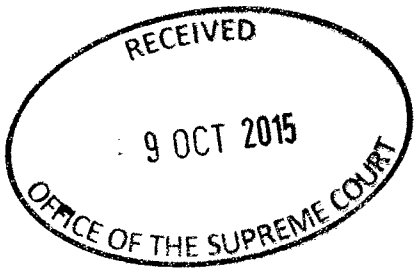
Appendix FF

No. 2



O. 58, r. 18(1)

SUPREME COURT

Respondent's Notice

Supreme Court record number		S:AP:IE:2015:000055

[Title and record number as per the High Court proceedings]

John Callaghan	V	An Bord Pleanála, Ireland and the Attorney General (Respondents), Element Power Ireland Limited, Element Power Ireland and North Meath Wind Farm Limited (Notice Parties) 2014 647 JR 2014 170 COM

Date of filing	9 October 2015
Name of respondents	Element Power Ireland Limited & North Meath Wind Farm Limited (First & Third Named Notice Parties)
Respondent's solicitors	Matheson
Name of appellant	John Callaghan
Appellant's solicitors	O'Connell & Clarke

1. Respondent/Notice Parties Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent/Notice Parties' full names	Element Power Ireland Limited (First Named Notice Party) North Meath Wind Farm Limited (Third Named Notice Party)

The Respondent/Notice Parties were served with the application for leave to appeal and notice of appeal on 28 September 2015

The Respondent/Notice Parties intend :

	to oppose the application for an extension of time to apply for leave to appeal
	not to oppose the application for an extension of time to apply for leave to appeal
✓	to oppose the application for leave to appeal
	not to oppose the application for leave to appeal

✓	to ask the Supreme Court to dismiss the appeal

	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court

	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of Respondent/Notice Parties' representation are correct and complete on notice of appeal:	No please see the below change in the Notice Parties' solicitors' details

Respondent's Representation

Solicitor			
Name of firm	Matheson		
Email	nicola.dunleavy@matheson.com and eimear.ohanrahan@matheson.com		
Address	70 Sir John Rogerson's Quay	Telephone no.	01 2322000
		Document Exchange no.	2 Dublin
Postcode	Dublin 2	Ref.	NDU/EIMO/663976/6

How would you prefer us to communicate with you?

	Document Exchange		E-mail
	Post		Other (please specify)

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

Counsel			
Name			
Email			
Address		Telephone no.	
		Document Exchange no.	
Postcode			

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

How would you prefer us to communicate with you?

✓	Document Exchange Post	✓	E-mail
			Other (please specify)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

NOT APPLICABLE.

3. Information about the decision that it is sought to appeal

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

The Appellant has omitted paragraph 2 of the judgment of the High Court delivered on 11 June 2015 [2015] I.E.H.C. 357 from Section 4 of the Notice of Appeal:

> "By order dated 24th November, 2014, McGovern J. entered these proceedings into the Commercial List of the High Court. By order dated 28th January, 2015, McGovern J. directed that the proceedings were to be dealt with by way of a single combined 'telescoped' hearing, the court firstly considering the application for leave to apply for judicial review and, if leave is granted,

proceeding immediately thereafter to consider the Applicant's substantive judicial review application."

The decision of the High Court against which the Appellant seeks to appeal was made under section 50 of the Planning and Development Act 2000, as amended. Subsection 50A(7) of that Act provides that the determination of the High Court of an application for section 50 leave or of an application for judicial review on foot on such leave shall be final and that no appeal shall lie from the decision of the High Court in either case save with the leave of the High Court, which leave shall only be granted where the High Court certifies that its decision involves a point of law of public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court. Subsection 50A(11) further provides that, on an appeal from a determination of the High Court, the appellate court shall have jurisdiction to determine only the point of law certified by the High Court under subsection (7) (and to make only such order in the proceedings as follows from such determination).

In circumstances where the High Court granted leave to appeal on a single point of law, it is impermissible for the Appellant (as is stated in Section 4 of the Notice of Appeal) to seek to appeal "the decision whereby the 'telescoped hearing' of the Applicant's application for leave to apply for judicial review and the Applicant's substantive judicial review was refused." In reality, the Appellant is impermissibly seeking leave to appeal to the Supreme Court against the entirety of the judgment of the High Court delivered on 11 June 2015 [2015] I.E.H.C. 357, notwithstanding the certification of a single point of law (and refusal of other points of law) for appeal by the High Court in the terms set out in the judgment of the High Court delivered on 24 July 2015 [2015] I.E.H.C. 493.

In addition, as regards the entity named as Second Notice Party, the Appellant has omitted the first part of paragraph 3 of the judgment of the High Court delivered on 11 June 2015, which states:

> "Element Power Ireland Ltd. ("EPI") is engaged in the development of wind farms and is the majority shareholder in the third named notice party, North Meath Wind Farm Ltd. ("the Third Named Notice Party") who was joined as a notice party by order of McGovern J. on 24th November, 2014. The second named notice party, Element Power Ireland, who was joined by the applicant to the proceedings, is simply a trading name for the EPI and, accordingly, the second named notice party is not a legal entity."

Finally in this regard, the Appellant has omitted paragraph 12 of the judgment against which it now seeks leave to appeal, which states:

> "Following the SID designation, an application for planning permission was made to the Board by the Third Named Notice Party on 6th October, 2014. The applicant has made no submissions or observation on that application since it was lodged on 6th October, 2014."

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

1. The Respondent/Notice Parties contest the within application for leave to appeal directly to the Supreme Court from the judgment and order of the High Court.

2. Applications for leave to appeal to the Supreme Court directly from the High Court under Article 34.5.4° of the Constitution are necessitated as a result of amendments to the Constitution brought about by the Thirty Third Amendment. As an alternative to exercising the right of appeal from the High Court to the Court of Appeal, a party may seek leave to appeal directly from the High Court to the Supreme Court (such an appeal has come to be colloquially known as a "leapfrog" appeal). In *Barlow and Ors. v. The Minister for Agriculture, Food and Marine and Ors.* [2015] I.E.S.C.DET 8, the Supreme Court set out general principles as to the proper approach, under Bunreacht na hÉireann, to the grant or refusal of such leave to appeal.

The decision in respect of which leave to appeal is sought does not involve a matter of general public interest

3. In these proceedings, the High Court has refused the application for leave to apply for judicial review and granted leave to appeal in relation to a single point of law (in circumstances where six points of law had been proposed by the Appellant in written legal submissions, which were reduced to three points at the hearing on the application for leave to appeal). In order to certify the single point of law, the High Court was required to find, and did find, that its decision involved "a point of law of exceptional public importance and that it is desirable in the public interest that appeal should be taken".

4. The Respondent/Notice Parties acknowledge that the High Court certified a single point of law as being of exceptional public importance. Accordingly, the Respondent/Notice Parties do not contend that the single point of law certified for appeal by the High Court does not involve a matter of general public importance.

5. However, as is apparent from Section 4 of the Notice of Appeal, and indeed the grounds of appeal in Section 6 of the Notice of Appeal, the Appellant seeks to appeal against the entirety of decision of the High Court and does not confine its appeal to the single point of law certified by the High Court.

6. Moreover, notwithstanding the express refusal of the High Court to certify a point of law in relation to the transposition of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ("the EIA Directive"), in Section 8 of its Notice of Appeal, the Appellant purports to request the Supreme Court to make a reference to the Court of Justice of the European Union on questions of interpretation of certain provisions of the EIA Directive. The purported questions for request for a preliminary ruling pursuant to Article 267 TFEU are entirely unrelated to the single question certified for appeal which exclusively concerns issues of national law.

7. Accordingly, the appeal as framed by the Appellant in his Notice of Appeal involves issues extraneous to the single point of law certified for appeal by the High Court and those extraneous issues do not involve a matter or matters of general public importance.

It is not, in the interests of justice necessary, that there be an appeal to the Supreme Court

8. Secondly, it is not necessary in the interests of justice that there be an appeal to the Supreme Court. Indeed, in its Notice of Appeal, the Appellant does not even contend that a direct appeal to the Supreme Court is necessary in the interests of justice. The interests of justice can be served by the Court of Appeal determining the single point of law certified for appeal.

9. The Appellant has not established, or even asserted, that it is in the interests of justice that his application be acceded to.

There are no exceptional circumstances warranting a direct appeal to the Supreme Court

10. Thirdly, notwithstanding the contents of Part 5 of the Notice of Appeal, there are no exceptional circumstances which would warrant a direct appeal to the Supreme Court in this case. In this respect, the Appellant's reliance on the decision of McGovern J. in *Dunnes Stores v. An Bord Pleanála* [2015] I.E.H.C. 387 is misplaced. The statement of the learned High Court judge in *Dunnes Stores* which is relied upon by the Appellant on this application was clearly expressed *obiter*, in circumstances where the High Court judge made an observation on the likelihood of cases certified for appeal being appealed directly to the Supreme Court. It is axiomatic that the High Court has no jurisdiction beyond deciding whether to certify a point (or points) of law for appeal and cannot determine whether the Court of Appeal or the Supreme Court should determine an appeal so certified by the High Court.

11. The single point of law certified for appeal by the High Court (which is set out *in toto* in Section 5, below) relates to an issue in respect of which there is a well-established body of jurisprudence, including Supreme Court authority. There is no unusual or exceptional complexity involved in the determination of the single point of law certified for appeal by the High Court. The Appellant offers no reason whatsoever as to why the Court of Appeal could not discharge its statutory functions and determine the appeal in the ordinary course, pursuant to the provisions of the Court of Appeal Act 2014. As the Supreme Court noted in *Fox v. Judge Mahon & Ors.* [2015] I.E.S.C. DET 2, it is important to emphasise that the new constitutional regime presumes that the constitutional right of appeal from the High Court is best met by allowing an appeal to the Court of Appeal.

12. The Appellant appears to rely on the entry of the proceedings in the Commercial List of the High Court as an "exceptional circumstance". Clearly, the entry of the High Court proceedings in the Commercial List cannot constitute an exceptional circumstance for the purposes of an application for leave to appeal to the Supreme Court directly from the High Court. Moreover, the commercial considerations of the Respondent/Notice Parties are not exceptional circumstances upon which the Appellant (who is opposed to the Notice Parties' proposed development) is

entitled to rely in grounding an application for leave to appeal directly to the Supreme Court from the High Court. As set out below, in the event that, notwithstanding the opposition of the Respondent/Notice Parties, the Supreme Court grants the within application for leave to appeal, the Respondent/Notices parties will request a priority hearing on the basis of the impact of delay on the commercial considerations of the Respondent/Notice Parties. However, those commercial considerations are not "exceptional circumstances" for the purpose of the Supreme Court acceding to an application for leave to appeal directly from the High Court.

13. The Appellant has failed to demonstrate that there are exceptional circumstances warranting a direct appeal to the Supreme Court.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

Preliminary Objection – Appeal in respect of issues not certified by the High Court

1. By way of preliminary objection, the Respondent/Notice Parties take issue with the breadth of the appeal sought to be advanced. By way of its judgment on 24 July 2015 [2015] I.E.H.C. 493, the High Court certified a single point of law pursuant to section 50A(7) of the Act, in the following terms:-

   "Is the statutory scheme contained in the Planning and Development (Strategic Infrastructure) Act 2006, when construed in the light of Sections 50(2) and 143 of the Planning and Development Act 2000, such that it is necessary to read into the scheme a right for interested members of the public to be heard prior to An Bord Pleanála reaching an opinion pursuant to Section 37A of the Planning and Development Act 2000?"

2. The jurisdiction of the Supreme Court on an appeal from a decision of the High Court made under section 50 of the Planning and Development Act 2000, as amended, is expressly limited by the legislature by 50A(11) of that Act to determining only the point of law certified by the High Court under section 50A(7).

3. In circumstances where the High Court granted leave to appeal a single point of law, it is impermissible for the Appellant (as is stated in Section 4 of the Notice of Appeal) to seek to appeal "the decision whereby the 'telescoped hearing' of the Applicant's application for leave to apply for judicial review and the Applicant's substantive judicial review was refused." In reality, the Appellant is impermissibly seeking to appeal against the entirety of the judgment of the High Court delivered on 11 June 2015 [2015] I.E.H.C. 357, notwithstanding the certification of a single point of law for appeal by the High Court in the terms set out in the judgment of the High Court delivered on 24 July 2015 [2015] I.E.H.C. 493.

4. In addition, in circumstances where the High Court expressly refused to certify a point of law in relation to the transposition of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ("the EIA

Directive"), the grounds of appeal pleaded out at paragraphs 1 and 11 (insofar as reference is made to EIA), and 14 to 17 inclusive of Section 6 of the Notice of Appeal are impermissibly advanced by the Appellant.

5. Moreover, in Section 8 of its Notice of Appeal, the Appellant purports to request the Supreme Court to make a reference to the Court of Justice of the European Union on questions of interpretation of certain provisions of the EIA Directive. However, the purported questions for request for a preliminary ruling pursuant to Article 267 TFEU are impermissibly advanced on this appeal, in circumstances where no issue of interpretation of European Union law arises on the consideration of the single point of law certified for appeal, which point of law exclusively concerns issues of national law.

Substantive Grounds of Opposition

6. Without prejudice to the foregoing objection, in response to the grounds of appeal of the Appellant, the following grounds of opposition are advanced on behalf of the Respondent/Notice Parties.

7. In relation to paragraphs 1 to 7 inclusive and 9 and 12, of the grounds of appeal, the Respondent/Notices Parties plead that:

   (a) An Bord Pleanála ("the Board") did not predetermine the outcome, or any part of the outcome, of the Environmental Impact Assessment or the application for planning permission;

   (b) the opinion of the Board on the designation of the proposed development under section 37A(2) of the Planning and Development Act 2000, as amended, is not determinative of the subsequent application for permission made under section 37E and does not lead to prejudgment. Indeed, pursuant to section 37C, the pre-application consultations held by the Board with the First Notice Party, which culminated in the impugned decision, *"shall not prejudice the performance of the Board of any other functions under this Act..."*;

   (c) in respect of the application for permission, the Board has statutory discretion under section 37G to decide to (a) grant permission, (b) make modifications to the proposed development, (c) grant permission in respect of part of the proposed development, or (d) refuse to grant permission;

   (d) accordingly, the Board's opinion made pursuant to section 37A(2) is not determinative of the application for permission and, in addition, does not lead to impermissible or any prejudgment or definitive conclusions as to whether the proposed development is of strategic economic or social importance;

   (e) pursuant to the provisions of section 143 of the Planning and Development Act 2000, as amended, in determining the application for permission, the Board is required to have regard to, *inter alia*, *"any effect the performance of the Board's functions may have on issues of strategic economic or social importance to the State"*;

   (f) in these circumstances, the Board may revisit its opinion that the proposed development would, if carried out, fall within one of the categories set out in section 37A(2), which opinion is, accordingly, not a concluded decision

within the meaning of section 50(2) of the Planning and Development Act 2000, as amended;

(g) the determination made by the Board which is impugned in these proceedings is not determinative of the socio-economic aspects of the application for permission and/or the Board's decision under section 37G and, accordingly, the Board would not be questioning the validity of its opinion made under section 37A(2) in circumstances where it reaches a different decision in relation to the social and/or economic aspects of the proposed development;

(h) the Board is entitled to look again as the material submitted at the pre-application stage in conjunction with all information available to the Board when deciding whether or not to grant or refuse permission; and

(i) the opinion formed by the Board at the pre-application stage pursuant to section 37A(2) is not a predetermination of any matter to be determined by the Board in deciding whether to grant or refuse permission under section 37G.

8. As regards paragraphs 8, 10, 11 and 13 of the grounds of appeal, the Respondent/Notices Parties plead that:

(a) In the circumstances of these proceedings, there was no requirement, as a matter of fair procedures, for the Applicant to be heard at the pre-application stage provided for under section 37B of the Planning and Development Act 2000, as amended; and

(b) in forming an opinion for the purposes of section 37A(2), the Board's determination did not trigger the right of the Applicant, or the public, to be heard.

9. Without prejudice to the preliminary objection set out above as to the admissibility of the grounds pleaded at paragraphs 14 to 17 inclusive of the grounds of appeal, the Respondent/Notices Parties contend that:

(a) the decision of the Board which is impugned in these proceedings (to the effect that the proposed North Meath Wind Farm would, if carried out fall within one of the categories of section 37A(2) and requiring the Respondent to make an application for permission directly to the Board) is not a "development consent" as defined, or for the purposes of, the EIA Directive.

(b) the EIA Directive requires that the public shall be informed of a number of matters "early in the environmental decision-making process" and the first of the matters listed is "the request for development consent";

(c) public participation in the development consent procedure commences when a request for consent/application for permission has been made;

(d) for the purposes of EIA Directive, the "request for consent" in this instance was the application for permission made pursuant to section 37E on 6 October 2014 and not the request to enter pre-application consultations made in May 2014;

(e) the Appellant had no right to participate at the pre-application consultation

stage pursuant to any requirement of the EIA Directive; and

(f) finally in this regard, whilst the Applicant was expressly refused certification of a point of law as to the transposition of the EIA Directive in relation to ensuring that there is "effective public participation in the decision-making process" and, consequently, the grounds of appeal seeking to agitate that point are inadmissible, the application for leave on grounds of a failure to transpose or otherwise implement the obligations of the EIA Directive is fundamentally misconceived.

10. The High Court correctly determined that the Applicant had not established substantial grounds for any of the reliefs sought in these proceedings.

Legal principles related to the grounds of appeal

11. The decisions of the High Court in *Killross Properties Ltd. v. Electricity Supply Board and EirGrid plc* [Unreported, Hedigan J., August 28, 2014] and *Amphitheatre Ireland Ltd. v. H.S.S. Developments* [2009] IEHC 464) do not provide authority for the Appellant's contention that, as a matter of law, in determining the application for permission under section 37G, the Board cannot come to a different conclusion to that reached at the conclusion of the pre-application consultations under section 37B. In *Killross*, the High Court held an application for injunctive relief pursuant to section 160 of the Planning and Development Act 2000 was an attempt to mount an impermissible collateral challenge to earlier section 5 declarations made by the relevant planning authorities. The Appellant's reliance on *Killross* is misplaced in circumstances where in that case, the determination of the planning authorities was final in circumstances where those matters had not been referred to the Board. This position is in stark contrast to the consequences of the decision impugned in these proceedings. In the instant case, it remains open to the Board to reconsider its opinion as to whether the proposed development would constitute, *inter alia*, strategic economic or social importance and such a determination would not represent a collateral attack on the earlier decision made by the Board. The *Amphitheatre* case concerned another application for an injunction pursuant to section 160, on this occasion, to restrain a public event from proceeding. The High Court again held that the challenge was, *inter alia*, an impermissible attempt to challenge a valid planning permission that itself had not been challenged. However, the determination impugned in the instant proceedings does not, and could not, comprise a development consent.

12. In purported substantiation of its grounds of appeal in relation to fair procedures, the Appellant places reliance on the decision of the Supreme Court in *Dellway Investments v. NAMA* [2011] 4 I.R. 1. In that case, the High Court and Supreme Court considered the provisions of the National Asset Management Agency Act 2009 ('the NAMA Act'). The Supreme Court ruled unanimously that the criteria for assessing whether fair procedures required a person be heard before a decision was made, included the nature of the decision, the nature of the statutory scheme, the importance of the decision to the person invoking the right and the choice of the procedure adopted by the decision maker. In addition, the Supreme Court unanimously held that, a person whose interests were capable of being directly affected in a material way by the decision should be allowed to put forward reasons as to why the decision should not be made or that the decision not take a particular form.

13. However, in contradistinction to the circumstances prevailing in *Dellway*, the interests of the Appellant in these proceedings are not liable to be affected in any material way by the decision of the Board that the proposed North Meath Wind Farm would, if carried out, fall within one or more of the paragraphs of section 37A(2) of the 2000 Act. The only decision of the Board which could conceivably concern the Applicant or his property or would be liable to affect his interests in any material way, is the decision of the Board whether to grant or refuse permission pursuant to section 37G. However, nothing involved in the process which lead to the making of the decision impugned in these proceedings concerned any property right or other interest which directly affects the Appellant. In such circumstances, the Appellant's reliance on *Dellway* is misplaced.

14. The Appellant is mistaken in his contention that the determination of the Board impugned in this decision had or has procedural effects of considerable significance. The Respondent/Notice Parties contend that the instances relied upon by the Appellant in paragraph 3 of Section 6(b) of the Notice of Appeal do not support the proposition the Appellant advances in this regard. By way of example only, in circumstances where an EIA is required to be conducted before a decision to grant development consent is made, it is immaterial whether that EIA is conducted by the relevant planning authority or the Board, as long as the requirements of EU and Irish law are implemented.

15. In any event, in the circumstances of this case, the procedural effects relied upon by the Appellant were not such as to entitle him to fair procedures or to afford him a right to be heard in relation to the opinion of the Board as to whether the proposed development, if carried out, would fall within one of the categories set out in subsection 37A(2). In such circumstances, the Appellant's reliance on *State (Irish Pharmaceutical Union) v. Employment Appeals Tribunal* [1987] I.L.R.M. 36, is misplaced, particularly as the requirement for a decision-maker to create and carry out necessary procedures arose where the fundamental requirement of justice found to exist by the Supreme Court in that case was that *"person or property should not be at risk without the party charged being given an adequate opportunity of meeting the claim, as identified and pursued."* It is evident that no such charge or claim arises in this case.

16. In relation to the issue of purported predetermination, the Appellant relies upon the decision of the Supreme Court in *Tomlinson v. Criminal Injuries Compensation Tribunal* [2006] 4 I.R. 321. However, in contradistinction to the circumstances pertaining in *Tomlinson*, in the instant case, the Board made a decision on one particular issue (whether the proposed development, if carried out, falls within one of the paragraphs of section 37A(2)) for one particular purpose (in order to determine an application for permission should be made to the relevant planning authority). Subsequently, the Board is required to make an entirely different decision under section 37G (whether to grant or refuse permission) and must perform its statutory duties in making that distinct decision.

17. The Appellant's reliance on Article 6(4) of the EIA Directive is inadmissible in the context of the single point of law certified for appeal by the High Court. Without prejudice to that contention, the Appellant's reference on the decision of the European Court of Justice in Case C-416/10 *Krizan* is misdirected, whether in the context of the assertion that the public must be able to effectively influence the outcome of the decision-making process, or in the context of seeking to request a preliminary ruling under Article 267 TFEU. In the latter respect, it is noteworthy that, in *Krizan*, the Court of Justice decided that it was for the

referring (i.e., national court) to determine whether, in the context of the administrative procedure in suit, all options and solutions remain possible.

18. Finally, the legal principles relied upon by the Appellant at paragraph 7 of Section 6(b) of the Notice of Appeal are, insofar as they reference the EIA Directive, predicated on matters which are irrelevant to the single point of law certified for appeal by the High Court.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Niall Handy B.L.
Jarlath Fitzsimons S.C.

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

NOT APPLICABLE.

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own decisions? ☐ Yes ☑ No
If Yes, please give details below:

make a reference to the Court of Justice of the European Union? ☐ Yes ☑ No
If Yes, please give details below:

Will you request a priority hearing? ☑ Yes ☐ No

If Yes, please give reasons below:

The Respondent/Notice Parties oppose the Appellant's application for leave to appeal to the Supreme Court. However, in the event that the Supreme Court determines that the appeal should be made to the Supreme Court rather than to the Court of Appeal, the Respondent/Notice Parties request a priority hearing of the appeal, for the following reasons:

(a) preparatory work in relation to the North Meath Wind Farm project has been ongoing since 2012 and development costs of approximately €3million (including €1.2m grid deposit paid to EirGrid plc) have been incurred. Moreover, the project will cost in the order of €240m to construct and operate;

(b) the First Named Notice Party has secured "Gate 3" grid capacity in respect of the connection of the electricity generated from the proposed North Meath (or Emlagh) Wind Farm to the national grid at Gorman, County Meath;

(c) pursuant to the decision of An Bord Pleanála which is impugned in these proceedings, on 6 October 2014, an application for permission was submitted to An Bord Pleanála for permission to develop the wind farm (under reg. ref. no. PL17 .PA0038). An oral hearing was convened on the application between 16 June and 20 July 2015 and the decision of An Bord Pleanála on the application for permission is awaited;

(d) in the event that permission is granted, the North Meath Wind Farm project will deliver approximately 3% of the total amount of renewable energy required to meet Ireland's target of 40% of the national electricity consumption by 2020, and will generate substantial amounts of electricity each year for up to 30 years;

(e) for a project of this scale to be completed on time to meet Ireland's 2020 renewable energy targets, the proposed development must have a final planning decision and all other permits in place before the end of 2015, due to the long lead times for the turbine equipment (up to between 12 to 18 months) and a similar period for the electrical transformers required for the wind farm to connect to the electricity transmission grid;

(f) the overarching commercial imperative is to ensure that the entire project is operational before the end of 2020, in order to enable the project to benefit from the REFIT 2 (Renewable Energy Feed in Target) scheme (operated under the aegis of the Department of Communications, Energy and Natural Resources), which provides a feed-in tariff support scheme that operates by guaranteeing new renewable generators a minimum price for electricity delivered to the grid over a 15-year period. In order to avail of the REFIT 2 scheme, an application must be made to before 31 December 2015, and the project must have been connected to the grid by end of 2017. Hence, subject to planning permission being granted, the target completion date of the construction of the wind farm development is December 2017;

(g) subsection 50A(11)(b) of the Planning and Development Act 2000 provides that, on an appeal from a determination of the High Court in respect of an application for section 50 leave or of an application for judicial review, the Supreme Court shall, in determining the appeal, act as expeditiously as possible consistent with the administration of justice;

(h) the economic viability of the North Meath Wind Farm project will be significantly impacted upon if the appeal is not determined expeditiously, with commercial uncertainty prevailing in the context of an extant appeal (notwithstanding the dismissal of the proceedings by the High Court and the certification of a single point of law for appeal) and the necessity to have the wind farm development constructed and connected to the national grid by December 2017.

Signed: Matheson
(Solicitor for) the Respondent/Notice Parties

Please submit your completed form to:

The Office of the Registrar to the Supreme Court
The Four Courts
Inns Quay
Dublin

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.