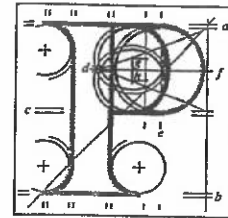


Our Case Number: ABP-317265-23



An
Bord
Pleanála

An Taisce
Tailor's Hall,
Back Lane
Dublin 8
D08 X2A3

Date: 04 August 2023

Re: Construction of Dyrick Hill Windfarm comprising 12 no. wind turbines and related works.
Townlands of Ballymacmague North, Ballymacmague South, Ballynaguilkee Lower, Ballynaguilkee Upper, Broemountain, Carrigaun (Mansfield) and others, Co. Waterford.

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.

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,


Ashling Doherty
Executive Officer
Direct Line: 01-8737160

PA09

Tel	Tel	(01) 858 8100
Glaos Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

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

Ashling Doherty

From: Marine
Sent: Thursday 3 August 2023 09:51
To: SIDS
Subject: FW: Ref. 317265
Attachments: 20230802-ABP-317265.pdf

From: John Cannon <j.cannon@pleanala.ie>
Sent: Thursday, August 3, 2023 9:33 AM
To: Marine <marine@pleanala.ie>
Subject: FW: Ref. 317265

From: Appeals2 <appeals@pleanala.ie>
Sent: Wednesday, August 2, 2023 4:26 PM
To: John Cannon <j.cannon@pleanala.ie>
Subject: FW: Ref. 317265

From: Bord <bord@pleanala.ie>
Sent: Wednesday, August 2, 2023 4:22 PM
To: Appeals2 <appeals@pleanala.ie>
Subject: FW: Ref. 317265

From: An Taisce Planning <planning@antaisce.org>
Sent: Wednesday, August 2, 2023 3:52 PM
To: Bord <bord@pleanala.ie>
Subject: Ref. 317265

A Chara,

Please find attached a submission from An Taisce in relation to Ref. 317265.

Kind regards,

Phoebe Duvall

Planning and Environmental Policy Officer
An Taisce - The National Trust for Ireland
The Tailors' Hall, Back Lane, Dublin 8, Ireland
Phone: 01 454 1786
www.antaisce.org

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An Taisce is a membership-based charity
Join at www.antaisce.org/membership

Please note that I work Monday through Thursday.

20230802-ABP-317265

An Bord Pleanála
64 Marlborough Street
Dublin 1

Sent by email to: bord@pleanala.ie

2nd August 2023

ABP Ref: 317265
App: Dyrick Hill Wind Farm Limited
For: Construction of Dyrick Hill Windfarm comprising 12 no. wind turbines and related works
Site: Townlands of Ballymacmague North, Ballymacmague South, Ballynaguilkee Lower, Ballynaguilkee Upper, Broemountain, Carrigaun (Mansfield) and others, Co. Waterford.

A Chara,

Thank you for referring the above application to An Taisce for comment.

Development Plan provisions

The subject site is located in an area classed as an exclusion zone for wind development per the Waterford City and County Development Plan 2022-2028. An Taisce does not consider that the applicant has sufficiently justified the location of the proposal in an exclusion zone, and therefore we do not consider that a material contravention of the Development Plan is warranted in this case. It is recommended that an alternative site be found in an area classed as either "open for consideration" or "preferred" for wind energy development.

Northern portions of subject site are adjacent to the Tipperary border. We note that the area of Tipperary bordering the site has also been classed as unsuitable for new wind energy development per the Renewable Energy Strategy (Map 11) in the current Tipperary County Development Plan 2022-2028.

Potential adjoining windfarm development

We note that plans for a 16-turbine windfarm directly adjacent to the subject site are currently being prepared. While this project is still in pre-planning stages at the time of writing, information available in the public domain on the project website (scartmountainwindfarm.ie) indicates that extensive surveying work is ongoing and identifies provisional turbine locations. The potential cumulative impacts of this proposed windfarm in combination with the subject proposal should be fully assessed, for the purposes of both Environmental Impact Assessment

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Company Limited by Guarantee no. 12469 | Charity CHY4741 | Charity Regulator no. 20006358 | EU Transparency Register no. 473905437651-60

Directors: Phillip Kearney (Chair), Trish O'Connell (Vice-Chair),
Stuart McCaul (Secretary), John Conroy (Treasurer), John Sweeney, Olivia Rogers Rónán O'Brien, Finbarr Murray

and Appropriate Assessment. The two projects combined would represent a total of 28 turbines – more than double the amount proposed in the subject application alone.

Legal obligations under the Habitats Directive

It is now well established in law that approval can only be granted for plans and projects when it has been established beyond all reasonable scientific doubt that the subject proposal will not adversely impact any Natura 2000 sites.

In Case C-258/11, *Sweetman & Others v An Bord Pleanála & Others*, it was held that the provisions of Articles 6(2)–(4) of the Habitats Directive must be interpreted together “*as a coherent whole in the light of the conservation objectives pursued by the directive*” and that they impose a series of specific obligations necessary to achieve and maintain favourable conservation status. A plan or project will negatively impact upon a site if it prevented the “*lasting preservation of the constitutive characteristics*” of the site for which it was designated, with reference to the site’s conservation objectives. Significantly it was determined that “*authorisation for a plan or projectmay therefore be given only on condition that the competent authoritiesare certain that the plan or project will not have lasting adverse effects on the integrity of the site. That is so where **no reasonable scientific doubt remains** as to the absence of such effects*” [emphasis added].

The competent authority must therefore refuse authorisation for any plans or projects where there is uncertainty as to whether the plan or project will have adverse effects on the integrity of the site. It was also held in paragraph 44 that:

*“So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it **cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned (see, to this effect, Case C 404/09 Commission v Spain, paragraph 100 and the case-law cited).**...”* [emphasis added].

In *Kelly v An Bord Pleanála & Others*, [2013 No 802 J.R.] with reference to *Commission v Spain c-404/09*, the High Court held in paragraph 36 that the competent authority must carry out an Appropriate Assessment for a plan or project in light of the best scientific knowledge in the field. It was also held that the competent authority must lay out the rational and reasoning which was used to arrive at the determination.

The case repeated the conclusion of the CJEU at paragraph 44 in the aforementioned Case C-258/11, namely that an AA “*cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt.*” Consequently, it was held that an AA must include “*examination, analysis, evaluation, findings, conclusions and a final determination.*”

The Kelly Judgement has provided a very helpful clarification of the requirements of an AA and in particular in paragraph 40, a summary of what must be delivered by the process in order to be lawfully conducted:

"(i) Must identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect the European site in the light of its conservation objectives. This clearly requires both examination and analysis.

(ii) Must contain complete, precise and definitive findings and conclusions and may not have lacunae or gaps. The requirement for precise and definitive findings and conclusions appears to require analysis, evaluation and decisions. Further, the reference to findings and conclusions in a scientific context requires both findings following analysis and conclusions following an evaluation each in the light of the best scientific knowledge in the field.

(iii) May only include a determination that the proposed development will not adversely affect the integrity of any relevant European site where upon the basis of complete, precise and definitive findings and conclusions made the Board decides that no reasonable scientific doubt remains as to the absence of the identified potential effects."

If uncertainty exists regarding the potential impact of any proposed development full account should be taken of the precautionary principle, and the development should be refused.

We note that Hen Harriers were observed on the site. Hen Harrier is a highly threatened species protected under Annex I of the Birds Directive. The application site is not located within an SPA, however, under Article 4 of the Birds Directive, Member States are required to strive to avoid pollution or deterioration of habitats of interest in areas outside specifically identified protection areas. It must be determined that the subject proposal will not adversely impact Hen Harrier, including in combination with the Scart Mountain windfarm proposal, which is currently in pre-planning.

Please acknowledge our submission and advise us of any decision made.

Yours sincerely,

Phoebe Duvall

*Planning and Environmental Policy Officer
An Taisce – The National Trust for Ireland*

