THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 336 J.R.]

IN THE MATTER OF SECTION 50 OF THE PLANNING AND DEVELOPMENT ACT, 2000 AS AMENDED

BETWEEN

CLAIRE O'BRIEN AND PATRICK O'BRIEN

APPLICANTS

AND

AN BORD PLEANÁLA

RESPONDENT

AND

LEONARD DRAPER

NOTICE PARTY

JUDGMENT of Ms. Justice Costello delivered on the day of , 2017

Introduction

1. This is an application for an order of certiorari quashing the decision of An Bord Pleanála ("the Board") on the 2nd March, 2017 granting the notice party ("the developer") substitute consent for a wind farm at Garranure, Kilvinane and Carrigeen, Ballynacarriga, Dunmanway, County Cork (the Kilvinane wind farm). The order is sought on the basis that the Board failed to carry out an Environmental Impact Assessment (EIA) in accordance with s.172 of the Planning and Development Act, 2000 as amended (the Act of 2000) as interpreted in accordance with the obligations imposed by Article 3 of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive).

Background

2. The planning history of the Kilvinane wind farm is complex and is fully set out in the decision of the Court of Appeal in *Bailey v. Kilvinane Wind Farm Ltd* [2016] IECA 92 by Hogan J. at paras. 4 to 37. I do not propose to repeat the detail of the planning history and shall confine myself in this judgment to the facts relevant to the issues in this case.

3. On the 19th July, 2002 the Board granted planning permission (PL 04.127137) (" the 2002 planning permission") to the developer for a wind farm consisting of four turbines with a hub height of 65 metres and blade length of 28.5 metres (an overall height of 93.5 metres) at Kilvinane, County Cork. Between March 2003 and October 2005 the developer wrote to the planning authority seeking approval for a number of alterations to the permitted development: an increase in the proposed blade length, a variation of the hub height from 65 metres down to 60 metres and a reduction in the number of turbines from four to three. The planning authority accepted the modifications and additionally granted the alteration of the permitted positions of each of the turbines by up to 20 metres from each permitted position.

4. The developer erected three turbines in accordance with the modifications to the 2002 planning permission accepted by the planning authority and in October 2006 the Kilvinane wind farm was connected to the national grid.

5. On the 27th April, 2011 the applicants sought a declaration under s.5 of the Act of 2000 as to whether the erection of the three turbines as built was or was not development and whether it was exempt development. The planning authority decided that the erection of the turbines was development and that it was exempted development. On appeal, the Board concluded that the development as constructed was not exempted development.

6. Ultimately, on the 16th March, 2016 the Court of Appeal held in *Bailey v. Kilvinane Wind Farm Ltd* that the turbines as constructed were unauthorised development having regard to the extent of the deviation from the 2002 planning permission in terms of location and (save as to turbine one) rotor diameter.

7. By order dated 21st April, 2015 the Board granted the developer leave to apply for substitute consent of the Kilvinane wind farm under s.177D of the Act of 2000 on the basis that exceptional circumstances existed and in particular that the developer could reasonably have had a belief that the development was not unauthorised. On the 14th October, 2015 the developer applied for substitute consent. The application for substitute consent was accompanied by a remedial Environmental Impact Statement (rEIS). On 23rd June, 2016 the Board requested the developer to submit further information including a revised rEIS to include information in respect of the existing connection to the national grid including the corridor for connection, the nature of the connection (distance, route, overground and/or underground), pole/tower type and height(s), line voltage and the cumulative effects of the wind farm and the grid connection. A revised rEIS was submitted to the Board on the 29th July, 2016.

8. The applicants made submissions to the Board in respect of the application for substitute consent and in respect of both the rEIS and the revised rEIS.

9. By order dated 2nd March, 2017 the Board granted the developer substitute consent for the Kilvinane wind farm. Under s.177O(1) of the Act of 2000 a grant of substitute consent has the effect as if it were a permission granted under s.34 of the Act of 2000. Further, development in compliance with a substitute consent or any condition to which it is subject is deemed to be authorised development.

10. On the 24th April, 2017 Noonan J. granted the applicants leave to seek judicial review of the decision of the Board of the 2nd March, 2017.

The Applicants' Case

11. The applicants work as a farmer and a music teacher respectively, and they lived just over 500m from the nearest turbine with their three children until they moved due to the noise of the wind farm. The details of their complaints in relation to noise we set out

in the judgment I gave previously in this proceedings on an application to lift the stay on the operation of the wind farm in July of this year. The applicants' arguments can be divided into two categories. Firstly, the applicants advance the argument that the Board failed to carry out an EIA in accordance with the requirements of the EIA Directive and the Act of 2000. The applicants' arguments under this heading are based on three contentions: that the Board did not engage with the noise report of the applicants' expert, Mr. Bowdler; that the incorrect baseline for measuring noise was used by the Inspector and the Board and that the Board failed to have regard to the experience of local residents, and in particular the applicants of the impact of the noise arising from the wind farm. Secondly they contend that the Board failed to record the reasons for its decision in breach of its obligations under the EIA Directive and the Act of 2000.

Obligation to Carry out an EIA
12. An EIA is defined in s.171A(1) of the Act of 2000 as: -

> *"an assessment, which includes an examination, analysis and evaluation, carried out by a planning authority or the Board, as the case may be, in accordance with this Part and regulations made thereunder, that shall identify, describe and assess in an appropriate manner, in light of each individual case and in accordance with Articles 4 to 11 of the Environmental Impact Assessment Directive, the direct and indirect effects of a proposed development on the following:*
>
> (a) *human beings, flora and fauna,*
>
> (b) *soil, water, air, climate and the landscape,*
>
> (c) *material assets and the cultural heritage and*
>
> (d) *the interaction between the factors mentioned in paragraphs (a), (b) and (c)."*

13. Section 172(1) and (1A) of the Act of 2000 requires an EIA to be carried out in respect of an application for substitute consent. Section 177E requires the applicant for substitute consent to submit a remedial EIS to the Board. Section 172 (1G) provides: -

> *"In carrying out an environmental impact assessment under this section the planning authority or the Board, as the case may be, shall consider —*
>
> *(a) the environmental impact assessment;*
>
> *(b) any further information furnished to the planning authority or the Board pursuant to subsections (1D) or (1E);*
>
> *(c) any submissions or observations validly made in relation to the environmental effects of the proposed development;*
>
> *(d) the views, if any, provided by any other Member State under section 174 or Regulations made under that section."*

14. Under s.172(1H) of the Act of 2000 the Board is entitled to have regard to and adopt in whole or in part any reports prepared by its officials or by consultants, experts or other advisors. Where the Board decides to grant consent for a proposed development it may, under s.172(1I) of the Act of 2000, attach "*such conditions to the grant as it considers necessary, to avoid, reduce and, if possible, offset the major adverse effects on the environment (if any) of the proposed development*".

The Submissions of the Applicant to the Board
15. The applicants made detailed submissions to the Board opposing the application for substitute consent. They set out in great detail the adverse effects of the noise upon themselves and their family including the fact that they had left their home which was approximately 500 metres from the nearest turbine and moved to an inferior house approximately 1.5 kilometres from the wind farm.

16. The submission included a report entitled "Critique of the noise section of the EIS" by Dick Bowdler, an acoustic consultant. His report took issue with aspects of the developer's noise assessment which was in Appendix D of the rEIS. In particular he said that:

> • The baseline ground noise levels were measured in 2006 prior to the commencement of turbine operations. When these measurements were taken there was no awareness of the importance of wind speed in calculating noise levels.
>
> • The noise assessment sought to reinterpret condition 8 [of the 2002 planning permission] and argued that the noise of the turbines should be assessed against a variation of condition 8.
>
> • The noise monitoring carried out in 2015 for the remedial EIS on the basis that the measurements have been averaged at each wind speed irrespective of whether the wind is blowing from the turbine or towards it and whether the turbines are switched on or off.
>
> • Kilvinane Wind Energy Ltd [a company formed by the developer and his wife to construct and operate the wind farm] had in its letter dated 21st February, 2014 to the Department of Environment Community and Local Government in respect of the review of the Wind Energy Guidelines stated that "*it is impossible to achieve 40 dBA day and night time noise limited at the proposed 500 m. set back from a wind turbine to the nearest receptor."*

Mr. Bowdler calculated the noise levels at houses H04, H07, H11, H14 and H16 and concluded that the noise limit imposed by way of condition 8 of the 2002 planning permission was breached to a very significant degree at these properties. The rEIS had concluded that the noise limits were not breached at these properties. Mr. Bowdler calculated that the noise limit was breached at 16 of the 36 properties identified in the rEIS.

Applicants' Submission to the Court
17. The applicants submitted that the Board was required to conduct an examination, analysis and evaluation that identifies, describes and assesses the direct and indirect effects of the proposed development on the factors set out in s. 171A(1) (a), (b), (c) and the interaction between these factors. They contended that there must be an examination, analysis and evaluation of the issues raised in the submissions of the public concerned and in particular of their submissions to the Board in relation to the noise impact of the wind farm. If there is a conflict between the views expressed by experts, then the Board must resolve the conflict. The Inspector's report does not examine, analyse or evaluate the Bowdler report and neither does the Board. It follows that no proper EIA was conducted and accordingly the decision ought to be quashed.

18. It is also argued that there was a similar failure to conduct an examination, analysis and evaluation of the experiences of the applicants and the other residents living in the area who made submissions to the Board.

19. Reliance was placed upon the decision of the CJEU in Case C-50/09 *Commission v. Ireland* ECLI:EU:C:2011:109 where the Court of Justice of the European Union held that the assessment which must be carried out before the decision making process involves an examination "of the substance of the information gathered". The Board must: -

> *"…undertake both an investigation and an analysis to reach as complete an assessment as possible of the direct and indirect effects of the project concerned on the factors set out in the first three indents of Article 3 and the interaction between those factors."*

These are the factors listed at para. (a) – (c) of the definition of EIA in s.171A(1).

20. Counsel for the applicants emphasised that it was not alleged that there must be a point by point rebuttal of every point made in all the submissions and observations from the public concerned. Neither were they challenging the adequacy of the information before the Board. The challenge was a focused one. There was a legal requirement to conduct an examination, analysis and evaluation of the Bowdler report and the submissions of the applicants which the Inspector and the Board failed to carry out. As a result, the EIA actually conducted was invalid and accordingly the decision of the Board is invalid.

The Inspector's Report
21. The Inspector summarised the report from the planning authority and the comments from the developer. He summarised the third party responses on pp. 8 to 15 of his report. There were eleven third party responses including those of the applicants. He took three pages to summarise the submissions of the applicants submitted by the planning partnership. The summary included: -

> *"• It is submitted that the effects on local residential amenities has not been adequately assessed in the Human Beings section of the rEIS.*
>
> *• A noise report, enclosed in Appendix A, outlines that 40 dB which is the limit set out in condition no. 8 is already a significant intrusion on their amenity.*
>
> *• It is submitted that the baseline background noise levels were measured in 2006. These measurements were carried out prior to the current best practice.*
>
> *• The 2006 guidance omits the knowledge of wind speeds which is essential.*
>
> *• Section 4.11 of the noise report clearly demonstrates that the 40 dB [limit] will be breached.*
>
> *• Section 4 of the noise report outlines the deficiencies in the calculation of noise complying with Condition no. 8."*

Other third party responses also complained of noise from the turbines and critiqued the rEIS noise impact assessment in the following terms:

> *"rEIS noise impact assessment is flawed", "noise from turbines is audible from miles away", "noise is constant", "noise is continually impacting on 'third party's house'", "noise impact assessment is flawed", "noise is audible from miles away", "impacts include noise", "noise from turbines is 24/7. Adverse impact on sleep patterns" and "noise levels disturbing" and it is not possible to let their house."*

22. At pages 18 to 21 the Inspector assessed the adequacy of the rEIS and accepted that it contained the required information. He noted that there is an operational noise associated with the development and that some residences were within a 500 metre radius of the constructed turbines. The relevant guidelines indicated that they were likely to be impacted by noise.

23. At page 21 he then assessed the likely significant effects identified in the context of the likely impacts on the environment having regard to the mitigation measures proposed. Under the heading human beings, fauna and flora he stated: -

> *"Having regard to the rE.I.S. and the information on the file I would consider that a direct impact of the development on **human beings**, would be low-scale employment opportunities…I would note that humans are also likely to be directly impacted by visual impact, noise and shadow flicker."*

24. He then proceeded to deal with the issue of shadow flicker and at p. 22 he considered the noise implications of the proposed development. He noted that there were implications at the construction and operation stage. In view of the case advanced by the applicants it is appropriate to quote from this section of his report in full.

> *"The mechanical noise emanating from wind turbines has generally reduced due to technological improvements however aerodynamic noise [is still emitted, and] is generally referred to as the "swish" of the turbine blades. The rEIS states that the existing turbines can be fitted with an automatic noise control system which permits the power output and associated noise output of the turbines to be restricted on the basis of time of day, wind speed and direction. This is significant, in my view, as it is a compliance mechanism to ensure that the noise generation from the turbines shall comply with any noise conditions. In the parent permission Condition no. 8 required that noise levels emanating from the proposed development shall not exceed 40 dB when measured at the nearest habitable house.*
>
> *The Ministerial guidelines recommend that noise is unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500 metres. I would note that the developer conducted a noise survey prior to construction in 2006. This noise survey included recording from five sensitive locations and it established that daytime noise levels or background noise levels range between 27-35 dB at average wind speeds of 4 m/s.*
>
> *The EIS includes a noise model which estimates the noise implications of the proposed development. The outcome of the noise modelling concluded that current operational noise is no more than that recorded in the background noise recorded in the 2006 survey and is in compliance with condition no. 8 of the parent permission.*
>
> *I have reviewed the Noise Impact Assessment (Attachment D of the rEIS). Table 12 of the NIA indicates that the 'as*

built' wind turbines would only have an additional impact of 1 dB than the permitted wind turbines at noise sensitive locations. In terms of human perception a 1 dB change is barely noticeable.

I note that the rEIS noise modelling measures expected noise levels using sound power level generated having regard to different wind speeds. It is concluded that worst case estimated turbine specific noise level, allowing for incremental increase in turbine sound power output, is still within the permitted level of 40 dB (A).

I would consider that Condition no. 8 of the parent permission which requires that noise emanating from the proposed development shall not exceed 40 dB (A) is a reasonable mitigating measures (sic) having regard to the established environment. The requirement to ensure that noise does not exceed 40 dB is an improvement on best practice which normally would require a noise limit of 45 dB (A) during night time and 55 dB (A) during day time. Overall, having regard to the information on the file, I would be satisfied that noise emanating from the development would not unduly impact on established residential amenities."

25. At part 9 of his report the Inspector concluded: -

"In conclusion the development which has occurred essentially comprises of a variation of a previously permitted development. It is concluded above that the modified wind turbines has not given rise to significant adverse effects on the environment and that ongoing impacts are limited in type and significance and can be remediated. Therefore, I recommend that the application for substitute consent be granted for the reasons and considerations and subject to the conditions below.

Having regard to the nature and scale of the development and to the environmental impacts which have occurred, it is considered that subject to compliance with the conditions set out below, the development which has been undertaken has not had and is not giving rise to an unacceptable level of environmental impact, and is, therefore, in accordance with the proper planning and sustainable development of the area."

26. Condition 2 required the environmental mitigation measures set out in the rEIS to be implemented in full and established that wind turbine noise (measured as AAeq) at dwellings or of a sensitive receptor shall not exceed 40 dB (A) LA 90 externally and that prior to commencement of development the developer shall agree a noise compliance monitoring programme for the operational wind farm with the planning authority.

27. Following the decision in *O'Grianna v. An Bord Pleanála (No. 1)* [2014] IEHC 632 the Board sought a revised rEIS from the developer, as the Board was unable to complete an EIA without full and complete details relating to the grid connection from the Kilvinane wind farm to the substation. The applicants made a further submission to the Board which repeated the points originally made in relation to noise and also referred to the fact that Kilvinane Wind Farm Ltd had submitted to the Department of the Environment Community and Local Government that it was impossible to achieve a 40 dB (A) day and night time noise limit at the proposed 500 m. set back from a wind turbine to the nearest receptor. The company contended that the submission from Irish Wind Farmers' Association showed that there was a serious flaw in the calculations used. At s.8.4 of the addendum to his report the Inspector concluded that: -

"The issue of noise output from the wind turbines has been raised indirectly in a submission to the Board. I would consider that the issue of noise was considered in my primary report…".

If the Inspector had overlooked or failed to consider the Bowdler report and the other submissions of the applicants in relation to noise in his first report, here was an opportunity to rectify that omission.

EIA of the Board

28. The decision of the Board recites that it decided to grant substitute consent in accordance with s.177K of the Act of 2000 in accordance with conditions set out in the decision. The Board stated that in making its decision it had regard to those matters which it was required to have regard including any submissions and observations received by it in accordance with the statutory provisions. It said that in coming to its decision the Board had regard to a number of matters. These included the provision of the Cork County Development Plan 2014–2020, including the designation of the area as one where wind energy development is open to consideration, the distance to dwellings and other sensitive receptors from the proposed development, the planning history of the overall site, the rEIS and revised rEIS and documentation generally on file and *"the submissions made in accordance with regulations under section 177N of the Planning and Development Act, 2000, as amended".*

29. Pages 3 and 4 of the decision provide as follows: -

"Environmental Impact Statement

The Board considered that the remedial Environmental Impact Statement submitted with the application, supported by the further information submitted to the planning authority, the revised remedial Environmental Impact Statement incorporating the grid connection, the reports, assessment and conclusions of the Inspector with regard to this file, and other submissions on file, were adequate in identifying and describing the direct, indirect, secondary and cumulative effects of the development on the environment.

The Board completed an Environmental Impact Assessment, and assessed the likely significant effects of the development including the potential impacts of the turbines and the grid connection, and concluded that the mitigation measures proposed and the residual effects were acceptable. The Board considered that, subject to the implementation of the mitigation measures proposed, the effects on the environment of the proposed development have been and continue to be acceptable.

Conclusion

It is considered that, subject to compliance with the conditions set out below, the development has been and is in accordance with national energy policy and with national and local planning policy on wind energy development and the protection of landscapes and scenic routes, has not adversely affected and does not adversely affect the landscape, does not seriously injure the visual or residential amenities of the area and is acceptable in terms of traffic safety and convenience. The development for which substitute consent is sought has been and is, therefore, in accordance with the proper planning and sustainable development of the area."

30. Two of the conditions attached to the grant of planning permission were relevant to the issue of noise. Firstly, condition 2 obliged the developer to implement in full the environmental mitigation measures set out in the rEIS. Secondly, a maximum noise limit was fixed by condition 5 in the following terms:

> *"Wind turbine noise at dwellings or other sensitive receptors shall not exceed 40 dB (A) LA90 externally. Within 3 months from the date of this order, the developer shall agree a noise compliance monitoring programme for the operational wind farm with the planning authority. All noise measurements shall be carried out in accordance with ISO Recommendation R 1996 'Assessment of Noise with Respect to Community Response,' as amended by ISO Recommendations R 1996-1. The results of the noise compliance monitoring shall be submitted to, and agreed in writing with, the planning authority within six months from the date of this order, following agreement of the programme."*

Discussion

31. When carrying out an EIA the Board is required to assess the direct, indirect, secondary and cumulative effects of the proposed development on the environment in relation to the factors set out in s.171A(1) of the Act of 2000. As set out in s.172(1G)(c), carrying out an assessment includes an examination, analysis and evaluation of the potential effects of the proposed development upon the environment. Separately, the Board is required to consider any submissions or observations validly made in relation to the environmental effects of the proposed development. These are distinct and separate obligations imposed on the Board. Consideration of the submissions or observations is part of the process whereby the Board examines, analyses and evaluates the potential effects of the proposed development upon the environment. This distinction is important when considering the validity of the applicants' argument that an examination, analysis and evaluation of the Bowdler Report and the submissions of the applicants was required in this case.

32. The applicants have not established that the Board did not consider their submissions as required by s.172(1G)(c). The Inspector recited a detailed summary of their submission to the Board, including a summary of the points made by Mr. Bowdler in his report. The noise impact of the wind turbines was a significant part of the EIA and there were a total of eleven third party submissions which raised the issue of the noise of the wind turbines. It is not credible to suggest that this was not the matter of detailed consideration by the Inspector and indeed the applicants do not go so far. The Bowdler Report was the only scientific evidence other than that contained in the rEIS before the Inspector and the Board. The applicants asked the Court to infer and conclude that the Bowdler Report was either ignored or not taken into consideration because there is no reference to the Report in that section of the Inspectors' report where he conducts his EIA of the proposed development. This is not an appropriate conclusion in these circumstances. However, if there were any doubt as regards the matter, this is dispelled by the addendum to the Inspector's report. The applicants effectively resubmitted the Bowdler Report and their own complaints in relation to noise generated by the wind turbines when the Inspector was considering the issue of the environmental impact of the grid connection from the wind farm to the national grid. If the Inspector had somehow overlooked the Bowdler Report and their personal submission, his clear statement at s.8.4 of his addendum report establishes that he had considered these submissions when he wrote his first report and that it was not necessary to revisit that portion of his first report.

33. When the Board came to make its decision, it had both the Inspector's first report and the addendum report which made clear that the Inspector had taken into consideration the Bowdler Report and the submissions of the applicants when he conducted his EIA with regard to the issue of noise impacts. Furthermore, the Board had the Bowdler Report and the submissions in its possession when it reached its decision. The Board stated that it took into account the submissions it had received and the documentation on file. In those circumstances, I believe it is clear that the Board did take into consideration the Bowdler Report and the other submissions of the applicants, including their own personal experience, with regard to noise emanating from the wind turbines when they operated.

34. The real issue is whether there was compliance with the obligation to examine, analyse and evaluate the direct and indirect noise effects of the proposed development. The Inspector commenced his consideration of the noise effects of the wind farm by noting that there is an operational noise referred to as the "swish" of the turbine blades and recorded that mechanical noise emanating from the wind turbines had generally reduced due to technological improvements. He then noted that the turbines can be fitted with an automatic noise control system which permits the power output and associated noise output of the turbines to be restricted. He regarded this as significant as it is a means of ensuring that the noise generated by the turbines complies with any noise limiting conditions. He then referred to condition 8 in the 2002 planning permission limiting the noise levels emanating from the proposed development. It is important to observe that Mr. Bowdler did not dispute the fact that the mitigation measure proposed by the developer was a tried and tested technology to ensure compliance with, *inter alia*, noise limits.

35. The Inspector then considered the Ministerial guidelines which recommended that noise was unlikely to be a significant problem where the distance from the nearest turbine to any noise sensitive property is more than 500m. Mr. Bowdler criticised these guidelines in his report but the Inspector and the Board were required to have regard to these guidelines.

36. The Inspector then referred to the noise survey conducted by the developer prior to construction of the turbines in 2006 and noted that it established that daytime noise levels or background noise levels range between 27 – 35 dB (A) at average wind speeds of 4 m/s. This is significant as this results in the receiving environment being treated as a low noise environment for the purposes of the Ministerial guidelines. Insofar as Mr. Bowdler contended in his report that the information was insufficient to establish whether or not the receiving environment was a low noise environment, the Inspector treated it as such and therefore the applicants had the benefit of this approach by the Inspector, and subsequently the Board.

37. The Inspector referred to the noise modelling set out in the rEIS without specifically referring to the criticisms set out in Mr. Bowdler's report. The applicants say that this amounted to a failure to examine, analyse and evaluate all the evidence before the Board.

38. In *Ratheniska Timahoe and Spink Substation Action Group & Anor v. An Bord Pleanála* [2015] IEHC 18 Haughton J. considered whether the Board had complied with its obligations to give reasons for its determination in relation to an appropriate assessment (AA) conducted for the purposes of Article 6(3) of the Habitats Directive and its obligation to state "*the main reasons and considerations*" on which the decision is based. In view of the fact that the Board agreed with the decision of its Inspector, the Court held in that case that the Board had complied with its obligations. At para. 126 Haughton J. continued: -

> *"Different considerations may arise where the Board is disagreeing with its Inspector (as in the Kelly case) or perhaps disagreeing with the content of a NIS or even where there is a* **dispute in relation to scientific evidence** *presented to the Board or given at an oral hearing. In such instances there may well be a need for the Board to give more detailed reasons for its decision in choosing to accept one side of the scientific argument over the other."* (emphasis added).

39. In this case Mr. Bowdler criticised the noise impact assessment included in the rEIS. He criticised the methodology adopted in the noise impact assessment and complained of a lack of salient information. Both the Inspector and the Board concluded that they had sufficient information to carry out an EIA of the Kilvinane wind farm. Not only is there no challenge to the adequacy of the information before the Board, the applicants' counsel expressly stated that there was no challenge to the adequacy of the information. It follows that the substance of the complaint (that there was no examination, analysis or evaluation of Mr. Bowdler's report) amounts to a complaint that there was no explanation why the Inspector and the Board concluded that there was sufficient information before them in order to carry out an EIA, notwithstanding Mr. Bowdler's complaints to the contrary.

40. It is a little difficult to reconcile this argument with the admission that there was no challenge to the determination that there was sufficient information before the Board to enable it to carry out an EIA. Be that as it may, in my opinion it does not amount to a *dispute in relation to scientific evidence presented* to the Board. Mr. Bowdler actually produced no evidence in his report but rather remodelled the available data and reached different conclusions on the basis of that data. Indeed, there is some force in the submission of counsel for the Board that in fact Mr. Bowdler was carrying out the exercise which was to be carried out by the Inspector and the Board and as such there was no express requirement to examine, analyse or evaluate the points made in his report.

41. It is important to reiterate that the Court does not review the merits of the decision of the Board in judicial review proceedings. The issue of the sufficiency of the information or the validity of a methodology adopted by an expert for a party to the appeal are matters solely for the Board, unless the proceedings contest the determination that the information before the Board was sufficient to enable it to conduct an EIA or the challenge to the decision is based upon alleged irrationality, neither of which was pursued in this case.

42. The applicants relied upon the decision of Lardner J. in *Simonovich v. An Bord Pleanála*, (Unreported, High Court, Lardner J., 24th July 1988) to support their contention that the Inspector was required to give a fair and accurate summary of the Bowdler Report in his report to the Board and that he was not entitled to reject the submissions of an expert without adequate explanation.

43. The facts in *Simonovich* were very different to this case. Critically, the Board did not have a report from the relevant expert (an historian) and relied upon the Inspector fairly to summarise his evidence. In this case, the Bowdler report was summarised by the Inspector and the complete report was before the Board. Therefore, *Simonovich* does not provide a basis for concluding that the Inspector or the Board failed to consider the submissions of the applicants, including the Bowdler report. It does not establish the principle that an Inspector must set out in his report to the Board his analysis of the submissions of every expert report submitted to the Board.

44. The implications of the submissions of the applicants in this case are that the Inspector and the Board must examine, analyse and evaluate each of the submissions or observations validly made to the Board. This is not what is required by either the EIA Directive or the Act of 2000, which simply requires that the direct and indirect effects of a proposed development be so assessed, not the submissions or observations. The arguments advanced by the applicants leads to a result which would render the provision of s. 172(1J)(c) effectively otiose. Why would the Oireachtas stipulate that the planning authority or the Board had an obligation to consider the submissions and observations submitted by third parties before the planning authority or the Board informed the public of the main reasons and considerations for their decision, if they were already obliged to examine, analyse and evaluate the individual submissions and observations and make that assessment available to the public under the provisions of s. 172(1J)(b)?

45. In my judgment it was not necessary for the Board (or the Inspector) to examine, analyse or evaluate the Bowdler Report or the points made in the report or the experience of the applicants (or their neighbours) in relation to noise in order to carry out a lawful EIA. It is sufficient that there is an examination, analysis and evaluation of the direct and indirect effects (including the noise implications) of the proposed development on the environment as set out in pages 22 to 23 of the Inspector's report.

46. It was argued that the Inspector mistakenly recorded that his role in conducting an EIA was to assess the EIS and by implication not any of the other material included in the appeal, including, of course, the submissions of the applicants, which resulted in a failure to conduct a lawful EIA. This was based upon a statement on page 18 of the report which referred only to the rEIS. In my opinion, a fair reading of the report as a whole indicates that this does not reflect his understanding of his role or indeed the assessment he actually carried out. The Inspector clearly understood that the submissions of third parties were to be considered. At page 21 of his report he referred to observations on file arguing that the development was having an adverse impact on established residential amenities in terms of shadow flicker, while at p. 23 he referred to the submissions from the Department of Arts, Heritage and the Gaeltacht. I am not satisfied that the applicants have established that the Inspector misunderstood his role in the conduct of an EIA.

47. It was also argued that the EIA was flawed on the basis that wrongfully the receiving environment was not treated as a low noise environment, primarily on the basis that it was said that it was not possible from the material before the Board to conclude whether or not the environment prior to the operation of the wind farm was a low noise environment. This argument ignores the fact that the environment was in fact treated by both the Inspector and the Board as a low noise environment. At p. 22 of his report the Inspector referred to the noise survey carried out prior to construction of the wind turbines in 2006. He noted that the survey established that daytime noise levels or background noise levels ranged between 27 – 35 dB at average wind speeds of 4 m/s. This means that the receiving environment is a low noise environment for the purposes of the Ministerial guidelines. Furthermore, the Inspector recommended and the Board adopted an exceedance limit of 40 dB (A) LA 90. This is consistent with the Ministerial guidelines for development in a low noise environment. Simply put, the Inspector and the Board have treated the development as being one in a low noise environment and have assessed its impacts and calibrated the mitigation measures accordingly. On that basis, I reject the argument that the EIA was flawed for failing to treat the receiving environment as a low noise environment.

48. The applicants argued that the EIA was flawed as both the Inspector and the Board purported to rely upon mitigation measures as part of the EIA whereas mitigation is an issue that arises at the end of the process when an EIA has been concluded. It was submitted that it is not permissible to thereby bypass the EIA process by attaching what was colloquially referred to as "an end of pipe" solution. The applicants relied upon the decision in *Berkeley v. Secretary of State for the Environment & Anor* [2001] 2 A.C 603. In that case Lord Hoffmann stated at p. 615 that "[t]*he Directive requires not merely that the planning authority should have the necessary information, but that it should have been obtained by means of a particular procedure, namely that of an EIA*." This was in the context of affording members of the public the right to participate in the EIA. The applicants in this case submitted on the basis of the decision in *Berkeley* that the Directive requires that an EIA take place before the consent for development is issued. Therefore, the EIA must be in place before any condition can be attached to a consent. This means that the end of pipe approach is not permissible.

49. The applicants argued that this is what occurred in this case. The Inspector noted that there would be noise emanating from the turbines and then stated that the turbines could be fitted with an automatic noise control system which would permit the power output and associated noise output of the turbines to be restricted depending on the time of day, wind speed and direction. In his

opinion this was significant as it was a compliance mechanism to ensure that the noise generation from the turbines would comply with any noise conditions that would be imposed. The applicants said this showed that the Inspector considered a mitigation measure, which would be attached to any grant of planning permission by way of a condition, before he had assessed the direct and indirect impacts of the wind farm upon the receiving environment. This approach was incorrect having regard to the decision in *Berkeley*.

50. The issue is whether it is wrong in principle to have regard to mitigation measures when conducting an EIA. In addressing this issue the following matters seem to me to be relevant.

51. The EIA Directive is not prescriptive in relation to the manner in which an EIA is to be conducted but merely requires that certain matters be assessed in an appropriate manner. Article 5(3)(b) of the Directive requires the developer to include in its EIS a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant effects. In other words, the EIS must contain details of any proposed mitigation measures.

52. In conducting an EIA, the Inspector and the Board are required by s.172(1G)(a) of the Act of 2000 to have regard to the EIS (in this case the rEIS) submitted by the developer. Section 172(1I) of the Act of 2000 authorises the Board to attach such conditions to the grant of consent as it considers necessary to avoid, reduce and, if possible, offset the major adverse effects on the environment (if any) of the proposed development. It must also be borne in mind that a planning authority or the Board has the power to grant planning permission for the proposed development notwithstanding the fact that the development may have significant adverse effects upon the environment.

53. Both the EIA Directive and the Act of 2000 envisage the environmental impact assessment and measures to mitigate adverse impacts arising from the proposed development upon the environment going hand in hand. This is not surprising. Sometimes the mitigation measures will be part and parcel of the development in respect of which permission is sought. They may be integral to the design of the proposed development or they may require separate construction works or they may be a combination of both. To take one example, it may be of limited utility to conduct an EIA of a large development without considering effectiveness of the proposed sewers or storm water drains for the development to prevent possible flooding of the receiving environment.

54. In *People Over Wind v. An Bord Pleanála* [2015] IECA 272 the Court of Appeal accepted that it was permissible to have regard to mitigation measures when carrying out an appropriate assessment for the purposes of the Habitats Directive. In that case the Court had to decide whether the Board had carried out a lawful adequate assessment. The applicants argued that there was an impermissible lacuna in the scientific evidence before the Board regarding the risk posed to the Nore Freshwater Pearl Mussel arising from silt or sedimentation making its way into the watercourses. In considering the argument, Hogan J. stressed that the effect of condition 17(k) of the planning permission was such that the Board had sought to bring about a state of affairs whereby no silt or sedimentation would enter the watercourses as a result of the development. The Court of Appeal held that the Board identified the precise hazard posed by the development (the risk of increased sedimentation due to water runoff into the upstream watercourses) and imposed a stringent standard (condition 17(k)) on the developer in order to ensure that no such contaminated runoff entered the watercourses. The Board thereby complied with its obligations under the Habitats Directive.

55. In this case the Board identified the precise hazard posed by the development (increased noise in the environment) and imposed a stringent standard (condition 5) and the means of ensuring compliance with the standard (condition 2) on the developer in order to ensure that there was no undue damage to existing amenities. It seems to me that there is no reason in principle why the approach adopted by the Court of Appeal in *People Over Wind* in respect of an AA may not also apply to an EIA. Assuming this is so, then *People Over Wind* supports the argument that in principle the Board can have regard to a condition it intends to impose if planning permission is granted when carrying out the required EIA. On this basis I reject the applicants' submissions on this point.

Baseline
56. The applicants emphasised the importance of establishing a baseline of the receiving environment for the EIA process. They referred to Tromans "Environmental Impact Assessment" (2nd ed.) which describes establishing the baseline at para. 4.43 as follows: -

> *"The baseline conditions describe the environment that exists before the changes that are brought about by the proposed project. It provides a benchmark against which the impact of the project can be compared. In most cases this would be consistent with the existing conditions, but it is still necessary to account for changes in environmental conditions that are likely to occur in the absence of the project."*

They emphasised the requirement that the developer provide this information in the EIS. They stated that the requirement to carry out an EIA in respect of an application for substitute consent is the same as that which applies to an application for a proposed development. Accordingly, the rEIS should contain information and the Inspector and the Board were required to assess the development against the environment which existed prior to the development being undertaken. (See s.177K (1) and (2) of the Act of 2000).

57. The applicants contended that the developer, the Inspector and the Board all failed in this regard with the result that the Board used the incorrect baseline environment for the purposes of the EIA. In conducting the EIA, the Board compared the impact of the proposed (as built) development with the permitted wind turbines. Consequently, the application for substitute consent was not considered against the environment as it existed prior to the construction of the wind farm. The applicants argued that this is a fundamental error in law, as the EIA for the substitute consent did not consider the environmental effects of the development as constructed on the pre-construction environment but merely the incremental effects over and above those that would have arisen from the 2002 planning permission if it had been built.

58. The rEIS noted that the variation in noise impact between the permitted development and the as built development was minimal. They said the Inspector's assessment was limited to an assessment of the difference between the two and accordingly there was a failure to conduct the required EIA.

Discussion
59. The facts do not support the applicants' case. While it is true that the developer, the Inspector and the Board assessed the potential impact of the "as built" wind farm from that permitted by the grant of the 2002 planning permission, there was also detailed information comparing the results of a noise survey from 2015 with baseline data collected prior to the commissioning of the existing wind farm in 2006.

60. The rEIS contained a detail report from AWN Consulting Limited, specialist acoustic consultants engaged by the developer to undertake an assessment of the impact of noise generated by the existing wind farm at Kilvinane on the surrounding environment.

They conducted a noise survey in 2015 through the installation of sound level metres at five locations for extended periods. They compared the result of this data with the baseline data collected from the same locations prior to the commissioning of the existing wind farm in 2006 i.e. when there was no noise impact upon the receiving environment from the wind farm. The results of the comparison highlighted that the current operational noise levels did not exceed the baseline noise levels by a significant margin in any instance. Section 5.2 of the report comprised a cross reference to the 2006 baseline survey.

61. In addition to comparing the results of the 2015 survey with those of 2006, detailed noise modelling was undertaken to determine the potential impact of the variation of the "as built" turbine layout against that originally permitted. The results of the modelling indicated that there was a negligible increase in noise levels due to the "as built" turbine layout. Thus the rEIS assessed the noise impact of the proposed development from two perspectives: the variation from the permitted wind farm and the impact upon the receiving environment as it existed prior to the commissioning of the turbines.

62. Mr. Bowdler was critical of the methodology adopted by AWN Consulting Limited but he acknowledged that the report compared the 2015 noise measurements with the 2006 baseline measurements. He pointed out that details of the wind speed were not available and in his opinion there was insufficient information to enable a decision on the merits of the application to be made.

63. On page 22 of his report the Inspector expressly refers to the noise survey conducted prior to the construction of the turbines in 2006 and sets out the established background noise levels. He thus established a predevelopment baseline as required by the EIA. He then accepted the conclusions in the rEIS that current operational noise is no more than that recorded in the background noise recorded in the 2006 survey and is in compliance with condition number 8 of the parent permission. He confirmed that Table 12 of the noise impact assessment of the rEIS indicated that the "as built" wind turbines would only have an additional impact of 1 dB than the permitted wind turbines at noise sensitive locations. He records that in terms of human perception, a 1 dB change is barely noticeable.

64. He assessed the noise impact of the development against both the baseline recorded by the noise survey conducted prior to the construction of the wind turbines in 2006 and by reference to the permitted planning permission and in particular condition 8 which governed the noise limits for the 2002 planning permission.

65. Accordingly, I am satisfied that the developer presented information to establish the baseline for the noise environment for the project reflecting the situation prior to the construction of the turbines. This baseline was considered by the Inspector in his report. Any further analysis or criticism amounts to a merits based challenge to the Inspector's and the Board's assessment of the information contained in the rEIS (where there is no such challenge) and thus is impermissible in judicial review proceedings.

66. The Inspector considered the noise impact arising from the variation between the permitted and the as built developments. This latter exercise did not invalidate the EIA. There was an appropriate environmental baseline established and the impacts of the proposed development against this baseline were assessed. Therefore, the applicants' argument on this ground must be rejected.

Obligation to Give Reasons
67. Article 9 of the EIA Directive requires the competent authority, in this case the Board, to inform the public of its decision and to make available to the public certain information: -

> " *(a) the content of the decision and any conditions attached thereto;*
>
> *(b) having examined the concerns and opinions expressed by the public concerned, the main reasons and considerations on which the decision is based, including information about the public participation process;*
>
> *(c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects."*

68. Thus the relevant obligation in the context of this case is to make available to the public the main reasons and considerations on which the Board's decision is based.

69. The obligation is transposed into national law by s.172(1J) of the Act of 2000. The obligation is wider than that required by Article 9 (see MacEntee v. An Bord Pleanála, Unreported, High Court, Moriarty J., 10th July, 2015). The Board is required to make available the following information: -

> " *(a) the content of the decision and any conditions attached thereto;*
>
> *(b) any evaluation of the direct and indirect effects of the proposed development on the matter set out in section 171A;*
>
> *(c) having examined any submissions or observations validly made,*
>
> > *(i) The main reasons and considerations on which the decision is based and*
> >
> > *(ii) The main reasons and considerations for the attachment of any conditions, including reasons and considerations arising from or related to submissions or observations made by a member of the public;*
>
> *(d) where relevant, a description of the main measures to avoid, reduce and, if possible, offset the major adverse effects;*
>
> *(e) any report referred to in subsection. (1H);*
>
> *(f) information for the public on procedures available to review the substantive and procedural legality of the decision, and*
>
> *(g) the views, if any, furnished by other Member States of the European Union pursuant to section 174"*

The evaluation under s.171A is the EIA as discussed above. An EIA includes an examination, analysis and evaluation of the direct and indirect effects of the proposed developments on human beings, flora and fauna, soil, water, air, climate and the landscape and

material assets and the cultural heritage and the interaction between these factors.

70. Section 172(1J)(b) and (c) distinguishes between the EIA and the main reasons and considerations on which the decision is based or for the attachment of any conditions. The obligation to carry out an examination, analysis and evaluation of the direct and indirect effects of the proposed development is distinguished from the obligation to examine any submissions or observations validly made. In relation to the submissions or observations, the obligation is to inform the public of the main reasons and considerations upon which the decision is based and the main reasons and considerations for the attachment of any conditions including those arising from or related to submissions or observations made by a member of the public. An obligation to give the main reasons and considerations does not require what has been described in other cases as a "discursive judgment" on all points raised in the appeal.

71. The applicants relied upon *Balz v. An Bord Pleanála* [2016] IEHC 134 in support of their submission that the statement of reasons by the Board in its decision was inadequate or insufficient. At paras. 174 and 175 Barton J. stated: -

> *"…it is my judgment that where the Board decides to differ from the findings in the report and the recommendation of its Inspector, then in order that a concerned member of the public – or, as in this instance, the Court – maybe satisfied that, in addition to identifying and describing the direct and indirect effects of the proposed development on the receiving environment, these were the subject matter of an assessment as defined in s. 171 A and that there was compliance with its obligations under s. 172 (1J) (e) and s.34 (10) (b), the Board, when giving its main reasons for differing from those findings and recommendations, must identify and deal specifically with those aspects of the Inspector's report in relation to those matters with which it disagrees, furthermore, it must provide a rational explanation which is informative of the conclusion reached; this is also necessary if a challenge to the decision of the Board as being uninformative and/or formulaic is to be avoided.*

Whilst the Board does not need to engage in a discursive judgment or full re-evaluation in its decision in order to comply with these requirements, and which may be in summary form, the information which is required be given if the standard of practical enlightenment discernable from the statement of reasons referred to in the decisions of O'Keeffe, Mulholland and O'Neill is to be met, must be such as to enable a concerned member of the public and, where necessary, the Court, to be satisfied that the Board has directed its mind to the concerns expressed and reasons given for the recommendation by its Inspector with which it differs, and that its statutory obligations in carrying out and completing an EIA have been complied with."

72. Thus, the crucial test as formulated by Barton J. is can a concerned member of the public or the Court be satisfied that the Board has directed its mind to the concerns expressed and the reasons given for the recommendation by its Inspector with which it differs.

73. In addition, at para. 58 of the judgment, Barton J. held that the adequacy or sufficiency of the statement of reasons must be apparent and are to be ascertained from the record. Deficiencies in the record which result in the Court being unable to determine whether or not these obligations have been complied with are fatal to the lawfulness of the decision and cannot be displaced or cured by a presumption that the Board acted lawfully.

74. It is settled law, as evidenced in *O'Neill v An Bord Pleanála* [2009] IEHC 202, that the decision of the Board must be read in its entirety in conjunction with any conditions attached to the grant of planning permission and the reasons given for the conditions when assessing whether the Board has complied with its obligations under s.172(1J).

75. The Board's decision records that it assessed the likely significant effects of the development including the potential impacts of the turbines and the grid connection and concluded that the mitigation measures proposed and residual effects were acceptable: "**Subject to the implementation of the mitigation measures proposed***, the effects on the environment of the proposed development have been and continue to be acceptable*" (emphasis added). It concluded that subject to compliance with the conditions set out the development does not seriously injure the residential amenities of the area and that the development for which substitute consent was sought has been and is in accordance with the proper planning and sustainable development of the area.

76. The two relevant conditions are conditions 2 and 5 which have been set out above. The environmental mitigation measure is critical. The reason stated for imposing condition 2 is in the interests of environmental protection and to protect the amenities of the area. Condition 5 is imposed in the interests of residential amenity and requires that the wind turbine noise at dwellings and other sensitive receptors shall not exceed 40 dB (A) LA 90 externally. This is a more onerous condition than is habitually attached to wind farm developments by the Board. Therefore, reading the decision as a whole together with the conditions and the reasons for the conditions attached, it is apparent that the Board considered the submissions of the applicants and others regarding the noise impact of the proposed development and imposed stringent mitigation measures to deal with the issue. The Board addressed its mind to the issue and made its expert assessment on the appeal as a whole. In this regard it is important to note that it made a small amendment to the terms of condition 5 from those proposed by the Inspector in condition 4 and condition 5 in turn is different to condition 8 of the 2002 planning permission.

77. Furthermore, the reasons for the decision of the Board may also be found in the report of the Inspector. It is well established that the decision of the Board may be read in conjunction with the report of the Inspector where, as in this case, the Board does not disagree with the report of the Inspector (see *Maxol Ltd v. An Bord Pleanála* [2011] IEHC 537; *Ratheniska v. An Bord Pleanála* [2015] IEHC 18; *Buckley & Anor v. An Bord Pleanála* [2015] IEHC 572 and *Fitzpatrick v. An Bord Pleanála* [2017] IEHC 644).

78. The report of the Inspector in this case set out the issues with regard to noise impacts and the mitigation measures proposed. He concluded that, subject to the implementation of those measures and the adoption of a more onerous noise limitation than is usually imposed in respect of wind farms and is more stringent than that required by Ministerial guidelines (if the environment is not treated as a low noise environment), the proposed development would not unduly impact on established residential amenities.

79. The issue for the Court is whether sufficient record of the Board's reasons for its decision in this case is to be found in the entire decision of the Board, the conditions attached to the permission and the reasons for those conditions and the report of the Inspector.

80. As set out in *O'Neill* at para 29, the adequacy of the reasons given should be assessed from the perspective of an intelligent person who has participated in the relevant proceedings and is appraised of the broad issues involved. If the Board differs from the overall recommendation of an Inspector, it is required by the provisions of s. 34(10)(b) of the Act of 2000 to explain its decision in this regard. However, there is no such statutory obligation where the Board rejects submissions or observations of either an applicant for planning permission or the public concerned. Therefore, the passage quoted from *Balz* can only assist the applicants if the obligation described by Barton J. applies where the Board rejects submissions or observations validly made, as opposed to the whole or part of the report of the Inspector.

81. The answer to this question in my opinion must be no as a matter of principle. There is a fundamental difference between the Board disagreeing with the report of its Inspector and disagreeing with the submissions and observations on the part of the first party to the appeal or the public concerned. In any appeal (or indeed application for planning permission) there may be a myriad of differing submissions and observations relating to a very considerable number of different aspects of the proposed development addressed in the submissions and observations filed by the public concerned or indeed the applicant for planning permission. Responding to each and every one of these submissions is clearly a task of a different order to giving reasons why the Board disagreed with the considered distillation and evaluation of these views by the Inspector in their report. In my opinion, acceptance of the submission of the applicants inevitably results in the extension of the obligation of the Board to give reasons for its decision far wider than is required by statute, notwithstanding the fact that the applicants stated that they did not contend that the Board is required to address each and every point in every submission. The applicants did not explain why the Board had an obligation to give reasons in this case for its rejection of the submissions of the applicants on the appeal but not to the submissions of the other participants in the appeal. Essentially the submission fails to appreciate that the Board is engaged in an administrative decision making process and not primarily in deciding disputes between parties.

82. The statutory obligations are carefully calibrated to take account of this reality. The first obligation is to consider any submission or observation validly made while the second requirement is to inform the public of the main reasons and considerations on which its decision is based or for the attachment of any conditions. There is no obligation to engage in a point by point refutation of the submissions and observations validly made.

83. In this regard the observations of Mr. Justice Birmingham in *Leefield Ltd v. An Bord Pleanála* [2012] IEHC 539 are particularly relevant. At paras. 19 to 21 of his judgment he stated: -

> *"In Mulhaire v. An Bord Pleanála [2007] I.E.H.C. 478 I commented as follows:-*
>
> > *'Here, if one has regard to the decision and the conditions and reasons, it is clear, therefore, that the Board has applied its mind to the issues before it. Indeed, the reasoning of the Board clearly emerges from the decision with the attached conditions. Mr. Mulhaire may, understandably, be very aggrieved at the outcome, particularly, as his arguments had carried the day before the planning authority, and with the Inspector, but he cannot be left in any doubt as to why the decision went against him.'*
>
> *Save that the arguments advanced by Leefield had not persuaded the planning authority those remarks apply with equal force. An informed and intelligent observer could have been left in no doubt as to what the issues were on the planning appeal and in absolutely no doubt as to the view formed on the issues by An Bord Pleanála. Understandably, Leefield may not like the fact that its arguments did not carry the day but it can have no real doubt as to why it lost and why An Bord Pleanála reached the decision it did. Leefield may not like that decision, may think that the decision is wrong, may even go so far as to believe that the decision was, in a legal sense irrational, but they cannot be in any doubt why their arguments failed to carry the day.*
>
> *Counsel on behalf of the applicant has disavowed any intention to seek a discursive judgment accepting that his client is not entitled to one. However, it seems to me that what emerges from the written and oral submissions is that the applicant in fact seeks something that is very much of that order. In particular, one has the sense that the applicant would have wished to see An Bord Pleanála engage in a detailed debate with its Inspector and engage in a point by point refutation of the Inspector's views and conclusions. However, there is no obligation on the Board to embark on such an exercise. In summary then it is my view that the reasons and consideration section is more than sufficient to meet the statutory obligations …".*

Conclusions

84. I am of the opinion that the applicants, as informed and intelligent observers, could have been left in no doubt as to what the issues were in relation to the noise impacts and could be in no doubt as to the view formed on the issues by the Inspector and the Board. Mr. Bowdler's criticisms of the information and assessment contained in the rEIS were not accepted by either the Inspector or the Board. Both the Inspector and the Board acknowledge that there will be adverse noise impacts upon the environment and they have sought to mitigate those impacts by the imposition of mitigation measures which have a proven effectiveness and by establishing an onerous noise limitation. The Inspector was able to conclude that the noise emanating from the proposed development with the mitigation measures would not unduly impact on the established residential amenities. The Board concluded that, subject to compliance with the conditions which were imposed *inter alia* in the interest of environmental protection and to protect the amenities of the area and in the interest of residential amenity, that the development has been and is in accordance with national energy policy and with national and local planning policy on wind energy development and the protection of landscapes and scenic routes. The Board also concluded that the development has not adversely affected and does not adversely affect the landscape, does not seriously injure the visual or residential amenities of the area and is acceptable in terms of traffic safety and convenience. The development for which substitute consent is sought has been and is therefore in accordance with the proper planning and sustainable development of the area.

85. I therefore conclude that the Board has complied with its obligations to furnish reasons for its decision in this case.

86. I therefore dismiss the application for judicial review.