

Daniel O'Connor

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From: martin g tracey <mgt11@hotmail.co.uk>
Sent: Thursday 27 August 2026 23:53
To: Appeals2
Subject: SU05E.324433 / ACP-324433-26 – Formal Observation and Objection – Martin Tracey

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Dear Sir/Madam,

FORMAL OBSERVATION AND OBJECTION

CASE REFERENCES: SU05E.324433 / ACP-324433-26

DEVELOPMENT: MEENBOG WIND FARM, COUNTY DONEGAL

APPLICANT: PLANREE LIMITED

Observer details:

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Date: 27 August 2026

Please accept this email, including all the text below, as my formal written observation on and objection to the above application. This observation is submitted electronically before the advertised deadline. Please place the complete email on the case file.

I am a resident of County Tyrone with a direct and legitimate interest in the protection of the shared cross-border environment, particularly the Mourne Beg, River Derg and River Foyle catchments and the protected rivers, habitats and species potentially affected by the development.

I object to the application in its entirety. I respectfully request that An Coimisiún Pleanála refuse substitute consent for the development already carried out and refuse consent for the proposed completion, operation and decommissioning of the 19-turbine wind farm.

The application does not concern a minor or technical planning departure. It concerns the attempted regularisation and completion of a substantially constructed development which the Irish courts

have determined to be unauthorised in its entirety following numerous material deviations from the permission.

1. Judicial findings and present status of the development

In *Donegal County Council v Planree Limited and Mid-Cork Electrical Limited* [2024] IEHC 193, the High Court restrained further development at Meenbog.

The Court of Appeal subsequently dismissed the developers' appeal on all grounds in *Donegal County Council v Planree Limited* [2024] IECA 300. It upheld the conclusion that the material deviations had rendered the development, in its entirety, unauthorised.

The judgments are available here:

High Court:

https://ww2.courts.ie/view/Judgments/6b028113-1030-41e2-8c63-41a65226a071/8d4b600a-7ae8-42c5-9b34-d813ffbc0511/2024_IEHC_193.pdf/pdf

Court of Appeal:

https://www2.courts.ie/viewer/pdf/254b80a4-e9ba-49d6-95ed-b79501e6114b/2024_IECA_300.pdf/pdf

I recognise that neither court determined the planning or environmental merits of this substitute-consent application. That decision is for the Commission. Nevertheless, the judicial findings are centrally relevant to:

- the unauthorised status of the development;
- the nature and extent of the material deviations;
- the applicant's compliance history;
- whether the applicant could reasonably have believed the development was authorised;
- the adequacy and reliability of the original environmental assessments;
- whether effective environmental assessment and public participation have been substantially impaired;
- the statutory exceptional-circumstances test; and
- the risks associated with allowing further construction and long-term operation.

The evidence considered in the proceedings referred to 45 deviations identified during examination of the site, of which 16 were assessed as presenting medium or higher ecological risks. Twenty-one deviations were relied upon in the enforcement proceedings, while the present application appears to seek regularisation of 25 material deviations. The Commission should establish precisely what was constructed, when it was constructed, how it differed from the permission and what environmental effects arose from each deviation individually and cumulatively.

The extent of the deviations and the judicial determination that the entire development is unauthorised distinguish this case from the correction of an isolated or inadvertent departure.

2. Exceptional circumstances under section 177K

Section 177K(1A)(a) of the Planning and Development Act 2000 provides that substitute consent must not be granted unless the Commission is satisfied that exceptional circumstances exist which justify its grant.

Under section 177K(1J), the Commission must have regard to:

- whether regularisation would circumvent the purpose and objectives of the Environmental Impact Assessment Directive or Habitats Directive;
- whether the applicant had, or could reasonably have had, a belief that the development was not unauthorised;
- whether the ability to assess its environmental effects and provide for public participation has been substantially impaired;
- its actual or likely significant environmental effects and effects on European sites;
- the extent to which those effects can be remediated;
- the applicant's compliance with previous permissions and history of unauthorised development; and
- any other relevant matter.

The current text of section 177K is available at:

<https://revisedacts.lawreform.ie/eli/2000/act/30/section/177K/revised/en/html>

The applicant bears the burden of supplying sufficient evidence to satisfy this exceptional statutory test. The fact that a development is substantially complete, that significant expenditure has been incurred or that the project would generate renewable electricity cannot by itself create exceptional circumstances. Otherwise, an applicant could improve its position by proceeding materially beyond its permission before lawful assessment and effective public participation occurred.

The applicant's assertion that it reasonably believed the altered development remained authorised must be examined against:

- the number and materiality of the deviations;
- the professional planning, engineering and environmental expertise available to it;
- the sensitive peatland and hydrological setting;
- the occurrence of multiple peat-instability incidents;
- the failure to notify the relevant authorities of earlier incidents, as recorded in the Court of Appeal judgment;
- the major peat failure in November 2020; and
- the judicial determination that the development as a whole was unauthorised.

The Court of Appeal judgment records seven peat-instability incidents during the first year of construction. Four incidents at two locations were classified as peat failures, and three further incidents involved minor instability. The judgment records that none of those earlier incidents appeared to have been reported to Donegal County Council or another agency.

The judgment also records that a criminal investigation and prosecution arising from events at the development resulted in convictions following guilty pleas in June 2022. These matters require careful examination when the Commission assesses compliance history, environmental caution and the credibility of the claimed belief that the development was authorised.

On the available evidence, the applicant has not demonstrated exceptional circumstances. Granting substitute consent in these circumstances would risk allowing retrospective regularisation to circumvent the preventative purposes of the EIA and Habitats regimes.

3. The November 2020 peat failure

The Court of Appeal judgment records that approximately 86,240 cubic metres of peat failed in November 2020 and that approximately 65,740 cubic metres left the failure area. The released material travelled approximately three kilometres along the Shruhanganve Stream into the Mourne Beg River in Northern Ireland and towards sensitive protected sites.

The judgment describes the entry of peat into water as a polluting event capable of harming aquatic life and species. It records that the incident was potentially significant and caused environmental damage.

For accuracy, I acknowledge that the courts did not find that the material planning deviations caused the November 2020 peat failure, and the works being undertaken at turbine location T7 were themselves contemplated by the permission. That distinction does not reduce the environmental significance of the event. Construction of the wind-farm development caused the peat failure, and the original assessments had not identified the relevant underlying weakness.

The courts further recognised that the receiving environment had been changed by the peat failure and the development works and that any later environmental impact assessment or appropriate assessment would require particularly careful scrutiny.

The event demonstrates:

- the limitations of the original peat-stability assessment;
- the vulnerability of the site;
- the existence of a direct transboundary pollution pathway;
- the potential consequences of construction activity at this location;
- the need to examine all earlier instability events cumulatively; and
- the danger of relying principally on mitigation, monitoring and reactive intervention.

Evidence that selected water-quality readings later approached previous measurements cannot establish that no ecological harm occurred. It does not demonstrate that deposited peat and sediment had no effects on spawning beds, invertebrates, fish, otter habitat, freshwater pearl mussel habitat or wider ecological function. Nor does it resolve the risk of delayed, repeated or cumulative effects.

4. Material inconsistency within the application

The Commission should require the applicant to reconcile a material inconsistency between its Planning Report and its remedial environmental documents.

Section 9 of the Planning Report asserts, in substance, that the existing development did not result in significant negative environmental effects and that no significant effects require remediation.

The remedial EIAR, however, acknowledges matters including:

- a direct significant effect on land, peat and subsoil arising from the November 2020 failure;
- a short-term significant negative effect on the water environment;
- short-term significant effects on downstream designated sites; and
- a significant transboundary effect extending into Northern Ireland.

Relevant material is contained in Chapters 8 and 9 of the rEIAR, available through the Commission's case file:

Those conclusions cannot readily be reconciled with an unqualified assertion that no significant negative effects occurred.

An effect does not cease to be significant because it is described as short-term, because monitoring subsequently indicates some recovery, or because the geographical area directly affected represents a small percentage of the applicant's overall 892-hectare site. The assessment must consider the nature, magnitude, duration, reversibility and ecological consequences of the effect upon each sensitive receptor and protected watercourse.

The Commission should not rely on the Planning Report's general conclusion unless every inconsistency has been transparently resolved by reference to evidence and the public has been afforded an opportunity to comment on that resolution.

5. Retrospective assessment and impaired public participation

The applicant describes approximately 90 per cent of the groundworks as complete. Much of the project was therefore constructed before the public had an opportunity to participate in an environmental assessment of the development as actually built.

Since the original assessment, the baseline has been materially altered by:

- extensive construction;
- the material deviations;
- excavation, movement and storage of peat;
- forestry removal;
- drainage works;
- borrow pits;
- internal roads and hardstands;
- turbine foundations;
- grid infrastructure;
- emergency and remedial works;
- repeated instability incidents; and
- the November 2020 peat failure.

A retrospective assessment undertaken after construction and environmental damage cannot automatically reconstruct, with the necessary scientific certainty:

- the complete pre-development ecological and hydrological baseline;
- the precise effect of every construction activity and material deviation;
- the cumulative effect of the earlier peat-instability incidents;
- the condition that would exist had the unauthorised development not occurred;
- the genuine alternatives that could have been chosen before construction; or
- the mitigation and design changes that public participation might have secured at a formative stage.

Public participation is intended to occur while alternatives remain open and before an irreversible commitment is made. Receiving observations when a project is substantially constructed does not by itself restore the opportunity that has been lost.

The Commission must expressly determine under section 177K(1J)(c) whether assessment and public participation have been substantially impaired. The applicant's assertion that they have not been impaired "to any degree" is unsustainable unless supported by detailed and convincing evidence addressing the altered baseline and the lost opportunity to influence the project before construction.

6. Habitats, protected sites and aquatic ecology

The remedial Natura impact statement identifies potential pathways requiring detailed assessment in relation to sites including:

- Croaghonagh Bog SAC;
- River Finn SAC;
- Lough Eske and Ardnamona Wood SAC; and
- the River Foyle and Tributaries SAC in Northern Ireland.

Relevant receptors include blanket bog, Atlantic salmon, otter and freshwater pearl mussel.

For European sites within the European Union, consent cannot lawfully be granted unless the Commission is satisfied, on the basis of complete, precise and definitive findings and the best available scientific knowledge, that no reasonable scientific doubt remains concerning adverse effects on site integrity.

This test must be applied to the project as a whole, alone and in combination with other plans and projects. It cannot be satisfied by identifying gaps or uncertainties and postponing their resolution to future monitoring.

Following the United Kingdom's departure from the European Union, the River Foyle and Tributaries SAC forms part of the United Kingdom's National Site Network rather than being an EU European site. It nevertheless remains a highly protected transboundary ecological receptor. Effects upon it must be fully assessed under the EIA and transboundary-assessment regimes and under all applicable cross-border environmental obligations. Its post-Brexit legal classification cannot justify a lower level of scientific or environmental scrutiny.

Later evidence that water-quality measurements returned towards selected baselines does not establish that:

- protected habitats or species suffered no adverse effects;
- all ecological functions recovered;
- peat or sediment deposits caused no continuing effects;
- there are no delayed or cumulative effects; or
- additional construction will not cause another instability event.

Because the original assessment failed to identify the weakness associated with the November 2020 failure, the Commission should apply particular caution to predictions of future peat stability. It should not accept conclusions which depend upon mitigation or monitoring unless the measures are specific, scientifically validated, legally enforceable and capable of ensuring the required result beyond reasonable scientific doubt.

7. Water Framework Directive and cross-border waters

The project must not cause deterioration in the status of any affected surface-water or groundwater body or compromise achievement of the applicable environmental objectives.

The Court of Justice has held that deterioration may arise where even one relevant quality element falls by one class and, where an element is already in the lowest class, any further deterioration is prohibited. Project authorisation requires a sufficiently detailed assessment of the effect on each affected water body and quality element.

The Commission should therefore require a water-body-by-water-body and quality-element-by-quality-element assessment addressing:

- the Shruhengarve Stream;
- the Mourne Beg River;
- the River Derg and connected Foyle catchment;
- the Lowerymore River and Lough Eske catchment;
- all affected groundwater bodies;
- biological quality elements;
- hydromorphological conditions;
- deposited peat and sediment;
- chemical and physicochemical conditions;
- cumulative pressures from forestry, drainage, roads, wind farms and other development; and
- the increased frequency and intensity of extreme rainfall associated with climate change.

Any conclusion that no Water Framework Directive deterioration occurred must be reconciled with the acknowledged significant and transboundary pollution event. A general conclusion based on limited monitoring locations, selected parameters or later recovery would not be an adequate substitute for the legally required assessment.

Relevant Court of Justice authorities include Case C-461/13, Bund für Umwelt und Naturschutz Deutschland v Germany, and Case C-535/18, Land Nordrhein-Westfalen:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013CJ0461>

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62018CJ0535>

8. Birds Directive and wider biodiversity

The proposed development comprises 19 turbines with tip heights of approximately 156.5 metres and an intended operational period of 25 years. The Commission must independently assess:

- collision mortality;
- displacement and barrier effects;
- habitat loss and fragmentation;
- disturbance during construction, operation and decommissioning;
- forestry removal;
- effects upon feeding, breeding and roosting areas;
- cumulative effects with other wind farms and infrastructure; and
- the adequacy, timing, duration and geographical coverage of the bird surveys.

The Commission should examine whether survey information remains representative following the lengthy development history, changes to the receiving environment and construction already undertaken.

Habitat-management, enhancement or compensatory proposals must not be used to conceal uncertainty regarding the project's effects. Such measures cannot replace the prior requirement to establish, on adequate evidence, that prohibited adverse effects will not occur.

9. Whole-project and cumulative assessment

The application must be assessed as a functional whole and not divided into separate components in a manner that understates its effects.

The assessment must include:

- all 19 turbines and foundations;
- crane hardstands;
- internal roads;
- the 110kV substation;
- the complete grid connection;
- underground cabling and joint bays;
- borrow pits;
- forestry felling and replanting;
- drainage and sediment controls;
- peat and spoil management;
- watercourse crossings and culverts;
- temporary compounds;
- emergency and remediation works;
- operational maintenance;
- eventual decommissioning; and
- all relevant existing, consented and proposed wind-energy and infrastructure projects.

The Commission should also take account of the recent refusal concerning three grid-connection culverts at Tawnawully Mountain, Donegal County Council reference 24/60495 and Commission reference ABP-321718-25 / PL05E.321718.

The Commission's order is available here:

<https://www.pleanala.ie/anbordpleanala/media/abp/cases/orders/321/d321718.pdf>

That decision raised material concerns relating to European-site effects, legal interest in the relevant lands and the premature nature of the proposed works pending resolution of the Meenbog development's planning status.

The present project should not be authorised on an assumption that necessary grid or access infrastructure will subsequently receive consent. Equally, connected infrastructure should not be excluded from the cumulative assessment merely because it is or was the subject of a separate application.

10. Transboundary assessment and participation

The November 2020 pollution pathway crossed the border directly into Northern Ireland. That is not a theoretical or remote possibility: a transboundary impact has already occurred.

The Commission should confirm that effective notification, consultation and access to information have been provided to all relevant Northern Ireland bodies and affected communities, including, as applicable:

- the Department for Infrastructure;
- the Department of Agriculture, Environment and Rural Affairs;
- the Northern Ireland Environment Agency;
- the Loughs Agency;
- relevant councils;
- water and fisheries authorities; and
- communities within the Mourne Beg, Derg and Foyle catchments.

Consultation with a limited number of official bodies is not necessarily equivalent to effective participation by the affected Northern Ireland public. Relevant documents, further information and expert reports must be made available in sufficient time and in an accessible manner.

The Commission should explain in its decision what transboundary consultation occurred, what observations were received and how those observations influenced its assessment.

11. Renewable energy policy

I recognise the urgent importance of renewable energy and climate action. My objection is not an objection to renewable energy in principle.

Renewable-energy policy does not displace the mandatory requirements of the Planning and Development Act, EIA Directive, Habitats Directive, Birds Directive, Water Framework Directive or the statutory exceptional-circumstances test.

Climate policy requires renewable energy to be delivered lawfully, at environmentally suitable locations and following reliable assessment and meaningful prior public participation. The environmental benefits claimed for a project cannot excuse unauthorised development or reduce the level of protection afforded to peatlands, rivers, protected habitats and species.

Regularising a substantially completed development after numerous material deviations, repeated instability incidents and a major transboundary pollution event would risk weakening deterrence and undermining the effectiveness of the environmental-assessment system.

12. Independent review and precaution

The Commission must ensure under section 177K that it has access to sufficient expertise to examine the remedial EIAR and determine its adequacy.

Given the history and complexity of this case, the Commission should not rely solely upon reports commissioned by the applicant. It should obtain independent expert advice on:

- peat stability and geotechnical risk;
- hydrology and hydrogeology;
- aquatic ecology and fisheries;
- freshwater pearl mussel and Atlantic salmon;
- ornithology;
- the remedial EIAR and remedial NIS;
- the prospective EIAR and NIS;

- Water Framework Directive compliance;
- transboundary effects; and
- the feasibility and environmental consequences of restoration.

Independent reviewers should have access to all construction records, incident reports, monitoring data, photographs, drainage records, correspondence and enforcement material, including records relating to every known peat-instability incident.

13. Determination requested

For the reasons set out above, I respectfully request that An Coimisiún Pleanála:

1. refuse the application in its entirety under section 177K;
2. refuse substitute consent for the development already carried out;
3. refuse consent for all remaining construction, operation and decommissioning works included pursuant to section 177E(2A)(b);
4. determine that the applicant has not demonstrated the exceptional circumstances required by sections 177K(1A) and 177K(1J);
5. following refusal, consider issuing a draft direction under section 177L requiring cessation of relevant activities and scientifically appropriate remedial measures to restore the site to a safe and environmentally sustainable condition and protect designated habitats and species;
6. ensure that any restoration is preceded by an independent assessment so that removal or remedial works do not themselves cause further peat instability, water pollution or ecological damage; and
7. require long-term independent monitoring of peat stability, hydrology, water quality, aquatic ecology and affected habitats.

Section 177L expressly permits the Commission, following refusal, to require remedial measures necessary to restore the site to a safe and environmentally sustainable condition:

<https://revisedacts.lawreform.ie/eli/2000/act/30/section/177L/revised/en/html>

Section 177O provides that, following refusal, the development is deemed unauthorised and the planning authority must take the prescribed enforcement steps:

<https://revisedacts.lawreform.ie/eli/2000/act/30/section/177O/revised/en/html>

If the Commission is not presently minded to refuse the application, I request, in the alternative, that it:

- require comprehensive further information;
- require the applicant to reconcile the inconsistencies identified above;
- obtain genuinely independent expert reports;
- publish all further information and expert reports;
- reopen public and transboundary consultation;
- undertake a site inspection;
- address every statutory factor under section 177K(1J) separately and expressly;
- undertake a complete whole-project and cumulative assessment; and
- hold an oral hearing because of the project's scale, unauthorised status, litigation history, cross-border effects and exceptional environmental complexity.

No substitute consent or approval for remaining works should be granted unless the Commission can lawfully reach all necessary environmental conclusions on the basis of complete, precise, definitive and up-to-date evidence.

Please acknowledge receipt of this observation, confirm that it has been accepted as valid and placed in full on the case file, and notify me of the Commission's eventual decision.

Yours faithfully,

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