Appeal No: VA19/1/0004

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

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

TULLYNAMOYLE WIND FARM III LTD **APPELLANT**

and

COMMISSIONER OF VALUATION **RESPONDENT**

In relation to the valuation of
Property No. 5017538, Utility at Tullynamoyle WindFarm 3 Limited Tullynamoyle, Killarga, Manorhamilton, County Leitrim.
(the '**Property**')

B E F O R E

Barra Mc Cabe BL, MRICS, MSCSI	**Deputy Chairperson**
Frank O'Grady MA, FSCSI, FRICS	**Member**
Fergus Keogh MSCSI, MRICS	**Member**

JUDGMENT OF THE VALUATION TRIBUNAL

ISSUED ON THE 4TH DAY OF JUNE, 2025

1. THE APPEAL

1.1 By Notice of Appeal received on the 28th day of January 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value ('NAV') of the above relevant Property was fixed in the sum of €824,000.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 28(4) of the Act because:

"*1. The Valuation of the subject property is excessive and inequitable. The sector remains subject to the Limerick Test Cases, namely VA15/5/012, VA15/5/038 and VA15/5/067 which remain undetermined by the Valuation Tribunal owing to legal issues.*

2. The remainder of the appellants grounds remain essentially the same as in VA15/5/038; namely the following issues arising in the Commissioner's methodology:

a) The Capacity factor. The valuation office are currently using a model that reflects a maximum capacity factor for the subject property. This does not take into account possible fluctuations in capacity based on poorer years for wind production. The hypothetical tenant would build in a buffer in order to make any rental bid and the capacity factor should be reduced by 5-10% to reflect this.

b) The 70:30 Landlord Tenant split in the divisible balance. Given that the sinking fund calculation involves estimating the value of the asset at the current time, rather than at a future projected time and that planning permissions for these projects elapse after 20 years at which point the tenant may be forced to extinguish the project if further permission is not granted, it is unlikely that the hypothetical tenant would be happy with only a 30% share of the profit derived. It is likely that in order to reach agreement, given the costs involved, a hypothetical tenant would require a 50:50 landlord tenant share, which is also in keeping with general practice.

c) The sinking fund calculation. At 1st Appeal, the Commissioner, for the first time, correctly identified wind farms as wasting assets, through application of a sinking fund allowance. Whilst the technical lifetime of a turbines is generally in the region of 20 years, the turbines are rendered technologically obsolescent in 12-15 years, due to advancements. The appellants believe that the formula should take account of this technological obsolescence as the hypothetical tenant would by highly likely to base his replacements on this fact, rather than the ultimate life of the turbines themselves.

d) The operating costs allowed by the Valuation Office would be insufficient for the hypothetical tenant. The manner in which the turbine is run by the actual tenant is not representative of a hypothetical tenant. In this instance, further analysis of comparable wind farm projects is required by the Valuation Office to ascertain the correct costings the hypothetical tenant would apply and disclose said to the appellants. The appellants believe that if these four conditions are met, a fair valuation on a receipts and expenditure valuation can be achieved.

3. However, it should be noted that even a 'fair' valuation on the basis of receipts and expenditure may not be in keeping with a fair value when weighed against other conventional power generation valuations and therefore what the hypothetical tenant might pay. The Commissioner currently appears to suggest that wind farms should pay ca. 400% more than conventional generating stations, which are just as profitable if not more so. All suppliers feed into the Single Energy Market (SEM) and as such should be fairly weighed against each other in order to arrive at an appropriate value for the subject property. Indeed, any attempt to value parts of the market in isolation may represent a subsidy to parts of the power generation market which could make future projects unviable and also may be contrary to Article 13 of the Renewables Directive. This must be taken into account in the 'stand back and look' stage of the valuation. Indeed, the appellants estimate of value may need to be revised downwards subject to the discovery of documents relating to the Net Annual Values applied to conventional generating stations, as these levels represent the maximum fair value for the subject property.

4. The schematic applied to the wind farms should use an economy to scale model as smaller projects tend to have higher fixed costs than larger ones. Indeed, if the Commissioner's argument was taken to its extreme, major providers such as SSE and ESB would build small farms, being in the Commissioners opinion 'more profitable', but this is not the case in reality.".

1.3 In the Notice of Appeal, the Appellant considered that the valuation of the Property ought to have been determined in the sum of €479,100. However, this figure was amended upwards to a sum of €540,000 in the Appellant's précis submitted in advance of the appeal hearing.

2. VALUATION HISTORY

2.1 On the 21st day of November, 2018 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €824,000.

2.2 A Final Valuation Certificate issued on the 4th day of January, 2019 stating a valuation of €824,000.

2.3 The valuation date for the rating authority area of Leitrim County Council was the 30th October 2015.

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 3rd day of March 2025. At the hearing, the Appellant was represented by Mr. David ES Halpin M.Sc. (Real Estate) Ba. (Mod). The Respondent was represented by David Dodd BL, instructed by the Chief State Solicitor who called Ms. Aoife McCrystal MSCSI, MRICS Dip Arb Law of Tailte Eireann, to give expert witness evidence.

3.2 In accordance with the Rules of the Tribunal, the parties respective valuers had exchanged their reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his or her précis as their 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 County Leitrim and comprises a wind farm electricity generating facility consisting of 6 Enercon E70/2300 turbines with a capacity of 2.3MW per turbine. The Total Installed Generating Capacity (TIGC) of the facility is 13.8 MW with a Maximum Export Capacity (MEC) of 11.98 MW.

4.2 There are two other wind farms located immediately adjacent to the Property, namely Tullynamoyle Wind Farm Phase I (PN 2212340) and Tullynamoyle Wind Farm Phase II (PN 5017537). The valuation of the former property was appealed to the Valuation Tribunal under appeal number VA17/5/659, the determination of which was issued on the 7th June 2023. The latter property was appealed along with the subject Property and both appeals were heard at the same time. A final determination in Tullynamoyle Wind Farm Phase II (PN 5017537) with Valuation Tribunal appeal number VA19/1/0003 was issued to the parties on 10th April 2025.

4.3 The Property is being valued for the first time.

4.4 The Property commenced operating as a wind farm on the 25th October 2017.

4.5 The Property is being valued as a Revision pursuant to section 49(1) of the 2001 Act.

5. ISSUES

5.1 A preliminary issue arose in respect of the nature of the appeal before the Tribunal, as the Appellant in their précis categorised the appeal as quantum only, while the Respondent categorised the appeal as a legal and a quantum appeal. Thereafter, three main issues fell for determination by the Tribunal.

The first issue was whether, in circumstances where the value of the Property falls to be determined under s 49(1) of the Act, whether the Tribunal can determine the NAV by matters other than by reference to the values, as appearing on the valuation list relating to the same rating authority as the Property is situate, of other properties comparable to that property.

The second issue to be determined is the method of assessing the output of the windfarm.

The third issue was whether the figure for operating costs should be €20 per megawatt hour (MWh) as sought by the Appellant or €15 per MWh as put forward by the Respondent.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The value of the Property falls to be determined for the purpose of section 28(4) of the Valuation Act, 2001 (as substituted by section 13 of the Valuation (Amendment Act, 2015) 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 Mr. Halpin opened by adopting his précis. In respect of the preliminary matter, he submitted that the issue with a valuation based on the tone of the list pursuant to s.49(1) of the Act was that the list is ostensibly fixed. He said that a Revision should take into account all the market evidence in the round and that a Receipts and Expenditure (R&E) method of valuation should be deemed as the leading method, especially given it was tested on appeal in VA17/5/659, which is adjacent to the Property and the determination of which was published in June 2023. In addition, Mr. Halpin argued that the Respondent did not defend their own scheme of valuation at that appeal.

7.2 In respect of the capacity / output issue, Mr. Halpin submitted that the Respondent's valuation leaves no divisible balance for the tenant. The Property did not become operational as a wind farm until 25th October 2017, two years after the Valuation Date and there was just one year of output information available to the tenant on the date the Proposed Valuation Certificate was issued, 27,991 MWh.

In his précis, Mr. Halpin provided the table at Appendix 1 (N/A to public), with four years output of MWh from 2018 - 2021. The Tribunal understands that more recent annual output figures for 2022, 2023 and 2024 were provided by Mr. Halpin to the Commissioner. While there was an offer by Mr Halpin to provide these figures to the Tribunal, no other annual output figures were ultimately put into evidence by Mr. Halpin.

Mr. Halpin relied on the Valuation Tribunal determination in VA17/5/659 as the most relevant source of comparable information. Mr. Halpin prepared a Receipts & Expenditure Valuation ('R&E Valuation') by adopting a combination of a generation figure for the Property and gross profit, operating and other figures from the adjacent wind farm determined in Valuation Tribunal appeal number VA17/5/659.

Mr. Halpin also submitted that the hypothetical tenant has to factor in bad years when output varies due to environmental factors outside their control and where a wind farm is concerned, the bid made by the hypothetical tenant is a made a year in advance. Finally, in respect of the sinking fund, he saw no reason to stray from the previous decisions of the Tribunal to calculate it over 15 years but accepted that the High Court had ruled differently on a 20 year period. He contended for a valuation of €540,000 based on his R & E valuation of the Property.

7.3 Under cross examination Mr. Halpin was directed to the Respondent's précis, in particular the comparable information for Tullynamoyle Wind Farm I, the subject of appeal VA17/5/659, the comparable property on which Mr. Halpin relied on in his own submissions. It was put to Mr. Halpin that this property was a 9.2 megawatt (MW) wind farm commissioned in 2011 and was comparable to the subject Property on a per megawatt hour basis. This comparable property was also in the same location and had similar capacity issues to deal with in respect of constraints and curtailments as the subject Property. Mr. Halpin took no issue with these points but held the view that this comparable property had a better location than the subject Property, something which he believed was relevant to valuation of the Property. However, Mr. Halpin objected to the Respondent's approach of using another adjacent wind farm property, Tullynamoyle Wind Farm II Ltd VA19/1/0003

as a comparable, in circumstances where this property is the second property of two forming part of the current appeal that is before the Valuation Tribunal and had yet to be determined on the date of appeal hearing.

7.4 Mr. Halpin took no issue when Mr. Dodd put it to him that list values were the starting point for valuing the Property. When reviewing the Appellant's estimate of electricity generation Mr. Dodd submitted that it was Respondent's view that the Appellant's estimate was low based on the fact that the Moy substation refurbishment project was substantially completed in 2020 representing a significant project for the security of supply in Mayo. In addition, the Corderry – Sranagh 110 KV line upgrade project was completed in 2020, which it was explained to the Tribunal, alleviated constraints and strengthened the transmission network in these areas of the west as part of the North Connacht 110 KV project between Moy substation near Ballina, Co. Mayo and Tonroe substation near Ballaghaderreen, County Roscommon. Based on the foregoing Mr. Dodd said it was the Respondent's position that an increase of 5 to 6% of output had been added for works to alleviate constraint and curtailment of the network. In reply, Mr. Halpin said that notwithstanding these improvement works, generation at the Property did not increase.

7.5 In respect of the service and maintenance costs, Mr. Dodd directed Mr. Halpin to paragraphs 10.5 and 10.8 of the Valuation Tribunal determination in appeal VA17/5/659 for Tullynamoyle Wind Farm Phase I, wherein the Valuation Tribunal explains how it came to a conclusion as to what level of maintenance and service costs should be applied to that particular wind farm based on its own unique set of circumstances.

7.6 In reply to Mr. Dodd's submission that the subject Property is just starting out on its (maintenance and service) lifecycle and therefore the operating expenses are at the lower end of the scale in its first 4-5 years of operation than the figure of €21.01/MWh applied by the Appellant, Mr. Halpin said that Respondent offers no analysis of the level of operating expenses that it applies. When Mr. Dodd said that operating expenses of €21.01/MWh is the highest cost, Mr. Halpin replied that it was a figure that should be accepted by both parties.

7.7 It is the Valuation Tribunal's understanding that the Mr Halpin relied primarily on the operational costs provided for Tullynamoyle Wind Farm Phase I (VA17/5/659), when undertaking the R&E valuation for the subject Property. Mr. Halpin contended that the hypothetical tenant has to be conservative about how he estimates his operating expenses and so the figure of €21.01/MWh is more appropriate one to apply in those circumstances.

8. RESPONDENT'S CASE

8.1 Ms. McCrystal adopted her précis as her evidence in chief and provided an explanation of how the "Tone of the List" was derived for County Leitrim. She also undertook an analysis of Valuation List Values, a table of which is included at Appendix 2 below (N/A to public), and a commentary of Revaluation Appeal Outcomes in Leitrim was also included.

8.2 In terms of methodology, the Respondent submits that the requirement of section 49(1) of the Act is to estimate the NAV 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, and Ms. McCrystal is of the view that it is accepted that such comparable properties, in this case wind farms do exist in County Leitrim. The Respondent analysed the comparable properties based on how the Net Annual Value devalues per installed Megawatt Hour because it felt this was the most suitable metric of comparison. The Respondent is also of the view that a further adjustment to reflect locational factors represented by achievable Capacity Factor is warranted for comparison purposes. Full details of the Respondent's list of comparable wind farms can be found at Appendix 3 (N/A to public) and detail below is list of the five comparable wind farms submitted by the Respondent:

Table 1: Respondent's Comparable Wind Farm Schedule

No.	Wind Farm	Property No.
1	Tullynamoyle Wind Farm Phase I	PN 22122340
2	Tullynamoyle Wind Farm Phase II	PN 5017537
3	Carrickeeny Wind Farm	PN 5006325

4	Faughary Wind Farm	PN 5009193
5	Garvagh Glebe Wind Farm	PN 2212342

8.3 The subject Property came into operation in October 2017 while the other property under appeal, Tullynamoyle Wind Farm Phase II, PN 5017537, came into operation in January 2018. Ms McCrystal said the figures supplied by the Appellant should be considered in light of the completion of the Moy substation refurbishment works and the Corderry – Sranagh 110 KV line upgrade project in 2020, referred to above at paragraph 7.4, that improved the curtailment/constraints on the network. Page 27 of the Respondent's précis illustrated the close locational proximity of the Respondent's 'tone of the list' comparable properties to that of the subject Property.

Ms McCrystal submitted that s. 63 of the 2001 Act means that the values on the valuation list are presumed to be correct, something that underpins a section 49(1) 'tone of the list' Revision valuation of the subject Property. Ms. McCrystal said that comparable wind farm number 3 in Table 1 above at Carrickeeny, was in line with the subject property notwithstanding the fact that this comparable wind farm started to operate in 2014 while the subject Property commenced operations in October 2017. She directed the Tribunal to the output information for the years 2018 to 2021 available at Appendix 4 below (N/A to public), which shows output reducing at the subject Property in 2021 after the works referred to earlier to diminish curtailment / constraints on the network had completed in 2020, something which the Respondent puts down to a 'bad wind year'.

8.4 Under cross examination, Mr. Halpin made reference to the fact that as the Respondent claimed that 2021 was a 'bad wind year' and therefore a low generation year at the subject Property, this made the valuation for Tullynamoyle Wind Farm Phase I (Valuation Tribunal appeal number VA17/5/659) all the more relevant as it was adjacent to the subject Property, something which Ms. McCrystal did not necessarily agree with. Ms. McCrystal said she was not aware of additional figures for the subject Property post the Final Valuation Certificate dated 4 January 2019. She said she was not aware whether an R&E valuation had been undertaken by the Respondent on comparison No.3 because she had not dealt with

this property however, Mr. Halpin submitted that the Respondent must have undertaken an R&E valuation on comparison No. 3. When asked by Mr. Halpin why Tullynamoyle Wind Farm Phase I (Valuation Tribunal appeal number VA17/5/659) was not the starting point for the Respondent's valuation of the subject Property, Ms. McCrystal indicated that this property had entered into operation in 2011 and other comparable properties had entered into operation closer to that of the subject Property, which commenced operation in October 2017. In respect of output, Ms. McCrystal did not agree with Mr. Halpin that the hypothetical tenant would be overly conservative even though they would only have had the benefit of one year's accounts, but she could not say whether the hypothetical tenant would bid more rent if they had better information on output. She also replied that a planning application had been submitted by a developer for more wind farms in the area but Mr. Halpin countered this by submitting that those wind farms would not be built for many years into the future, and there was no guarantee that they would be built at all. Ms. McCrystal acknowledged that that notwithstanding the completion of the Moy substation refurbishment works and the Corderry – Sranagh 110 KV line upgrade project, the curtailment /constraint issues at the Property had still not been resolved.

9. SUBMISSIONS

9.1 In advance of the appeal hearing the Respondent submitted written Outline Legal Submissions however, no written submissions were submitted by the Appellant. At the hearing, Mr. Dodd made a number of legal submissions to illustrate the distinction between valuing a property by a Revaluation under the 2001 Act based on the 'first principal methods' and valuing a property by a Revision pursuant to section 49(1) of the Act.

First principal methods said Mr. Dodd, were in order of preference, firstly rental evidence from the market, secondly from an analysis of the gross revenue / gross costs and the divisible balance (commonly used terms the Receipts & Expenditure (R&E) method of valuation), and finally the 'Contractor's Method' of estimating the value of a property based on the cost of the land and the cost to construct the buildings on the land.

9.2 Mr. Dodd's primary legal submission was that the none of the first principal methods apply to the valuation of the subject Property because it is being valued under a Revision, which is governed by section 49(1), by refence 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 the Property, which is often referred to as the 'tone of the list'. This means that the Property is valued by reference to the prevailing values of comparable properties appearing on the list in the County Leitrim rating authority area.

"Revision" pursuant to section 28 of the Act provides for the revision of an individual entry on a valuation list prior to a revaluation or between revaluations of the entire rating authority area in which the Property is located, in this case County Leitrim. Section 28 provides that a Revision may only be conducted if a "*material change of circumstances" (*MCC) has taken place since the property was last valued, an expression that is defined in section 3 of the 2001 Act.

In addition, Mr. Dodd said that section 63 of the Act means that the statement of the value of a property as appearing on a valuation list is deemed to be a correct statement of the value under section 49(1) until it has been altered in accordance with the provisions of the 2001 Act, as amended. Mr. Dodd submitted that this means s.63 is not a presumption of correctness that can be rebutted in a particular case, but rather the values are deemed to be correct unless altered by the Act. As such Mr. Dodd said the list values are the rent fixed under a statutory hypothesis.

9.3 In citing paragraphs 26, 27 and 28 of the judgment of the Court of Appeal in *Dayhoff Limited v Commissioner of Valuation* [2022] IECA, and the correctness of Tone of the List values pursuant to a Revision under s. 49(1) of the Act, Mr. Dodd directed the Tribunal to the fact that all of the figures relied on by the Appellant in their (R&E) valuation of the subject Property had come from somewhere other than the valuation list. Relying again on paragraph 26 of *Dayhoff*, Mr. Dodd submitted that the rating system is not concerned with absolute values, but rather relevant values are more important.

9.4 Mr. Dodd argued that Tullynamoyle Wind Farm Phase I (PN 22122340) (Valuation Tribunal appeal number VA17/5/659) is not the same as the subject Property. He reiterated that the Appellant had not used figures from the valuation list nor from the financial accounts when undertaking their valuation of the subject Property, but instead had relied primarily on figures provided in the appeal of Tullynamoyle Wind Farm Phase I, thereby ignoring entirely the tone of the list values required to be used pursuant to s.49(1) of the Act.

9.5 In reply Mr. Halpin stated that it was a matter of fact that the property was being valued by Revaluation pursuant to section 19(5) of the Act and as such 'equity' and 'uniformity' needed to be achieved. In also citing paragraph 26 of *Dayhoff*, he said that relative value rather than absolute value should not be interpreted as stripping the values of properties on the valuation list from their original value and facts in contrast relying solely on size and electricity generation. He said that there are anomalies in the list which is advantageous to the "strip away methodology" of the Respondent. Mr. Halpin submitted that the 'tone of the list' values (of wind farms in County Leitrim) are based on R&E valuations of those properties and the Commissioner did not like the Valuation Appeal determination in Tullynamoyle Wind Farm Phase I (PN 22122340) (Valuation Tribunal appeal VA17/5/659), and as a result was trying to give less weight to this property when valuing the subject Property.

9.6 Mr. Halpin submitted that the relevant property in *Dayhoff* previously stood in the valuation list, but that the subject Property was a brand new property newly added to the list, and that the Respondent does not give any consideration at all to the method of valuation applied to valuing the subject Property, and that they must attempt to do a similar valuation exercise.

9.7 In his final remarks, Mr. Halpin said that the constraints and curtailment issues remain at the subject Property even after the upgrade works detailed by the Respondent.

9.8 In summary, the Respondent stated that the Appellant had used too high an operating cost for a wind farm that was one year old when it was valued and that the Appellant relied

entirely on the Valuation Appeal decision of Tullynamoyle Wind Farm Phase I (PN 22122340) (Valuation Tribunal appeal VA17/5/659).

10. FINDINGS AND CONCLUSIONS

10.1 On this appeal the Tribunal has to determine the value of the Property so as to achieve, insofar as is reasonably practical, a valuation that is correct and equitable so that the valuation of the Property as determined by the Tribunal is relative to the value of other comparable properties on the valuation list in the rating authority area of County Leitrim.

10.2 On the preliminary issue of whether this appeal is a quantum only appeal as contended for the Appellant, or a legal and quantum appeal as contended for by the Respondent, the Tribunal finds that this was clearly a legal and a quantum appeal. This finding is based on the fact that both parties were asking the Tribunal to interpret s.49(1) of the Act on an entirely contrasting basis with the Appellant also asking to consider s.19(5) of the Act with regard equity and uniformity, when considering the valuation of the subject Property.

10.3 In respect of the primary legal issue in dispute between the parties, namely the interpretation of s.49(1) of the Act, based on a reading and consideration of this section of the Act as well as sections 3 and 63 of the Act, the Court of Appeal judgment in *Dayhoff* and on hearing and considering the submissions from both parties, the Tribunal finds that the Commissioner, and the Tribunal are obliged to value the subject Property by reference to section 49. In this regard, *Dayhoff* at paragraph 26 is instructive:

> "*The system are provided for in the 2001 Act requires that a property be valued by reference to an estimate of the annual rental value of that property at a specified valuation date. The 'tone of the list' assumes that values as they appear in the valuation list are accurate assessments of the rent the properties would command under the relevant statutory conditions, and it thus makes sense that the valuation of comparable properties be conducted by refence to that listing"*

10.4 In terms of section 3 of the Act with regard the definition of material change of circumstances (MCC), the Appellant put forward no authority for the submission that a brand new property on the list for the first time should not be valued based on the tone of the list.

10.5 In respect of the formation of the tone of the list itself and the quality of the valuation and quantity of comparable properties on that list *Dayhoff* is again instructive at paragraph 35 wherein it states the following:

> "*Dayhoff in its submissions also refers to the fact that s.49 refers to 'other properties' for the purposes of the exercise in comparison, and it was suggested there had to be more than one such property. This is not correct. Section 18(a) of the Interpretation Act 2005 posits a default position whereby the singular in a statute imports the plural and vice versa. That default position can be displaced expressly or by context to suggest that it was intended to displace it, but there must be something in the context to suggest that it was intended to displace it. Not only is there no such indication in this case, but the conjunction between s.49 and the definition of 'material change in circumstance' in s.3(1) would strongly suggest the opposite intent."*

In the present appeal, the Appellant while only relying on one of them in valuing the subject Property, identified a total of nine windfarms in the valuation list in County Leitrim. The Respondent for their part provided a list of eight windfarms in County Leitrim other than the subject Property and the other property under appeal that was before this Division, namely Tullynamoyle Wind Farm Phase II (PN 5017537). Of the eight other wind farms identified by the Respondent, comparable NAV details for five of those eight wind farms were included in the Respondent's précis to identify the tone of the list. The Tribunal finds based on the foregoing that the tone of the list for wind farms in County Leitrim has been adequately formed both in qualitative and quantitative terms.

10.6 In respect of the Appellant's submissions regarding anomalies in the list and the posited obligation on the Respondent to value the subject Property by using the tone of the list as a starting point followed by an R&E valuation, the Tribunal finds that the Appellant submitted no authority or evidence to substantiate this claim. While it is the view of the Tribunal that a Revision Officer is allowed to take into account valuations of other comparable properties, they are not obliged to retrospectively undertake R&E valuations of all the other comparable properties in the list on which they rely, nor indeed are they required to undertake an R&E valuation of the subject Property when valuing it pursuant to s.49(1) of the Act. Even on a simple reading of the relevant sections of the Act this was clearly not what was intended by the Oireachtas when enacting section 49(1) of the 2001 Act, when read in conjunction with section 63 of the 2001 Act.

10.7 As the Tribunal is firmly of the view that section 49(1) is mandatory and the Respondent is able to rely solely on the tone of the list when undertaking a Revision valuation, the Tribunal is not going make any findings in respect of the Appellant's R&E valuation of the subject Property, including any amendment to the operating expenses. As a result of the foregoing, there remains a singular finding to be made in respect of the comparable output / electricity generation at the subject Property.

10.8 Ms. McCrystal had regard in her valuation to 'constraints / curtailments' and considered the first year's output to be a 'bad wind year', but accepted that the 'down the line works' did not in practice improve the 'constraints / curtailments'. In regard to the output, the Tribunal finds that notwithstanding that significant upgrade works that were completed in 2020, the output figures provided to the Tribunal clearly illustrate that the constraints / curtailments on electricity generation at the subject Property remain and that the lack of increase in generation at the subject Property in 2021 cannot be omitted simply because it was a 'bad wind year.

10.9 The Tribunal recognises the particular difficulty that the valuers have in relation to valuing this property due the unusual circumstances that arise caused by the misalignment of the valuation date and the commissioning date, and the fact that only one year's output figures

for the Property were available on the valuation date. The Tribunal is of the view that the hypothetical tenant would be conservative in its rental offer having regard to these issues.

10.10 The valuation of the Property is governed by Section 49 of the Valuation Acts 2001-2020. Section 49(1) which provides that the valuation of the subject Property is determined by reference to the values, as appearing on the valuation list relating to the same rating authority area as the Property is situate in, of other properties comparable to that property. This is historically referred to as the Tone of the List and aims to ensure that there is equity and uniformity between ratepayers.

10.11 The Property is one of eleven wind farms in the County Leitrim Rating Authority Area and the Tribunal has had regard to the commissioning date of the Property, the number, capacity and size of turbines relative to other windfarms in the County Leitrim Rating Authority Area. The Tribunal has considered all the information both oral and written placed before it, and the fact that the Tribunal does not make specific reference to any particular document or submission does not indicate that it has not been into taken account.

10.12 The Tribunal has had particular regard to the following wind farms and their valuations as they appear on the List;

Tullynamoyle 1 Wind Farm (PN 2212340) is a smaller and older windfarm with four turbines and was commissioned in 2011. The turbines are of a similar capacity to those of subject Property at 2.3 MW per turbine. Its valuation was determined by the Tribunal with an adopted capacity factor of 29.11% resulting in a NAV valuation of €56,626 per MW equivalent to €130,500 per turbine.

Carrickeeny (PN 5006325) is a smaller windfarm with four turbines and was commissioned in 2014. The turbines are of a smaller capacity to those of subject Property at 2.0 MW per turbine. Its appeal to the Tribunal was withdrawn prior to a hearing. It is valued with an adopted capacity factor of 32.60% resulting in a valuation of a NAV valuation of €59,217 per MW equivalent to €143,000 per turbine.

Faughary Wind Farm (PN 50094193) is a smaller windfarm with three turbines and was commissioned in 2014. The turbines are of a smaller capacity those of subject Property at 2.0 MW per turbine. Its valuation was agreed prior to a Tribunal hearing with an adopted capacity factor of 38.00% resulting in a valuation of a NAV valuation of €59,684 per MW equivalent to €168,000 per turbine.

10.13 The Tribunal considers that the overall approach adopted by the Respondent in valuing the Property is correct having regard to the requirements of the Act however, it considers that insufficient account was taken regarding the impact of the prevailing constraints and curtailments on the future generation outputs and the regard that the hypothetical tenant would have in the formation of its rental valuation.

DETERMINATION:

Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to € 780,000.00.

RIGHT OF APPEAL:

In accordance with section 39 of the Valuation Act 2001 any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.