

## **Padraic Thornton**

### **Planning and Environmental Consultancy**

#### **Independent Review of Draft Section 31 Direction on Westmeath County Development Plan 2014 - 2020**

##### **Introduction**

I was appointed by the Minister for Housing and Planning on 28<sup>th</sup> April 2014 to carry out an independent review, having regard to specified Terms of Reference, of the Draft section 31 Directions issued by the Minister in relation to the Westmeath County Development Plan 2014 – 2020 (a typographical error on the appointment and Terms of Reference indicates the Plan term as 2014 – 2022).

The Draft Direction was sent to the County Manager of Westmeath County Council with a letter dated 15<sup>th</sup> February 2014.

The Terms of Reference require me to review, in accordance with section 31(13) of the Planning and Development Act 2000, the Draft Direction issued by the Minister on the Plan and the Manager's report submitted on foot of the Draft Direction, as the Minister considers that further investigation is necessary in order to clarify that aspect of the report dealing specifically with the submissions received on foot of the public consultation on the Draft Direction and more specifically to gain a better understanding of the level of support for each of the views as set out in the Manager's summary of same.

I was required by the Terms of Reference to consult with the Manager and the elected Members of Westmeath County Council. I was also required, if deemed necessary, to consult with the Regional Authority and persons who made submissions and to submit a report to the Minister containing recommendations within three weeks of the appointment.

This report is in compliance with the Terms of Reference as referred to in my appointment. Issues outside the Terms of Reference are not covered by the review.

##### **Background to Review**

The Minister forwarded a Draft Direction with accompanying documentation to the Westmeath County Manager on 15<sup>th</sup> February 2014. The letter with the Draft Direction sets out the background to the case. This includes reference to a letter dated 15<sup>th</sup> November 2013 outlining issues arising from proposed amendments to the then Draft Westmeath County Development Plan 2014 – 2020 and the need to ensure that the adopted Development Plan was compliant with the Planning and Development Act 2000 and with relevant departmental guidelines.

The Draft Direction referred to two issues. These issues were:

- (1) The deletion of policy P-WIN6 and accompanying text from the plan. The text of P-WIN6 is quoted in the Draft Direction as

'to require a setback distance from residential dwellings of ten times the height of industrial wind turbines. In the context of this policy industrial/large-scale energy production projects are defined as follows. Projects that meet or exceed any of the following criteria:

- Height: over 100 metres to blade tip or
- Scale: more than 5 turbines or
- Output: having a total output greater than 5 MW.'

- (2) The plan/map entitled 'Glasson Zoning Map' (Date: October 2013 Map Ref: 38) which sets out the zoning objective for Glasson is to be removed. A copy of the map in question was attached as an Appendix to the Draft Direction.

A Statement of Reasons for the Draft Direction referred to a letter sent on behalf of the Minister for the Environment, Community and Local Government in November 2013. This letter outlined that proposed amendments concerning the planning authority's policy framework for wind energy projects would be significantly inconsistent with:

- The Wind Energy Guidelines (issued under section 28 of the Planning and Development Acts in 2006);
- The Midland Regional Authority Planning Guidelines in relation to the areas identified as suitable for wind energy/renewable energy development;
- National targets for generation of energy consumption from renewable energy sources by 2020 (as derived from EC Directive 2009/28 on the proportion of the use of energy from renewable sources); and
- National Government Policy commitments to increase on and offshore wind energy production indicated in the Strategy for Renewable Energy 2012 – 2020.

It was also stated that the written submissions raised concerns with the consolidation sites in Glasson, having regard to the prioritisation for development at gateway settlements and compliance with the justification text under the planning system and Flood Risk Management Guidelines (November 2009).

It was stated that the decision of the members to alter the policies and objectives, in regard to wind energy objectives and the rezoning of land as referred to, does not provide for proper planning and sustainable development and, therefore, the Westmeath County Development Plan 2014 – 2020 is not in compliance with the requirements of sections 9, 10, 12 and 28 of the Planning and Development Act 2000 (as amended).

As required by the legislation, public notices were published and persons were given an opportunity to comment on the Draft Direction. The Manager, also, in accordance with the legislation, prepared a report on the submissions.

It is noted from the Manager's report that a total of 5624 submissions were received in relation to the Draft Direction in so far as it required the removal of P-WIN6 from the Plan. Of the submissions received only four supported the deletion of P-WIN6. One submission did not relate to the Draft Direction.

As no submission was received in relation to the zoning of land at Glasson, I will not be referring any further to this issue as my Terms of Reference specifically relates to submissions received and the Manager's report on these submissions.

### **Submissions Received as Part of Review Process**

As part of my review, in accordance with the Terms of Reference, I invited the elected members of the County Council, if they so wished, to make any further submission and, in particular, having regard to the Terms of Reference. I also invited the County Manager and the Midland Regional Authority to make any submission they considered appropriate. I attach copies of my communication to the elected members, the County Manager and the Midland Regional Authority.

The letter from the County Manager (copy attached) responded to specific queries I had raised in relation to a Draft Direction on the Mullingar Local Area Plan and also contained copies of various public plans which I had requested from the local authority. The Manager stated that he did not wish to make any further observation in relation to the matters over and above those contained in his report (dated 8<sup>th</sup> April 2014) on the Draft Direction.

No response was received from the Midland Regional Authority.

I received direct responses from Councillors Leonard and Corcoran in relation to the Draft Direction.

Councillor Leonard forwarded a copy of a landscape assessment being done for Co. Westmeath. He highlighted the unique landscape and topography of the county and referred to the sensitivity of the landscape with its flat intimate topography. He referred to the lakes and historical sites in the county. The landscape rendered Westmeath unsuitable for large scale industrial wind development. The Councillors, as trustees of the landscape, have unanimously responded to the Minister on the Draft Direction. He considered that the report was evidence of what the Councillors had to protect. The policy P-WIN6 was necessary to protect the landscape. Councillor Leonard also included a report on noise and health implications. He noted that a 2012 EPA report had been confirmed in line with best international practice by the Deputy Chief Medical Officer. He considered that the report supported a noise level of 35 dB(A) or a set back 11 times the total height.

Copies of the two reports are attached. These reports were separately given to me at a meeting held with the Chairman of the County Council and a deputation invited by the Chairman. The landscape report is a summary report of work done by Minogue and Associates with Geoscience Ltd. One of the authors of the report, Ms. Ruth Minogue, attended the meeting and outlined the basic methodology and findings of the report.

A submission was also made directly by Councillor Gerard Corcoran. This submission contained three attachments. These related to a submission to Offaly County Council in

relation to proposed material alteration to the Offaly County Development Plan. This submission sets out his concerns in relation to wind farms. The submission refers to the 2006 Guidelines as being outdated and recommends a 3000 metre set back from any inhabitable building. The set back distance must consider health and devaluation effects. The set back distance of 10 times turbine height is also referred to. Location on waste ground and at sea, well away from seaside resorts and beaches, is recommended. If cut away bogs are considered, there must be stringent guidelines in relation to protecting landscapes, wildlife etc. All types of noise, including low frequency, must be monitored. The contracts with landowners must be more carefully scrutinised and county development plans should include provision for other forms of renewable energy such as sea waves and solar technologies.

A second attachment from Councillor Corcoran refers to various research projects into the health implications of wind farms. Sleep disturbance/infrasound etc., is referred to. The Irish Guideline levels do not comply with WHO standards. The effects on landscape and danger from ice and blade fling are referred to. A set back of 500 metres is not adequate. The high cost of wind generated energy is referred to.

A third attachment from Councillor Corcoran contains recommendations of amendments incorporating P-WIN2 and P-WIN6 of the Development Plan. The downgrading of some areas to low rather than medium capacity is referred to also. Submissions received support the recommendations. People have sincerely held opinions and concerns in relation to health, quality of life, environment heritage, landscape and visual and recreational amenities. Submissions against the recommendations on the grounds of contravention of National Policy and renewable energy and the implications for landowners are also referred to.

At the request of the Chairman of Westmeath County Council, Mr. Peter Burke, I met with him at his office on Wednesday 14<sup>th</sup> May. Mr. Burke was accompanied by a deputation of four persons. Three of these represented concerned groups from various parts of the county. Ms. Ruth Minogue, who was involved in preparing a report for the concerned parties on Landscape Character Assessment and Wind Energy Capacity in Co. Westmeath was also present. The other three persons attending were Mr. David Reid, Chairperson of the Ballymore Wind Information Group, Mr. Daryl Kennedy, Chairperson of the Killucan-Rahamey Wind Information Group and Ms. Nora Fagan, also a member of the Ballymore Wind Information Group.

The deputation attending outlined the concerns of the communities in relation to wind farms and in support of the policy contained in P-WIN6.

Mr. Reid made a presentation setting out what he considered to be an evidence based methodology for determining required wind turbine set back distances. As a result of this the councillors incorporated a set back distance of 10 times the overall height of the turbine into the Development Plan. He considered this to be in keeping with WHO standards. The submission refers to recent EPA Guidance on noise which recommends the use of LAeq rather than LA90 and refers to the German scientific model produced by the State of Saxony to support the arguments set out in submissions to the effect that there is no valid reason for deleting the Westmeath CDP 10 times the overall height set back. He further submitted that until the revision of the Wind Energy Guidelines is complete there is a health vacuum whereby there is no proper protective measure in place to give effect to the WHO standards for protecting human health. He criticised the fact that public health was not within the scope of the study on noise commissioned by the Sustainable Energy Authority of Ireland (SEAI).

Mr. Daryl Kennedy submitted copies of a paper dealing with the health effects of wind turbine noise and another on community response to wind turbine noise. These indicated serious concerns in relation to the health implications arising from turbines even at distances removed from the turbines and that community annoyance increases in direct correlation to the level of noise. Further research was required on the public health implications arising from wind turbine farms. He also submitted a copy of a chart from the Marshall Day Acoustics report to demonstrate the fact that an LA90 noise setting regime allows a higher noise level than a LAeq based system.

Ms. Ruth Minogue outlined the work being undertaken on landscape character assessment and capacity for wind turbines in Co. Westmeath. A copy of a summary report was forwarded following the meeting. She also submitted maps indicating viewshed and 50 KM Buffer Zones from the Hill of Uisneach and drawings indicating the landscape character types in Co. Westmeath. She pointed out that the cutaway peat areas are generally located on the outer perimeter of the county. Ms. Minogue's conclusion was that Co. Westmeath has little capacity to accommodate wind turbines, having regard to landscape character assessment. There may be some capacity in the cutaway bog areas. Ms. Minogue stated that she was qualified in anthropology and nature science. She had been involved in preparing landscape character assessments for Co. Galway and Co. Clare. She had 15 years experience in Ireland and Northern Ireland.

In discussion on the situation in relation to wind energy projects in Co. Westmeath, I was informed that there is no wind energy farm there at present. One application had been refused by the planning authority and An Bord Pleanála. The whole industry was a developer led one and developers were reluctant to give much information prior to application stage. It was stated that contracting landowners were not informed of the height of turbines. Mr. Kennedy forwarded a map of the county indicating proposed clusters of turbines subsequent to the meeting.

It was submitted that there was a groundswell of opposition to the proposed turbines. Health issues and impact on the landscape were important issues in this regard. It was considered that the 2006 Guidelines were no longer fit for purpose. The Precautionary Principle should be applied. Communities were very concerned when the set back proposed in the draft review of the Guidelines remained the same as in the 2006 Guidelines. Reference was also made to the danger from blade throw as occurred in Co. Donegal. It was submitted that a manual issued by one company advised its own employees not to go closer than 400 metres to a turbine, except for repair purposes. Reference was made to a survey carried out in one location where turbines were proposed. Houses within 1 km were surveyed and over 90% considered the proposal inappropriate. While people supported renewable energy they did not do so at a risk to human health. People had to rely on the County Development Plan for protection as the National Guidelines were inadequate.

The Chairman of the Council stated that over the years the council had supported the construction of one-off houses in the county. Whilst there may be different opinions on this, the fact was that when applications are made for turbines there are a considerable number of objections. He stressed the landscape and tourism resources of the county. Turbines would damage the aesthetic quality of the county. The county did not have a history of energy generation such as other counties had. It had a sensitive landscape and heritage. The

Councillors were unanimous in not being prepared to compromise the aesthetic quality of the county.

### **Submissions Received in Response to the Public Notice Inviting Submissions**

I have reviewed the submissions received and considered the Manager's Report on the submissions.

I consider that the Manager's report provides a comprehensive summary of the submissions and in a useful manner divides the submissions into blocks based on the nature of the submissions.

The bulk of the submissions i.e. approximately 74% are listed in the first part of the report i.e. pages 7 to 26. These submissions were of a similar format arguing that the set back distance referred to in P-WIN6 should be retained. It is argued that the current Guidance is out of date. Wind farms in Co. Westmeath are not needed to meet national targets and the set back is required to protect public health (noise and shadow flicker are referred to). It is also argued that the provision is needed to protect the value of residents' property and because of the overall impact of any wind farms/turbines on the landscape and the general amenity of residents.

The second largest group of submissions are listed on pages 45 to 48 of the Manager's report. This group again all made similar submissions. The group comprised approximately 7% of total submissions. The submissions addressed the issues of compliance with national targets, health and safety, alternative renewable options and sensitive receptors such as persons with Autism and A.D.H.D. who occupy the sensory sensitive spectrum.

The third largest group is that listed on pages 29 to 32 of the Manager's report. This group comprised approximately 6.5% of total submissions. This grouping submitted four versions of a much similar submission. The submissions addressed the issues of national targets, health and safety, gave a defence for the set back based on German (Saxony) criteria, indigenous industry, essentially potential impact on the equine industry and possible alternative renewable options. Some of the submissions in the group also dealt with sensitive receptors and property devaluation.

The fourth largest group, as set out in the County Manager's report, is that listed on pages 34 to 37. This group comprised approximately 4% of total submissions. The submissions dealt with national targets, health, property devaluation, shadow flicker and indigenous industry i.e. equine industry (thoroughbred horses).

The fifth largest grouping is listed on pages 40 to 42 of the Manager's report. This group comprised approximately 3% of total submissions. The submission from this group comprised of a one page letter focussing essentially on health issues.

The sixth largest grouping is listed on page 44 of the Manager's report. This group comprised approximately 2.4% of the total submissions. The submission comprised of a two page document referring to the unique topography and major heritage sites in the county i.e. Hill of Uisneach, lakes etc. Reference is made to various research projects into the health

implications of wind turbines and the set back required by P-WIN6 is defended. Blade failure and turbine collapse are mentioned. Devaluation of property is also referred to as is the diminution of residential amenity and potential impact on the equine industry.

The remaining submissions are grouped in small numbers or dealt with individually. These comprise a relatively small percentage of the overall submission. The six blocks of submissions referred to above together comprise about 97% of total submissions.

Some of the small groups of submissions and, in particular, the group listed on page 49, focus on particular issues. The persons making submissions in this case are parents, teachers and carers of children suffering from Autism and A.D.H.D. The submissions focus on the particular potential health hazards of such people and their right to live in dignity within their homes.

I would point out that in assessing the submissions I noted that when added together the total listed, in the various blocks and singly, come to in excess of the number of submissions listed in the introduction to the Manager's report i.e. 5625. I noted in reviewing the lists that some cases were listed twice. This may have been due to both letters and emails being received. I do not consider, however, that this had any great significance in terms of the level of support for the various views submitted or the percentage figures given above. I also noted that some submissions appeared to be in the wrong grouping. I noted that the submission from the small group listed on page 43 is similar to the larger group listed on pages 7 to 26 and the additional issue referred to on page 43 of the Manager's report is also referred to on pages 27 to 28. I do not consider this of any significance in terms of the groupings.

In addition to the issues referred to above as being raised in the various submissions, the vast majority of submissions were critical of the existing Guidelines and of the Minister for interfering in the local democratic process. The elected members were praised for taking the opinions of those who made submissions on board and for adopting the plan with P-WIN included.

The overwhelming issue raised in the submissions was the potential impact of wind turbines on health due in particular from noise and to a lesser extent shadow flicker. The overall impact on residential amenities also featured high in the level of support for including P-WIN6 in the development plan. Property devaluation and impact on the landscape were significant issues with a high level of support. The whole issue of impact on the landscape and landscape character assessment and capacity to absorb wind farms featured more prominently in the meeting with the Chairman of the County Council. This was probably due in part to the composition of the deputation which was invited along by the Chairman.

Other issues mentioned in submissions included hazard or danger for the equine (in particular thoroughbred horses) and tourist industries in the county and potential impact on heritage sites or the setting of such sites. Less frequently mentioned were hazards from blade throw or turbine collapse.

It is clear from the submissions that there is a groundswell of opposition to turbines or wind farms and in particular to large scale turbine farms which appear to be designed to tap into a possible agreement for the export of electricity. There is a very strong feeling that central government is not protecting local communities from business interests and there appears to be little expectation of any benefit to local communities. The submissions and the elected

members' reaction to the submissions and representations demonstrate a very strong level of opposition to wind farms in any area where they are proposed or are being considered.

Only four of the submissions received supported the issuing of a Direction on foot of the Draft Direction issued. These four parties are essentially ones with vested interests in the industry. It is noted that, while the four parties in question clearly supported the issuing of a Direction along the lines of the Draft, most of their submissions related to other wind energy policies and objectives which are now contained in the Development Plan e.g. P-WIN2 and changes to the wind energy designations in the county. These issues are now part of the Development Plan and the Draft Direction cannot be amended or widened in scope to include these issues in a Direction. The impact of P-WIN6 in association with the other policies can of course be considered in determining whether or not to issue a Direction.

Some of the submissions dealt with the reason for issuing the Draft Direction as set out in the Draft Direction i.e. inconsistency with the Wind Energy Guidelines (2006), the Midland Regional Planning Guidelines, in relation to areas identified as suitable for wind energy/renewable energy development, national targets for generation of energy consumption from renewable energy sources by 2020 and National Government Policy commitments to increase on and offshore wind energy production indicated in the Strategy for Renewable Energy 2012 – 2020. I will refer to these arguments and submissions later.

The Manager's report on the submissions contains the justification of the elected members for retaining P-WIN6. This refers to Westmeath's unique rural landscape, biodiversity and heritage. It also refers to the large number of submissions based on extensive research into health, noise etc. The proposed set back is considered essential, having regard to the dense population density, unique topography and major heritage sites. The justification states that noise and infrasound are major concerns. It is also argued that the energy is not required for the Irish Grid and that the existing facilities plus those with connection offers for Gates 1, 2 and 3 will result in more wind electricity generated than the target. It is also argued that nationally adequate land would be available allowing for the set back distance proposed. Other issues raised are the impact on property values and safety issues due to blade failure or turbine collapse. It is argued that the documents referred to in the reasons for the Draft Direction are either under review or subject to a major re-think in policy. Other renewable options are also available. The elected members have concerns similar to those making submissions and the provision would protect the people of Westmeath in an appropriate way.

## **Relevant Policy and Guidance Documents**

### ***National Renewable Energy Action Plan***

This Plan was submitted to the EC under Article 4 of Directive 2009/28/EC.

The Plan states that the government has set a target of 40% electricity consumption from renewable sources by 2020.

It is stated in the Plan that in setting out to achieve a significant transformation of the energy landscape, the government does not underestimate the challenge (not unique to Ireland) of winning the hearts and minds of local communities, in support of the new infrastructure required to deliver change.



### ***Strategy for Renewable Energy 2012 – 2020***

It is a strategic goal of the Strategy to progressively have more renewable electricity from onshore and offshore wind power for the domestic and export markets. One of the key actions specified in the Action Plan is to support delivery of the 40% target for renewable electricity through the existing GATE processes. A further targeted Gate may be developed, if necessary, following a review of Gate 3 offers, while developing a next phase plan-led approach for additional onshore capacity in future.

### ***The Midland Regional Planning Guidelines 2010 – 2022***

Section 3.3.4.6 deals with the issue of renewable energy. It is stated that renewable energy, in all its forms, offers significant potential for the development of the rural economy including wind energy potential, the growing of energy crops and ancillary supporting infrastructure within the broader objective of reducing carbon emissions and developing alternative energy sources.

It is stated in the Guidelines that development of wind turbines needs to take place within the context of clear development plan policies and the Department of the Environment, Heritage and Local Government Wind Energy Development Guidelines. Worked out peatland areas offer potential for renewable energy installations including wind energy. It is also stated that with a strong history of energy production and an extensive electricity transmission network in place, the potential exists for a smooth transition to renewable energy from fossil fuels.

It is stated in paragraph 3.4.6.1 that the Midland Region is well placed for the development of renewable energy such as wind and biomass/biofuels given the predominantly rural nature of the landscape which includes large expanses of worked out peatland.

The Regional Planning Guidelines support the development of wind energy generation throughout the region subject to appropriate siting considerations as set out in the Wind Energy Development Guidelines (2006), Local Authority Wind Strategies and compliance with environmental and landscape designations. It is stated that the development of the renewable energy section in the Midland Region will significantly contribute to the national target of generating 40% electricity from renewable sources by 2020. The significant potential for the growth and development of biomass and biofuels is also referred to. (EU and national targets are contained in Table 3.2).

Section 5.8 of the Guidelines in dealing with energy provision states that the region can avail of the opportunity to use its existing power stations to make the transition from peat to renewable energy sources. It is further stated that the region has substantial renewable energy potential to accommodate large scale energy production in the form of wind farms and bio-energy fuel sources.

A Transport and Infrastructure policy is that Subsidiary Plans will seek to promote the implementation of the government's Energy White Paper 'Delivering a Sustainable Energy Future for Ireland, the Energy Policy Framework 2007 – 2020 (DCMNR2007).

### **Wind Energy Development Guidelines June 2006**

These Guidelines were issued under section 28 of the Planning and Development Act 2000. Section 28 requires that both planning authorities and An Bord Pleanála have regard to them in the performance of their functions.

The Guidelines, in the introduction, state that it is important that all development plans incorporate both a statement of the planning authorities policies and objectives in relation to wind energy development and the matters it will take into account in assessing planning applications for specific wind energy development proposals.

It is a requirement of the Guidelines that the development plan must achieve a reasonable balance between responding to government policy on renewable energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development.

It is also stated that the assessment of individual wind energy development proposals needs to be conducted within the context of 'plan-led' approach. This involves identifying areas considered suitable or unsuitable for wind energy development. The areas should then be set out in the development plan in order to provide clarity for developers, the planning authority and the public.

Section 3.4 of the Guidelines sets out the types of policies and objectives which should be contained in the development plan. These include a positive and supportive statement of the importance of wind energy as a renewable energy source which can play a vital role in achieving national targets in relation to reductions in fossil fuel dependency etc. The plan should also set out objectives to secure the maximum potential from the wind energy resources in the planning authority's area commiserate with supporting development that is consistent with proper planning and sustainable development.

The Guidelines also require the identification on development plan maps of the key areas within the planning authority's functional area where there is significant wind energy potential and where subject to criteria such as design and landscape planning, national heritage, environmental and amenity considerations, wind energy development will be acceptable in principle.

The Guidelines require that the plan sets out the specific criteria for wind energy development that the planning authority will take into account when considering any wind energy or related proposals in the key areas identified based on the recommended siting and design criteria referred to in the Guidelines.

#### **Assessment of Issues Arising**

This assessment and my recommendation have regard to the Terms of Reference of my appointment and I will not be commenting on what provisions or standards should be contained in the revised Guidelines. The draft of these Guidelines is being reviewed in the light of the submissions made. It would be outside my brief and inappropriate for me to make any recommendation on the detailed guidance to be issued. Specialist input is required

to adequately assess the various submissions made in relation to the draft Guidelines. My recommendation will relate specifically to the Draft Direction.

There is clearly a significant body of opinion in favour of inserting P-WIN6 into the Development Plan. The vast bulk of submissions support the decision of the elected members and the members were clearly swayed by the arguments made and the level of opposition to wind farms and in particular the higher/larger turbines now being proposed. There is clearly a groundswell of opposition to such developments, not only in Co. Westmeath but in other counties where proposals are being put forward.

If my recommendation was to be based solely on the level of support in numerical terms for the views expressed, it would clearly have to be to recommend that a Direction not be issued and the insertion of the provision into the Development Plan would be allowed.

The essential question which arises, however, is whether or not the measure proposed would be inconsistent with the policies/guidelines referred to and whether such a provision, at this point in time, would result in the decision to adopt the measure not being in accordance with provisions in the Planning and Development Act 2000 (as amended).

Part 5.6 of the Guidelines refers to the issue of noise. It is stated that good acoustical design and carefully considering siting of turbines is essential to ensure that there is no significant increase in ambient noise levels at nearby sensitive locations. The Guidelines give guidance on appropriate noise levels in different locations and at different times of the day. The noise description used is LA90. It is stated that, in general, 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.

Shadow flicker is dealt with in part 5.12. The Guidelines recommend that shadow flicker at neighbouring offices and dwellings within 500 metres should not exceed 30 hours per year or 30 minutes per day. It is stated that at distances greater than 10 rotor diameters from a turbine the potential for shadow flicker is very low.

It is generally accepted that the 2006 Guidelines need to be updated in certain aspects and a process to do this is currently underway. Clearly detailed consideration will have to be given to the various arguments made in submissions on the draft Guidelines which generally correspond to those made in relation to the Minister's Draft Direction. Issues such as whether or not a set back distance is the most appropriate noise control measure will have to be addressed. So also will issues such as whether LA90 or LAeq is most appropriate as a control standard.

It is strongly argued in the submissions that central government has failed local communities in terms of protecting them from the health implications arising from wind farms and, accordingly, they have to rely on the County Development Plan and local democracy. The main argument being put forward in this regard is by reference to the statement that, in general, 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. It appears that this is interpreted as meaning that once the distance is over 500 metres, noise is no longer a problem or planning consideration. I would point out that there is a general statement in the Guidelines to the effect that good acoustical design and carefully considered siting of turbines is essential to ensure *that there is no significant increase in ambient noise levels at any*

*nearby noise sensitive locations* (noise sensitive locations include any occupied dwellinghouse etc.) (Italics mine)

In considering a planning application for any significant sized wind farm development, the noise impact on any noise sensitive location is considered and is a relevant planning consideration. In situations where an Environmental Impact Assessment is required this is a specific legal requirement. This applies irrespective of whether or not the noise sensitive location is more than 500 metres or any other stated distance from the noise source.

Arguments have been put forward to defend P-WIN6 on the basis of landscape character assessment and the capacity of the landscape to accommodate wind energy developments and, in particular, wind farms. In any planning assessment of a wind farm such an assessment is required and detailed guidance on the assessment etc. is contained in the 2006 Guidelines. The provision (P-WIN6) specifically refers to a set back distance from a dwelling and makes no reference to landscape character. The exclusion of wind farms from the specified distances would clearly lessen the potential impact on all landscape character types. The requirement to consider impact on the landscape, having regard to the landscape type etc., would however remain without the provision (P-WIN6) being contained in the Development Plan.

Similar arguments apply in relation to potential impact on the equine industry and in particular the thoroughbred horse industry. P-WIN6 makes no reference to horses. It would clearly indirectly reduce significantly the areas considered suitable for wind farms but does not per se exclude such wind farms from lands adjacent to these used by the equine industry. In considering any planning application, the potential impact on other established or authorised uses would be considered.

I consider that the benefits (from their perspective) to be derived from the incorporation of a provision such as P-WIN6 into the Development Plan may be overstated by those making submissions. I accept that it is clear government policy that land use planning should be plan-led. I would point out, however, that in the case of an application to An Bord Pleanála under section 37 E of the Planning and Development Act 2000 (as amended) i.e. Strategic Infrastructure provisions, the Board may decide to grant permission for development even if the proposed development contravenes materially the development plan relating to the area in which it is proposed to situate the development (section 37 G (6)). The Board must, of course, consider the provisions of the development plan for the area. The Board must also have regard to the policies and objectives for the time being of the Government, a state authority, the Minister etc. where functions have or may have a bearing on the proper planning and sustainable development of any area. It must also have regard to the national interest, the National Spatial Strategy and any Regional Planning Guidelines in force. (Section 143 of the Planning and Development Act 2000 (as amended)). The Board must also have regard to any guidelines issued under section 28 of the Act e.g. Wind Energy Guidelines.

In a situation where there is an appeal to An Bord Pleanála against a decision of a planning authority, the Board may also grant planning permission in some instances, even where one of the reasons for a refusal was that a development materially contravenes the development plan. The Board may still grant permission in certain circumstances e.g. permission should be granted having regard to regional planning guidelines for the area, guidelines under section 28, any relevant policy of the government or any Minister etc. A number of decisions

of one planning authority to refuse planning permission for telecommunications mass were over turned on appeal on the basis that a provision in the Development Plan was in conflict with Government policy in relation to the provision of telecommunication facilities.

It is noted that the current Development Plan provides for a review of the policies and objectives relating to industrial scale wind farms in the light of the completion of the focussed review of the Wind Energy Guidelines 2006 and the finalisation of the Planning Policy Framework for Renewable Energy Export. This should lead to a review of the policies and objectives in a relatively short period of time. I also note that Departmental Circular 20-13 advised planning authorities to defer amending development plan policies in relation to wind farms pending the completion of the review and finalisation of the framework referred to. This has not been complied with in the current case. Policies in the Development Plan relating to wind farms/turbines can hopefully be more objectively assessed after the targeted review of the Wind Energy Guidelines is completed.

Arguments have been made to the effect that the reasons given in the Statement of Reasons are not valid. I will briefly comment on the four issues covered by bullet points in the Statement of Reasons beginning with national targets.

It is argued that the main document containing the national target i.e. The National Renewable Energy Action Plan is in some way flawed or unlawful. It appears that challenges have been made on the basis of non compliance with the Aarhus Convention and it has also been argued that a strategic environmental assessment was required. The action plan has, however, been sent to the EC in compliance with the requirements of EC Directive 2009/28/EC. I am not aware of any decision in the Irish Courts or in the European Court of Justice which has found it to be unlawful or invalid. It appears to have been accepted by the European authorities as in compliance with the Directive. In the circumstances I consider that it must be accepted as lawfully setting out Government and national targets.

Strong arguments are made to the effect that the national targets will be met without the need for any wind farms in Co. Westmeath. This is based on existing output and factoring in the output from future developments where connections to the national grid have been agreed in principle through the Gate process. It was not, however, a necessity for agreement in principle for a connection that planning permission had been attained. It may also be the case that planning permissions have expired or that some of the projects have been abandoned. In the circumstances I do not consider it clear cut and definitive that targets will be met.

I consider that the impact of the proposed set back would be very significant, particularly when taken in conjunction with other wind energy related policies contained in the plan e.g. P-WIN2, which is to strictly direct large scale wind energy production projects onto cutaway peatlands and the Wind Energy Development Capacity map (Map No. 5) of the plan which indicates most of the county as having low capacity and a small proportion having medium capacity. The map indicating landscape character types, submitted by Ms. Minogue, indicates most of the cutaway peatlands in the area designated as being of low capacity for wind energy development in the development plan.

It appears to me, from the plan and from the submissions that the overall intent with P-WIN6 included is to effectively exclude commercial sized wind farms from the county. I consider that if such policies were adopted nationally there would be a serious danger of targets not being reached. Such policies would be inconsistent with the national targets for electricity

generation from renewable sources by 2020 and even more directly in contravention of the policy to increase on and offshore wind energy production as set out in the Strategy for Renewable Energy 2012 – 2020 referred to earlier. (Significant progress does not appear to have been made in developing other forms of electricity generation from renewable sources. It would take a considerable period of time to convert an existing electricity generation plant to use of a renewable energy source).

I have outlined previously provisions in the Midland Regional Planning Guidelines relevant to wind energy.

Having regard to the reference to the policies of the Midlands Regional Authority Regional Planning Guidelines in the Statement of Reasons for the Draft Direction, I invited the Authority to submit any observations it considered appropriate. No submission was received. Having reviewed the Planning Guidelines, I have some reservations about this part of the Statement of Reasons and the reference to areas identified as suitable for wind energy/renewable energy development. It is not clear if this is intended to refer to areas identified in the Regional Guidelines or in the Draft County Development Plan. The Regional Guidelines identify worked out peatland areas as offering potential for wind energy development. This appears to be accepted in P-WIN2, although P-WIN6 could exclude at least some of these areas. The Regional Guidelines do state that they support the development of wind energy generation throughout the region subject to appropriate siting considerations as set out in the Wind Energy Guidelines (2006). The inclusion of 'Local Authority Wind Strategies' in the same sentence, however, leaves the issue open to some doubt. I consider that, on balance, P-WIN6 in conjunction with other wind energy policies in the plan would be in contravention of the Guidelines.

Planning authorities are required to have regard to guidelines issued under section 28 of the Planning and Development Act 2000 in the performance of their functions. The Wind Energy Guidelines 2006 were issued under section 28 and although being reviewed in part they have not been rescinded or withdrawn.

It is stated in the 2006 Guidelines that the development plan must achieve a reasonable balance between responding to overall government policy on renewable energy and enabling the wind energy resources of the planning authority's area to be harnessed in a manner that is consistent with proper planning and sustainable development. I consider that with P-WIN6 included with the other policies etc. in the plan, including the wind energy development capacity map, a reasonable balance would not be achieved. The set back criteria proposed, although possibly required in some instances depending on design, power output, topography etc., may not be required in other situations, having regard to proper planning and sustainable development.

It is not clear from the documentation and the submissions why section 9 of the Act is referred to in the second part of the Statement of Reasons in so far as this relates to P-WIN6. It appears that the Minister has not specifically determined under section 9 (6) that the National Renewable Energy Action Plan or the Strategy for Renewable Energy 2012 – 2020 relates to proper planning and sustainable development. Reference to Government policy on renewable energy as is contained in the Wind Energy Development Guidelines would not seem to be a determination of the issue for the purposes of section 9 (6). It would be preferable if the specific sub-sections had been identified as argued in submissions. The

Minister may wish to consider the relevance of including section 9 in the Statement of Reasons.

It is also not clear why section 10 is included except in a general way in that the plan does not set out an overall strategy for the proper planning and sustainable development of the area as referred to in 10 (1) due to adequate regard not being had to the National Plan and Strategy on Renewable Energy and not adequately taking account of the Regional Planning Guidelines and Wind Energy Development Guidelines.

With regard to section 12, I consider that adequate regard has not been given to relevant policies and objectives of the government or any Minister of the Government as referred to in subsection (11), although it could be argued that these were considered but were outweighed by other considerations relevant to proper planning and sustainable development.

I note that section 27 requires that a planning authority shall ensure, when making a development plan, that the plan is consistent with the Regional Planning Guidelines in force for the area. The Draft Direction has stated that the provision in question i.e. P-WIN6 would result in the Development Plan not being consistent with the Regional Planning Guidelines. This issue is referred to in part 1 of the Statement of Reasons.

I have concluded that the proposed policy P-WIN6 would be in conflict with the Wind Energy Guidelines issued under section 28 of the Planning and Development Act 2000 (as amended). It would, accordingly, be contrary to section 28 of the Act.

Sections 9, 10 and 12 of the Act may however be more relevant and pertinent to the issue dealt with in part 2 (ii) of the Direction relating to the 'Glasson Zoning Map'. This is outside my Terms of Reference for the reasons already stated.

#### **Recommendation**

Having regard to my assessment, as set out above, I recommend that, in so far as it relates to the issue referred to in 2 (ii) relating to policy P-WIN6, the Minister should issue a Direction on the basis of the Draft Direction. Section 27 might be added to the sections quoted in part 2 of the Statement of Reasons.

*Padraic Thornton*

Padraic Thornton

*20<sup>th</sup> May 2014*

## **Appendix No 1**

### **Letter of appointment and Terms of Reference**