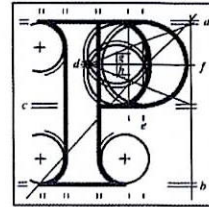


**Our Case Number:** ABP-316178-23



**An  
Bord  
Pleanála**

Development Applications Unit  
The Manager  
Newtown Road  
Wexford  
Co. Wexford  
Y35 AP90

**Date:** 22 June 2023

**Re:** Proposed development of Oweninny Wind Farm Phase 3 consisting of 18 wind turbines.  
Within the townlands of Laghtanvack, Croaghaun (also known as Croaghaun West), Moneynieran,  
Corvoderry, Shanvolahan, Dooleg More, Shranakilly, Bellacorrick and Shanvodinnaun, Co. Mayo

Dear Sir / Madam,

An Bord Pleanála has received your submission in relation to the above mentioned proposed development and will take it into consideration in its determination of the matter.

The Board will revert to you in due course in respect of this matter.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the local authority and at the offices of An Bord Pleanála when they have been processed by the Board.

More detailed information in relation to strategic infrastructure development can be viewed on the Board's website: [www.pleanala.ie](http://www.pleanala.ie).

If you have any queries in the meantime please contact the undersigned officer of the Board. Please quote the above mentioned An Bord Pleanála reference number in any correspondence or telephone contact with the Board.

Yours faithfully,

Sarah Caulfield  
Executive Officer  
Direct Line: 01-8737287

PA09

<b>Tel</b>	<b>Tel</b>	(01) 858 8100
<b>Glaao Áitiúil</b>	<b>LoCall</b>	1800 275 175
<b>Facs</b>	<b>Fax</b>	(01) 872 2684
<b>Láithreán Gréasáin</b>	<b>Website</b>	<a href="http://www.pleanala.ie">www.pleanala.ie</a>
<b>Ríomhphost</b>	<b>Email</b>	<a href="mailto:bord@pleanala.ie">bord@pleanala.ie</a>

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

## Klaudia Wiezowska

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**From:** Sarah Caulfield  
**Sent:** Thursday, June 22, 2023 11:38 AM  
**To:** Simon.Dolan@npws.gov.ie  
**Cc:** Klaudia Wiezowska  
**Subject:** RE: SID application ABP-316178-23 in Bellacorick, Co. Mayo

Dear Simon,

The Board acknowledges receipt of your email and attached submission in relation to the above-mentioned application.

Kind Regards,  
Sarah

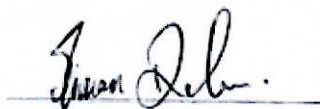
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**From:** Simon Dolan (Housing) <[Simon.Dolan@npws.gov.ie](mailto:Simon.Dolan@npws.gov.ie)>  
**Sent:** Thursday, June 22, 2023 10:19 AM  
**To:** SIDS <[sids@pleanala.ie](mailto:sids@pleanala.ie)>  
**Subject:** SID application ABP-316178-23 in Bellacorick, Co. Mayo

A Chara,

Attached please find the Archaeological & Nature Conservation recommendations.

Regards,



Simon Dolan

An Roinn Tithíochta, Rialtais Áitiúil agus Oidhreachta  
Department of Housing, Local Government and Heritage  
*Executive Officer*

Aonad na nIarratas ar Fhorbairt  
*Development Applications Unit*

Oifigí an Rialtais  
*Government Offices*

Bóthar an Bhaile Nua, Loch Garman, Contae Loch Garman, Y35 AP90  
Newtown Road, Wexford, County Wexford, Y35 AP90



**Planning Ref: ABP-316178-23**

*(Please quote in all related correspondence)*

22 June 2023

Secretary  
An Bord Pleanála,  
64 Marlborough Street,  
Dublin 1  
D01 V902

Via email: [sids@pleanala.ie](mailto:sids@pleanala.ie)

**AN BORD PLEANÁLA**

**22 JUN 2023**

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- 064478-23  
ABP- 316178-23

Re: Notification to the Minister for Housing, Local Government and Heritage under the Planning and Development Act, 2000, as amended.

**Proposed Development:** SID application for Oweninny Windfarm Phase 3 at Bellacorick, Co. Mayo.

A chara

I refer to correspondence received in connection with the above. Outlined below are heritage-related observations/recommendations co-ordinated by the Development Applications Unit under the stated headings.

### **Archaeology**

It is noted that the Environmental Impact Assessment Report (EIAR) submitted as part of the planning application includes a desk-based Archaeological Impact Assessment (AIA) which was carried out in relation to the proposed development by IAC Ltd (EIAR Chapter 18; date March 2023). The Department has reviewed the EIAR and is broadly in agreement with the findings in relation to Archaeology and Cultural Heritage as set out therein.

However, issues of particular concern remain unresolved in relation to:

- 1) ***Indirect impacts to the setting of Recorded Monuments and non-Statutory SMR sites:*** The study area for the AIA as set out in Chapter 18 of the EIAR is not of sufficient size to adequately assess the possible effects of the proposed development on the wider archaeological landscape.

Chapter 18 states that a study area of 2km extending out from the redline boundary of the proposed development site (PDS) was established with a view to assessing

**Aonad na nIarratas ar Fhorbairt**

*Development Applications Unit*

**Oifigí an Rialtais**

*Government Offices*

**Bóthar an Bhaile Nua, Loch Garman, Contae Loch Garman, Y35 AP90**

*Newtown Road, Wexford, County Wexford, Y35 AP90*





potential indirect impacts (or impacts to setting). On that basis potential impacts to setting were only evaluated for seven Recorded Monuments. The ZTV drawings (EIAR Appendices 15.1 and 15.3) indicate potential visibility for all proposed turbines extends across an area extending 5-10km out from the redline boundary. While acknowledging that ZTV analysis does not include many screening factors such as existing buildings or landscape planting, the stark contrast between the limited study area for the archaeological and cultural heritage environmental baseline and that potential extent of the area where impacts to setting vulnerable receptors (i.e. visual impacts) could occur is concerning. An EIA for a scheme of this type must include an adequate assessment of the possible effects of the proposal on the wider archaeological landscape. It is of importance, therefore, that the study area should be of sufficient size and extent to support this.

In this regard the department notes, for example, that in addition to the seven Recorded Monuments included within the scope of this EIA, there are a further 23 known archaeological monuments located within 5km of the PDS. These include a barrow (MA036-001----), two burial grounds (MA020-003----; MA020-004----), a cist (MA027-003----), an enclosure (MA037-001----), a field boundary (MA028-003001-), a fulacht fia (MA028-003006-), hut site (MA028-003005-), a megalithic structure (MA029-055----), four megalithic tombs (MA020-001----; MA021-044----; MA021-064----; MA028-003003-), three ringforts (MA028-009----; MA029-034----; MA037-002----), a road/trackway (MA036-003----), a souterrain (MA037-002001-), three standing stones (MA021-095----; MA028-003002-; MA029-056----) and two stone rows (MA020-002----; MA028-003004-). A number of these known monuments are site types that are particularly vulnerable to impacts on setting such as standing stones, stone rows, megalithic tombs and ringforts.

**2) *Cumulative impacts to the archaeological and cultural heritage environment:***

The proposed development is one of a number of permitted and proposed wind farms developments within this part of county Mayo (Section 5.3.2 of the EIAR lists 40 no. relevant developments within 10km of the PDS of which 13 relate to wind energy). Despite this Chapter 18 does not discuss or evaluate the potential cumulative impact of this proposed development to the archaeological and cultural heritage environment, with particular regard to potential impacts on setting/indirect impacts that might occur. Chapter 15 of the EIAR—dealing with Landscape and Visual—does address cumulative impacts at Section 15.9, but only in terms of the more general landscape considerations. It does not assess/address the specific vulnerabilities that may be present within the archaeological and cultural heritage environment. It is not clear if the likely cumulative effects of this proposed development to the archaeological and cultural heritage environment have been evaluated.

If Further Information is being requested by the Board, it may be beneficial to consider including clarification of the aforementioned points as part of the request.

Notwithstanding this, the Department of Housing, Local Government and Heritage advises that the following should be included as a condition of any grant of permission. Note these recommended conditions align with Sample Conditions C3, C5 and C6 as set out in *OPR Practice Note PN03: Planning Conditions* (October 2022), with





appropriate site-specific additions/adaptations based on the particular characteristics of this development and informed by the findings of the EIAR.

**Archaeological Requirements:**

1. All mitigation measures in relation to archaeology and cultural heritage as set out in Chapter 18 of the EIAR (IAC Ltd; date March 2023) shall be implemented in full, except as may otherwise be required in order to comply with the conditions of this Order.
2. The developer shall engage a suitably qualified archaeologist (licensed under the National Monuments Acts) to carry out pre-development archaeological testing in areas of proposed ground disturbance within the wind farm site and to submit an archaeological impact assessment report for the written agreement of the planning authority, following consultation with the Department of Housing, Local Government and Heritage, in advance of any site preparation works or groundworks, including site investigation works/topsoil stripping/site clearance and/or construction works.
  - a. The report shall include an archaeological impact statement and mitigation strategy. Where archaeological material is shown to be present, avoidance, preservation in-situ, preservation by record (archaeological excavation) and/or monitoring may be required.
  - b. Any further archaeological mitigation requirements specified by the planning authority, following consultation with the National Monuments Service, shall be complied with by the developer.
  - c. No site preparation and/or construction works shall be carried out on site until the archaeologist's report has been submitted to and approval to proceed is agreed in writing with the planning authority.
3. The Construction Environment Management Plan (CEMP) shall include the location of any and all archaeological or cultural heritage constraints relevant to the proposed development as set out in Chapter 18 of the EIAR and by any subsequent archaeological investigations associated with the project. The CEMP shall clearly describe all identified likely archaeological impacts, both direct and indirect, and all mitigation measures to be employed to protect the archaeological or cultural heritage environment during all phases of site preparation and construction activity.
4. The planning authority and the Department of Housing, Local Government and Heritage shall be furnished with a final archaeological report describing the results of all archaeological monitoring and any archaeological investigative work/excavation required, following the completion of all archaeological work on site and any necessary post-excavation specialist analysis. All resulting and associated archaeological costs shall be borne by the developer.

**Reason:** To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.





## **Nature Conservation**

These observations are intended to assist An Bord Pleanála in meeting their obligations in relation to National and EU legislation and policies for nature conservation and biodiversity, in the context of the current application.

### **1. Owenduff / Nephin Complex SPA**

The Screening for Appropriate Assessment Report provided with the application concludes that the proposed development is not likely to have a significant effect on the Owenduff / Nephin Complex SPA. Consequently, the Natura Impact Assessment (NIS) does not consider whether the proposed development will have an adverse effect on the integrity of this European Site. However, the Department considers that it is uncertain whether the proposed development is likely to have significant effect on the Owenduff / Nephin Complex SPA, and consequently, in light of this uncertainty, it should be considered whether the proposed development will have an adverse effect on the integrity of the Owenduff / Nephin Complex SPA. Consequently, any NIS provided to facilitate An Bord Pleanála's Appropriate Assessment determination should consider whether the proposed development will adversely effect the integrity of this European Site.

The Owenduff / Nephin Complex SPA is designated for its importance to breeding populations of both Merlin *Falco columbarius* [A098] and Golden Plover *Pluvialis apricaria* [A140]. Both species were recorded within the application site for the proposed development during the surveys undertaken to inform both the Environmental Impact Assessment Report (EIAR) and the NIS. Flights of both of these species were also recorded within the collision risk zone of the proposed turbines during these surveys.

In relation to Golden plover the Appropriate Assessment (AA) Screening Report provided with the application considers that the Owenduff / Nephin Complex SPA is outside of the zone of influence of the proposed development. The rationale provided is that the proposed application site is 3.8km from the SPA and '*the core foraging range for Golden Plover is 3km (SNH, 2016)*'<sup>1</sup> (Tobin, 2023). However, the Department notes that Scottish Natural Heritage (SNH) document referenced in the passage quoted above provides 2 figures for the approximate foraging range for Golden plover, a core range of 3km and a maximum range of 11km (SNH, 2016), the latter of which is not referenced in the AA Screening Report provided. The Department considers that as the proposed application site is just outside of the 3km core foraging range, and within the maximum potential foraging range of 11km provided, and the proposed application is likely to result in the collision mortality of this species, during both the wintering and breeding season, the population of breeding Golden Plover within the Owenduff / Nephin Complex SPA should be considered to be within the zone of influence of the proposed development. The Department considers that a detailed analysis should be undertaken within any NIS provided to determine the potential effects of the proposed development on the conservation objectives of the Golden plover within the the Owenduff / Nephin Complex SPA. Any such analysis should include rationale, and evidence, as to why the Golden

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<sup>1</sup> Scottish Natural Heritage (2016) Assessing Connectivity with Special Protection Areas (SPAs)





plover recorded within the application site are, or are not, associated with the SPA. If such a link cannot be ruled out based on the surveys undertaken, further surveys should be undertaken or an analysis undertaken of why the potential collision impacts of the proposed development would not adversely affect the conservation objectives of Golden plover in this European Site. The most recent survey of breeding Golden plover in the Owenduff / Nephin Complex SPA resulted in a count of 5 occupied territories within the surveyed areas which indicated a decline of 37.5 % from previous counts undertaken in 2006 (NPWS, 2020)<sup>2</sup>. While most of the projected collision mortality cause by the proposed development will occur during the non-breeding season (6.50 @ 98% avoidance) a small loss of 0.27 birds per year during the breeding season may result in a significant effect on a population of approximately 5 breeding pairs that is already in decline, and any such potential, where likely, or where uncertainty remains, should be considered in detail.

In relation to Merlin the AA screening report acknowledges that the proposed application site is within the potential core foraging range of merlin (5km, SNH, 2016) associated with the Owenduff / Nephin Complex SPA. However, it states that as *'the proposed development site contained comparatively low numbers of Merlin and no important migration flight line routes or breeding territories were found, furthermore the Proposed Development at the operational stage has very limited potential to give rise to collision risk to Merlin following the results of the collision risk model'* (Tobin, 2023). The Department notes that Merlin are very difficult to detect and are likely to be under recorded where they have been observed<sup>3</sup>. In line with this characteristic the EIAR provided expresses ambiguity about the status of this species within the application site. Section 8.7.2.1.3 states that Merlin have a possible breeding status onsite but there was no confirmed nests or juveniles. Similarly, the flight line data for this species displayed in the Figure 10 of Appendix 8.1 shows truncated flight lines with uncertainty or ambiguity over the origins of these flights. Consequently, the Department considers that potential a connection of the birds recorded within the application site and the population within the Owenduff / Nephin Complex SPA cannot be easily ruled out. Consequently, a detailed analysis of this connection should be undertaken within an NIS to inform an AA determination.

The Department also notes that as Merlin, despite being recorded within the collision zone of the proposed turbines, were not subject to assessment within the collision risk model (the reasons for this exclusion and its applicability to the AA process are discussed below in Section 3). Consequently, the statement in the AA Screening Report that *'the operational stage has very limited potential to give rise to collision risk to Merlin following the results of the collision risk model'* (Tobin, 2023) is not coherent and further explanation is necessary.

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<sup>2</sup> Suddaby, D. & O'Brien, C. (2020) A survey of breeding Golden Plover within the Owenduff/Nephin Complex SPA, County Mayo. Irish Wildlife Manuals, No. 120. National Parks and Wildlife Service, Department of Culture Heritage and the Gaeltacht, Ireland

<sup>3</sup> Scottish Natural Heritage (2017) Recommended bird survey methods to inform impact assessment of onshore wind farms.





The Department considers that a detailed analysis should be undertaken within an NIS to determine the potential effects of this development on the conservation objectives of Merlin within the Owenduff / Nephin Complex SPA. Any such analysis should include rationale as to why Merlin recorded within the application site are or are not associated with the SPA. If such a link cannot be ruled out based on the surveys undertaken, further surveys should be undertaken or an analysis should be undertaken of why the potential collision impacts caused by the proposed development would not adversely affect the conservation objectives of Merlin in this site.

## **2. Issues with the methodology to determine the magnitude of the impacts**

The department considers that the NIS and EIAR do not accurately use the methodology outlined to determine the significance of the potential mortality caused by collisions with the proposed turbines. The NIS and EIAR make reference to the methodology outlined by Percival (2003)<sup>4</sup> for determining the magnitude of an effect on a given population (e.g. High = < 20% population remains, Negligible = < 1 % population lost). According to Percival (2003), the magnitude of impact on a species population as a result of collisions, would be negligible if the estimated mortalities does not increase the natural mortality rate by 1%. However, Percival (2003) states that *'one issue in this process concerns the precise area or bird population against which the degree of impact should be judged. For protected SPAs this is usually quite straightforward, comprising simply the populations for which that site has been designated'* (Percival, 2003). Outside of protected sites Percival (2003) recommends that analysis be undertaken as to whether a homogenous area of suitable habitat occurs with which a population may be associated and the density that this area may contain.

However, in relation to the current proposal, both the EIAR and NIS reference is made only to county and national populations when undertaking an analysis of the magnitude of the predicted collision risk impact on the species identified. For example, Section 8.8.3.2.1.2 of the EIAR states that as no accurate population estimate is readily available for the wintering population of Golden plover in County Mayo the analysis of whether the collision mortality caused by the proposed development is significant should be undertaken on the national population. An analysis is consequently undertaken that determines that the predicted collision mortality caused by the proposed development will not increase the mortality rate of the national population above 1% and can therefore be considered a negligible impact.

The Department considers that the use of the national population as a reference to make such an analysis is obviously flawed and not the intended use of the methodology outlined in Percival (2003). Using the figures provided in the EIAR 1 % of the annual mortality rate for the approximate national population of Golden plover is 217. Consequently, following the rationale used in the EIAR and NIS, a single specific development, such as the current proposal, could result in the loss of approximately 217 Golden plover per year (6510 over 30 years) and still be considered to have a negligible effect on a local population of Golden plover. Furthermore, as the in-combination effects

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<sup>4</sup> Percival, S. M. (2003). Birds and wind farms in Ireland: A review of potential issues and impact assessment. Ecology Consulting, Coxhoe, Durham





of proposed developments, such as the current application, typically only consider other developments in the same county, using the methodology in this way would allow for a similar impact to occur in every county in any given year, resulting in a potential collision mortality of 6944 individuals per year (217 for every county), an increase of approximately 30% over the annual mortality rate, while remaining a negligible effect on the national population according to each application.

Percival's methodology requires an analysis of habitat suitability, and the potential density of species in such habitats, in the wider area of the application in order to determine the baseline population from which to assess the magnitude of any impacts. Percival states that the *'populations of each important species at the wind farm within this zone should be estimated using the best available data on bird densities and habitat availability. These populations then constitute the baseline against which the magnitude of any predicted effects should be judged'* (Percival, 2003). For example, in relation to the current proposal, the foraging behaviour of Golden plover during both the breeding and wintering period, the habitats that this behaviour is associated with, and the potential densities these habitats are likely to support, should be considered in relation to the wider area of the application site before a determination is made on the magnitude of any impacts caused by the proposed development. This impact can then be contextualised in a wider geographical context.

### 3. Use of arbitrary thresholds

The Department note that there is issues with the use of arbitrary thresholds in the Appropriate Assessment process that should be considered by An Bord Pleanála when undertaking their AA determination.

The Collision Risk Modelling Report in Appendix 8.2 of the EIAR states that a *'proportionate approach to CRM was followed, whereby it was only run for species that met a specified threshold of flight activity. The threshold used was of three flights, or at least 10 individuals, recorded within the CRZ at PCH within either season, over the course of all survey years. Thus any species which was recorded using the site only very occasionally, and for which a nil or negligible collision impact could therefore be predicted, were excluded'* (Tobin, 2023).

The Department notes that no reference is provided to support this approach and its rationale is not explained in any detail. An Bord Pleanála should consider that within the context of the Appropriate Assessment process there is difficulty with the use of arbitrary thresholds or categories to exclude developments, or their impacts as in the current case, from an Appropriate Assessment (see ECJ cases – C-98/03, C418/04, C-588/09, C293/17 and C294/17 for reference). The Department considers that any use of arbitrary thresholds or categories in relation to the Appropriate Assessment process must be scientifically rigorous and justified. In the context of the current example a rationale should be provided as to why the thresholds provided in relation to the number of flights within the collision risk zone would ensure that there is no likely significant effect on a qualifying interest of any Special Protection Area (SPA), and furthermore no potential for adversely effect on the integrity of any such SPA. A very small risk of collision (1 bird lost over a number of years) may exacerbate the decline of a population of a bird species within a given SPA that is both already small and in decline, and may undermine the





conservation objectives for such a species within a given Natura 2000 site. Consequently, the use of any threshold or category to eliminate further analysis of a specific impact would need to ensure that this outcome is not possible. In relation to the current proposal Merlin, which are a qualifying interest of the Owenduff / Nephin Complex SPA which located within 4km of the proposed application site, is excluded from analysis within the Collision Risk Model, as the flights recorded within the collision risk zone of the proposed turbine do not meet the thresholds outlined. This exclusion is then used as a part of the rationale for considering the proposed development to not have a likely significant effect on this species and consequently the Owenduff / Nephin Complex SPA. The validity of this approach in the context of Appropriate Assessment is questionable.

**Discrepancy in figures referenced:**

In relation to Golden Plover Section 6.1.5.2 of the Natura Impact Statement (NIS) states *'A total of seven flights were recorded at collision height over the survey period consisting of 173 individuals. A collision risk was calculated for these flights and (assuming a maximum diameter of 158m) an estimated 1.01 collisions per year was calculated, equating to 30.3 collisions over the estimated 30-year life span of the wind farm'*(NIS, 2023). However, the Collision Risk Model Results presented in Appendix II of the NIS states that the *'species of greatest potential concern is golden plover, with an estimated annual mortality of 6.77 individuals at 98% avoidance (of which 6.50 is accounted for by the non-breeding season). This equates to 169.25 birds over a 25-year period'* (Tobin, 2023). Similarly Table 3.3 provided in the Collision Risk Model Results report. Furthermore, Section 8.8.3.1.2 states that for Golden plover *'an annual collision of 5.29 was calculated (which would equate to 158.7 collisions over the 30-year lifespan of the wind farm'* (Tobin, 2023). The Department requests that for the sake of clarity any such discrepancies are amended before An Bord Pleanála undertakes both their EIA and AA determinations for the proposed development.

The Department takes this opportunity to remind An Bord Pleanála of their obligations under Article 6.3 of the Habitats Directive (92/43/EEC). Competent national authorities, are to authorise activity only if they have made certain that it will not adversely affect the integrity of a European site. That is the case when there is no reasonable scientific doubt as to the absence of such effects<sup>5</sup>.

You are requested to send further communications to this Department's Development Applications Unit (DAU) at [manager.dau@npws.gov.ie](mailto:manager.dau@npws.gov.ie) where used, or to the following address:

The Manager  
Development Applications Unit (DAU)  
Government Offices  
Newtown Road  
Wexford  
Y35 AP90

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<sup>5</sup> C-418/04 Commission v Ireland ECLI:EU:C:2007:780





Is mise, le meas

Simon Dolan

Simon Dolan  
Development Applications Unit  
Administration