

5.3 Derrybrien

The struggle of a small rural Community to have its voice heard

Derrybrien, Loughrea, County Galway.

This section of the report has been taken from a thesis written by Derrybrien local man, Mr. Martin Collins of the Derrybrien Development Society Ltd.

5.3.1 Introduction

Derrybrien is a small rural village/hamlet located on a south-facing slope of the Slieve Aughty Mountains in South County Galway in the West of Ireland. The village itself is situated along the Gort – Portumna road. The Abhainn Da Loilíoch River meanders its way in a southwest direction in the valley below the village, and flows into Lough Cutra (lake).



Figure 2.1: Map of Derrybrien (inset: location in Ireland) showing location of windfarm

The name Derrybrien, translated to Irish is Daraidh Draoin, the oak-wood of Brian, or O'Brian. Brian Boru was said to have used the oak-woods of Derrybrien to shelter his guerrilla bands, constantly harassing the Danes on Lough Derg and along the Shannon, and using the same tactics as the Danes themselves, the sudden attack and quick retreat, after burning their ships and settlements. Those guerrilla fighters

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formed the nucleus of the Dal gCais army, which finally defeated the Vikings at Clontarf.



Figure 2.2: Derrybrien Village with seven turbines in the background

The census figures for 1996 show a population of 144 people. However the 2002 figures indicate a decline in population to 129 people (63 Females and 66 Males) a drop of 10.4%. The current population is estimated at 114 people. There are a total of 49 houses in the parish with 39 of these occupied. The other 10 houses are either closed permanently or are only visited occasionally by their owners.

Derrybrien is stated to encompass an area of 4078 Hectares. Approximately 50% of this land area is planted with coniferous trees.

5.3.2 The Developments

In December 1997, Saorgus Energy Ltd. (based in Tralee, Co. Kerry) applied to Galway County Council to erect turbines on two separate sites, with 23 turbines per site (46 in total). On the 12th March 1998, permission was granted for all turbines.

In January 1998, B9 Energy Services Ltd. (based in Larne, Co. Antrim) applied to Galway Co. Co. for permission to erect 25 turbines on a single site at Derrybrien. On the 26th March 1998, permission was granted for 23 of the 25 turbines.

Local residents appealed the decisions to An Bord Pleanála. However, An Bord Pleanála upheld the County Council decision.

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Saorgus applied again to Galway County Council in 2000 for a further 25 turbines (making 71 in total). Galway County Council refused permission. However, on appeal by the developers, An Bord Pleanala granted permission. For various reasons the B9 project never materialized.

In the meantime Saorgus Energy Ltd leased the site (which they had purchased from Coillte Teoranta, the Irish State Forestry Company) and sold the project to a subsidiary of the Electricity Supply Board Ireland (ESB), Hibernian Wind Power Ltd.



Figure 2.3: Aerial photo of the windfarm site

Construction work started on the 850-acre site around June/July 2003.

The details of the project are as follows

- ❖ 60 mega-watt project
- ❖ €60 million project
- ❖ 71 (850 kw) Turbines on 850 acres of blanket bog, on which 650 acres of trees are to be/being/have been clear felled and not replanted.
- ❖ Turbines – 73 metres to the top of the blade.
- ❖ Two large quarries opened on site.
- ❖ 20 km of roadways throughout the site.
- ❖ 7 km of new 110 kv powerline is being constructed.

5.3.3 The Landslide

During the construction related activities of the 71-turbine project a major landslide of some 450,000 cubic meters of peat occurred on the 16th October 2003. The bog and uprooted trees followed the course of a little stream for about 2.5 km before surrounding an old farmhouse and knocking some stone outbuildings which were in its path.

Following heavy rainfall on the 29th to 30th October 2003 the bog became liquidised and entered the Abhainn Da Loiloch River which eventually meandered its way for a further 22km and finally entered Lough Cutra, a Special Area of Conservation (SAC), Special Protected Area (SPA) and the main source of water for the town of Gort. The Shannon Regional Fisheries Board estimated that approximately 50,000 fish had choked on the sludge and were dead (Shannon Regional Fisheries Board Preliminary Report November 2003) [8].

Hibernian Wind Power Ltd, Galway County Council and the local residents each commissioned separate reports on the events surrounding the landslide. It is widely accepted that construction related activities caused the landslide. There are many issues of deep concern to the local residents such as unauthorised development, robust drainage, water quality concerns, the estimated 50,000 wild brown trout killed and the considerable distress and disturbance inflicted on this small rural community.

On the 20th October 2004 in Gort District Court, ESB International and Ascon Ltd. (the construction company) were both convicted of allowing polluting matter to enter the headwaters of the Abhainn Da Liolioch River. A maximum fine of €1250 was imposed on both companies. Nobody was convicted of a fish kill.

Members of the local community travelled to Brussels in January 2004 and met with representatives of the EU Commission at the offices of DG Environment. As a result of that meeting a substantial file was sent to DG Environment. Recently the Commission confirmed that they will take Ireland to the European Court of Justice with regard to matters related to the development of the windfarm.

Derrybrien Development Society Limited has recently initiated legal proceedings against Saorgus Energy Ltd, Coillte Teoranta and Gort Windfarms Ltd with a view to seeking an Injunction to stop the deforestation of 650-acres of trees on the 850-acre site. However Ms. Justice Dunne in her judgement delivered in the High Court on 3rd June 2005 found that; ***“Having considered the matter carefully and in particular in the light of the matters set out in the Environmental Impact Statements I have come to the conclusion that on a reading of the Environmental Impact Statement attached to the various permissions it was quite clear that the proposed development envisaged the removal of the forestry thereon and the changes of use on the lands from forestry to use as a windfarm. I can come to no other conclusion.”*** and ***“In the circumstances I am not satisfied that the applicants have made out the case that the de-forestation of the lands at Derrybrien is an unauthorised development”***. The Derrybrien community has been divided by the proposals to construct 92-turbines in the locality

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Figure 2.4: Aerial photo of the landslide

5.3.4 County Development Plans

In the 1997-2002 Galway County Development Plan [2], Derrybrien and indeed all the Slieve Aughty Mountains were designated as “*High Scenic Amenity Area*”. This designation as identifies under section 9.2 Development Control Objectives states that:

“9.2 Development Control Objectives- 9.2.1 Scenic Amenity Areas

To restrict development which would detract from the amenity value of the zoned areas indicated in the relevant maps, where such development would be visually inappropriate and out of character, or could not be satisfactorily blended into its surroundings.”

As part of the consultation process in preparation for the 2003 – 2009 Galway County Development Plan [3] submissions were made by at all stages of the process by representatives from Derrybrien. However, Derrybrien and the Slieve Aughty Mountains were zoned a “*Strategic Area – Where wind farm development is considered appropriate i.e. wind resource at or above 6m/sec*”. No further

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information is available from Galway County Council as to what detailed criterion was used in agreeing this designation.

One other issue which is closely connected to the windfarm planning strategy is forestry. A significant number of correspondence to the planning section of Galway County Council refer to changing the designation of the Slieve Aughty Mountains from “*High Scenic Amenity Area*” to a lower category due to the fact that there is widespread Coniferous Plantations on the mountains and that this activity has severely damaged and degraded the environment and landscape in this region. In the 2003 Galway County Development Plan the Slieve Aughty Mountains are identified under “*Scale of woodland appropriate*” as being suitable for “*Up to 100% woodland cover*”.

5.3.5 History of Consultation and Planning Process

- In late 1998 two companies, Saorgus Energy Ltd, Tralee, Co. Kerry and B9 Energy Services Ltd, Larne, Co. Antrim proposed to construct 71 windturbines on three sites at Derrybrien.
- Three separate applications for planning permissions were lodged with Galway County Council (GCC) in January 1998. The two Saorgus proposals should constitute project splitting.
- Public meeting for local community in Derrybrien National School on 21st January 1998.
- Public meeting held in Egan’s Lounge Derrybrien on 17th February 1998. A well attended meeting with representatives from the developers, IFA, Coillte Teoranta and IRD South East Galway in attendance.
- Objection to the proposed developments was submitted to the Planning Section of Galway County Council on the 2nd March 1998.
- Galway County Council granted permission to Saorgus Energy Ltd on 12th March 1998 to erect 46 turbines (23 + 23). On 26th March 1998 GCC granted permission to B9 Energy Ltd to erect 23 turbines and refused 2 mainly on grounds of possible noise pollution.
- Local residents group employ the services of a planning consultant to lodge an appeal to An Bord Pleanala against the decision by Galway County Council to grant permission.
- Public meeting held in Egan’s Lounge Derrybrien on 13th April 1998. A well attended meeting which included two TDs and four County Councillors.
- A deputation from Derrybrien addressed the Loughrea Area Councillors at a meeting held in Clarinbridge on 20th April 1998.
- A deputation from Derrybrien addressed the Loughrea Town Commissioners on 20th April 1998 in Loughrea.
- On the 12th October 1998 An Bord Pleanala granted permission to Saorgus Energy Ltd to erect 46 wind turbines.
- A presentation was prepared by Martin Collins, Adrian Headd and Berna Morgan, of Derrybrien & District Concerned Residents Group and this was presented to The Irish Planning Institute workshop “*Planning and Wind Energy : Creating a Secure Framework for Investment*” on 23rd October 1998 in The Kiltarnan Golf and Country Club Hotel, Kiltarnan, Co Dublin. [4]

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- Following from this presentation a document entitled “*WINDFARMS A Local Response (November 1998)*” [5] was compiled and approximately 35 copies were sent to politicians, people in the media and various other interested parties. In this document, objections to the proposals to erect 69 turbines in the locality were outlined. They are as follows;
 1. Visual Impact
 2. Noise Effects
 3. Effects on Habitat
 4. Negative Effects on Tourist Potential
 5. Causing a Split Within The Community
 6. Devaluation of Property
 7. A Material Contravention of The 1997 Galway County Development Plan
 8. Lack of Employment or Community Benefits
 9. Safety Considerations
 10. In that document a number of alternatives were offered to the large scale concentration of windturbines on the tops of hills and mountains especially focused on the western seaboard, they are as follows;
 - a. Large scale offshore windfarms
 - b. Small scale windfarms locally owned and locally operated (the provision of Micro turbines for domestic use). See <http://www.micropower.co.uk> [6]
 - c. Bord na Mona developing large tracts of bog to accommodate large scale windfarm developments but only where such developments would be acceptable to local communities and environmental groups.
 - d. Siting of windturbines in their natural home e.g. industrial zones, harbours, cities etc.
 - e. Energy conservation (implementing a policy of awareness and practical steps such as better insulation standards and encouraging the installation of new energy efficient appliances).
- On 20th September 1999 Saorgus Energy Ltd was granted permission by Galway County Council to construct a 110KV powerline, 7 km in length from the windfarm to an existing powerline. The fact that approximately 70 acres of trees were to be cut and the line intersected a Hen Harrier hunting ground was ignored in the grant of planning. Also the sketchy information provided with the planning application did not refer to a Substation building, the location of the 9 steel masts or the size of the structures to be constructed along the route of the line.
- On the 5th October 2000 Saorgus applied to Galway County Council for permission to build a further 25 wind turbines.
- Galway County Council refused permission for the development on 1st December 2000. The planner who refused this permission was courageous and was to be proven fully correct in her decision. She deserves credit and recognition for her diligence and foresight.
- An Bord Pleanála overturned Galway County Council decision and grant permission on 15th November 2001. The An Bord Pleanála Inspector, estimates that there were 152 wind turbines granted permission on the Slieve Aughty Mountains (this includes the 25 that she was about to decide on).

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- Around the time of the grant of planning written and verbal communication was made with the Environmental Protection Agency (EPA) and The Western Regional Fisheries Board, however both ignored the concerns raised.
- On 4th February 2002 Saorgus was awarded an Alternative Energy Requirement V (AER V) contract for the Derrybrien project by the Department of Public Enterprise.
- In June 2002 Galway County Council allow Saorgus to change turbine type regarding the first two applications.
- Saorgus applied to Galway County Council to change turbine type to 850KW with 26 m blades, 47 m hub for the 25 turbines. This was approved on 27th November 2002.
- Saorgus applied to the Forest Service in January 2003 for a Felling Licence to deforest 650 Acres of trees on the 850KW windfarm site.
- On 20th May 2003 a Felling Licence was **granted to Coillte Teoranta** to cut the trees.
- A public meeting was held in Egans Lounge Derrybrien on 4th April 2003. The attendance included representatives from the local community, councillors, The Forest Service, Coillte Teoranta, Galway Rural Development and Galway County Council. Mr Niall Heenan facilitated the meeting. The main issues discussed were the extremely high level of coniferous afforestation in the area, local planning issues, development of windfarms and the significance of Clár designation.
- Coillte Teoranta sold the site to Saorgus in June 2003.
- Negotiations took place between Saorgus and Hibernian Wind Power Ltd in early 2003 to lease the land and sell the project. The sale of the project “Gort Windfarms Ltd” was completed in July 2003.
- On 2nd July 2003 construction work commenced on the site.
- On 9th July 2003 Saorgus was awarded AER VI contract [7] for the Derrybrien project from Department of Communications, Marine and Natural Resources (DCMNR).
- Martin Collins wrote to the Enforcement Officer in Galway County Council on 29th July 2003 requesting information and action regarding the possibility of unauthorised development taking place on the windfarm site. This letter was replied to on 16th July 2004.
- Gort Windfarms Ltd applied to Galway County Council on 1st October 2003 for an extension of time on the first two planning applications.
- On 16th October 2003 a bog slide occurred adjacent to the excavation of Turbine 68. Approximately 450,000 cubic metres of bog moved.
- On 24th November 2003 Galway County Council granted the extension of time to Gort Windfarms Ltd.
- Gort Windfarms Ltd applied to Galway County Council for an extension of time to complete the construction of the powerline in September 2004. This was granted in October 2004.
- Gort Windfarms Ltd applied for a further extension of time for the original 46 turbines in February 2005. This was granted in March 2005. An application has been made to The High Court for a Judicial Review of the decision to grant a second extension to the original 46 turbines on the basis “that in the Assessment of Application included in the planning report of 30th March, 2005 that “*substantial works*” had been carried out by the Applicants is the wrong

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criterion to be applied to a second extension application”. Proceedings are expected to take place on the 13th July 2005 in The High Court in Dublin.

5.3.6 Political Response to the Landslide

A public meeting was held in Egan’s Lounge Derrybrien on 3rd November 2003. The attendance included local residents, local and national politicians, developers, local authority, clergy, members of fishing club and people from the media.

A deputation from the local community attended the Loughrea Area Committee meeting of Galway County Council in O’Dea’s Hotel Loughrea on 12th November 2003. At the time, it was felt that the deputation received a sympathetic hearing from both the County Councillors and the Executive staff members. However through a Freedom of Information (FOI) request to Galway Co. Co., it was later learned that prior to attendance at the meeting, the County Councillors proposed and agreed to write to the Shannon Regional Fisheries Board expressing disappointment and annoyance at their press release which stated that up to 100,000 fish may have been killed as a result of the landslide. Also, which is even more alarming, is that the same Cllr. stated that *“it was important for the local economy that the project goes ahead”*. These comments were made at a time when there was a great deal of uncertainty as to what threat or danger the local community and environment was facing into the future.

On the 11th December 2003 again a deputation from Derrybrien made a presentation to The Joint Oireachtas Committee on the Environment & Local Government, in Leinster House Dublin 2. This meeting and presentation was in vain. The Government and politicians in general pontificate about the wide consultation process and the rigorous procedures that projects must go through in order to get planning permission. However, experience by local communities has been the complete opposite. No meaningful consultation took place at any time through the past 8 – 10 years with any of the parties involved in this project. The facts are that unelected civil servants, county managers, An Bord Pleanála and the Judiciary have a major input into policy implementation and all are under the jurisdiction of the Government. The only real assistance received by the local community has come from MEPs (Member of the European Parliament).

5.3.7 Sale of the Land for Development by Coillte and FOI

Requests for information were to the Department of Agriculture and Food, Department of Environment Heritage and Local Government, Department of Communications, Marine and Natural Resources and Galway County Council under the Freedom of Information Act 1997. The information provided by the Department of Communications Marine and Natural Resources was the subject of an appeal to the Office of the Information Commissioner. The Information Commissioner, Ms Emily O’Reilly, recently delivered her decision on the issues in question which were the releasing of all records relating to the “sale and option agreements” between Saorgus Energy Ltd and Coillte Teoranta for the land on which the 71 windfarm was to be

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constructed. In formulating her decision The Information Commissioner made the following comments;

“On the question of the public interest, though, your submission in response to Ms. Campbell’s (Investigator, Office of the Information Commissioner) preliminary view letter emphasised that seller of the land in question was not just any ‘other landowner’ but rather a ‘State owned company’. Accordingly, on 18 January 2005, Ms. Campbell wrote to Coillte to advise the company of your persuasive argument that there is a public interest in openness and accountability with respect to the property transactions conducted by Coillte. Ms. Campbell noted that, although Coillte is not a public body within the meaning of the FOI Act, it is a commercial semi-state company. She also stated her understanding that Coillte owns and manages property in Ireland as an agent of the State. In the event that her understanding was incorrect, Ms. Campbell expressly requested Coillte to clarify the status of the lands that are the subject of the sale and option agreements and the nature of the business conducted by Coillte insofar as it relates to this review.

In the meantime, Ms Campbell was compelled on 31 January 2005 to return the Department’s files that had been forwarded to this Office in order for the Department to make a decision on the additional records identified as falling within the scope of your request following your search query and for the preparation of appropriate schedules. On 3 February 2005, Ms. Campbell received a very strongly worded submission from Saorgus expressing its amazement that I ‘would force a government department to release information that was submitted to it in commercial confidence as part of a state-sponsored competitive tender.’ Saorgus suggests to me that ‘such practices, particularly where no demonstrable public good can be achieved, have already led to a general unwillingness to transmit any such information in writing to or between public bodies.’ Saorgus also described to me how it intends to conduct its future dealings with public bodies accordingly. In relation to the land prices at issue, Saorgus states;

‘We submitted the land prices sought under this Derrybrien appeal to the DCMNR as part of an AER5 tender. The information needed by DCMNR was that the lands had been secured and that we were in a position to deliver on the project if our tender was accepted. We did not need to have the commercial aspects of the land transfer included, just that we had secured the land. Therefore, additional information that was incidental to the information which was required was submitted. We therefore regard the submission of this information to the DCMNR as a mistake in the first place.’

Subsequently, on 23 February 2005, the Department’s files were returned to this Office with appropriate schedules but without the sale and option agreements. Section 37 of the FOI Act entitles me to require any person who is in possession of information or has a record in his or her power or control that, in my opinion, is relevant to the purposes of a review under section 34 to furnish any such information or record for my examination. Nevertheless, it seems that Saorgus asked the Department not to return the sale and option agreements to my Office, and pending the receipt of the advice of the Attorney General on the matter, the Department complied with this request. The documents were ultimately provided on 8 March 2005 on foot of the Attorney General’s advice.

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This is the eight year in which the FOI Act has been in effect in Ireland and numerous tender-related decisions have issued from this Office. It is therefore difficult to comprehend how a company tendering for a contract in a competition administered by a public body could greet the potential for the release of tender-related records held by the public body with amazement. Saorgus' reaction in this case is all the more puzzling given the fact that AER application forms expressly advise applicants in bold and italicised lettering of the possibility of disclosure of records held by the Department under FOI. In any event, it seems to me that the Department should have been well aware of my authority under section 37 without having to seek the advice of the Attorney General before returning records to my Office that are the subject of a review under section 34.

I consider Coillte's conduct, however, to be particularly egregious. In response to Ms. Campbell's letter dated 18 January 2005, Coillte made a submission dated 16 February 2005 formally objecting to the release of the sale and option agreements. Coillte stated, among other things, that Ms. Campbell's understanding of its legal status and its role in managing lands in Ireland was incorrect. According to the submission, Coillte is a private limited company registered under the Companies Act 1963-2003 that was established under the Forestry Act 1988 to operate forestry and forestry-related businesses commercially. It does not provide public services and it receives no public funding for its business activities other than that available to any private company. Coillte further stated;

'Coillte is not an extension of a Government department neither is it an agency, nor under the control, of any Government department. While the shareholders in the company are the Minister for Agriculture and Food and the Minister for Finance, management of the company is the legal responsibility of the Board of Directors of the Company whose duties are set out in company law and in the Forestry Act 1988.

The relationship between the company and the Minister for Agriculture is the same as that between any private or public limited company and its shareholders. In relation to Coillte's forests and other land these are wholly owned by the company to whom the lands were transferred by virtue of Section 39(1) of the Forestry Act 1988. The lands are not managed on behalf of the State in contract for example with National Parks that are owned by the State and managed on behalf of the State by the National Parks and Wildlife Service.

In this context, the lands owned by the company are, in law, private property and the transaction which is the subject of the request is a private law transaction between two entities neither of which is subject to the Freedom of Information Acts.'

I consider that, notwithstanding my powers under section 37 of the FOI Act, Coillte has provided me with an incomplete description of its legal status. Coillte's submission makes no mention whatsoever of the binding judgement of the European Court of Justice in which Coillte's view of its status as a private company was rejected. In Case C-339/00, Ireland v. Commission of the European Communities [2003] ECR I-11757, the Court (Fifth Chamber) held that, 'as a public undertaking' [emphasis added], Coillte was not eligible to receive grant aid under the EU

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afforestation scheme. In its recital of the facts, the Court noted that the Irish State had owned and directly managed approximately 400,000 hectares of forest until the end of the 1980s.

In reaching its judgement against Ireland, the Court made the following findings:

‘In the present case, Ireland itself has stated that Coillte Teoranta is and always has been a public undertaking wholly owned by the State. Moreover, the Court has already held in Connemara Machine Turf and Commission v. Ireland that the company was controlled by the State and no new evidence has been adduced which might show that this was no longer the case in the financial years 1997 and 1998. Neither the company’s obligation to manage its affairs on a commercial basis nor the fact, alleged by Ireland, that the State does not, in practice, intervene in the company’s management can prevail over the finding that the company is wholly owned and therefore intervene. It follows that the Coillte Teoranta is not private-law legal person for the purposes of Article 2(2)(b) of Regulation No 2080/92.’

It is readily apparent from the references to earlier judgements that the Court’s view of Coillte as a public undertaking wholly owned and controlled by the State is not limited to the purposes of Regulation No 2080/92. In the circumstances, I consider Coillte’s failure to include in its submission any reference to the Court’s ruling on its status as unfortunate at best.

In this case, the parties argue that the sale and option agreements relate to confidential, commercial transactions and were given to the Department by Saorgus in confidence. Coillte indicates that the Department has acknowledged the confidential nature of the records and therefore a mutual understanding of confidence exists. The submissions of both Coillte and Saorgus strongly suggest that disclosure would have a prejudicial effect on the provision to the Department of confidential, commercial information in the future by themselves or other parties. Coillte states:

‘It would be totally absurd were Coillte put in a position whereby it could not advise its shareholders of the details of significant commercial land transactions out of concern that such obviously commercially sensitive information would be put in the public domain.’ Coillte also expresses concern that disclosure in this case would provide “an irresistible precedent to compel the disclosure of all past and future similar transactions. The company would necessarily be the subject of enquiries, controversy and debate, of no particular benefit and would require allocating disproportionate resources to this end.’”

Ms. O’Reilly goes on to state that: “I find no basis whatsoever for concluding that the sale and option agreements, apart from the pricing information therein, include commercially sensitive information within the meaning of section 27(1) of the FOI Act. In relation to the pricing information, I note that the documents show that the prices were agreed in October 1999 and that the sales were completed in December 2001. In Cannon and Australian Quality Egg Farm Limited (1994) 1 QAR 491 (para. 56), the Queensland Information Commissioner observed: “[I]nformation which is aged or out-of-date has no remaining commercial value...and it may be that the value of information relating to a major, “one-off” commercial transaction, such as the sale of a government property, is spent once the transaction is consummated”.

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Indeed in some jurisdictions, disclosure of similar such land prices seems to be a matter of routine unless some special circumstance exists, such as an incomplete transaction. See, e.g., Ontario Realty Corporation, Information and Privacy Commissioner, Ontario, Order PO-1964, Nov. 8, 2001 (purchase price available through title search). I further note that, as the sale and option agreements include no details to show how the land prices were calculated, I do not accept that disclosure would reveal any information relating to Coillte's approach to valuation or its valuation model."

Finally Ms. O'Reilly states that: *"Weighing in favour of release is the fact, as you have indicated that the sale of land by Coillte to a company such as Saorgus is not a commercial property transaction between two private companies. Coillte's lands were previously owned outright and managed directly by the State. Pursuant to section 39910 of the Forestry Act, 1988, the lands were transferred to Coillte, a company set up by the State for the purpose of carrying on "the business of forestry and related activities on a commercial basis and in accordance with efficient silvicultural practices" (section 12(1) of the Forestry Act, 1988 refers). However, as the European Court of Justice has ruled, Coillte is wholly owned and controlled by the State. Accordingly, I consider that Coillte's land transactions should be subject to public scrutiny. See generally Ontario Realty Corporation, Order PO-1964 (reference above) (noting that information about the sale of land by the Ontario Realty Corporation is "inherently a matter of public interest" and that the public interest in disclosure may be "compelling" where extraordinary circumstances exist); Vynque Pty Ltd and Department of Primary Industries (1998) 4 QAR 393 (finding "that there is a strong public interest in scrutinising the Department's dealings with [a third party], to ensure that they have a proper commercial basis, and that the Department is properly monitoring the extraction operations and discharging its public duties with respect to its responsibility for the management of a public resource").*

In the circumstances, I find that, on balance, the public interest in full disclosure of the information at issue relating to the land transactions outweighs the public interest factors weighing again release. Accordingly, section 27(1) dose not apply.

Decision

Having carried out a review under section 34(2) of the FOI Act, I hereby vary the decision of the Department as described above.

A party to a review, or any other person affected by a decision of the Information Commissioner following a review, may appeal to the High Court on a point of law arising from the decision. Such an appeal must be initiated not later than eight weeks from the date of this letter."

Complaint regarding Certification of Coillte Teoranta to Forest Stewardship Council (FSC) standards

On 5th June 2004 a meeting was held in Egan's Lounge, Derrybrien, at which the FSC certification of Coillte Teoranta was questioned and discussed with representatives of Woodmark, Soil Association [9], representatives of the Derrybrien Community and

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members of the Woodlands League [10], as well as members of various other community groups. The following issues were raised at that meeting and in subsequent correspondence with Woodmark Soil Association;

- The sale of the windfarm site by Coillte to speculators without any meaningful consultation. The sale of land did not go to tender.
- Coillte's involvement in the clearfelling of 650 acres of trees on the windfarm site without complying with the Environmental Impact Assessment Directive 97/11/EC (which states that any area of deforestation in Ireland over 70 hectares require a mandatory Environmental Impact Assessment and separate planning permission).
- Negative impact on indigenous people's rights.
- Lack of compliance with Local Agenda 21.
- Possible contamination of water as a result of chemical application also water table disturbance.
- Blanket planting of large tracts of land with non- native monoculture coniferous trees.
- The so called "consultation meetings" organised by Coillte and held in The Lady Gregory Hotel Gort, Co. Galway on 8th June 2000 and the meeting in Tommy Larkin's GAA Hall, Woodford, Co. Galway on 10th December 2001 were PR exercises and yielded nothing.
- Landowners adjoining Coillte plantations encounter major problems with regard to maintenance of boundary fences.
- The blanket coniferous plantations have to a large extent obliterated the folklore and historical importance attached to local landmarks.
- A major fire hazard has been created because of the intensive and vast tracts of plantations in this region.
- The roads and bridges in the locality are not capable of carrying heavy and dangerous loads.
- Lack of employment and community benefits.
- Non-compliance with the Convention on Biological Diversity 1992. The planting of non-native trees on such a large scale displaces high nature value species and ecosystems.

On a point of information the definition of sustainable forest management is; *"The stewardship and use of forests in a way and at a rate that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economical and social functions, at local, national and global levels and does not cause damage to other ecosystems"* from Ministerial Conference Helsinki 1993. Forestry in Ireland operates under the **Forestry Act, 1946**. This Act has been amended by the **Forestry Act 1956**, and the **Forestry Act 1988** [11]. This legislation is totally outdated and offers little or no protection to trees or the environment in general. The penalties and fines attached to the **Forestry Act, 1946** are paltry and reflect a bygone age. It is imperative that a new Forestry Act is drawn up and enacted urgently. Otherwise the assertion could be made that this outdated and weak Act allows unscrupulous persons the liberty to damage and destroy trees and their habitat in the knowledge that the deterrent and penalties are not appropriate to a modern affluent society.

5.3.8 References

1. Green Paper on Sustainable Energy; Department of Public Enterprise; September 1999 -
<http://www.dcmnr.gov.ie/Energy/Sustainable+Energy+Division/Green+Paper+on+Sustainable+Energy/>
2. Galway County Council, County Development Plan 1997 – 2002. Adopted on May 1997.
3. Galway County Council; County Development Plan 2003 – 2009. Adopted May 2003 (See DVD Appendices) .
4. Planning and Wind Energy: Creating a Secure Framework for Investment; A Workshop Examining European Practice 22/23rd October 1998.
5. Derrybrien & District Concerned Residents Group: WINDFARMS A Local Response (November 1998).
6. Micropower, or “microgeneration” is the production of power on the smallest of scales. See Micropower web site <http://www.micropower.co.uk>
7. Alternative Energy Requirement (AER) – is a scheme of competitions held for rights to generate electricity and sell the output to the ESB at agreed rates over 15 year period. The AER VI refers to the sixth competition.
8. Shannon Regional Fisheries Board; Preliminary Report On the Landslide at Derrybrien, Co. Galway into the Owendalulleagh Catchment – November 2003
9. Soil Association Woodmark is a UK based company which operates a forestry and chain of custody certification scheme. Web site <http://www.soilassociation.org/forestry>
10. The Woodlands League is a focus group that has been quietly consulting communities and individuals affected by the plantation style forestry so rampant in Ireland, via Agenda 21. Web site <http://www.woodlandsleague.org>
11. Forestry Act, 1988 (See DVD Appendices).