

Appeal No: VA20/4/0004

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

**NA hACHTANNA LUACHÁLA, 2001 - 2015
VALUATION ACTS, 2001 - 2015**

TAPBURY MANAGEMENT LIMITED

APPELLANT

AND

COMMISSIONER OF VALUATION

RESPONDENT

In relation to the valuation of

Property No. 5017211, at T17 Carrowleagh Wind Farm, Carrowleagh, County Sligo.

B E F O R E

Carol O'Farrell - BL

Chairperson

Donal Madigan - MRICS, MSCSI

Deputy Chair

Fergus Keogh - MSCSI, MRICS

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30th DAY OF JUNE 2022**

1. THE APPEAL

1.1 By Notice of Appeal received on the 27th of October 2020 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV)' of the above relevant Property was fixed in the sum of €162,700.

1.2 The grounds of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is incorrect as it not a determination that accords with that required to be achieved by section 49 of the Act because:

"1. The subject property is not a new property. It is an extension of PN 5008931. The entirety of the Windfarm in Sligo should be valued as a single entity under PN 5008931. The entire Windfarm is occupied and owned by a single entity.

2. The occupiers hereby append generation data from the turbine, which indicates capacity of 28.3%."

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €302,500 after being amalgamated with PN 5008931.

2. VALUATION HISTORY

2.1 On the 7th day of January 2020 a copy of a valuation certificate proposed to be issued under section 28 of the Valuation Act 2001 (“the Act”) in relation to the property was sent to the Appellant indicating a valuation of €185,000.

2.2 Being dissatisfied with the valuation proposed, representations were made to the Revision Manager in relation to the valuation. Following consideration of those representations, the valuation of the property was reduced to €162,700.

2.3 A valuation certificate issued on the 30th of September 2020 stating a valuation of €162,700.

2.4 The valuation date for the Sligo County Council area is 30th of October 2015.

2.5 This appeal arises from a decision of the revision manager in the exercise of his powers pursuant to section 28 of the Act to value the property and to include it on the valuation list as a separate relevant property.

3. THE HEARING

3.1 The Appeal proceeded by way of an oral hearing held in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 1st day of April 2022. At the hearing, the Appellant was represented by Mr. David Halpin M.Sc. (Real Estate), B.A. (Mod) and the Respondent was represented by Mr. David Dodd BL instructed by the Chief State Solicitor. Mr Liam Hazel MSCSI, MRICS, MIPAV (CV), ACI Arb, M.Sc., B.Sc., Dip. Acc. & Fin., RICS Registered Valuer was called to give evidence on behalf of the Respondent.

3.2 In accordance with the Rules of the Tribunal, the parties filed their respective précis of evidence prior to the commencement of the hearing. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The Property is located in the townland of Cloonkeelaun approximately 15 Kms southeast of Enniscrone close to the Sligo/Mayo county border.

4.2 The Property is a single wind turbine known as “T17” (hereinafter referred to as “T17”) which is an Enercon E-70 turbine with a hub height of 64 metres and rotor diameter of 71 metres with a total installed generating capacity of 2.3 MW.

4.3 T17 forms part of Carrowleagh Wind Farm which encompasses wind turbines in counties Sligo and Mayo. There are three turbines in County Sligo which are assigned Property

Number ('PN') 5008931 by the Valuation Office and thirteen turbines in County Mayo which is assigned PN 1359653 by the Valuation Office. T17 has been valued as a separate relevant property by the Respondent and assigned PN 5017211.

- 4.4 T17 was commissioned in or about December 2018.
- 4.5 T17 is connected to the Carrowleagh wind farm substation.
- 4.6 Subsequent to the hearing of the appeal, at the request of the Tribunal Mr. Hazel and Mr. Halpin jointly submitted details of both the constituent number of turbines and their power rating (TIGC) in respect of the following wind farm properties in County Sligo:

PN	Wind Farm	Turbines	TIGC
5009195	Carrane Hill	4 x 0.85 MW	3.4 MW
2170253	Kingsmountain	10 x 2.5 MW	25 MW
2192709	Lackan	3 x 2.3 MW	6.9 MW
5008931	Carrowleagh	3 x 2.3 MW	6.9 MW
1571758	Geevagh	6 x 0.85 MW	5.1 MW
5009236	Dunneill	13 x 0.85 MW	11.05 MW

5. ISSUES

- 5.1 The issues raised by the Notice of Appeal are as follows:
 - (a) whether T17 should have been amalgamated with that part of the Carrowleagh Wind Farm in County Sligo (i.e., with the turbines T14, T15 and T16 comprised in PN 5008931) for valuation purposes
 - (b) If the answer to question (a) above is no, whether the NAV of T17 should be reduced to reflect a capacity factor of 28.3%.

6. RELEVANT STATUTORY PROVISIONS

- 6.1 All references hereinafter to a particular section of the Valuation Act 2001 ('the Act') refer to that section as amended, extended, modified or re-enacted by the Valuation (Amendment) Act, 2015.
- 6.2 Section 3(1) of the Act in material part defines "material change of circumstances" as meaning a change of circumstances that consists of:
 - (a) the coming into being of a newly erected or newly constructed relevant property or of a relevant property, or
 - (b) a change in the value of a relevant property caused by—
 - (i) the making of structural alterations to that relevant property, or
 - (ii) the total or partial destruction of any building or other erection which forms part of that relevant property, by fire or any other physical cause
- 6.3 If a revision manager is satisfied that a material change of circumstances as defined by

section 3 of the Act has occurred since a valuation under section 19 of the Act was last carried out in the rating authority area in which the property is situated, the revision manager has power under section 28(4)(b) of the Act, if the property does not appear on the valuation list and is relevant property to do both of the following:

- (i) carry out a valuation of that property, and
- (ii) include the property of the list together with its value as determined on foot of that valuation.

6.4 Where a property falls to be valued for the purpose of section 28(4) of the Act that value is ascertained in accordance with the provisions of section 49 (1) of the Act which provides:

“(1) If the value of a relevant property (in subsection (2) referred to as the “first-mentioned property”) falls to be determined for the purpose of section 28(4), (or of an appeal from a decision under that section) that determination shall be made by reference to the values, as appearing on the valuation list relating to the same rating authority area as that property is situate in, of other properties comparable to that property.”

7. APPELLANT'S CASE

7.1 The remedies pursued by Mr. Halpin, for the Appellant, in his Précis were (a) that the property be excluded from the valuation list by reason of the Respondent's failure to amalgamate it with PN 5008931 or (b) that the valuation be reduced in line with the actual generation for the property. At the hearing he submitted, by way of a two stage approach, that:

(a) T17 should not be separately assessed but amalgamated with that portion of the Carrowleagh wind farm situated in Sligo, (the other parts being in County Mayo under PN 1359653) being the other three turbines (T14, T15 & T16) comprised in PN 5008931, at an amalgamated valuation of €302,500.

(b) alternatively, if T17 cannot be amalgamated with PN 5008931 or excluded from the valuation list, the valuation should be made in accordance with the actual generating capacity of T17 which he calculated at 28.3%.

7.2 Mr. Halpin outlined that although some wind farm properties have been subject to appeal and determined by the Tribunal arising from the Valuation Order made in respect of the rating authority area of Sligo County Council, the valuation list has remained unaltered by reason that those appeals are currently before the High Court on appeals by way of case stated. Consequently, the only valuations appearing in the valuation list for Sligo, as at the effective date of the valuation certificate (20th of September 2020) are those that have been determined on the basis of the original valuation scheme devised by the Respondent when wind farms in County Limerick were valued. He pointed out that when a property is included in the list following a revision application, as is the case here, the property has to be valued in accordance with s. 49(1) of the Act by reference to the values on the list of comparable properties.

- 7.3 Mr. Halpin confirmed that T17 with a hub height of 64 metres and rotor diameter of 71 metres, is located in the rural and remote townland of Cloonkeelaun in County Sligo, the nearest village being Bonniconlon in County Mayo approximately 5 Kms to the south-west and the nearest town being Ballina some 11 Kms to the west. He stated that T17 cannot function on its own because it has no independent grid connection.
- 7.4 Outlining his case for amalgamation, Mr. Halpin submitted that the matter is complicated by the fact that the three turbines in PN 5008931 are not before the Tribunal on appeal and because T17 came into existence after the last valuation of the rating authority area was carried out, it was not possible to value T17 at the same time as PN 5008931. He pointed out that the case for amalgamation was advanced at Representation Stage when it was open to the Respondent to decide to amalgamate T17 which was constructed as an extension to the Carrowleagh wind farm. He acknowledged that it is not possible for the Tribunal to amalgamate a property under appeal with another property not under appeal. This, he submitted, left the Appellant without redress.
- 7.5 Notwithstanding the fact that the Respondent had treated T17 as a “*new property*” under s. 28(4) (b) and it was accepted to be a newly constructed turbine he maintained that as it is not capable of independent operation the Respondent should have determined that the relevant material change of circumstances that had occurred was a change in the value of a relevant property caused by the making of structural alterations as provided for in paragraph (b) of the definition of material change of circumstances in section 3 of the Act. On that basis, he submitted that the Tribunal should exercise its powers under s.37 (2)(b) (iv) to exclude T17 from the valuation list.
- 7.6 Turning then to his alternative argument on valuation, he contended that T17 falls to be valued under s.49(1) of the Act and as it is the Respondent’s position that the value of T17 must be ascertained by reference to comparable properties on the list a difficulty arose because of the six wind farms in the valuation list [outlined in detail on pages 21 to 24 of Mr Hazel’s Précis but excluding Blacklough] the value of only one wind farm was unchallenged, namely Geevagh wind farm. It was his understanding that Blacklough wind farm was not in the valuation list when T17 was entered on the list and that Geevagh is an out of support wind farm that was assessed off a lower base NAV per MW.
- 7.7 Mr Halpin confirmed that three of the wind farms in Sligo, namely Carrowleagh, Lackan and Dunneill which were appealed to the Tribunal, had on appeal been valued on an agreed full Receipts & Expenditure (R & E) basis but that the valuation list had not been altered as those determinations are under appeal by way of case stated to the High Court. The two other wind farms in Sligo were also appealed. Carrane Hill wind farm was agreed prior to hearing by the Tribunal while the appeal concerning Kingsmountain wind farm has not yet been heard.

- 7.8 Mr Halpin stated that it was evident that wind farms on the valuation list had been determined pursuant to a valuation scheme adopted by the Respondent based on an assumed rate of €73,000 per MW at a 33% standard capacity factor, as adjusted. However, following the hearing of appeals by the Tribunal the Respondent has abandoned the schematic thereby creating the situation where it is not yet known what the ultimate tone of the list will be when changes of a retrospective nature are made once the case stated appeals are finally decided by the courts.
- 7.9 He posited that if T17 is to be valued on the basis that the schematic is accepted, then the only difference between the parties is whether a capacity factor of 28.28% (28.3% rounded) rather than the capacity factor of 32% applied by Mr. Hazell should be adopted. If T17 falls to be valued pursuant to the schematic, T17's valuation based on a capacity factor of 28.3% would be €143,800. He said the only way to avoid the schematic is to apply s. 49(2) of the Act as this would allow the Tribunal to value T17 under s. 48 using the receipts and expenditure (R&E) method in the same way other wind farms were being valued on appeal.
- 7.10 Mr Halpin's calculation of 28.3% is based on the energy output achieved during the calendar year of 2019. He was provided the following table of outputs by the Appellant:

Month	Year	Generation (KWh)	Capacity Factor
January	2020	1,015,592	60.45%
December	2019	867,095	51.61%
November	2019	638,812	38.02%
October	2019	775,274	46.14%
September	2019	605,641	36.05%
August	2019	684,012	40.71%
July	2019	466,339	27.76%
June	2019	383,784	22.84%
May	2019	204,187	12.15%
April	2019	276,923	16.48%
March	2019	314,031	18.69%
February	2019	272,547	16.22%
January	2019	213,680	12.72%

Taking the entire output for 2019 of 5,702.32 MWh / 5,702,325 KWh equates to a capacity factor of 28.3%.

- 7.11 When cross examined, Mr. Halpin agreed that the T17 capacity factor data so provided shows a significant difference in the output achieved in January 2019 and the output achieved for the same month in 2020 and that there could be other reasons (apart from the wind not blowing) to account for this difference such constraint issues or the wind farm being out of operation. He further agreed with Counsel for the Respondent that the Tribunal had determined that the other three turbines in Carrowleagh County Sligo which were commissioned in 2012 had a capacity factor of 30.19% whereas T17, commissioned in 2018, being a more modern turbine would be more efficient.

7.12 In answer to a question from the Chairperson as to the ownership of the wind farm Mr. Halpin said he believed the owner to be Powercon Wind Energy Limited under a freehold title and that the Appellant, who operates the windfarm on behalf of Powercon Wind Energy Limited, is the day to day occupier of the site. He confirmed that Carrowleagh wind farm is a REFIT supported windfarm. He was unable to confirm whether T17 has a separate power purchase agreement but expressed the view that it must have on account of being built at a different time to the other turbines at Carrowleagh.

8. RESPONDENT'S CASE

8.1 Mr. Hazell for the Respondent contended (a) that T17 falls to be valued as a separate relevant property and (b) that the valuation of T17 should be confirmed at €162,700.

The valuation was calculated as follows:

Value on the Valuation List (Standard NAV/MW) €73,000

Standard Capacity Factor 33%

Subject Est. Capacity Factor 32%

Adjustment factor 0.9696

Adjusted NAV/MW €70,780.80

TIGC 2.30MW

€162,795.84 (2.3 X € 70,780.80)

NAV say €162,700

8.2 Mr. Hazell outlined that he had issued a section 45 notice to the Appellant to obtain full information in respect of T17, to include a power purchase agreement, output probability estimates, and confirmation of whether it was a supported wind farm but despite follow up requests he only received confirmation of the commissioning date and the output information at the Representation Stage from Mr. Halpin.

8.3 In support of the list valuation he relied on seven comparable properties briefly summarised as they appear on the valuation list as follows:

P N	Wind Farm	Capacity Factor	TIGC	NAV	NAV/MW
5008931	Carrowleagh	29%	6.27 MW	€402,000	€64,115
5020589	Blacklough	32%	14.10 MW	€998,000	€70,780
2192709	Lackan	32%	6.00 MW	€424,000	€70,667
170253	Kingsmountain	27%	27.00 MW	€1,493,000	€59,720
5009236	Dunneill	38%	11.05 MW	€928,000	€83,982
571758	Geevagh	30%	5.10 MW	€166,900	€32,725
5009195	Carrane Hill	34%	3.40 MW	€255,000	€75,000

He said Geevagh wind farm was assessed at a lower base value (€ 36,000 per MW) as it is an unsupported wind farm, and he conceded that Blacklough wind farm was not on the valuation list at the effective date for the T17 valuation, that is, on the 30th of September

2020. He also confirmed that Carrane Hill had been incorrectly valued as a REFIT supported and that its value on the list had not yet been corrected.

- 8.4 Mr. Hazell contended that the information provided by the Appellant's agent with regard to the wind capacity factor was not dependable as the figures were suspect containing extremes for different months. On the 28th February 2022 he requested information from the Appellant as to the date of commissioning of T17, all output data from the commissioning date up to the most recent data available, confirmation of which REFIT support scheme relevant to T17, if any, a copy of the relevant power purchase agreement ('PPA') and the maintenance contract, copies of all Energy Production Assessment Reports undertaken on the turbine and confirmation of P50, P75 and P90 estimates, but to no avail.
- 8.5 He clarified that the Carrowleagh Wind Farm (thirteen turbines in Mayo and three turbines in Sligo) had been initially valued on an overall basis and an apportioned figure assigned to the three turbines forming PN 5008931 with a capacity factor of 30.19%. In valuing T17, he had made an adjustment upwards to 32% to reflect a more modern efficient turbine. He stated that he would have preferred to have a response to his aforesaid request for information so as to ensure his figure was accurate but in the absence of that information had to make a judgment, as best he could, in those circumstances.
- 8.6 Mr. Hazell also provided analysis in his Précis of Revaluation of Wind Farms to date and also an analysis of Valuation Tribunal decisions for wind farms in Sligo County Council on assumptions for both 15 year and 20 year sinking fund periods with decisions reconfigured based on 20 year periods as per the decision of the High Court in *Commissioner of Valuation v Hibernian Wind Power Limited [2021] IEHC 49*.
- 8.7 Mr. Hazell confirmed that the valuation certificate had issued on the 20th September 2020 and when questioned as to the ownership of T17, he said the occupier was Tapbury Management Limited as stated in the Notice of Appeal. He confirmed that he had consulted the local authority planning file which confirmed that the Appellant had made the planning application in respect of T17 and also reviewed the PPA for Carrowleagh Wind Farm which he said related to only 16 turbines (i.e., excluding T17). In the appeal concerning the three turbines in County Sligo Powercon Wind Energy Limited had appealed as the occupiers of the wind farm and he recalled that a German company who he believed owned the wind farm had written to the Tribunal to make representations, as owners, and this necessitated an adjournment of that appeal at that time.
- 8.8 In cross examination Mr. Hazell stated that a full R & E valuation was only appropriate on first principles where there are no comparables on the valuation list but that s. 49(1) applies as there are comparable properties on the list.
- 8.9 He further confirmed that the material change of circumstances that required the exercise of his powers as revision manager was adjudged to be the erection of a newly constructed property and that the request for the appointment of a revision manager was instigated by a request from the local authority.

- 8.10 Mr Hazell stated that the key factor for him in deciding to value T17 as a separate property was that it was occupied by a separate legal entity from the entity in occupation of PN5008931 and accordingly could not be amalgamated with comprised in PN5008931.

9. SUBMISSIONS

- 9.1 Counsel for the Respondent submitted that the basis for the revision of the valuation list was a material change of circumstances that occurred due to “*the coming into being of a newly erected or newly constructed relevant property or of a relevant property.*” He stated that wind farm appeals were in a state of flux because decisions are awaited from the High Court and Court of Appeal on case stated appeals. He said Mr. Hazell had attempted in his Précis to identify the possible outcomes. He requested the Tribunal to bear in mind that the valuations of Carrowleagh, Lackan and Dunneill wind farms could change radically in the light of evolving law and that it may be necessary for the Respondent to invoke section 38 of the Act to alter the list to take account of decisions of the Tribunal, the High Court and Court of Appeal as the case may be.

10. FINDINGS AND CONCLUSIONS

- 10.1 Two grounds of appeal are advanced by the Appellant. Taking, firstly, the case for amalgamation of T17 with PN 5008931 as advocated by Mr. Halpin, he himself recognised that the fact that there is only one appeal before the Tribunal in respect of T17 presents an insurmountable problem for the Appellant in pursuing its first ground of appeal. The Tribunal only has jurisdiction to amalgamate relevant two or more properties that are the subject of two or more appeals before the Tribunal.
- 10.2 In any event the Tribunal would have rejected the argument for amalgamation as it accepts the evidence of Mr. Hazell that T17 is a separate relevant property from PN 5008931. The Appellant is identified as the occupier of T17 in the Notice of Appeal. The Appellant applied for planning permission for the construction of T17. While it is asserted in the Notice of Appeal that the portion of Carrowleagh wind farm situated in County Sligo is owned and occupied by the Appellant and Mr Halpin asserted in his Précis of evidence that T17 is held on a freehold basis in conjunction with the remainder of Carrowleagh wind farm, no documentary evidence was adduced by the Appellant to prove such ownership and occupation.
- 10.3 Mr Hazel gave evidence that Carrowleagh wind farm is occupied by a separate legal entity namely, Powercon Wind Energy Ltd, as was confirmed in evidence before the Tribunal in *VA17/5/787 Powercon Wind Energy Limited T/A Carrowleagh Wind Farm* and that the PPA in respect of Carrowleagh Wind Farm was made between Powercon Wind Energy Limited and Viridian Energy Limited does not include T17. That evidence was not challenged. The Appellant did not produce a copy of T17’s PPA. Mr Hazel was also correct in his recollection that the Tribunal received a letter from solicitors on behalf of Infrastruktur SICAV-SIF as an interested party to the appeal bearing record number in *VA17/5/787* which confirmed at that time that Infrastruktur SICAV-SIF owned Powercon Wind Energy Limited.

- 10.4 The Tribunal accepts Mr Halpin's evidence that T17 was built as an extension and forms part of Carrowleagh wind farm and that it is connected to the Carrowleagh wind farm substation to facilitate export to the grid. It is of course appropriate that if two properties are within the same curtilage or contiguous to one another and in the same occupation that they should be treated for rating purposes as if they formed part of a single relevant property. There are situations, however, where they may be treated as two properties, for instance, because they are in different occupations or because they are used for entirely different purposes.
- 10.5 It may well be that Powercon Wind Energy Limited and the Appellant are companies within the same group of companies, but they are different legal entities. In all the circumstances nothing in the evidence adduced by the Appellant provided any basis for doubting the correctness of the information provided to the Tribunal in *VA17/5/787 Powercon Wind Energy Limited T/A Carrowleagh Wind Farm* as the Tribunal. In the circumstances the Appellant has failed to discharge the burden of proving that Mr. Hazell was incorrect in determining that the material change of circumstances that had occurred consisted of the coming into being of a newly erected turbine and that T17 should be entered on the Valuation List and valued separately from PN5008931 on the basis that T17 is not occupied by the same entity that is in occupation of PN5008931.
- 10.6 The alternative argument advanced by Mr. Halpin that T17 ought to be excluded from the valuation list is a new ground of appeal which was not advanced in the Notice of Appeal. Rule 23 of the Valuation Tribunal Rules 2019 requires a notice of appeal to state precisely each ground of appeal, giving particulars where appropriate, and to identify in respect of each ground the facts or matters relied upon as supporting that ground of appeal. Rule 55 provides that a notice of appeal may not be amended without the permission of the Tribunal and Rule 56 provides that an appellant shall not be permitted to rely on a new ground of appeal save in exceptional circumstances where the Tribunal considers that it is in the interests of justice and fairness to admit a new ground. The Appellant did not seek leave to amend its Notice of Appeal to raise a new and fundamentally different ground of appeal to the two grounds stated in that Notice.
- 10.7 Even if it was permissible for the Appellant to raise this point as a new ground of appeal it is misconceived and does not have any realistic prospect of success. On an appeal under s.34(1)(c) of the Act against a decision to include a property in the valuation list, the Tribunal's jurisdiction to remove a property from the relevant list can only arise if the Tribunal is satisfied that the property is no longer relevant property (e.g., incapable of beneficial occupation), or no longer exists, or no longer falls within Schedule 3. The argument for exclusion of T17 from the list was the failure of the revision manager to treat T17 as a structural alteration that changed the value of PN5008931, and such failure meant that T17 cannot function independently of the other turbines. This argument cannot prevail as T17 is a relevant property rateable in accordance with paragraph 1. (m) of Schedule 3 of the Act which identifies electricity generating stations, including where appropriate -
- (vii) wind generators, turbines and generators, together with ancillary plant and electrical equipment, including transformers*

and is capable of beneficial occupation as it fully functional having a cable connection to the Carrowleagh wind farm substation.

- 10.8 The Appellant's second and alternative ground of appeal is that T17's output data for 2019 indicates a capacity factor of 28.3%. The Appellant did not comply with a section 45 Notice issued on the 14th November 2019 and when it was subsequently copied to Mr Halpin on the 23rd March 2020 following receipt of representations on the 14th February 2020, Mr Hazel was furnished with the T17 commissioning date and the output data for 2019 and the month of January 2020. Mr Hazel did not consider this data to be dependable and following receipt of Mr Halpin's Précis of evidence requested the provision of output data from the commissioning date up to the most recent date available. That information was not forthcoming. It certainly appears to the Tribunal that T17 has yielded some anomalous results. The output data for January 2019 to July 2019 appears particularly low. Admittedly these are the first six months following commissioning and it may well be that T17 underperformed or for some other good reason output in those initial few months were poor. However, Mr Halpin could offer no explanation to account for what appear to be exceptionally low levels of output.
- 10.9 In the Tribunal's view it would clearly be wrong to estimate the NAV of T17 based on the average 2019 output data provided by the Appellant. It was open to the Appellant to put before the Tribunal output figures for the months of February 2020 to September 2020 in support of their contention that T17 has a capacity factor of 28.3% but it chose not to do so. If a detailed explanation is not available for wind data that ordinarily a valuer would be expected to provide given the wide disparity in the monthly figures supplied, the Tribunal must treat the wind data supplied with a degree of caution. The onus of proof rests with the Appellant and the absence of background information to explain what appear to be abnormally low outputs in the earlier months renders this ground of appeal unsustainable. The evidence and opinion of Mr Hazel for not departing from the 32% capacity factor is entirely persuasive particularly as the capacity factor for the sixteen other turbines comprised in Carrowleagh Wind Farm was determined by the Tribunal to be 30.19%, and given that Mr Halpin did not demur when it was put to him that T17 is a more modern and efficient turbine than those that were built in 2012, it appears to the Tribunal that the capacity factor of 32% adopted by Mr. Hazell is fair and reasonable in all the circumstances.

11. DETERMINATION

- 11.1 In conclusion the Tribunal finds that on the two grounds of appeal that were advanced by the Appellant there is nothing in fact or in law to persuade the Tribunal to the conclusion that the Respondent's determination was wrong. The appeal is disallowed and the rateable value of the Property is confirmed at €162,700 00 with effect from the 30th of September 2020.