight, not admissibility) theory of the law of evidence. Public service is difficult enough these days without courts adding to the problem. In the unlikely event that anyone is interested in my two cents on this, it is perhaps high time that either the legislature or the Supreme Court updated the law of hearsay as historically understood, since it is now so obviously a barrier to, rather than a facilitator of, the process of truth-discovery. But in the meantime, it should not be operated in a way that causes problems of the type that would be unleashed by the applicants' technical objections here.

116. That is not to say that there may not be particular situations where something is within the peculiar knowledge of an office-holder or involves her personal knowledge, actions or inactions, or some reason to doubt the official account of matters, such that a full account of the decision-taking process does require some evidence from her. Where such an issue arises, meaningful cross-examination should not be stymied by hiding behind an official. But this is not that type of situation - there is simply no basis to question the material regarding the expertise of the commission's members here. The most the applicants can do is to ask for that expertise to be set out positively, but that has been done. There isn't some sort of demonstrable loose end that cries out for clarification in the name of candour.

117. Ultimately and independently of that, the fact of disclosure of information (even if some is technically inadmissible) and the various admissible matters deposed to distinguish the case clearly from *Rogers* where the commission did not seek to demonstrate its expertise.

118. As the applicants have not displaced any of that, there is no basis to quash the decision on any alleged issue about lack of expertise.

Core ground 4 - bats

119. Core ground 4 is: "The EIA screening and Appropriate Assessment conducted by the Commission do not adequately assess the impact of the Proposed Development on bats and thus are in breach of the requirements of Part XAB of the 2000 Act and Article 6 of the Habitats Directive and are unlawful and invalid."

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

"Applicant's Position

77. As a result of the failures in the survey contained in the Developers EcIA which was accepted by the Inspector, there is no objective basis on the papers before the Inspector or the Commission on which to conclude by way of preliminary examination that that there was no real likelihood of significant effects on the environment arising from the Proposed Development, for the purposes of the EIA screening determination. The AA also fails to dispel all reasonable scientific doubt and those failures in the EIA screening and AA are evidenced by the expert evidence contained in the affidavit of Patrick Moran dated 16th April 2026 and Pamala Bartley dated 17th April 2026.

Commission's Position

78. The Applicants have not established, evidentially, any errors or failures in the Developer's EcIA. Insofar as they take issue with same, the Developer has responded and the Applicant bears the onus of proof which it has not discharged.

79. Further the Applicants are confined to the case as pleaded in the Statement of Grounds. There was no plea contained in the Statement of Grounds to correspond with the submission made at §107 of the Applicants' written submissions or in the Statement of Case that there 'is no objective basis on the papers before the Inspector or the Commission on which to conclude by way of preliminary examination that that there was no real likelihood of significant effects on the environment arising from the Proposed Development'. The Applicant is not entitled to expand its case by way of written submissions or the Statement of Case.

80. The Applicants have no standing and/or are not entitled to rely on Core Ground 4 in circumstances where they did not take issue with the Notice Party's Ecological Impact Assessment in their observations submitted to the Commission dated 23 October 2025, and the pleas under this ground should be dismissed. It is not accepted that the EIA Screening and Appropriate Assessment conducted by the Commission do not adequately assess the impact of the Proposed Developments on bats as alleged. Bats were expressly considered at §8.9.5 - §8.9.9 of the Inspector's Report. The Inspector and the Commission were entitled to consider the information and Reports before it and reached lawful conclusions in planning terms which the Inspector was entitled to reach and were matters within the competence, expertise and judgement of the Commission. An assessment of the adequacy of the information submitted for EIA purposes is primarily a matter for the discretion of the Commission.

81. The Applicants have not established that the information in the Ecological Impact Assessment was inadequate such as to invalidate the EIA screening and Appropriate Assessment, have not established any legal error in the Commission's Decision and have not demonstrated any route map from the alleged error relied on to the reliefs claimed. The onus of proof lies on any Applicant asserting any defect or inadequacy of an assessment. The Applicants have failed to engage at all with the Statement of Opposition or Affidavits submitted by the Notice Party in the within proceedings in response to the pleas raised in the Statement of Grounds and the alleged identified failures.

Notice Party's Position

82. At Core Ground 4, the Applicants allege that the Commission's EIA Screening and AA failed to adequately assess the impact of the Proposed Development on bats. Core Ground 4 is pleaded on the basis of Part XAB of the 2000 Act and Article 6 of the Habitats Directive and, therefore, this ground of challenge can only be advanced in respect of AA and not in relation to EIA. It should be noted that no bat species are listed as QIs for the Great Island Channel SAC or Cork Harbour SPA and, in those circumstances, Core Ground 4 should be dismissed in limine insofar as this ground of challenge is advanced to impugn the AA carried out by the Commission.

83. The EcIA report submitted on behalf of Ballysallagh was prepared by qualified and experienced personnel and the EcIA report established an adequate baseline ecological data for the Proposed Development site and adequately assessed the ecological value of the identified features within the study area. In addition, the RFI raised by the planning authority raised issues in relation to bats, and requested that further assessment should be carried out, which issues were addressed as part of the RFI Response. In addition, Ballysallagh pleads that the four criteria identified for bat surveys were satisfied for those surveys carried out in respect of the Proposed Development. While the Applicants advance a number of additional complaints in relation to the survey effort in respect of bats, none of these complaints are made out or are capable of vitiating the Impugned Decision. The EcIA concluded that no significant adverse impact on bats would result from the Proposed Development, noting the absence of confirmed roost features within the development footprint and the significant hedgerow enhancement and bat roost box programme proposed.

84. The Inspector considered the bat evidence at sections 8.9.5 to 8.9.9 of her report and correctly concluded at paragraph 8.9.9 that 'the development will not result in an adverse impact on bats'. In the premises, and contrary to the assertions made by the Applicants, there was no deficiency in either the EIA Screening or AA in respect of assessment of avifauna and/or bats which would vitiate the Impugned Decision. The Applicants have failed to establish any deficiency in the Commission's EIA Screening Determination and/or AA evidentially."

121. The basic reason why this point fails is:

(i) The applicants did not put evidence before the commission of significant impact on bats. The applicants, as the commission points out, did not take issue with the Notice Party's EcIA in their observations submitted to the Commission dated 23 October 2025.

(ii) On the contrary the developer's material before the commission supported a conclusion of no significant adverse impact.

(iii) The inspector concluded at §8.9.9, as the commission points out, that the development would not result in an adverse impact on bats in view of:

(a). the nocturnal nature of the species

(b). the fact that the existing hedgerows and treelines are to be augmented

(c). the preponderance of comparable habitat in the vicinity and

(d). the erection of 30 bat roost boxes (including at least 3 maternity roost boxes)

(iv) The notice party has supported the approach adopted by means of expert evidence, without reply from the applicants, and accordingly the applicants, who bear the onus of proof, must fail on an *RAS Medical* basis.

Reference to the CJEU cannot therefore arise

122. The parties' positions as recorded in section J of the statement of case are that reference to the CJEU is not applicable.

123. For the avoidance of doubt, I have obviously (and as always when an EU law point is argued) considered any potential relevance of Art. 267 TFEU. The question of whether foreseeable applications need to be considered in the EIA/AA process is of course interesting and potentially reference-worthy in the right case, but, as stated above, because nothing turns on it here (since the point fails anyway for multiple reasons), deciding that point is not "necessary" within Art. 267 TFEU and so a reference would be inadmissible.

Discretion

124. 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).

125. Applying the foregoing here, even if counterfactually the applicants had established a breach, I would as a matter of discretion have refused relief, primarily due to:

(i) The failure of the applicants to make any developed case during the process in relation to the complaints now made; and

(ii) The critical importance of renewable energy as underpinned by EU law.

126. Since all of the points raise EU law issues in one way or another it would be non-goal-congruent to quash this permission on EU law grounds when European law is so strongly in favour of accelerated delivery of renewables (indeed so is domestic law). As well as general treaty-level commitments to environmental rights (the EU Charter, art. 191(2) TFEU, the polluter pays principle), the following instruments are particularly notable in that regard:

(i) The **Emissions Trading System Directive** (Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC) as amended involves a cap (on emissions) and trade (in allowances) covering emissions from the electricity and heat generation, industrial manufacturing and aviation sectors and, more recently, maritime transport.

(ii) Directive 2009/28/EC (the **Renewable Energy Directive**) of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC established mandatory targets for the consumption of energy from renewable sources by member states.

(iii) The **LULUCF Regulation** (Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU) sets binding limits on emissions from the land use sector.

(iv) Regulation (EU) 2018/1999 (the **Governance Regulation**) of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (the Governance Regulation) was adopted to implement the Paris Agreement commitments (agreement at conference of parties of the UNFCCC (the United Nations Framework Convention on Climate Change opened for signature at UN Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992) (COP21) in Paris, on 12 December 2015).

(v) By way of implementation of the Paris Agreement, the **European Climate Law** (Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999) involves a reduction of GHG emissions for the EU by at least 55% by 2030 compared to 1990 levels. Ireland's Nationally Determined Contributions (NDCs) under Paris are as part of the EU contribution to GHG reductions.

(vi) **Council Regulation (EU) 2022/2577** of 22 December 2022 lays down a framework to accelerate the deployment of renewable energy. Article 3(1) introduced a presumption of overriding public interest for renewable energy projects for the purpose of the birds, habitats and strategic environmental assessment (SEA) directives, and provision was made for the acceleration of such projects. Case C-325/25 Eneco Wind is ongoing as to the ramifications of this legislation.

(vii) The **Effort Sharing Regulation** (Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999) involves binding obligations on member states to reduce GHGs in sectors not covered by the ETS system by 2030.

(viii) The recast **Energy Efficiency Directive** (Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast)) mandates a significant reduction in energy consumption. The transposition date was 11 October 2025.

(ix) The current version of the **Renewable Energy Directive (REDIII)**, Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, provides for a presumption of overriding public interest and for accelerated timelines including requiring judicial remedies to be the most expeditious available in national law.

127. I generally endorse the submission of the notice party:

"IV. DISCRETIONARY FACTORS

84. It is Ballysallagh's position that all grounds advanced by the Applicants should be dismissed, and as such, that there is no basis upon which the Court should be called upon to consider the exercise of its discretion to refuse to grant relief, particularly, certiorari. However, in the event that the High Court concludes that the Applicants have made out one or more of its grounds of challenge (which is not accepted for the reasons set out above), then it is Ballysallagh's position that this Court should exercise its discretion to refuse the reliefs sought.

85. The proposed development is a renewable energy project which, when developed, will make a significant contribution towards achieving national climate action targets, including those set out in the Programme for Government 2025 (which commits to achieving a 51% reduction in greenhouse gas emissions from 2018 to 2030 and net-zero emissions no later than 2050) and the Climate Action Plan 2025 (which includes a legally binding reduction in sectoral emissions by 75% by 2030). In addition to the Proposed Development's potentially significant contribution to the achievement of the national climate targets, it offers capacity to address issues identified in relation to security of electricity supply."

Summary

128. 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, certain of the applicants' points are inadequately pleaded;

(ii) applying settled law that there is relevance of the extent to which submissions on a given point were made to the decision-taker, which is consistent with the general principle that, apart from autonomous-type obligations, material capable of sustaining the point must have been properly **before the decision-taker** at the relevant time such as to give rise to a duty to consider it to the facts here, the applicants' failure to make, during the decision-taking process, any or any developed case on most of the points now relied on, renders relief on such grounds inappropriate;

(iii) 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 in any event;

(iv) applying settled law that an applicant must have discharged the **onus of proof** to establish all facts necessary for relief to the facts here, the applicants have not evidentially demonstrated the asserted errors or omissions in the decision or that such alleged defects give rise to establishing grounds for *certiorari*;

(v) applying settled law that 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, to the facts here, all such conflicts must be resolved against the applicants; and

(vi) applying settled law that judicial review is a **discretionary remedy** within established doctrinal boundaries to the facts here, *certiorari* should be refused even if counterfactually there was an error of the type complained of.

Order

129. 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 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.