



Objection

Objector:	Mr. John Callaghan
Organisation Name:	Ireland Against accelerated Seal Level and Temperature Rise
Objector Address:	10 THE CLOISTERS, Oldcastle Road, Townparks Kells, Co. Meath.
Objection Title:	Objection 3rd party objection for Reg No:[P1113-02]
Objection Reference No.:	OS011938
Objection Received:	24 April 2025
Objector Type:	3rd Party
Oral Hearing Requested?	Yes

Application

Applicant:	Echelon Clondalkin DC Services Limited
Reg. No.:	P1113-02

See below for Objection details.

Attachments are displayed on the following page(s).

Objection to a Proposed Determination on a Licence Application

Register Number P1113-02

Applicant Name Echelon Clondalkin DC Services Limited

Appellant: John Callaghan

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1.0 Introduction

The proposed development will increase Natural Gas Demand by 2.45TWh¹ on foot of the 2023 National Demand of 48.26TWh² increasing gas demand by 5.1%.

Various indicators of generation efficiency arise including the 4.6.1 - Water and Energy Usage - Attachment³

Electricity Generated on Site	914,632 MWh
Gas Consumption	208,514,928 M ³
Gas Consumption	2,450,000 MWh

$$914,632 / 2,450,000 \times 100\% = 37.33\%$$

The Inspectors Report refers to efficiency of 35%

SEAI have assessed the efficiency of generation of Grid Electricity at 59.1%⁴ and the CO2 intensity per kWh at 255g /kWh. Hence

Grid power	914,632MWh	233,231 Tonnes CO2
Onsite Generation	914,632MWh	499,800 ⁵ Tonnes CO2

1.1 Key Issues

Hence the generation of electricity on site as opposed to sourcing electricity from the grid more than doubles emissions. 214%

The Generation of power onsite increases National gas demand by 5.1% in the context of additional grid generation being conditioned to use HVO low emission fuel per An Bord Pleanála Grant ABP-319278-24 Condition No 1 requiring the facility to be operated in accordance with the planning application documentation lodged describing the fuel to be used as HVO.

¹ Gas Network Ireland Conversion of 11.7kWh/ M³ see <https://www.gasnetworks.ie/corporate/gas-regulation/transparency-and-publicat/dashboard-reporting/gas-quality/daily-average-calorific-values-15-zones/>

² Energy in Ireland 2024 page 46 <https://www.seai.ie/sites/default/files/publications/energy-in-ireland-2024.pdf>

³ https://epawebapp.epa.ie/licences/lic_eDMS/090151b2808e0ba9.pdf

⁴ Energy in Ireland 2024 SEAI page 58

⁵ SEAI Emission Factor Adjusted to Gas Networks Calorific Value Scope 1 only

2 Grounds of Appeal

2.1 The EPA is an Emanation of the State and therefore the CJEU Judgment has direct effect per *Inter-Environnement Wallonie ASBL v Région wallonne*. Case C-129/96

Refer to (**Foster v British Gas, Case C-188/89**), are bound to apply the Energy Efficiency First Directive during transposition (deadline October 11, 2025).

Put simply if the Private sector can use renewable fuel to generate power from the grid for public use, then renewable fuel must be studied as a reasonable alternative for this project even if it is more expensive.

2.2 The EPA in the exercise of its functions must not frustrate the purpose of a directive per the ruling in *Inter-Environnement Wallonie ASBL v Région wallonne*. Case C-129/96. I respectfully refer the EPA to the following paragraphs of Case C-129/96. I submit that the EPA has erred in interpreting European Law

44 Nevertheless, it is during the transposition period that the Member States must take the measures necessary to ensure that the result prescribed by the directive is achieved at the end of that period.

45 Although the Member States are not obliged to adopt those measures before the end of the period prescribed for transposition, it follows from the second paragraph of Article 5 in conjunction with the third paragraph of Article 189 of the Treaty and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed.

Direct Effect: *Inter-Environnement Wallonie* (para. 45) holds that Member States must not compromise a directive's objectives during transposition. **Article 3** and **Recital 19** of the EED impose a clear, precise, and unconditional obligation to apply EEF1st in major investments (>€100 million), requiring CBAs for energy-efficient solutions (e.g., CCS, HVO). This binds the EPA and planning authorities, as **emanations of the state**, per **Foster v British Gas (Case C-188/89)**.

Recital 15: Establishes EE1st as an **overarching principle**, mandating energy efficiency as the **first option** in policy and investment decisions, prioritizing demand-side solutions (e.g., grid reliance) over supply-side investments (e.g., gas turbines).

Recital 19: Requires CBAs for projects like Crag Digital (>€100 million), using rising EU ETS prices (Directive 2003/87/EC) to incentivize low-carbon solutions like CCS or HVO.

Recital 102: Mandates CCS consideration unless cogeneration is not cost-effective, applicable to Crag Digital's Emissions.

State Duty: The EPA's reliance on EU ETS (Page 45) and failure to impose CCS/HVO conditions (Page 14) violates EE1st, as does the planning authority's lack of **section 98(3)** conditions (e.g., monitoring gas use, Page 4). Both are **emanations** obligated to uphold **Recital 18's** holistic approach and **Recital 14's** GHG reduction goals.

2.3 There are several inconsistencies in all documents on file. I believe that the only reasonable course is to have an Oral Hearing.

2.4 Eire Grid's Inability to Supply Power to Large Users in Dublin.

I submit that the development is premature at the current site while the possibility of locating it at a grid connectable site has not been explored. I submit that there are several alternative sites that are services with the highest speed of fibre that have not been evaluated.

2.5 CO2 Sequestration OR Cogeneration-District Heating Efficiency

Recital 102 of the EED requires CCS or cogeneration assessment unless cogeneration is not cost-effective, triggering sequestration.

Recital 102 and District Heating Feasibility

- **Recital 102:** Exempts installations from cogeneration CBAs if CCS is planned and cogeneration/district heating is **not cost-effective**. For Crag Digital, no CCS plans exist (Page 45), and district heating feasibility must be assessed

Recital 102 Requirement: Since it is maintained that district heating is **not cost-effective** in Clondalkin, a **CBA for CCS** is mandatory. The EPA's failure to assess CCS (Page 45), despite EU precedents (Northern Lights, Porthos), breaches **Recital 19's** CBA obligation and **Recital 18's** holistic approach. **Tanker transport at 15–20 bar** to sites like Northern Lights is feasible via Dublin Port, capturing ≈90% of 385,121 to 500,000 tonnes annual CO2 emissions

2.6 The split function between the planning authority (South Dublin County Council) and the Environmental Protection Agency (EPA) under section 98 of the Environmental Protection Agency Act 1992 and section 173A of the Planning and Development Act 2000 compromised a holistic assessment of the project's environmental impacts, particularly its gas demand.

Refer to Križan (Case C-416/10), Holohan (Case C-461/17), and Martin v An Bord Pleanála (No. 2) ([2008] IESC 23).

Section 98, EPA Act 1992: Prohibits planning authorities from imposing conditions controlling **emissions** or **fuel** (section 98(1)–(2)), reserving these for the EPA, but allows **section 98(3)** conditions to mitigate significant adverse environmental effects (e.g., monitoring gas use). The EPA regulates emissions.

The EPA cannot rely on a Environmental Impact Assessment carried out that on a basis that limited the consideration of alternatives by law. The matter has been considered by the Superior Courts using a limited Chimney Analogy. Again the context of Jurisprudence has changed predating Climate related Directives.

The split function for Assessment between planning and the EPA creates a **blind spot**, with neither authority addressing the project's full environmental footprint, undermining Ireland's 51% GHG reduction target.

Decision makers must be mindful that Ireland has yet to achieve the 2020 Energy and Climate Target of 16% Renewable Energy with the current outturn at just 14%

2.7 The EPA must make its decisions in accordance with EU Law.

The EPA is respectfully referred to the Judgement of Clarke CJ in **Callaghan v An Bord Pleanála & ors** | [2017] IESC 60

5. Conclusions

5.1 For the reasons set out in this judgment I have come to the view that the proper approach of the Court to determining the scope of an appeal subsequent to the 33rd Amendment is to confine an appellant to issues which can fairly be said to arise within the scope of the appeal as identified in the determination of this Court granting leave to appeal. However, I also propose that the Court should not, in so confining an appeal, adopt an overly technical or narrow approach but rather should consider whether, on a fair basis, it can be said that the arguments sought to be relied on come within the broad scope of the leave granted.

5.2 In addition, I have come to the conclusion that, where the potential construction of a statute or legislative measures is at issue in proceedings, this Court should not ignore arguments which might impact on the proper objective construction of the measures concerned which derive either from the principle of constitutional construction or from the requirement of conforming interpretation as a matter of European Union law.

5.3 In those circumstances, I would propose that Mr. Callaghan be permitted to rely on any European Union law arguments which might be relevant to the proper construction of the statutory framework under the 2006 Act which is at the heart of these proceedings provided that those arguments are directed towards a construction of that statutory framework in the manner advanced on behalf of Mr. Callaghan in the courts below.

2.8 Conclusion

I am asking the EPA to grant an Oral Hearing. I undertake to participate fully to avail the proper determination of this application.

I am open to accepting practical mitigations like the provision of funds to accelerate the energy upgrade of people with low income who need energy upgrades.

Similarly, arrangements that mitigate emissions with carbon sequestration measures would be appropriate and proportional. It's a complex subject that is important to our State. It is vital that a low emission path is secured in early course for the vital Data Sector.

Ireland has the lowest penetration of renewable energy in the entire EU at just 14% still falling short of the 2020 Target of 16%

2.9 There is a reasonable expectation that a State Authority will make an EU Law Compliant Decision per Reid v An Bord Pleanála line of cases

R v Dytham [1979] QB 722 is an English criminal law case dealing with liability for omissions. The court upheld the common law mantra that if there is a duty to act, then failure to do so is an offence.

*Dytham was followed in Irish Law in **The DPP V Bartley** 1998 WJSC-CCC 5331*

Public Officials who shirk their duty can go to jail!

ENDS