

File With _____

SECTION 131 FORM

Appeal NO: ABP 322154-25Defer Re O/H ☐Having considered the contents of the submission dated/ received 22-06
fromATL Trajer 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 planning issuesE.O.: Daniel O ConnorDate: 24/4/25

For further consideration by SEO/SAO

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: _____ Task No: _____

Allow 2/3/4weeks – BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORMAppeal No: ABP 322154-25

M _____

Please treat correspondence received on 22-04-25 as follows:

1. Update database with new agent for Applicant/Appellant _____

2. Acknowledge with BP BLSO3. Keep copy of Board's Letter ☐

1. RETURN TO SENDER with BP _____

2. Keep Envelope: ☐3. Keep Copy of Board's letter ☐**Amendments/Comments**Obs from A & L. Trayer**4. Attach to file**(a) R/S ☐(d) Screening ☐(b) GIS Processing ☐(e) Inspectorate ☐(c) Processing ☒**RETURN TO EO** ☐

EO:

Dorel Cavalls

Date:

25-04-25Plans Date Stamped ☐Date Stamped Filled in ☐

AA:

Date:

25/04/25

AN BORD PLEANALALDG- 079664-25

ABP- _____

22 APR 2025

Fee: € 50 Type: CheqTime: 1115 By: Leneal**Details**

Submitter details

Name	Alan & Laura Trayer
Address	Hillview, Kilmanagh, Co. Kilkenny, R95P8N6
Email	alan.trayer@gmail.com
Date	21/04/2025

In relation to application

An Bord Pleanála Case Reference	PL10.322154
Kilkenny County Council Planning File Number	2560003
Applicant	Briskalagh Ltd.
Address	In the townlands of Acragar, Ballyconra, Ballycuddihy, Ballyroe, Ballyroe (Grace), Ballyroe (Maher), Baunaniska, Boherkyle, Briskalagh, Brittas, Clone, Coolnapisha, Curraghduff, Freshford, Freshford Lots, Graigueswood, Grange, Huntstown, Kilmanagh, Knockeenglass, Knockown, Moatpark, Monabrika, Monavadaroe, Moneenaun, Oldtown, Oldtownhill, Parksgrove, Picketstown, Rathealy, Sart, Sweethill, Tobernapeastia, Tullaroan, Upperwood Demesne, Co. Kilkenny.

Subject: An Bord Pleanála Case Reference: PL10.322154

Kilkenny County Council Planning Application Reference: 2560003

To: An Bord Pleanála

This submission is made in response to the First Party Grounds Of Appeal (GOA) lodged by Briskalagh Ltd. following Kilkenny County Council's (KCC's) decision to refuse permission for the proposed wind farm development at Briskalagh and adjacent townlands.

We wish to firstly reiterate that we are not against wind energy. We support the nearby Foyle, Ballybay and Cnoc windfarms and to our knowledge, we experience no issues from them.

We secondly wish to state that we continue stand over all of our submissions, observations and objections lodged with KCC on 06/02/2025. Nothing in the developer's appeal document has allayed our concerns and misgivings regarding this completely inappropriate proposed development.

The developer's application & appeal remain completely defective and insufficient in terms of:

- Addressing Human Health & Wellbeing
- Inappropriate scale, location and adequate engagement with the community
- Deficiencies remain in the EIAR, key questions remain unanswered, and no new mitigations have been furnished.
- The Developer's Natura Impact Statement remains non-compliant.
- Planning Policy remains misrepresented and legally flawed.
- Residents/local community remain excluded, ignored and overlooked by the developer.
- Cumulative impacts remain unaddressed and inadequately considered.

- Addressing Kilkenny Co Co's & CAAS's multiple queries, reasoned concerns and identified shortfalls and lacunae contained in the Planner's Report.

With regard to the Applicant's 140-page Appeal Document, we wish to make the following observations:

1. The applicant fails to acknowledge and address all of the grounds for refusal and several community concerns in the first instance, specifically cumulative impacts with regard to noise, haul route, grid route, residential amenity and visual impact. On several occasions, they maintain that all of the necessary information was presented in the application and simply state to 'refer back to' the relevant EIAR section, without providing any further information, clarification or mitigation.
2. The applicant repeatedly emphasises that Climate Action laws, CAP 24 etc must take precedence in Bord Pleanála's legal obligations & decision-making process but fails to acknowledge that environmental and planning laws take precedent over climate action needs per Justice Holland's High Court ruling in April 2024.
3. The applicant uses the words 'refute/refutes' six times incorrectly in their appeal document. The dictionary definition of "Refute" is 'to prove (a statement or theory) to be wrong or false; disprove.' The applicant should have used the word 'deny' because all they can do is deny KCC's/CAAS's statements/observations/reasons for refusal since they cannot refute them as being wrong or false.
4. In section 4.1.1.4 of the Appeal Document, the applicant states: *'With reference to the possible visibility and potential of significant visual impacts that may arise from the proposed turbines on the local sportsground of Tom Ryall Park at the east of Kilmanagh village'*. Further, the applicant states: *'In the case of Tom Ryall Park, the attention of players and spectators is primarily directed towards the activity on the field, rather than the surrounding landscape'*. This statement is too simplistic, is deliberately obtuse, and does not at all address the major and inevitable visual impact that seven 185 metre turbines moving behind two sets of south facing goalposts during GAA matches or training sessions will cause. The fact of the matter is that players, officials and spectators will struggle to discern the goalposts due to seven white gargantuan moving turbines behind them. Players will have a harder time scoring due to visual distraction caused by the turbines moving behind the goalposts. Players, spectators and officials will have a harder time determining whether a ball was pointed or went wide. White turbines behind white goalposts coupled with a sliotar will inevitably create frequent visual disruption and a visual clash resulting in confusion as to whether a ball was pointed or wide, leading to points of contention during matches. Tom Ryall Park is therefore at risk of falling out of favour with opposing teams, particularly as a preferred neutral venue, leading to a reduction in the number of competitive, entry fee fixtures and consequently a reduction in gate receipts/income for the GAA and Camogie clubs.
5. In section 4.1.8.7 of the appeal document, MKO state:

'A submission was made in relation to the potential presence of marsh fritillary within the site stating that the applicant has not proven that the plant or butterfly colony do not exist in the development area. As outlined in Section 6.4.3.3.3. of the EIAR, 'a search for Marsh Fritillary (Euphydryas aurinia) records was carried out on the NBDC biodiversity map online viewer on the 05.07.2024. No records of this species were found within hectads S35 and S45 or adjacent to the Site boundary'. During the mutli-disciplinary walkover surveys of the site undertaken throughout 2023 and 2024, a thorough search for suitable supporting habitat for marsh fritillary was undertaken. No suitable habitat for marsh fritillary was recorded within the Proposed Wind Farm site. As no suitable supporting habitat for the species was recorded, dedicated marsh

fritillary larval web surveys were not undertaken. Given the absence of suitable habitat for this species at the Site, no potential for impacts on this species was identified. As such the conclusions of the EIAR remain valid.'

We would question the adequacy and timing of the walkover survey dates in 2023 and 2024. Section 6.4.3.3 of the EIAR does not state what dates or months the walkover dates were conducted in 2023 and 2024. Crucially, MKO do not state whether the searches were conducted during this butterfly species' 'on the wing' active season between mid-May and mid-July or during the Devil's Bit Scabious (*Succisa pratensis*) blooming season of late July to October. Given the lack of clarity regarding the walkover survey dates, it is entirely possible the walkover surveys were conducted outside 'optimal season' when the marsh fritillary was in hibernation and during the Devil's Bit Scabious' dormant season, when of course, no trace of either of these species would be found.

In light of the above, MKO have not proven the walkover surveys were performed within optimum Marsh Fritillary season or optimum Devil's Bit Scabious blooming season and therefore their assertion that 'no suitable habitat for marsh fritillary was recorded within the Proposed Wind Farm Site' is both insufficient, inconclusive and lacking in adequate detail and therefore cannot be treated as either factually robust or correct. Furthermore, in their appeal, MKO fail to state in their original application or appeal whether any searches or surveys were specifically conducted in respect of the plant Devil's Bit Scabious on which Marsh Fritillaries are reliant and whether or not this plant species was found in the development site or adjacent site boundary.

We would contend that given Briskalagh's relatively remote location and largely undisturbed adjacent riverbanks, marshes, hedgerows and boggy terrain where there is an abundance of various wildlife forms and plant species already present, that it is most certainly a suitable habitat for Devil's Bit Scabious and Marsh Fritillary contrary to MKO's assertion above that 'no suitable habitat for Marsh Fritillary was recorded'. Furthermore, Devil's Bit Scabious is widespread in the locality and has spread abundantly here in recent years, therefore we would seriously question MKO's assertion that 'no suitable habitat was recorded' and question whether they are only referring to Devil's Bit Scabious in terms of 'suitable habitat'. We repeat that the Briskalagh development site given its remote and undisturbed location is a perfectly 'suitable habitat' in itself for Devil's Bit Scabious and therefore the Marsh Fritillary.

6. With regard to Section 4.1.12 of the Appeal Document, (Impact on Sensitive Receptors – Local Schools), the developer has demonstrably failed to acknowledge and adequately assess the various risks and impacts to St. Aidan's National School (Kilmanagh Village), Scoil Ruadháin (Tullaroan Village), Giant Steps Montessori (H104), Ballagh, Kilmanagh as sensitive receptors. We would point out that nowhere within the developer's original application are the words 'Giant Steps Montessori' (H104 – 1001 metres from Turbine 7) mentioned or referenced.

This is further compounded in their appeal document (Section 4.1.12), where the applicant repeatedly misidentifies Giant Steps Montessori as H093 when it is in fact H104. Refer to submission from Mariann Cleere dated 04/02/2025 to Kilkenny Co Co which states her home and montessori are identified by the developer as H104. The applicant claims in their appeal Section 4.1.12 that 'St. Aidan's NS..... and Giant Steps Montessori (Sensitive Receptor ID - H093 were considered in both the shadow flicker and noise impact assessments within the EIAR'. The applicant goes on to talk about shadow flicker and noise predictions for Giant Steps Montessori School, again

misidentified as H093 in paragraph 4 however these statements/predictions must obviously be treated by ABP as completely erroneous and moot since the applicant has misidentified and referenced the wrong premises number entirely.

Also, in paragraph 4 of Appeal Section 4.1.12, the applicant asserts *'The Montessori School is located on the L1008 road and..... The section of the L1008 along which it is located is not proposed to be used as a construction haul route'*. This is factually incorrect as the montessori is not located on the L1008 road and furthermore, there is no L1008 road within the locality.

Again, this further compounds our argument that the developer's application and appeal is littered with errors, omissions and conflicting information and their assertions therefore cannot be taken at face value. This also begs the question whether the applicant's noise and flicker predictions for all identified sensitive receptors are accurate and can be trusted.

We firmly contend that given this level of erroneous detail and disparity that the applicant's planning application and appeal are both evidently deficient in both detail and accuracy and therefore cannot be treated as either factual or sound in method.

7. In Section 4.1.9 of the Grounds of Appeal document, the applicant states: "A submission included the following statement: *"Kestrel and other raptor species, Cormorant, Curlew, Kingfisher are all observed onsite and as the applicant states, "Important migratory and recolonising species were also observed on site including Golden Plover, Greylag goose, Lapwings, Little Egret and even a Great Spotted Woodpecker was spotted once on site"*.

'It is noted that the quote attributed to the applicant is false and does not appear in any of the documents submitted with the planning application. In addition, cormorant, curlew, lapwing and greylag goose were not recorded within the Proposed Wind Farm site during the two years of surveying.'

We wish to draw the Board's attention to the Briskalagh Biodiversity Poster, an extract from which is below, and the full copy is attached.

The poster displays the logo of MKO in the top right-hand corner of the page and:

- Was displayed at Public Information Exhibitions.
- is currently still accessible on the Briskalagh website: [230502 Briskalagh Wind Farm - A1 posters.indd](#)
- The Briskalagh website (and therefore its contents including this Biodiversity Poster) are explicitly mentioned of the appendices of the Community Engagement Section of the developer's original application.

According to this poster, all those bird species above were listed on site. Even within their appeal, the applicant has made a glaring error in stating that these birds were not found on site and also in stating the quote is falsely attributed.

How are the relevant planning authorities and local residents expected to trust the findings of a biodiversity EIAR which contains so many errors, some of which are now explained by "typographical errors" and a denial of statements which the applicant has repeatedly made? In light of the above, we can only conclude that the contents of the biodiversity chapter cannot be trusted to be factually accurate.

Bird Species

A wide variety of common and widespread bird species typical of farmland habitats have been recorded in the study area. Of particular note are raptor species such as Buzzard, Kestrel, Peregrine Falcon, and Sparrowhawk. Species associated with aquatic habitats were also observed including Grey Heron, Moorhen, Cormorant, Curlew and Kingfisher. Important migratory and recolonising species were also observed on site including Golden Plover, Greylag goose, Lapwings, Little Egret and even a Great Spotted Woodpecker was spotted once on site.

Buzzards are seen and heard soaring above fields. Kestrels are easily distinguished by their trademark hovering behaviour as they search the ground for prey. Grey Heron can be seen perched and slowly wading through watercourses within the study area. Kingfisher are observed foraging along the banks of the Tullaroan stream in the southern end of the site.



The development site is of County Importance to many of the bird species listed, and as such this habitat should therefore be protected from any further harm caused by human, industrial or mechanical presence.

The crucial ornithological habitat at Briskalagh and the surrounding townlands should be protected, left undisturbed, and preserved to support the continued survival of these vulnerable bird species.

8. In section 4.1.17 of their Appeal Document, the applicants attempt to defend their credentials in relation to 'issues' at Meenbog Windfarm and heralds their 'extensive experience' in the construction & operation of windfarms in seven counties. On page 75/140 of the appeal document, the applicant states *'a peatslide occurred during the construction of the Meenbog Wind Farm in November 2020, which was not attributed to any negligence by the developer'*.

Negligent or not, according to several news articles, Planree Ltd (an Enerco associated company) was fined €1,500 and also ordered to pay for restoration works arising from this major environmental incident.

Furthermore, according to this news article, <https://www.donегallive.ie/news/local-news/1474128/high-court-grants-order-to-stop-further-works-at-meenbog-wind-farm.html>, *'Parties agreed that Planree's works caused, or at least contributed to the occurrence of, the November 2020 slide'*.

Whether or not Planree Ltd were negligent for the peatslide, what firstly alarms us is the fact the developer's windfarm works caused or at least contributed to a major environmental disaster at Meenbog in the first instance. Local people in that area of Donegal were on record stating their warnings about soils stability but they were ignored by the developer and MKO. We have been similarly ignored by the developer/MKO in terms of the risks and our warnings regarding the proposed site at Briskalagh and surrounding townlands. Secondly, their attempt to deny any link or cause for the Meenbog peatslide only days before a trial presided by Justice David Holland which he found to be *'puzzling, unhelpful and entirely unrealistic'* and *who contended that it was 'simply untrue' that the peat slide was caused by its development works* is also questionable and alarming. Thirdly, their continued reliance on semantics i.e. the peatslide *'was not attributed to any negligence by the developer'* is intended to suggest they were completely blameless; **however**, it is accepted their works certainly caused or contributed to the peatslide. There weren't just *'issues'* at

the Meenbog Windfarm as the applicant suggests, this was a wholesale environmental and ecological disaster which is still ongoing, is far from being remedied and will leave long term environmental impacts in its wake.

Predictably and unsurprisingly, the applicant fails to respond to the other 'issues' raised in our submission to Kilkenny Co. Co. in respect of noise nuisance proceedings & out of court settlements with Valentine Kelleher's family arising from Enerco's Knockduff Windfarm and multiple noise complaints and court proceedings relating to Enerco's Slievecallan Windfarm.

Notwithstanding the applicant's assertion that '*each planning application must be assessed independently*', we as members of this community, assert that we must be afforded special and/or extra protection from the Planning Authorities against unscrupulous developers or developers with poor or chequered histories or developers with inappropriate or hopelessly defective development plans.

In summary, we believe that the proposed development remains contrary to proper planning and we concur with all of the reasons for refusal cited by Kilkenny County Council.

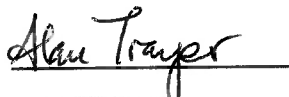
We ask that An Bord Pleanála kindly consider our original observations to Kilkenny Co Co and our additional observations in this document relevant to the appeal.

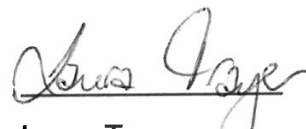
Finally, we ask that An Bord Pleanála affirm and uphold Kilkenny County Council's very many sound and justified reasons for refusing this proposed development.

Thank you for taking the time to read and consider our submissions.

Please find enclosed cheque for €50 payable to An Bord Pleanála.

Sincerely,


Alan Trayer


Laura Trayer

Briskalagh Biodiversity

Briskalagh Biodiversity

Briskalagh is situated within an agricultural grassland landscape encompassing hedgerows and treelines with rivers, floodplains, and small areas of plantation forestry. This leaflet provides an overview of the main habitats and species recorded during ecological surveys of the area.

What is Biodiversity?

Biodiversity is a term used for the variety of life on earth, biodiversity includes all species and habitats found within a given area known as an ecosystem. A wide variety of specialist ecological surveys are being undertaken at Briskalagh by MKO, with the project designed to avoid sensitive ecological receptors. These surveys have targeted a wide variety of species and habitats with the aim of determining their distribution in the area. Species recorded in the study area to date include rabbit, kingfisher, buzzard and a number of bat species. The site is also likely to support other mammal species such as badger and fox. This leaflet provides a brief overview of a variety of habitats and species of interest with potential to occur within the site as well as some interesting facts for the reader.

Habitats

Map 1 illustrates the biodiversity study area. The following habitat types, which may be of interest to the local community, are found within the study area.



Watercourses - A number of small watercourses and tributaries flow in a southeasterly direction within the Briskalagh site. The Tullaroan Stream and its tributaries flow southward throughout the site, while the headwaters for the Bregagh stream flow eastward from the northeast part of the site. The Tullaroan stream is known to support Salmon, Brown Trout, Lamprey and Otter amongst other species. Aquatic invertebrates such as mayfly play an important role in the food chain for a wide array of faunal species, including the aforementioned fish species. Drainage ditches border the majority of the improved agricultural field within the study area. A variety aquatic plants dominate river margins.



Plate 1-2: Watermint by the Tullaroan Stream.

Agricultural Grasslands - Agricultural grassland is the most abundant habitat within the biodiversity study area and is currently being grazed by livestock such as sheep and cattle. The grassland habitats on the site comprise mainly improved agricultural grassland as well as wetter grasslands dominated by rushes in waterlogged soils. Although agricultural grasslands are often of relatively low biodiversity value, they do provide some supporting habitat for pollinator species and foraging fauna such as Badger and various bird species.



Plate 1-3: improved grassland.

Treeline and Hedgerows - The agricultural fields across the site are bounded by a network of treelines and hedgerows, often featuring impressive, mature trees of native Ash and Oak, and the non-native Beech, and Sycamore. Other species found within the site include the native Alder, Hawthorn, blackthorn, Hazel, Elder and a variety of Willow species. These species provide vital sources of food for insects in spring and summer and berries in autumn for birds and mammals. These linear natural structures provide the feature of "connectivity" between different habitats which is vital for linking the areas' various habitats together and acts as shelter for mammals, particularly bats which depend on these features for commuting, foraging and roosting.



Plate 1-4: Hedgerow with mature tree and shrub species.

Conifer Forestry - In the southern part of the site there is a small area of conifer plantation forestry which is situated near the Tullaroan stream. This habitat is often relatively low in biodiversity value due to the density of trees planted and the monoculture nature of the species composition. Nevertheless, a variety of species can be found utilising its shelter including pine marten, red squirrel, and a variety of bird species.

Broadleaved Forestry and Mixed Broadleaved Woodland - Small areas of broad-leaved plantations are present within the southern section of the site adjacent to the conifer plantations. These contain a more diverse array of tree species, such as Alder, Ash, and Birch. These areas provide important areas of shelter for birds and mammal species. A small mixed broadleaved woodland is located in the north of the site. This woodland consists of native tree and shrub species such as Ash, Alder, Willow, Hawthorn, Blackthorn, Hazel, Elder, Holly and Spindle. The woodland has a typical flora composition of mosses, ferns, and woodland flowers such as Wood Aven, Wood Sorrel, Foxglove, Herb-Robert, and Bramble. This habitat provides food and shelter for a variety of birds, mammals, and insects.



Plate 1-5: Wood Sorrel blanketing the woodland floor.



Plate 1-6: Fern and moss assemblage on a Blackthorn branch.



Plate 1-7: Dense community of flora species within the mixed broadleaved woodland.

Mammals

A number of mammals including Badger, Irish Hare, Otter, Red Squirrel, Rabbit and Pine Marten have been recorded in the area in the past. Badgers live in social groups with family members and can live within complex tunnelling systems known as setts. Irish Hare is a subspecies of the Mountain Hare which is endemic to Ireland and is therefore a particular conservation interest. There are nine bat species in Ireland, and a number of these species have been recorded foraging within the study area, including Common Pipistrelle, Nathusius' Pipistrelle, Soprano Pipistrelle, Myotis species, Brown Long-eared Bat and Leisler's bat. Ireland's smallest bat is the Soprano Pipistrelle which weighs as little as a €1 coin. Each bat can eat over 3000 midges in one night! Ireland's largest bat, Leisler's bat, has also been recorded.

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Journal of Microbiology

