

File With _____

SECTION 131 FORMAppeal NO: ABP - 318689-23Defer Re O/H ☐

TO: SEO

Having considered the contents of the submission ~~date~~ received 16/1/24
fromSheila Hector I recommend that section 131 of the Planning and Development Act, 2000
be/not be invoked at this stage for the following reason(s): No new issuesE.O.: Daniel & ConnorDate: 20/1/24

To EO: _____

Section 131 not to be invoked at this stage. ☐Section 131 to be invoked – allow 2/4 weeks for reply. ☐

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached
submission

to: _____

Allow 2/3/4 weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

LDG-769339-24

-last day for obs: 18/1/24

Tasks:

• BPHO to issue to observer. ✓

• Enclose receipt.

• update case narrative ✓

~~LDG-769339-24~~
haura.

18/01/24 - D.C



An
Bord
Pleanála

Planning Appeal Online Observation

Online Reference
NPA-OBS-003064

Online Observation Details

Contact Name
Sheila Hctor

Lodgement Date
16/01/2024 23:28:13

Case Number / Description
318689

Payment Details

Payment Method
Online Payment

Cardholder Name
Sheila Hctor

PMT-053899-24
Payment Amount
€50.00

Processing Section

S.131 Consideration Required

☒ Yes — See attached 131 Form

☐ N/A — Invalid

Signed

Laura Grady Lawlor
EO

Date

18/1/24

Fee Refund Requisition

Please Arrange a Refund of Fee of

€

Lodgement No

LDG—

Reason for Refund

Documents Returned to Observer

☐ Yes ☐ No

Request Emailed to Senior Executive Officer for Approval

☐ Yes ☐ No

Signed

EO

Date

Finance Section

Payment Reference

ch_3OZM3FB1CW0EN5FC00fJ5HMP

Checked Against Fee Income Online

EO/AA (Accounts Section)

Amount

€

Refund Date

Authorised By (1)

SEO (Finance)

Authorised By (2)

Chief Officer/Director of Corporate Affairs/SAO/Board
Member

Date

Date

The Development Applications Unit/Department pre planning submission (Dated 9th May 2023) and submission in response to the actual planning application (Dated 27th October 2023) further convey why nature conservation is a priority within this area. This is underpinned by submissions made to Tipperary County Council by many local people who live adjacent to the site. My own submission from pages 2 – 5 (See Appendix 1) outlines how the proposed development is part of *an ecological corridor connecting a range of ecologically valuable sites* including a range of European (Natura 2000) and national conservation priority areas, which hold significant conservational importance, as they provide suitable habitat for several protected birds (including Annex 1 species), insects, terrestrial mammals, flora and fauna. The proposed development is also adjacent to a significant area of undesignated peatland at Sharragh (owned by the Department/National Park and Wildlife Service) and they have carried out habitat restoration measures here and intend to carry out further habitat restoration in the future. (As stated in the DAU/Dept. letter dated 9th May 2023).

The First Party Appeal Document prepared by MKO on behalf of Carrig Renewable Energy Limited for 40 plus pages outlines from a policy perspective why this proposed development should be granted planning permission because of its strategic and national importance to the state as 'The urgency of renewable energy development has increased drastically over the last few years, with the climate crisis deteriorating coupled with the evolution of the energy security crisis.' (First Party Appeal, pg.47). However, nowhere within these 40 plus pages is there reference to the biodiversity crisis that goes hand in hand with the climate crisis and how as citizens, local authorities and as a state we also have responsibilities and objectives of strategic local, national and European importance regarding the conservation, protection and promotion of habitats and biodiversity.

Legislation and policy in this area comes in many forms including The Habitats Directive and The Birds Directive, moreover, policy and legislation in this area will be further developed and strengthened as a result of the work of The Citizens' Assembly on Biodiversity Loss and the European Union's Nature Restoration Law which aims to restore at least 20% of the EU's damaged land and sea areas by 2030, and all ecosystems by 2050.

The potential for this area (Figure 1.) to be further developed from a conservation and habitat restoration perspective is demonstrated through the Arragh More (Derrybreen) Bog SAC (2206), which was only designated a Special Area of Conservation in early 2023. The potential for further nature restoration measures at the Dept./NPWS owned lands in Sharragh is also acknowledged by the NPWS whom are very active in this area and are working with local land owners and farmers to conserve, protect and enhance habitat and biodiversity. (See Appendix 1, pg. 5)

I understand that the production of renewable energy is vital for Ireland to achieve emissions targets, but a balance has to be achieved between conservation of fragile ecosystems and the development of renewable energy projects. The proposed development site is located in an area zoned 'unsuitable for new wind energy development'. It is very evident why it is zoned in this manner and therefore, quite rightly, in its Decision Letter/Planning Report, Tipperary County Council conclude that 'Notwithstanding the general Planning Policy support for wind energy generation at national, regional and local policy level, including: Policy 3-1 which seeks to 'promote and facilitate renewable energy development, in accordance with the policies and objectives of the Tipperary Renewable Energy Strategy 2016 (and any review thereof), and the Tipperary Climate Adaptation Strategy 2019', the proposed development is located on lands identified as an area unsuitable for new wind energy development within the Tipperary Renewable Energy Strategy. Furthermore, it is considered that the proposed development would not, come within the limited circumstances provided for in policy TWIND 4.14. of the Wind Energy Strategy in the Renewable Energy Strategy.

Accordingly, it is considered that the proposed development would contravene materially the policies and objectives of the Tipperary County Development Plan 2022 - 2028, specifically Volume 3, Appendix 2, Tipperary Renewable Energy Strategy, Wind Energy Strategy, Policy TWIND 4. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area'. (Tipperary County Council, Notification of Decision letter).

This point is also further developed in other observations relating to this planning appeal.

2. Impact on Natura 2000 network and Ornithology

At pg. 11 of The First Party Appeal Document prepared by MKO on behalf of Carrig Renewable Energy Limited it is stated that 'It has been comprehensively demonstrated in 4.3 of this report the Proposed Development will not significantly impact avian populations of importance in the area and does not therefore run contrary to the proper planning and sustainable development of the area. The additional information provided within the appeal adequately addresses any perceived deficiencies that have been identified in the Tipperary County Council assessment'. I do not agree with this statement and below I will outline my reasons for this.

Whooper Swans

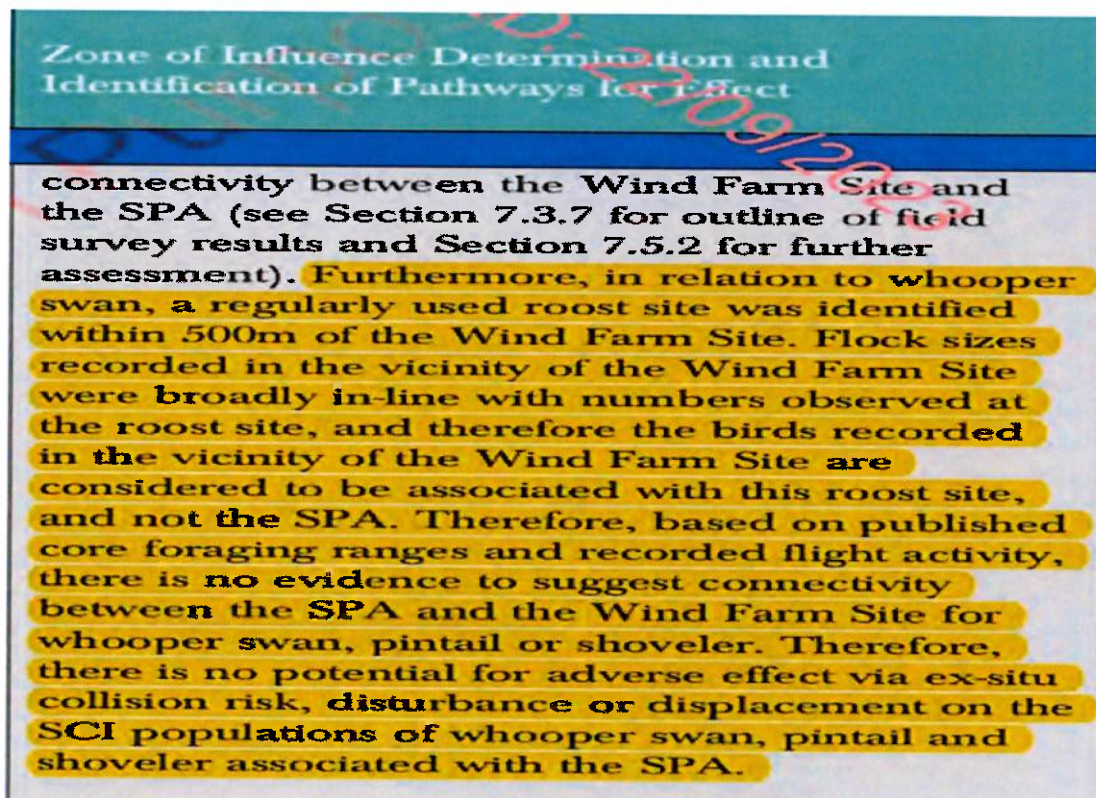
At pg. 50 of the First Party Appeal, MKO contain that 'based on published core foraging ranges and recorded flight activity, there is no evidence to suggest connectivity between the SPA and the wind farm sight for whoopers swans. The DAU/Dept. submissions (Dated: October, 27th 2023) contests this substantially as do I, as the developers/consultants failed to provide a full picture of the activity of the Whooper Swans in the area.

The habitats restoration measures carried out at the Dept./NPWS owned lands at Sharragh has allowed it to become an area that is attractive to wildfowl including Whooper Swan. They are an Annex 1 species of conservational interest which have been present in the area for many decades and particularly use the standing waterbodies at Sharragh in very large numbers during drier winters.

Pages 6 to 39 of my submission document (Appendix 1) conveys the presence, movement, flight lines and roosting of Whoopers in the wider area for many years including in much larger numbers than what the 2020 – 2023 MKO Bird Survey Results convey. The video/photographic evidence provided in Appendix 1 shows 70 plus Whoopers on the water bodies in Sharragh.

The specific extract below from my submission (pg. 32 – 39) challenges some of the findings relating to Whooper Swan in the EIAR – Chapter 7 – Ornithology, The MKO Community Consultation Report and what MKO conclude at pg. 50 – 52 of the First Party Appeal.

Within the EIAR Chapter 7 – Ornithology pg. 31, the following statement is made:





Screenshot 1









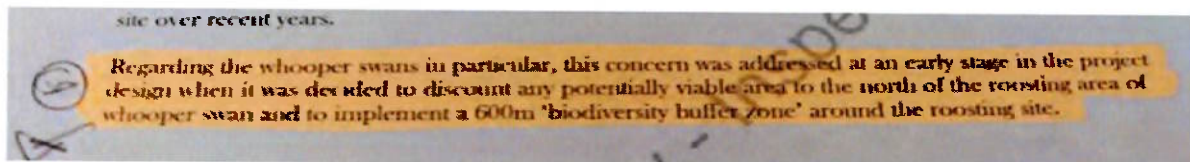


The full video is available here - https://drive.google.com/file/d/1NfULPRuwj9wNwh2ndZKiRHtFK-v2CSEu/view?usp=share_link



The cottage and the trees in **Screenshot 1** above are located at point 

Furthermore, within the Community Consultation Report the statement extracted below is made regarding Whooper Swans.



From the Impact on Local Wildlife section within the Community Consultation Report (no page no. available).

However, there is no indication as to why any potential viable area to the north of the Whooper Swan roosting area was specifically discounted, but other areas were not, given that Whooper Swans are active in the wider area, including in flight over the proposed turbine locations. I relayed my concerns on many occasions regarding the impact on Whooper Swans to MKO representatives both at my kitchen table and at a meeting organised by MKO to address mine and others concerns regarding the Whoopers and other protected species of birds and biodiversity. I was never directly consulted about the 600 meter biodiversity buffer zone described above. Also, the 600 meter buffer zone seems to be measured from the turbine tower and not from the blade tip of T6. Moreover, should it not be measured from the blade tip to the closest waterbody within the NPWS owned lands given that the Whooper Swans and other red listed birds including Golden Plover, Snipe and Lapwing etc. use these waterbodies? (extract from pg. 32 – 39 of my submission to Tipperary County Council – see Appendix 1)

In addition to the above, the DAU/Dept. contend that 'There are very few suitable roosting areas between Sharragh and the Little Brosna SPA and foraging grounds to the south of the proposed site. Therefore, the Department considers it entirely possible that there may be movement between the sites, constituting ex-situ usage of the development zone of influence by qualifying interest species from the SPA' (Pg. 3 DAU/Dept Letter, dated: 27th October 2023)

At pg. 52, within the First Party Appeal the consultants seem to acknowledge that movement of Whooper Swans between the SPA and Sharragh cannot be ruled out. 'While the balance of evidence is that they do not, if these local swans very occasionally visit the nearest SPAs (Little Brosna SPA or the Middle Shannon Callows SPA) then the impacts are predicted to be no greater than negligible for the larger SPA populations'.

It also needs to be noted that, regarding the 2023 Breeding Bird Data Survey submitted with the First Party Appeal document, Whooper Swans do not appear in larger numbers as it was conducted during April – September 2023. As per the Birdwatch Ireland website, Whooper Swans are 'Winter visitor to wetlands throughout Ireland from October to April'. <https://birdwatchireland.ie/birds/whooper-swan/> with only occasional breeding recorded for this species in Ireland.

Curlew

In addition to the DAU concerns regarding breeding curlew in the area and the potential impacts on an already threatened breeding species. At page 40 of my submission, I outline how The Oran Ecology report, adjunct to my submission at (Appendix 1, pg. 54)) refers to Curlew likely roosting on the waterbodies in Sharragh (Dept./NPWS lands) adjacent to the proposed development site. This is not indicated within the MKO EIAR Chapter 7 Ornithology and 7.4 Survey Data on Curlew.

Infrastructure		
Curlew (Red Listed)	Probable Breeding. There was one probable breeding territory identified approximately 750m from the Wind Farm Site.	No regularly used roosts identified

The 2023 survey also failed to establish this. However, it does state the following at pg. 11 of the *Breeding Bird Data Survey for 2023* 'There were two observations of one and two birds calling in the vicinity of the probable 2021 & 2022 breeding territory location in May, approximately 750 meters North of the windfarm site. There were two observations of birds calling *within* the windfarm site in June. The remaining observations comprised between 1 - 12 birds calling and travelling within 500 meters of the windfarm site in June and September'.

Furthermore, regarding the 2023 Breeding Bird Data Surveys submitted with the First Party Appeal document, it is clear there are multiple records of ecologically significant species (including Red Listed & Annex. 1) continuing to move through and within close proximity to the proposed site as well as potential breeding on the proposed site itself including:

- Kestrel (red list, including a breeding territory identified within the site)
- Woodcock (red list, present on site during breeding walkover surveys)
- Snipe (red list)
- Merlin (Annex 1, amber list)
- Barn Owl (red list)
- Hen Harrier (amber list)
- White Tailed Eagle (red list)
- Black headed Gull (amber list)
- Buzzard
- Sparrow Hawk

Additional ornithological data relating to the 2023 breeding season can be viewed within my submission (pg. 42 – 44, Appendix 1).

Merlin

In addition to the concerns raised by the DAU/Dept, the Oran Ecology Report (see Appendix 1, pg. 54) commissioned in 2023 by myself and 2 neighbours, also identified other birds of conservation concern that utilise the area including *a probable pair of breeding Merlin* (Annex I species in the EU) along with kestrel (Red List of Birds of Conservation Concern in Ireland), buzzards, snipe (Red List of Birds of Conservation Concern in Ireland) and wood cock (Red List of Birds of Conservation Concern in Ireland). Birdwatch Ireland describe Merlin as “A rare breeding bird in Ireland. Nests on the ground on moorland, mountain and blanket bog. Also nests in woodland and has taken to nesting in forestry plantations adjacent to moorland. More Merlins are found in the west of the country but they are scattered across the midlands and the Wicklow Mountains also hold good numbers”. [Merlin - BirdWatch Ireland](#)



From Appendix 7-4 Survey Data Pg. 45/46 – Merlin Observations

At pg. 53, within the First Party Appeal the consultants contest the DAU/Departments point that merlin are equally likely to nest in the proposed wind farm site as anywhere else in their territory given the ‘recorded pair of Merlin exhibit a very high rate of nest site fidelity’. However, the consultants also point to the fact that ‘it is possible that nesting could occur in the proposed windfarm given the presence of suitable nesting habitat

(forestry)' ... and go onto say that 'If a merlin nest is found to be active during the construction phase no works shall be undertaken within a disturbance buffer in line with industry best practice....No work shall be permitted within the buffer until it can be demonstrated that the nest is no longer occupied' therefore are they implying if Merlin are nesting there, they will wait until the nest is vacant and then go ahead with construction in a known nesting location for a rare breeding bird in Ireland?

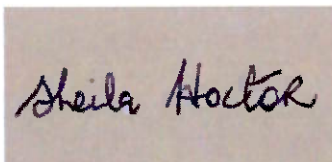
It is evident that the potential impact of the proposed development cannot be adequately mitigated and would result in significant impacts on the environment, biodiversity and ornithology in the area including Annex 1 species and therefore I concur with the Decision Letter/Planning Report of Tipperary County Council where it outlines that Policy11-16 of the Tipperary County Development Plan 2022 - 2028 states that "In assessing proposals for new development to balance the need for new development with the protection and enhancement of the natural environment and human health. In line with the provisions of Article 6(3) and Article 6 (4) of the Habitats Directive, no plans, programmes, etc. or projects giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this Plan (either individually or in combination with other plans, programmes, etc. or projects1)".

Having regard to the proximity to a number of European Sites with conservation objective to maintain or restore the favourable conservation conditions of a number of bird species. Having regard to the EIAR and NIS submitted with the applications and submissions made on the applications, and notwithstanding mitigation measures proposed, the Planning Authority is not satisfied that the likelihood of significant effects on the environment can be excluded. The applicant has failed to demonstrate that the development on the site would not have an adverse impact on the site integrity of the local sites within the Natura 2000 network. The Planning Authority considers that the proposed development would result in a loss of habitat, disturbance and displacement for Annex I bird species, and in this context, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area, development would adversely affect bird species or their habitat specified in Article 4 of the Birds Directive, which forms the basis of the classification of that site.

Ultimately, this is a poor choice of location for such a development.

On the basis of the above, I trust that the points raised will be taken into consideration prior to a decision being reached on this appeal.

Mise Le Meas

A rectangular box containing a handwritten signature in dark ink. The signature appears to read 'Sheila Hctor' in a cursive script.

Sheila Hctor