



An Taisce

The National Trust for Ireland

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Sent by email to: sids@pleanala.ie

12th August 2026

Ref: 324420

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 remitted application for to An Taisce for comment.

1. Ecological Sensitivities of the Subject Site

An Taisce is in principle very supportive of renewable energy development that is done sustainably; that is fully compliant with our national, European and international legal obligations; and that recognises the intertwined nature of the climate and biodiversity crises by avoiding particularly ecologically sensitive areas and fully assessing and mitigating potential ecological impacts. However, we have serious concerns about the ecological sensitivities of the subject site as well as the adequacy of the EIAR and NIS. Multiple third party and prescribed body submissions to the original application (ACP Ref. 317265) raised serious concerns about adverse ecological impacts, and we consider that these remain relevant.

Indeed, reason for refusal no. 3 of the decision by then An Bord Pleanála (Ref. 317265) is as follows:

"The proposed development would result in the direct loss of 3.5 hectares of dry heath (4030) habitat, which is included in Annex I of the European Union Habitats Directive of 1992, This area of dry heath located on Broemountain forms part of a wider habitat area across the commonage area of Broemountain and across the Knockmealdown Mountains which supports

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Directors: Terri Morrissey (Chair), Neil Whoriskey (Vice Chair), John Conroy (Treasurer), Laura Segura Gutierrez (Secretary),

Finbarr Murray, Helen Shaw, Tony Holohan

nationally declining species, including Annex 1 species protected under the EU Birds Directive, of hen harrier and golden plover, as well as other bird species of high and medium conservation concern. Having regard to the direct loss of Dry Heath habitat and the lack of interrogation of the implications for the hen harrier recorded in the area, in addition to associated risk of displacement caused by the proposed turbines to hen harrier and golden plover, the Board is not satisfied that the proposed development will not result in a significant loss of biodiversity. It is considered that the proposed development would be contrary to objectives ENV01, BD01 and BD02 of the operative development plan which seek to protect habitats listed in Annex I of the Habitats Directive, protect biodiversity and ecological connectivity, and achieve net gain in biodiversity enhancement and creation, and would be contrary to Article 4(4) of the Birds Directive (2009/147/EC) to avoid deterioration of habitats affecting protected birds. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area."

We submit that this reason for refusal still applies (we address the other two reasons in section 4 below).

1.1 Dry Heath and Peat Habitat

The site is known to contain the Annex 1 habitat 'Dry Heath' [4030] which, according to the latest NPWS Article 17 reporting, has an overall conservation status of 'Bad' with an actively deteriorating trend, and with windfarms being attributed as a significant pressure upon the habitat.¹ Consequently, the necessity of removal of 3.5 ha of this sensitive habitat to facilitate the development requires reconsideration, as well as a robust articulation of alternative sites considered and a rationale for why this site is deemed necessary given the occurrence of areas considered "preferred" and "open for consideration" across the county, according to the Wind Energy Strategy of the Waterford City and County Development Plan 2022-2028. We would also highlight that Table 6.12 of EIAR Chapter 6: Biodiversity (p. 76) notes how *"dry heath occurring under the footprint of the proposed development are representative of Annex 1 blanket bog habitat....the loss of dry heath habitat...has the potential to result in significant negative effects at the national/international scale."*

The EIAR 'Assessment of Alternatives' Chapter states that the subject site is *"Located outside areas designated for protection of ecological species and habitats."* While this may be the case in terms of being outside the strictly delineated boundary of an SAC/SPA/pNHA/NHA, the impact on the Annex 1 Dry Heath habitat still requires consideration of indirect impact given that it may have functional importance and connectivity with the wider Natura 2000 network at a landscape level.

In Case C-461/17 *Holohan v An Bord Pleanála (2018)*, the CJEU held that an AA must examine the implications of a proposed project, not just for the species within a European site, but also the significant *ex situ* implications for the habitat types and species found beyond the defined boundaries of a European site: *"(3) The assessment provided for in Article 6(3) of Directive 92/43 must also include **adverse effects on species or habitats outside the protected areas**, where such adverse effects may be detrimental to the conservation objectives of the protected areas (Question 3)."*

It should be noted that a likelihood of significant effects, under Article 6(3) of the Habitats Directive, may arise not only from plans or projects located within a protected site but also outside the strictly delineated boundary of the site. This point was clarified within Case C-142/16 *European Commission v Federal Republic of Germany* (para. 29):

¹ <https://www.npws.ie/sites/default/files/publications/pdf/article-17-report-2025-volume-1.pdf>

"It should be noted at the outset that the fact that the project to which the environmental assessment being challenged relates is not situated in the Natura 2000 areas concerned, but rather at a considerable distance from them, upstream of the Elbe, in no way precludes the applicability of the requirements laid down in Article 6(3) of the Habitats Directive. It is clear from the wording of that provision that 'any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon' is subject to the environmental protection mechanism it prescribes."

The sufficiency of habitat restoration measures are also uncertain given the length of time it takes for biodiversity to replenish and the lack of guarantee that such measures will be effective given the disturbance to normal hydrological function and vegetation regimes due to access track and foundation construction, as well as compaction effects due to machinery movement during operations. Furthermore, the disturbance created may alter the vegetation composition entirely, with dry heath being replaced by scrubland and secondary woodland, leading to a net loss of favourable reference area for the habitat which raises concerns regarding Habitats Directive compliance.

1.2 Ornithological Significance

While An Taisce in principle welcomes the development of renewable energy, we would highlight that is critical that they be ecologically sustainable, and developed in a way which is sensitive to the potential significant impacts on bird populations. given the potential for wind farms to have direct, indirect and cumulative impacts on bird species.

We consider that the EIAR and NIS do not capture the full extent of ornithological significance of the site and in the wider region, including by appearing to exclude consideration of the Knockmealdown Mountains cNHA to the north, for instance. While not given full European or national statutory designation, the cNHA is likely to be of regional ornithological and ecological significance and potential species and habitat connectivity between it and the subject site requires assessment. The importance of this site and the wider region was noted in the Department of Housing, Local Government and Heritage submission in the initial consultation where they highlight how the Knockmealdown site exceeds the criteria for SPA designation and should have been appropriately designated as a result. They also highlight Case C-374/98 *Commission v French Republic* where the CJEU stated that "areas which have not been classified as SPAs but should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of the Birds Directive", which concerns taking appropriate steps to avoid deterioration of habitats supporting relevant bird species, the Hen Harrier in this case, among others. The subject proposal would appear to contravene this requirement by removing a substantial area of dry heath, for instance, which would support ground-nesting bird species.

It appears that the EIAR Ornithology section has failed to include the vast Knockmealdown Mountains upland complex in its assessment, which potentially severely underestimates the risk factor for species which reside in this area to the immediate north of the subject site. This raises concerns regarding the robustness of the assessments undertaken as a whole which may underestimate regional ornithological and ecological connectivity with the proposed development site. Permitting the development in the absence of robust consideration of impact to species and habitats in the region cannot be considered to be precautionary and embeds a significant degree of ecological degradation risk to the proposal.

The subject dry heath and peatland landscape may be functionally linked in an ecological manner with this cNHA and the wider landscape, and there may be species linkages in terms of ornithological migration and feeding/roosting/nesting activity. Therefore, the construction phase works to build

turbine foundations, access roads etc may disturb the ecological integrity of the area and associated functional links with the cNHA and the wider upland area. Furthermore, the introduction of turbine structures may introduce permanent displacement effects to ground-nesting birds due to habitat loss and disturbance, as well as creating collision risk for vulnerable bird species.

A robust bird survey should include consideration of species migration between the Knockmealdown Mountains complex, regional upland habitats and the subject site, and modelling of the extent to which wind farm introduction to the area will disturb this connectivity to the detriment of habitats and species, including cumulatively with other wind farms in the region. This is likely to include the critically endangered Hen Harrier species, as well as Red Grouse. The ornithological significance of the site is evident from the applicants surveys which recorded an abundance of red and amber-listed species during summer and winter seasons, including Golden Plover, Kestrel, Lesser Black-backed Gull, Lapwing, Snipe, Stock Dove, Hen Harrier, Mallard, Merlin, Teal. This includes birds listed under Annex I of the Birds Directive. It is therefore clear that the site is of high ornithological importance and sensitivity, and is questionable in terms of wind farm suitability at this location. The applicant's surveys note ornithological abundance, yet these may remain an underrepresentation.

1.2.1 Hen Harrier

We have particular concern for bird populations which are of national and international importance, and which are of conservation concern such as Annex 1 species under the Birds Directive, of which the Hen Harrier is one. The Hen Harrier is a protected raptor, listed in Annex I of the EU Birds Directive and as such, Member States are obligated to protect and conserve the species. These obligations involve key actions to designate Natura 2000 sites (Special Protection Areas (SPAs)) and also to undertake monitoring of Hen Harriers nationally, regionally and within the designated areas. This species is currently the subject of a species threat response plan due to its ongoing decline in population. The species are also protected under the Wildlife Acts 1976-2000 and are currently considered an All-Ireland Species of Concern and UK priority species.

We would highlight the following statement from the latest iteration of the Hen Harrier Threat Response Plan²: *"Along with a number of other species and habitats, the Hen Harrier's decline is due to a number of factors, but primarily the loss of suitable habitat through afforestation/forest maturation, agricultural reclamation and intensification, and wind energy development"*.

The consistent decline in the population of the species is exemplified in the results from a 2022 survey conducted by the NPWS³, as reproduced below:

The 2022 survey identified 85 confirmed and 21 possible territorial hen harrier sites (85-106) in Ireland. This represents a decline from all the previous national surveys including 2015 (108– 157); 2010 (128–172); 2005 (132–153; and 1998–2000 (102–129) (refer to Table 11). The percentage decrease, based on maximum population estimate (confirmed + possible) from each of these surveys is -33% (since 2015), -38% (since 2010), -31% (since 2005), and -18% (since 1998-2000) respectively meaning the population has declined from all previous estimates and now comprises only around 100 pairs

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² <https://assets.gov.ie/static/documents/hen-harrier-threat-response-plan-final.pdf>

³ Ruddock, M., Wilson-Parr, R., Lusby, J., Connolly, F., J. Bailey, & O'Toole, L. (2024). The 2022 National Survey of breeding Hen Harrier in Ireland. Report prepared by Irish Raptor Study Group (IRSG), BirdWatch Ireland (BWI), Golden Eagle Trust (GET) for National Parks & Wildlife Service (NPWS). Irish Wildlife Manuals, No. 147. National Parks and Wildlife Service, Department of Housing, Local Government and Heritage, Ireland

At least 15 of the regional populations, (see map in Barton et al., 2006) scattered across the island, have seen further declines based on comparison of the 2015 and 2022 figures. Several of these defined regional populations (see Norriss et al., 2002) includes lands within the now defined SPAs for breeding hen harrier, particularly the Devilsbit, Slievefelim, Silvermines, King Hill; the Slieve Aughties; the Slieve Blooms; the Stack's, and Glanarudderies, Knockanefune, Mullaghareirks, north of Abbeyfeale (see Section 5.4).

...

Hen harrier populations have declined in five of the six SPAs (between 20–80%) since the 2005 survey and only one site."

The Hen Harrier Monitoring Report from 2021⁴ (p. 6) also highlights how a drop in productivity was noted for the species in 2020 (33 fledged from 13 pairs), with a high failure rate for breeding pairs (80%) still in evidence. While predation is listed as a significant pressure and reason for nest failure in this report, a precautionary approach would suggest that allowing wind farm operations in sensitive Hen Harrier areas would constitute a significant risk to the continued viability of the species in the area throughout the operational timeframe of the proposal and possibly beyond if repowering is considered.

The EIAR records sightings of Hen Harrier, but, as highlighted by the Department of Housing, Local Government and Heritage, it fails to properly assess the significance of this. We draw An Coimisiún's attention to the following extract from the Department's submission:

one within 0.5km and one within 3km. The Department does not accept the EIAR assessment (Table 7.22) that harrier habitat on the site is highly degraded and "*deemed unlikely to be suitable for breeding*" or that it is sub-optimal for foraging, nor does the Department accept conclusions drawn that only 11.17ha of suitable habitat will be lost through the development. The EIAR has not mentioned or included in its evaluation the importance of nearby young pre-thicket forestry plantation which is also suitable

breeding and foraging habitat supporting the adjoining open habitat. We are aware that hen harrier nested in young forestry at the Broemountain site in 2016 and a nearby site (0.5km) in 2019 and both pairs regularly foraged over pre-thicket forestry as well as heather moorland and grass moorland at the site (A. Mee pers. obs.).

Consequently, we submit significant adverse effects and continuing pressure on the Hen Harrier species arising from the wind farm has not been ruled out.

It is our considered opinion that to permit this development in light of these concerns would be in breach of the Birds Directives, under which the Hen Harrier is protected as an Annex I species. Overall, the approval of this development may result in direct, indirect and cumulative negative impacts on this important regional Hen Harrier population with knock on negative impacts on the integrity and connectivity of the declining national breeding population. Granting permission in light of this would be in contravention of the Birds Directive. As outlined by Pearce-Higgins *et al.* (2012)²: *'It is therefore important that the planning process remains robust, to ensure that wind farms, a necessary component of reducing greenhouse gas emissions, avoid sites with vulnerable bird populations (Bright et al. 2008), taking account of the potential for cumulative impacts '*

⁴ http://www.henharrierproject.ie/HHP_HH_Monitoring_2021.pdf

1.2.2 Birds Directive Requirements

Under European law both the Habitats and the Birds Directive require the protection of certain species across the EU, both within and outside Natura 2000 sites, to ensure their conservation across their natural range within the EU. This concerns all naturally occurring wild bird species in the EU. Under Article 3 of the Birds Directive, Member States are required to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the wild bird species in the European territory. This requirement includes habitat protection measures outside the Natura 2000 network.

"1) In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.

2) The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures: a) creation of protected areas; b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones; c) re-establishment of destroyed biotopes; d) creation of biotopes."

Article 5 provides for a general system protection for all species of birds prohibiting in particular:

- (a) deliberate killing or capture by any method;*
- (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;*
- (c) taking their eggs in the wild and keeping these eggs even if empty;*
- (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;*
- (e) keeping birds of species the hunting and capture of which is prohibited*

The CJEU has taken a broad interpretation of the concept of "deliberate" acts of harm which includes the acceptance of a possibility of disturbance. This means that harm would be a foreseeable outcome of a proposed course of action, even if not the aim of the activity or project concerned (Case C-784/23 *Voore Mets*).

Furthermore, a recent ruling in CJEU Case C-131/24 *VIRUS (I)* has confirmed that the protection of wild birds from disturbance otherwise prohibited by Article 5(d) is conditional on the conservation status of the species concerned and prohibits disturbance at a population level. Consequently, given that the subject proposal's surveys indicate the presence of amber/red-listed birds of conservation concern, deliberate disturbance with regard to the objectives of the Birds Directive of general protection for all bird species is likely to ensue, raising uncertainties about the ability of the project to proceed. The Court also confirmed that it is permissible to take account of mitigation measures when deciding whether disturbance is likely to occur under Article 5(d), necessitating an assessment by the planning authority of the rigour of proposed mitigation, which should be effective and grounded in the best available science. It should be ensured that the objective of maintaining populations of birds at a satisfactory level or adapting them to that level is not compromised by approval of the project.

"Para. 41: Thus, Article 5(d) of the Birds Directive prohibits disturbances which have a significant effect on the level deemed sufficient for the populations of wild bird species, and not on specimens of those species, unless the population of a given wild bird species is numerically reduced to such an extent that the disturbance of isolated specimens of that species is such as to jeopardise its conservation."

"Para. 44: It follows that, if appropriate preventive measures effectively prevent a project from disturbing wild birds or are effectively capable of reducing that disturbance such that it does not have significant effects on the objectives of the Birds Directive, it follows from the wording of Article 5(d) thereof and from the context of that provision that the prohibition of deliberate disturbance referred to in that provision is not applicable. The existence of such measures, the implementation of which is provided for by the project, must therefore be taken into consideration in assessing whether the prohibition on disturbance of wild birds laid down in Article 5(d) of the Birds Directive precludes the project."

"Para. 47: It follows from the foregoing that Article 5(d) of the Birds Directive must be interpreted as meaning that there is no deliberate disturbance, within the meaning of that provision, where measures, implemented as part of a project, make it possible to prevent any significant effect contrary to that directive's objectives of maintaining or restoring to a sufficient level the population of all species of naturally occurring birds in the wild state in the European territory of the Member States, taking into account, in particular, ecological, scientific and cultural requirements, as well as economic and recreational requirements."

Crucially, Article 4(4) of the Birds Directive also requires the avoidance of deterioration of habitats that affect protected bird species. In Case C-418/04 *Commission v Ireland*, the CJEU ruled that Ireland had failed to make serious or sufficient efforts to avoid pollution or deterioration of habitats outside of SPAs for the protection of birds (so called *ex situ* habitats and species). This is highly relevant to the subject application given the proposed loss of heath habitat.

We would also highlight that Article 9 derogations under the Birds Directive appear to be highly restrictive, with derogations to permit harm to commonly occurring birds in the wild not of conservation concern being difficult. (Case C-784/23 *Voore Mets* & Case C-131/24 *VIRUS (I)*)

2. Need for Updated Environmental Assessments

In the intervening period since the original application was made, an application for the Scartmountain Windfarm was lodged (ACP Ref. 321522, lodged in December 2024). This is in very close proximity to the subject proposal and the two proposals must be assessed cumulatively for the purposes of Environmental Impact Assessment and Appropriate Assessment. We therefore submit that the EIAR and NIS for the subject application must be updated accordingly, and in particular to take account of survey data from the Scartmountain proposal.

3. Landslide Risk

We would also highlight that, according to a GSI Landslide Risk Susceptibility Map, six of the proposed turbines appear to overlap with areas designated as moderate to high landslide susceptibility risk. This correlates with the Irish Peatland Conservation Council submission during the initial consultation window that the area is likely to contain underlying peat sediment, which requires clarification given the landslide risk. Historic events such as Derrybrien demonstrate the devastating impacts of peat slide events where wind farms are located in unsuitable upland locations.

4. Potential Material Contravention of Development Plan & Application of Climate Act

It is noted that the site selection process was undertaken within a previous iteration of the Waterford County Development Plan (2011-2017) in which the area containing the subject site was designated as 'Open for Consideration'. However, under the subsequent, current iteration of the Development Plan (2022-2028), the project area is located within a designated 'Exclusion' zone. This is a change of situation from the circumstances in which initial site selection was conducted, arguably requiring an updated site selection rationale and assessment of alternatives process which has regard to the "Exclusion" designation. Furthermore, the subject site is located within an area designated as "Most Sensitive" according to the CDP Landscape and Seascape Character Assessment. An Bord Pleanála's reasons for refusal 1 and 2 for the original application related to these issues.

The Development Plan has been described as a "*blueprint for development in the area of each planning authority*" in *Tennyson v Corporation of Dún Laoghaire* [1991] 2 I.R. 527 at 535; an "*environmental contract*" by McCarthy J in *Attorney General (McGarry) v Sligo County Council* [1991] 1 I.R. 99 at 113; affirmed as constitutional and in the common good due to public consultation opportunity in *Blessington Heritage Trust Ltd v Wicklow County Council* [1999] 4 I.R. 571; and appraised for its democratic consultation procedure which shapes its content in *Brophy v An Bord Pleanála* [2015] IEHC 433. Therefore, the Development Plan has long been recognised by the Courts for its role in shaping development in an area. The current Development Plan indicated the unsuitability of the selected site for wind energy development. The site selection process was carried out under a previous iteration of the Development Plan, necessitating a revised process.

In our view, the Board was correct in their original conclusion that sufficient evidence was not presented to justify a material contravention.

Section 15 of the Climate Action and Low Carbon Development Act 2015 (as amended) does require public bodies to perform their functions, in so far as is practicable, in a manner consistent with:

- (a) the most recent approved climate action plan,
- (b) the most recent approved national long term climate action strategy,
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,
- (d) the furtherance of the national climate objective, and
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State."

The permitting of renewable energy developments by planning authorities is indeed in principle aligned with the above criteria, provided the projects do actually demonstrably contribute to decarbonisation and the reduction of cumulative emissions in line with the national climate objective, carbon budgets, the Climate Action Plans, etc.

However, in the first instance we would highlight that compliance with other national and EU law provisions remains a requirement and is not automatically overruled by s.15. In particular, the Habitats and Birds Directives both contain extremely strong provisions regarding the required level of protection for habitats and species and birds, including stringent criteria for the permitting of projects. In our view, the provisions of the Habitats and Birds Directives (in particular Art. 6(3) of the Habitats Directive and Art. 4(4) of the Birds Directive) are stronger requirements than those of s.15. We concur with the Board's conclusion in reason for refusal no. 3 of the original decision that the proposal does not comply with the requirements of the Birds Directive.

Second, compliance with s.15 must be looked at in the round, and it cannot be assumed that the development of renewables will not also be a *source* of carbon emissions. There may be instances where the development of renewables releases stored carbon from soils, etc. and actually undermines the emissions reduction benefits of the renewable energy. Therefore, the carbon sequestration potential of the subject site must be assessed here, particularly given the known heath habitat, and the likelihood that there could be peatland on the site, as articulated by the Irish Peatland Conservation Council in their original submission (to Ref. 317265).

In light of the ecological sensitivities of the site as outlined above and by the other third party and prescribed body submissions to the original application, the related flaws in the assessments in the EIAR and NIS, and reason for refusal no. 3 of the original decision we do not believe that a material contravention of the Development Plan, per s.37G(6) of the Planning and Development Act 2000 (as amended), is warranted in this case. We do not consider that the proposal is consistent with the requirements of the Birds and Habitats Directives, and we submit that this warrants refusal, even having regard to the requirements of s.15 of the Climate Act.

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

Is muidne le meas,

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