AN BORD PLEANÁLA
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Ardass
Tarmon
Castlerea
Co. Roscommon
7th Aug 2024

The Secretary
An Bord Pleanála
64 Marlborough St
Dublin 1

Reference Number DED 724 Section 5 Referral

Referral for review of the Declaration under Section 5 of the Planning and Development Act 2000 (as amended) to grant exempted development to lighting development consisting of 12 external lights, in Tarmon National School Ballinphuil, Castlerea, Co. Roscommon.

Section 5 Declaration on Development and exempted development notification of decision dated the 12th of July.

Background
In accordance with Section 5 of the Planning and Development Act 2000 a declaration was requested from the Roscommon Co Council as to whether the development detailed above was considered exempted development.

On the 12th of July, Roscommon County Council found that the development met the criteria for being classified as exempted development.

The planner found that
a) the' works' are development
b) the installation of external light installations as described in this case is exempted development
c) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.

I submit that this determination is incorrect and is not in compliance with the conditions, limitations and statutory requirements for exempted development outlined in the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). I enclose the acknowledgement the notification of decision from Roscommon County Council dated the 12th of July (See Appendix 1) and requisite fee.

Grounds for request for review/appeal

1. The planner's decision that an appropriate assessment is not required to address the Bellengare bog SPA Conservation objectives fails to comply with Section 4(4) of the Planning and Development Act, s.177U of the *Planning and Development Act 2000* and Article 6(3) of the *Habitats Directive* in failing to address the conservation objective of the SPA: "To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests..."

2. The planner has no grounds to determine that the lights are '*comparable nocturnal intensity to dwelling security lighting and of lower intensity than village street lighting and not of an intensity which could reasonably be argued to cause migratory birds to avoid the site, likely significant impacts including avoidance or displacement of qualifying interest species can reasonably be excluded*' Expert evidence relating to this site and the qualifying interest of the SPA in a recent High Court case contradicts the Planners assessment and a lighting consultant's report provided by Redmond Analytical (See Appendix 3) rejects the planners assessment of the lighting infrastructure.

3. The planners determination that the development qualifies for exemption due to Section 4(1)h of the Planning and Development Act 2000 fails to take account that this exemption is subject to Article 9 (viiB) of the Planning and Development Regulations 2001

4. The planners determination that Section 4(1)h of the Planning and Development Act 2000 (as amened) is 'applicable in principle' is fundamentally flawed. This determination is a result of the planner's mischaracterisation of the lighting infrastructure as '*comparable in design and intensity to domestic security lighting*'. The report provided by the lighting consultant indicate that the lighting exceeds the characteristics of domestic security lighting.

5. A Bird and Bat Survey of the local area discovered the presence of bats in the immediate area surrounding the lighting development. The impact of the lighting on the bat population has not been considered in the decision to grant exempted development.

6. In his assessment the Planner has stated that the height of the lights from ground level is 2.5 metres. This is an incorrect measurement. The lights are 3.7metres from ground level.

7. The development is situated in LCA 28 the Tulsk Rathcroghan Plateau an area deemed of Exceptional Landscape value in the Roscommon Development plan. The planner's assessment does not demonstrate due regard for the visual and residential amenity of the area.

1. **The Planner's decision that an appropriate assessment is not required to address the Bellengare bog SPA Conservation objectives fails to comply with Section 4(4) of the Planning and Development Act, s.177U of the *Planning and Development Act 2000* and Article 6(3) of the *Habitats Directive* in failing to address the conservation objective of the SPA: "To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests"**

The lighting development, the subject of this appeal, is situated 3km from European site Bellanagare Bog SPA (Site code: 004105) and Bellanagare Bog SAC (Site Code 000592).
The conservation objective of Bellanagare bog SPA is: "To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests..."

Section 4(4) of the Planning and Development Act sets out that a development shall not be considered exempted development if an environmental impact assessment or an appropriate assessment of the development is required. In his report the planner determines that in respect of this development, Section 4(4) is not applicable.

The planner report states that an Appropriate assessment is not required due to *'reported low frequency of use or possible abandonment of the site by the said qualifying interest species, and in particular the significant distance between the development and the closest European site'*. Pg 6 of Planners report on application under Section 5 of the Planning and Development Acts 2000 (as amended) Appendix 2

I submit that this decision fails to give due regard to the conservation objectives of Bellanagare bog, a protected site under Article 6(3) and Article 6(4) of the EU Habitats Directive.

High Court Case: Dark Sky Roscommon v An Bord Pleanála
The site of this development was the subject of a recent High Court case: **Dark Sky Roscommon v An Bord Pleanála**. The Board of Management of Tarmon National School was a notice party in this case. The primary issue under consideration was the potential impact of a proposed lighting development at the school site on the Greenland white-fronted goose, a qualifying interest of the Special Protection Area (SPA) Bellengare Bog (Planning Ref 21/131, ABP Ref 310323-21).
In the case the respondent, An Bord Pleanála, asserted that there would be no significant impact on the geese as they had abandoned the site and would avoid areas of artificial illumination in any event. The applicant challenged that conclusion as failing to comply with s.177U of the *Planning and Development Act 2000* and Article 6(3) of the *Habitats Directive* in failing to address the conservation objective of the SPA: "To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests..."

The judge found that it was "*common case*" that the geese were not currently in situ at the SPA, "*but, if anything, that should highlight rather than obviate the need to consider the impact that this development could have on the conservation objective of restoring the qualifying interest*".

Noting the expert evidence that if the geese were to return, they would likely avoid the site because of the artificial illumination, the judge found that this could not be consistent with achieving the conservation objective of restoring the geese.

Ms. Justice Bolger writes, *'It is common case that the geese are not currently in situ on the Bellanagare Bog SPA but, if anything, that should highlight rather than obviate the need to consider the impact that this development could have on the conservation objective of restoring the qualifying interest. The fact that the geese, if they return, are likely to avoid the site because of the artificial illumination from the development- a finding the inspector seems to make regardless of the size and scale of the proposed development - cannot be consistent with achieving the conservation objective of restoring the geese. It is difficult to understand the inspector's conclusion that the geese avoiding the area equates to no significant impact on the geese, particularly given the apparent absence of any identifiable consideration of Dr. Ni Bhroin's observation that "birds move from location to location to forage"*
Proper consideration of the two ecological reports available to the inspector could not have led to a reasonable conclusion that the development "will not adversely impact on the qualifying interests associated with the nearest SAC or SPA", as found by the inspector. That conclusion is contradicted by the inspector's own endorsement of Dr. McLoughlin's finding that the geese, if they returned, would be "likely to avoid the area" and "simply avoid the spillage and glare".

After thorough consideration, the High Court quashed the planning permission for the lighting development in July 2024. This decision underscores the importance of environmental considerations in planning and development processes, particularly when protected species and habitats are involved. (See Court judgement Appendix 4)

Planners' assessment in DED 724
Upon reviewing the Planner's decision in DED 724, in light of the recent court ruling, it is evident that the approach taken is incorrect both in fact and in law. The planner's determination to grant exempted development is based on reasoning that has been rejected by the High Court. The judgement in the *Dark Sky Roscommon v An Bord Pleanála* clarifies that the '*low frequency of use*' and '*possible abandonment*' of the SPA detailed by the Planner, does not remove the obligation of the local authority to take measures to achieve the conservation objective of the SPA to 'restore the favourable conservation condition of the bird species.
Furthermore, the planner's decision that a screening assessment is unnecessary due to the site's 3km distance from the SPA fails to consider that all Natura 2000 sites within a 15km radius of a development must undergo assessment under the Habitat Directive.

The determination by the planner that the Greenland White Fronted goose no longer frequents the Special Protection Area (SPA) and thus faces no potential impacts is fundamentally flawed. This assessment overlooks the critical obligation of Roscommon County Council to not only protect but also to restore the favourable conservation status of this species.
Disregarding this obligation undermines conservation efforts and amounts to an inappropriate use of the exempted development permission.

2. **The planner has no grounds to determine that the lights are '*comparable nocturnal intensity to dwelling security lighting and of lower intensity than village street lighting and not of an intensity which could reasonably be argued to cause migratory birds to avoid the site, likely significant impacts including avoidance or displacement of qualifying interest species can reasonably be excluded*' Expert evidence relating to this site and the qualifying interest of the SPA in a recent High Court case contradicts the Planners assessment and a lighting consultant's report provided by Redmond Analytical (See Appendix 3) rejects the planners assessment of the lighting infrastructure.**

The planners assessment that the lights are of '*dwelling security lighting and of lower intensity than village light*' has been found to be incorrect by lighting consultants by Remond Analytical. Please see report from Redmond Analytical (Appendix 3)

Expert Evidence from Redmond Analytical

The assessment conducted by Redmond Analytical provides critical insights into the intensity and design of the luminaires installed on the exterior walls of Tarmon National School. According to the report from Redmond Analytics
'the luminaire installed on the exterior walls of Tarmon National School are bulkhead fittings designed to be mounted horizontally. The nature of luminaires of this type is to produce higher intensity light in the horizontal plane, specifically the plane parallel with the wall on which they are mounted. They are designed this way to deliberately maximise light distribution away from the wall. This means that they are visible at nighttime from a considerable distance. It is our professional opinion that lighting produced by luminaires of this nature is not appropriate in a location such as Tarmon, as it will have a considerable negative impact on the environment, over a considerable distance, due to the amount of light pollution they produce.

The report elaborates that the purpose of such a design is to deliberately maximize light distribution away from the wall. Consequently, these luminaires emit light that is visible from a considerable distance at nighttime. This characteristic directly contradicts the planner's assessment that the lights are of a comparable nocturnal intensity to dwelling security lighting and of lower intensity than village street lighting.

Furthermore, the Planners determination that the lighting is '*not of an intensity which could reasonably be argued to cause migratory birds to avoid the site, likely significant impacts including avoidance or displacement of qualifying interest species can reasonably be excluded*' lacks support from a competent authority and is contradicted by evidence provided in a recent High Court case.

Expert evidence, in the recent High Court case, Dark Sky Roscommon v An Bord Pleanála contradicts the Planners assessment. Dr. Ni Bhroin conducted a thorough assessment of the site and examined the potential disruption to the Greenland White-fronted goose, a qualifying interest species of the Special Protection Area (SPA). Dr. Ni Bhroin's report highlighted several critical points regarding the impact of artificial lighting on these migratory birds.

Dr. Ni Bhroin report details that the goose' *will fly between locations to forage during Winter months'* and *'it is especially important that birds flying between habitats in adverse weather conditions are not distracted by bright lights', 'illuminating an existing dark sky could have a*

significant impact on the receiving environment and the wildlife the environment supports. The ecologist acting on behalf of Tarmon National School also stated that the geese would likely '*avoid areas of illumination*' (See Court judgement Appendix 4)

These ecological reports relate directly to the location of the site in relation to the SPA and the effect of lighting on the qualifying interest of the SPA, it is therefore likely that the lighting in the development, the subject of this appeal, will have similar impact on the qualifying interest of the SPA.
These reports make clear t that the planner's assessment lacks any basis and that the effect of the lighting development on the qualifying interest of the SPA is unknown until an appropriate assessment is carried out by a competent authority. Therefore, it is incorrect to exclude the need for this assessment and to grant exempted development to this type of development.

3. **The planner's determination that the development qualifies for exemption due to Section 4(1)h of the Planning and Development Act 2000 fails to take account that this exemption is subject to Article 9 (viiB) of the Planning and Development Regulations 2001**

Section 4(1) (Exempted Development) of the Planning and Development Act, 2000 (as amended) states that the following shall be exempted development for the purposes of this Act:
(h) *Development consisting of the carrying out of works for the maintenance, improvement, or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.*

However, this exemption is subject to Article 9 of the Planning and Development Regulations 2001 (as amended), which states that development shall not be exempted development for the purposes of the Act if the carrying out of such development would:
(viiB) *Comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.*

The exemption under Section 4(1)h is subject to Article 9 of the Planning and Development Regulations 2001. This stipulates that development requiring an appropriate assessment due to its significant effect on the integrity of a European site does not qualify for exemption.
As detailed in the points above, I submit that this development does not qualify for an exemption due to the requirement for an appropriate assessment.

4. **The planner's determination that Section 4(1)h of the Planning and Development Act 2000 (as amened) is 'applicable in principle' is fundamentally flawed. This determination is a result of the planner's mischaracterisation of the lighting**

infrastructure as '*comparable in design and intensity to domestic security lighting*'. The report provided by the lighting consultant indicate that the lighting far exceeds the characteristics of domestic security lighting.

The planner has determined that the lighting development meets the criteria set out in Section 4(1)(h) of the Planning and Development Act 2000 (as amended). According to the planner:
"I do not consider the lighting installations would materially affect the appearance of the structure such as to render it inconsistent with itself or with neighbouring structures. While it is considered that the external lighting would have a somewhat greater degree of nocturnal visual impact, it is considered that the lighting is comparable in design and intensity to domestic security lighting. I do not, therefore, consider the lighting would materially affect the appearance of the structure such as to render it inconsistent with itself or with neighbouring structures."
Section 4(1)(h) limits exempted development to works that do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or neighbouring structures. The planner has determined that because he considers the light is comparable to domestic security lighting, Section 4(1)(h) applies.

However, the lighting consultant's assessment, detailed in the Redmond report, rejects this determination. The report states that the lighting fixed to the school walls is not equivalent in intensity to domestic security lighting. The lighting is designed and angled to project light considerable distances, greatly impacting its receiving environment, which is a dark rural location with no other source of artificial lighting. The design of the lights does not allow for cowling or any other mitigating measures to reduce the glare and light pollution created by the lights.
Moreover, the Planner does not seek to any mitigation measures to reduce the light pollution created and he does not impose any time limits on the use of the lights.

Given the rural location and the absence of other sources of artificial light, it is evident that the 12 lights in this development are inconsistent with the immediate surroundings and neighbouring structures.

Although the planner has determined that the lighting is comparable to domestic security lighting and thus falls under Section 4(1)(h), the lighting consultant's report provides substantial evidence that the lighting's intensity and design are not consistent with the character of the structure or its rural surroundings.

The school features a total of 12 lights positioned at roof level on all its walls. The image above shows the lights on the Western aspect of the building.

The Western aspect of the school is notably elevated compared to its immediate surroundings. This elevation results in the lights fixed to the school walls being positioned at a height of six metres. The elevated lights have a significant negative impact on the surrounding landscape, causing light pollution, and potentially affecting local wildlife. Additionally, the visual intrusion of such high-mounted lights can detract from the aesthetic appeal of the area, making it less pleasant for residents and visitors alike. Addressing these concerns may require a re-evaluation of the lighting strategy to balance functionality with environmental and community considerations.

This image illustrates that the height of the lights affixed to the school walls aligns with the 6-meter-high lighting poles, a result of the elevated ground levels surrounding the school building. The planning permission for the 6-meter floodlighting infrastructure was recently quashed in by a High Court judgment Dark Sky Roscommon v An Bord Pleanala, due to several critical factors including the potential impact on the qualifying interest of the SPA.

I submit that the impact of the lights affixed to the wall is even more problematic than the lighting poles due to the lack of cowling and the projection of the light detailed in the lighting report compiled by Redmond Analytical.'*The nature of luminaires of this type is to produce higher intensity light in the horizontal plane, specifically the plane parallel with the wall on which they are mounted. They are designed this way to deliberately maximise light distribution away from the wall.'*

The school building which is already positioned on an elevated site when considered in the context of the surrounding topography, is in a prominent position in the wider landscape and looks down on the lands to the West which slope away from the site. The dominance of the school building on the skyline means the lights significantly impact the receiving environment and a negative visual impact on the surrounding amenity.

Image showing the elevation of the school building in comparison to the ground level.

The image above illustrates the use of 3 out of 12 available lights. Even with just these three lights, the effect is quite significant. When all 12 lights are in use, the impact becomes even more pronounced.

The lights project a strong glare forward, affecting not only the immediate surroundings but also the neighbouring properties. This intense illumination can lead to discomfort and potential disturbances for those living nearby. The glare is intrusive and the excessive brightness contribute to light pollution in an otherwise completely dark area, diminishing the quality of the night sky and affecting local wildlife.

The image above illustrates the absence of any other source of artificial light in the rural area. The rural setting, devoid of artificial light, offers a pristine environment where natural darkness prevails. The light pollution map of the region indicates that a very large area from the north to the northeast has little or no light pollution. This lack of artificial light allows for a clear and unobstructed view of the night sky.

The impact of this type of light design, with no cowling or mitigation measures to direct and reduce the glare of the artificial light on such an area is considerable. The introduction of artificial lighting can disrupt the natural nocturnal environment, affecting local wildlife and ecosystems. Artificial light can interfere with the natural behaviours of nocturnal animals, such as foraging, mating, and migration.

Maintaining areas with minimal light pollution is crucial for preserving the natural nocturnal environment and ensuring that both wildlife and ecosystems can thrive without the adverse effects of artificial lighting

This image was taken in at 250m from the lights. The Redmond report states that the lights are designed to deliberately maximise light distribution away from the wall and are visible at nighttime from a considerable distance. The glare and light pollution is significant and distracting to road users.

5. **A Bird and Bat Survey of the local area discovered the presence of bats in the immediate area surrounding the lighting development. The impact of the lighting on the bat population has not been considered in the decision to grant exempted development.**

A Bird and Bat Survey of the local area, conducted by Wild on Foot Ecological Services (Appendix 5), has identified the presence of bats less than 100m from the lighting development. Consequently, the National Parks and Wildlife Service (NPWS) has informed us that a derogation license should have been or should be applied for.

Bats in Ireland are protected under two key pieces of legislation:

1. European Communities (Birds and Natural Habitats) Regulations 2011: This regulation lists bats as an Annex IV species, with the Lesser Horseshoe Bat being an Annex II species, affording them a significant degree of protection.
2. Wildlife Act 1976: This act further reinforces the protection of bats in Ireland.

Under Regulation 54 of the European Communities (Birds and Natural Habitats) Regulations 2011, any disturbance to bat habitats must be approved through a derogation license issued by the NPWS. This ensures that any potential impact on bat populations is carefully managed and mitigated.

As per the Bird and Bat Survey findings in Appendix 5, bats inhabit the area in question. However, there is no evidence that a derogation license application has been submitted or sought by the Planner. This raises concerns about compliance with the necessary legal protections for bats. Given the absence of a derogation license application, it is concluded that the Planning Authority has not adequately assessed the potential negative impact of the proposed development on the residential amenity of surrounding dwellings.

6. **In his assessment the planner has stated that the height of the lights from ground level is 2.5 metres. This is an incorrect measurement. The lights are 3.7metres from ground level.**

The image below shows that the lights affixed to the building are 3.7metres from ground level. In order to demonstrate that the 2.5m height stated by the Planner is incorrect we have placed a metre stick showing that the lights are just under 4m from the ground level surrounding the school building

The elevation of the school building combined with the topography of the landscape creates an overlook on the immediate surroundings and dwelling at the Western side of the building. Considering the dominance of the building in a rural area and the lack of boundary screening is essential to ensure the landscape character of the rural area is not detrimentally impacted and adjoining properties are not negatively affected.

7. **The development is situated in LCA 28 the Tulsk Rathcroghan Plateau an area deemed of Exceptional Landscape value in the Roscommon Development plan. The planner's assessment does not demonstrate due regard for the visual and residential amenity of the area.**

Tarmon is situated in LCA 28, an area designated as having exceptional landscape value by the Roscommon Development Plan. This designation is rare, with only two areas in the county receiving such recognition. The site of the development also borders the Castlerea Raised Bogland (LCA 27) and area considered to be of high value due to its amenity, ecological, and aesthetic qualities and valued for its tranquillity and ecological importance.

The Roscommon Development Plan describes the landscape in LCA 28 as a setting that offers opportunities for long views, enhancing its scenic value with tourism potential. The townlands of Tarmon and Ballinphuill are rich in heritage buildings and scenic walks. Within 100 meters of the site of the lighting development, the subject of this appeal, the Heritage Council has funded three separate projects: the restoration of a 200-year-old roadside schoolhouse, a 200-year-old granary, and a farmyard. Scenic walks have been developed in the locality to allow walkers to access the countryside views.

The Rural Development Policy 2021-2025 commits to a new Dark Skies Strategy, focusing on the opportunities this unique blend of tourism and science can create employment for rural communities. Failte Ireland has recently identified this area as a potential site for Dark Sky tourism. However, this potential will be compromised if light pollution is not addressed.
Light pollution is the inappropriate or excessive use of artificial light involving glare – excessive brightness that causes visual discomfort, skyglow – brightening of the night sky, often an orange hue and light trespass – light falling where it is not intended or needed. I submit the lighting development, the subject of this appeal, meets this description.

The Planner's assessment fails to adequately consider the visual and residential amenity of the area, particularly in the context of LCA 28's exceptional landscape value. The poor design of the lights and lack of any limits on the use of the lights has had a detrimental impact on the landscape characteristics, compromising both the scenic and ecological qualities that make this area unique.

Conclusion

The planner's determination that the site does not require an appropriate assessment does not align with the Conservation objectives of Bellengare bog SPA; To maintain and restore the favourable conservation condition of the bird species listed as Special Conservation interest for this SPA: A395: Greenland White-fronted Goose (Answer albinfrons flavirostris).

The High Court case of Dark Sky Roscommon v An Bord Pleanála provides substantial evidence that the introduction of artificial lighting in proximity to the SPA could have significant adverse effects on the Greenland White-fronted goose. This case underscores the necessity for a comprehensive assessment by a competent authority to determine the true impact of such developments on qualifying interest species.

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The Planner has mischaracterised the type of lighting installed and has incorrectly determined that the lighting will have minimal effect on the receiving environment. This conclusion appears to be based solely on the Planner's personal opinion rather than on any formal assessment conducted by a competent authority.

It is submitted that the planner's determination to grant exempted development is incorrect both in fact and in law, failing to comply with statutory requirements and adequately consider the impact on local wildlife and conservation objectives. It is requested that An Bord Pleanála re-evaluate this decision, taking into account the conservation objectives of the Bellanagare Bog SPA and the potential environmental impacts.

Yours sincerely

Claire Larkin

Claire Larkin

Appendix 1. Section 5- Declaration on Development and exempted development -Notification of decision

ROSCOMMON COUNTY COUNCIL

PLANNING AND DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

NOTIFICATION OF DECISION

REGISTERED POST
Claire Larkin,
Ardass,
Castlerea,
Co. Roscommon.
F45 TP93.

Reference Number:	**DED 724**
Application Received:	**17th June 2024**
Name of Applicants:	**Claire Larkin**
Agent:	**N/A**

WHEREAS a question has arisen as to whether 12 external lights installed at Tarmon National School, Ballinphuill, Castlerea, Co. Roscommon, F45 K298, is or is not development and is or is not exempted development:

AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:

(a) Sections 2, 3, 4 and 5 of the Planning and Development Act, 2000, as amended.
(b) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Act, 2000, as amended.
(c) The planning history of the site.

AND WHEREAS Roscommon County Council has concluded that:

(a) The works are development.
(b) The installation of external light installations as described in this case is exempted development.
(c) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.

NOW THEREFORE:
By virtue of the powers vested in me by the Local Government Acts 1925 – 2019 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the application described above, it is hereby declared that the **12 external lights installed at Tarmon National School, Ballinphuill, Castlerea, Co. Roscommon, F45 K298, is development that is exempted development** as defined within the Planning and Development Act 2000 (as amended) and associated Regulations.

Signed on behalf of the Council:

Alan O'Connell,
Senior Executive Planner,
Planning.

Date: 12th July 2024

ADVICE NOTE

Any person issued with a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) may, on payment to An Bord Pleanála of the prescribed fee, refer a Declaration for review within 4 weeks of the date of the issuing of the Declaration.

Appendix 2 .Planners report on application under Section 5 of the Planning and Development Act 200 (as amended)

Planner's Report on application under Section 5 of the Planning and Development Acts 2000 (as amended)

Reference Number:	DED 724
Re:	Application for a Declaration under Section 5 of the Planning & Development Act, 2000, as amended, regarding whether 12 external light installations is Exempted Development under the Planning & Development Act (Exempt Development) Regulations 2018 at Tarmon National School, Ballinphuill, Castlerea, Co. Roscommon.
Applicants:	Clare Larkin
Date:	12th July 2024

WHEREAS a question has arisen as whether 12 external light installations at Tarmon National School, Ballinphuill, Castlerea, Co. Roscommon is or is not development and is or is not exempted development.

I have considered this question, and I have had regard particularly to –

(a) Sections 2, 3, 4 and 5 of the Planning and Development Act, 2000, as amended
(b) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Act, 2000, as amended
(c) The planning history of the site

Site Location & Development Description

The subject site is located in the townland of Ballinphuill, Castlerea, Co. Roscommon and the structure to which this request for an opinion relates is Tarmon National School. The site is accessed via a Local Primary Road L-1616 approximately 190m west of its junction with Regional Road R 377 and approximately 2.5km northeast of the settlement of Casterea.

The development described consists of 12 external lighting installations affixed to the external walls of Tarmon National School at approximately 2.5m above ground level

Archaeological and Cultural Heritage

No RMP recorded in the likely zone of influence of the proposed development. No Protected structures or structures listed in the National Inventory of Architectural Heritage are within the likely zone of influence of the proposed development.

Planning History

As per the Roscommon County Council's Planning Registry, the following recent planning history has been traced:

PD 00-1916: Permission granted to demolish existing front porch, construction of new remedial room, form new front entrance door to front of School with extension to rear, new septic tank and percolation area and associated site works.
PD 07-1415: Permission granted to construct an extension comprising of 1. A new classroom; 2. A staff room; 3. Toilets and a multipurpose room; 4. Gym sports hall; to an existing school, including all other ancillary site works
PD 14-241: Incomplete application
PD 14-256: Permission granted for the construction of an extension to the rear of the existing GP hall comprising of changing rooms, toilets and storage along with connections to all services and all other associated site works.
PD 15-402: Permission granted for (i) the construction of a 4 classroom single store extension to the side (western)elevation of the existing school (ii) the construction of a single storey entrance porch to the front (southern) elevation of the existing GP hall (iii) a new roadside entrance (iv) the provision of additional car parking, hard and soft play areas, sensory garden and astro turf pitch (v) the installation of a new sewerage treatment unit and percolation area, along with connections to all services and all other associated site works.
PD 19-608: Permission granted to retain and complete and Permission for the following; (1) Permission to retain and complete is sought for (I) changes to development previously granted under PD/15/402 including rearrangement of access road, parking, tarmac areas and raised footpath to school perimeter together with elevational changes to window treatment of new school block. (ii) changes to development previously granted under PD/14/256 including changes to the rear block now repurposed from changing rooms/storage to classrooms including elevational changes. (2) Permission is sought for new single storey ASD classroom block to rear of recently completed extension together with connections to services and all other associated site works.
PD 20-230: Incomplete application
PD 20-257: Permission granted for the erection of 2 prefabricated temporary classroom buildings, including connections to all services and all other associated site works.
PD 21-131: Permission granted for the erection of floodlights to existing astro-turf pitch and lighting to illuminate existing running track, walkway and car-park, together with all associated site works. Set aside.
PD 23-38: Incomplete application
PD 23-53: Retention Permission and Permission granted by the local Planning Authority for the following: 1. Permission for Retention is sought for existing Temporary Car Park; 2. Permission is sought for the construction of single storey extension to the rear (north-east) of existing school consisting of 1 Classroom SEN Base, Early Intervention Classroom, Multisensory Room, 3 Mainstream Classrooms, Office, Storage Area & necessary circulation areas, demolition of existing storage areas, provision of additional car parking spaces, upgrading of foul and surface water treatment system, together with all associated site works. Currently the subject of appeal reference ABP-318876-24.

Statutory Provisions

Planning and Development Act, 2000 (As Amended)

Section 2 (Works) Works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1) (Development) Development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4(1) (Exempted Development) The following shall be exempted developments for the purposes of this Act: (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4 (4) (Environmental Impact Assessment or Appropriate Assessment)
Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Planning and Development Regulations, 2001 (as amended)

Article 6 (1) states the following: Subject to Article 9 the development of a Class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.

Article 9 (1)(a) provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would,

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use, (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site

Assessment:

I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I consider that the issues relevant to the subject request for an opinion can be assessed under the following headings:

- Whether the installation of the said external lighting is or is not development, or is or is not exempted development.

- Whether the works can be considered exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

Is or is not development

'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

The subject of the request for an opinion consists of '12 external light installations'. I consider the subject light installations to comprise 'works' as their installation includes an act of alteration. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this request for an opinion are considered to comprise 'development'.

Is or is not exempted development

Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended set out forms of development which are exempted development within specific context.

In considering the applicability of Section 4(1)(h) to the proposal it is first necessary to consider whether the proposal comprises 'works for the maintenance, improvement or other alteration of any structure'. Having regard to the nature of the proposal, specifically noting that installing external lighting, would represent an alteration, I consider that in principle, Section 4(1)(h) would confer an exemption for the proposal.

A second relevant consideration in relation to the applicability Section 4 (1) (h) is whether the proposal would 'consist of works which only affect the interior of the structure, or which do not materially affect the appearance of the structure such as to render it inconsistence with itself or with neighbouring structures'. From inspecting the development descriptions, images and particulars submitted with the request for an opinion, based on my site inspection and having regard to the size of each of the light installations individually and in combination in the context of the nature and scale of the structure upon which they have been installed, which has notably highly modeled elevations and signage of considerably larger scale, I do not consider the lighting installations would materially affect the appearance of the structure such as to render it inconsistence with itself or with neighbouring structures.

While it is considered that the external lighting would have a somewhat greater degree of nocturnal visual impact it is considered that the lighting is comparable in design and intensity to domestic security lighting and I do not therefore consider the lighting would materially affect the appearance of the structure such as to render it inconsistence with itself or with neighbouring structures.

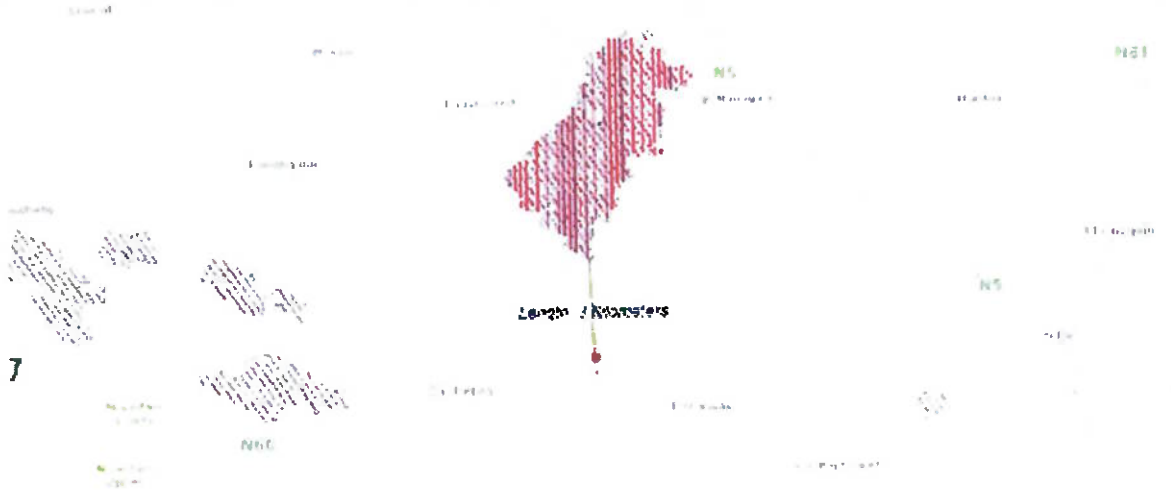
Restrictions on exempted development

I note that the restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, relates to exemptions provided under Article 6 of the Planning and Development Regulations, 2001, as amended. As Section 4(1)(h) of the Planning and Development Act, 2000, as amended, is considered to confer an exemption for the proposal, Article 9 of the Planning and Development Regulations, 2001, as amended, and the restrictions contained therein is not pertinent in this instance.

Environmental Impact Assessment and Appropriate Assessment
Section 4(4) of the Planning and Development Act sets out that development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

EIA
The development described does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations, 2001, as amended, and therefore is not subject to EIA requirements.

AA Screening
The closest European sites to the site of the development are Bellanagare Bog SPA (Site Code: 004105) and Bellanagare Bog SAC (Site Code: 000592) which are both located circa 3km to the north.



Bellinagare Bog SAC Conservation Objectives
7110 Active Raised Bogs
To restore the favourable conservation condition of Active raised bogs in Bellanagare Bog SAC

7120 Degraded Raised Bogs still capable of natural regeneration

The long-term aim for Degraded raised bogs still capable of natural regeneration is that its peat-forming capability is re-established; therefore, the conservation objective for this habitat is inherently linked to that of Active raised bogs (7110) and a separate conservation objective has not been set in Bellanagare Bog SAC

7150 Depressions on Peat Substrates of Rhynchosporion
Depressions on peat substrates of the Rhynchosporion is an integral part of good quality Active raised bogs (7110) and thus a separate conservation objective has not been set for the habitat in Bellanagare Bog SAC

Bellinagare Bog SPA Conservation Objectives

To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA:

A395: Greenland White-fronted Goose (Anser albifrons flavirostris)

A review of the site synopsis for the European site indicates that:

"At the time this site was designated as a Special Protection Area (SPA) it was known to be utilised by part of an internationally important Greenland White-fronted Goose population. The geese appear to have since abandoned the peatland sites in favour of grassland sites elsewhere".

It is further indicated in the NPWS Synopsis that "in the past, the bog was used by wintering Greenland White-fronted Goose from the internationally important population that is centred on Lough Gara. However, the geese now feed mainly on intensively managed grassland and have not been recorded at the site in recent years".

It is considered therefore that in view of the reported low frequency of use or possible abandonment of the site by the said qualifying interest species, and in particular the significant distance between the development and the closest European site as well as the nature of the development being lighting which is of comparable nocturnal intensity to dwelling security lighting and of lower intensity than village street lighting and not of an intensity which could reasonably be argued to cause migratory birds to avoid the site, likely significant impacts including avoidance or displacement of qualifying interest species can reasonably be excluded.

AA Conclusion:
Having regard to the separation distance between the site and the closest Natura 2000 site and the nature of the development, there is no real likelihood of significant effects on the conservation objectives of these or other European sites arising from the proposed development. The need for further Appropriate Assessment can therefore, be excluded.

In this context, I am satisfied that no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Recommendation

WHEREAS a question has arisen as to whether 12 external light installations at Tarmon National School, Ballinphuill, Castlerea, Co. Roscommon is or is not development and is or is not exempted development.

I have considered this question, and I have had regard particularly to –

(a) Sections 2, 3, 4 and 5 of the Planning and Development Act, 2000, as amended
(b) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Act, 2000, as amended
(c) The planning history of the site

AND WHEREAS I have concluded that

a) The works are development.
b) The installation of external light installations as described in this case is exempted development.
c) The proposed development individually and in combination with other plans or projects would not be likely to have a significant effect on any European site and that the requirement for AA or EIAR does not apply with respect to the current case.

and I recommend that a declaration to that effect should be issued to the applicant.

Signed: **Date:** 12th July 2024

Senior Executive Planner

Appendix 3. Lighting consultant report from Redmon Analytical Management services

REDMOND
ANALYTICAL MANAGEMENT SERVICES
LIGHTING | ENERGY | DESIGN | SUPPORT

Client: **Claire Larkin**

Project: **Tarmon National School**

Response to: **Document Reference *DED 724* (dated 12th July 2024)**

Date: 3rd August 2024

To whom it concerns,

Whilst lighting is often considered from an architectural viewpoint with consideration given to appearance and aesthetics, lighting is an engineering discipline and is better measured with facts and figures. Light produced by a luminaire can be calculated and modelled during the design of an intended installation, and more importantly, can be measured and quantified after installation has been completed. Therefore, it is not necessary to make loose comparisons between lighting types, or the application for which the lighting is being used.

The comparison was made within the report to domestic security lighting. It is well known in the professional lighting industry that domestic security lighting is one of the largest contributors to light pollution and nuisance light. Because domestic security lighting is not covered by statute, it is not controlled or enforced, but that does not mean that it does not create serious issues for people, and flora and fauna present in the vicinity of such lighting.

The comparison was made within the report to the intensity of village street lighting. This must be considered a vague and meaningless comparison from a light intensity, and more importantly, from a light distribution, point of view. What might be considered village lighting is controlled by European Standards and Local Authority Specifications. Light levels achieved on the ground will normally be in the range of 7.5LUX to 20LUX, depending on location and application. Glare will be calculated, with direct upward light and horizontal spill considered. Vertical spill may also be considered, depending on the individual location of the project. By and large, the initial lighting design will be undertaken by a competent person, who is likely to be a member of a professional body and working to that body's Code of Conduct.

The luminaires used for such applications will be designed as 'full cut' off meaning there will be no direct upward light. The distribution pattern of the luminaire will be selected to minimise horizontal spill outside the area to be illuminated and will generally produce low intensity light in the horizontal plane.

The luminaire installed on the exterior walls of Tarmon National School are bulkhead fittings designed to be mounted horizontally. The nature of luminaires of this type is to produce higher intensity light in the horizontal plane, specifically the plane parallel with the wall on which they are mounted. They are designed this way to deliberately maximise light distribution away from the wall. This means that they are visible at nighttime from a considerable distance.

Redmond Analytical Management Services Ltd.
Rosewood House, Mount Seaton, Camolin, Enniscorthy, Co. Wexford. Y21 K8P3
Tel: 053 9383696 | Email: info@redmondams.ie | Web: www.redmondams.ie
Company registration number: 557316
Directors: P Redmond, M Redmond.

REDMOND
ANALYTICAL MANAGEMENT SERVICES
LIGHTING | ENERGY | DESIGN | SUPPORT

It is our professional opinion that lighting produced by luminaires of this nature is not appropriate in a location such as Tarmon, as it will have a considerable negative impact on the environment, over a considerable distance, due to the amount of light pollution they produce.

Respectfully,

Patrick Redmond

EUR ING Patrick Redmond *IEng MILP MSLL*

Managing Director

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Appendix 4. Court judgement in **Dark Sky Roscommon v An Bord Pleanala** Record No. 2022 211 JR]

Approved Judgment

We Redaction Needed

THE HIGH COURT

[Record No. 2022 211 JR]

BETWEEN

DARK SKY ROSCOMMON

APPLICANT

AND

AN BORD PLEANÁLA

RESPONDENT

BOARD OF MANAGEMENT TARMON SCHOOL

NOTICE PARTY

JUDGMENT of Ms. Justice Bolger delivered on the 27th day of May 2024

1. The applicant is an NGO established to protect the night-time environment of Roscommon by raising awareness of the impact of light pollution and promoting the use of lighting designs that mitigate such impact. It seeks certiorari quashing a decision of the respondent (hereinafter referred to as "the Board") of 18 January 2022 to grant planning permission for a 21 light floodlighting development (hereinafter referred to as "the development") at Tarmon National School in County Roscommon. The development has proceeded with the applicant's knowledge in spite of these proceedings. The applicant chose not to challenge that and instead to await the outcome of this application and so I do not rely on that in my decision. It will be a matter for the relevant parties to deal with matters in the light of my decision.

The applicant's challenge

2. The applicant contends that there was a failure by the Board firstly, to properly assess the impact of the development on the receiving environment and secondly, to consider or engage with

their submissions to the Board on the impact the development may have on the Greenland White Fronted Goose (hereinafter referred to as "the goose/geese") which is a qualifying interest for a nearby Special Protection Area (SPA) at the Bellanagare Bog some three kilometres away from the development. They rely on an ecological submission that was before the Board which they say confirmed that the development was likely to have a significant impact on the SPA and they say that raised a reasonable scientific doubt about the development's impact on the geese, which they say is sufficient as they do not need to prove evidence of actual impact.

3. The Board's Inspector said that there would be no significant impact on the geese because firstly, the geese had abandoned the site and secondly, even if the geese recolonised the site, because of the size and scale of the proposed development and the fact that migratory birds (which would presumably include the geese) will avoid areas of artificial illumination. The applicant says this conclusion failed to comply with the conservation objectives of the Bellanagare Bog SPA and with s. 177U of the Planning and Development Act 2000 and Article 6(3) of the Habitats Directive in not addressing the restoration of the qualifying interest conservation objective of the Bellanagare Bog SPA.

4. The following National Parks and Wildlife Service have identified the conservation objective of the Bellanagare Bog SPA as: "To maintain or restore the favourab/e conservation condition of the bird species listed as Special Conservation Interests for this SPA".

Article 6(3) of the Habitats Directive 92/43/EEC requires, inter alia:

> "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives."

Section 177U of the Planning and Development Act 2000 provides:

> "Screening for appropriate assessment.
>
> 177U.—(1) A screening for appropriate [assessment of a draft Land use plan or application for consent for proposed development] shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that Land use plan or proposed development, individually or in combination with another plan or project is likely to have a significant effect on the European site.
>
> (2) A competent authority shall carry out a screening for appropriate assessment under subsection (1) before—
>
> (a) a Land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made, or
>
> (b) consent for a proposed development is given.

(4) The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is required if it cannot be excluded, on the basis of objective information, that the draft Land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.

(5) The competent authority shall determine that an appropriate assessment of a draft Land use plan or a proposed development, as the case may be, is not required if it can be excluded, on the basis of objective information, that the draft Land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site.

(9) In deciding upon [a declaration or a referral under section 51 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section,]

[(10) In deciding upon an application under section 176,4 ora determination review or an application referral under section 176C, a planning authority or the Board, as the case may be, shall, where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section. "

5. The applicant relies on the low threshold for Article 6(3) as found by Advocate General Sharpston in Sweetman C-258/11 i.e. that "likely" equates to "possibility of" and "significant effect" is an effect somewhere above "no appreciable effect" and that "[t]he threshold at the first stage of Article 6(3) is thus a very low one, It operates merely as a trigger...". That test was incorporated into Irish law by Finlay Geoghegan J. in Kelly v. An Bord Pleanála [2014] IEHC 400. The applicant also relies on the caselaw of the CJEU that the Habitats Directive applies to a location that has been abandoned by the protected species; Case C-477/19 Magistrat der Stadt Wien ('the Hamster case'), Case C-383/09 Commission v. French Republic, Case-281/16, Case C-535/07 Commission v. Austria and Case C-404/09 Commission v. Spain.

The response of the Board and notice party

6. The Board says that all issues, including those raised in the ecological report on which the applicant relies, were properly considered by the inspector and there was no evidence or reasonable scientific doubt that the proposed development would have a significant effect on the geese. Both the Board and the notice party placed heavy emphasis on the content of the notice party's expert report ("the

McLoughlin report") which found that the development presented no significant effect on the geese. They say the Board was entitled to prefer one expert to another as long as reasons are given (as per Humphreys J. in Alice O'Donnell & Ors v. An Bord Pleanåla [2023] IEHC 381). They disputed that the conservation objectives of the SPA for the purposes of the Habitats Directive included repopulation of abandoned areas of distribution and said the purpose of Article 6(3) is only to ensure that the integrity of the site is not compromised; People Over Wind v, An Bord Pleanå/a

[2015] IECA 272.

The expert reports

7.The Ni Bhroin report, on which the applicant relied in asserting a reasonable scientific doubt that the proposed development would have a significant effect on the geese, was submitted by a different objector. That does not lessen the issues now raised by the applicant. There were two expert reports before the Board which had to be considered by the inspector. I examine below what each report said.

The McLoughlin report

8. Dr. McLoughlin does not consider that the development will have any significant effects on the Bellanagare Bog SPA and that any effect on the geese will be avoided because they are no longer at the site and are now likely to avoid the area:

> "The impacts of light emissions upon the QI of Bellanagare Bog SPA have also been considered. The sole QI species of this SPA is the Greenland White-fronted Goose (Anser albifrons flavirostris). In the past when this SPA was initially designated, this bog was used by wintering Greenland White-fronted Goose from the internationally important population that is centred on Lough Gara. However, the geese now feed mainly on intensively managed grassland and have not been recorded at the site in recent years (NPWS, Bellanagare Bog SPA, Site Synopsis 2012 and Natura 2000 Standard Data Form, 2018). Therefore, it can be concluded that significant effects upon this bird species will be avoided. Unlike wires, pylons and turbines the lights poise no direct mortality threat to any bird species, and any birds that fly on winter nights are simply likely to avoid the area.
>
> There will be no direct disturbance to any species listed in Annex I of the Birds Directive or Annex II of the Habitats Directive. There will be no significant effects upon any protected species arising from the installation of the lights or operation of the lights. The lights will have no significant effects upon the Greenland White-fronted goose, which no longer uses the habitats of Bellanagare Bog SPA. "

Appendix 1 to the report discusses 'Ecological Considerations':

> "The proposed development will have no significant effects upon any Natura 2000 site. However, as part of the response to the appeal against the granting of permission to this development by Roscommon County Council, a number of other ecological issues were raised. These points are considered below:

1. The need for an Ecological Impact Assessment - It is not considered necessary... There will be no loss or fragmentation of any habitat of biodiversity arising from the proposed installation of lights. Whilst light can result in fragmentation of habitats, it is not considered significant in this instance. The lights will be used on dark evenings outside of the late spring and summer months and they will have a shut off time at 10pm. There will be no loss or removal of any trees or hedgerows. In addition, there are no watercourses on site, therefore pollution to watercourses will not arise. "

Later the report says:

"4. Mammals that remain active through winter and that can be affected by lighting include otters, badgers and pine martins. There are no suitable otter habitats on site, and otters will forage at night time along river corridors... The closest watercourse to the application site is approximately 500m away, therefore effects upon otters arising from the lights are not likely to occur, Badgers and pine martins may occur in habitats that are closer to the proposed site but having regard to the habitats on the site and around the site and the fact that lights will shut off at 10pm, significant effects upon these mammals are not likely to arise.

5, Impacts upon flight paths of birds - the lights will be used at night, when the majority of birds are inactive. Some geese do fly at night however but the light emitted will not have any significant effect upon them and they may simply avoid the spillage and glare. The lights will shut off at 10pm so usage of same will not be significant. The Greenland white-fronted goose has abandoned the Bellanagare Bog SPA. "

9. Dr. McLoughlin's report says there will be no light after 10pm but this is not correct as the planning permission that was granted allowed the notice party to maintain two of the 21 lights on after 10pm in the carpark area which are operated by daylight sensors.

The Nf Bhroin report

10. Dr. Ni Bhroin sets out at 3.0 of her report:

> "...the Planner has not considered that where floodlighting is concerned the sky is a connection between the proposed development and the nearby Natura 2000 sites. The Planner has not sought additional information with respect to the light emissions into the dark sky. It should be considered that light quality during winter months October to January is considerably poorer than (sic) summer months March through to August. The Planner has not sought expert advice with respect to the proposed development on Natura 2000 sites and the impact on the ecology that these sites support. "

She continues at 4.0:

> "The abundance of Turloughs and the callows of the River Suck provides an ideal network of habitats for winter migratory birds and waterbirds. There has been no assessment of the cumulative impact of Natural Heritage Areas, proposed Natural Heritage Areas, Turloughs and the callows of the River Suck on the migration of the Annex I bird species Greenland White Fronted Goose, other winter migratory birds and waterbirds by the proposed development. "

At 5.0 she says:

> "It is important that the direct, indirect and especially the cumulative impacts associated with the floodlighting should be assessed Impacts during and post construction should also be determined. Where there is deemed to be significant impact upon habitats or species, mitigation measures should be provided to reduce the impact of the proposed development upon protected species and upon the receiving environment. "

She concludes at 6.0:

> "The proposed development consisting of floodlighting of a rural area with 6m and 10m light stands entailing 17 light stands in total will lead to the illumination of an existing dark sky. A Screening for Appropriate Assessment needs to assess the impact of the proposed development on SPA sites within the Ricker Suck catchment. It is especially important that birds flying between habitats in adverse weather conditions are not distracted by bright lights. The Annex I winter migratory species Greenland White Fronted Goose is a qualifying interest of many of the SPA sites within the River Suck catchment and the bird is afforded protection under the Birds Directive.

Illuminating an existing dark sky could have a significant impact on the receiving environment and the wildlife the environment supports. An Ecological Impact Assessment should have been requested to assess the impact of the proposed development on bat species locally, on birds flying between waterbodies and the impact on nocturnal species associated with rural environments. Nocturnal species need dark zones to trigger wake up time and for foraging. The impact of the proposed floodlighting on the local environment and species has not been assessed. "

10. Dr. Ni Bhroin is more general in her observations than Dr. McLoughlin, but she does confirm the importance of birds flying in winter (which must include the geese) not being distracted by bright lights. She says that birds fly between locations to forage during the winter months and the floodlights will lead to the illumination of an existing dark sky which "could have a significant impact on the receiving environment and the wildlife the environment supports" (at 6.0). She expresses her concern about the impact on nocturnal wildlife and while she does not describe the geese as nocturnal, Dr. McLoughlin confirms in her report that they fly at night.

The inspector's report

11. The inspector found that migratory patterns were not affected:

"...it is clear from the site synopsis form prepared by the NPWS that the Greenland White Fronted Goose have abandoned the site in question in favour of grassland sites elsewhere. Having regard to the fact that the qualifying interest no longer uses the Nature 2000 site in question it is self-evident and unquestionable that the proposed development will in no way affect migratory patterns associated with the bird. " (para. 11.3)

12. The absence of the geese on the site is a point heavily relied upon by the inspector who definitively concludes at 11.5 of his report that:

"...the proposed development in combination with other plans and projects would not be likely to have a significant effect on European Site (004105) or any other European Site, in view of the site's conservation objectives, and an appropriate assessment and the submission of an NIS is therefore not required. "

13. The inspector endorses Dr. McLoughlin's finding that the geese would avoid areas of illumination if the area was being recolonised. The inspector did refer to recolonisation but only to say that:

"Having regard to the size and scale of the subject site and the amount of illumination proposed it would be reasonable to conclude that even where bird migratory patterns could potentially be affected (for example if the species in question recolonise the SPA), the site and scale of the development would not be such that it would significantly affect migratory patterns associated with the birds in question. " (para. 11.3)

He says nothing about how the conservation objectives for the Bellanagare Bog SPA of restoring the favourable condition of the geese might be accommodated, including by the possibility of encouraging such recolonisation. I found it difficult to locate any consideration of that aspect of the site's conservation objectives in the inspector's report.

Discussion

14. It is common case that the geese are not currently in situ on the Bellanagare Bog SPA but, if anything, that should highlight rather than obviate the need to consider the impact that this development could have on the conservation objective of restoring the qualifying interest. The fact that the geese, if they return, are likely to avoid the site because of the artificial illumination from the development- a finding the inspector seems to make regardless of the size and scale of the proposed development - cannot be consistent with achieving the conservation objective of restoring the geese. It is difficult to understand the inspector's conclusion that the geese avoiding the area equates to no significant impact on the geese, particularly given the apparent absence of any identifiable consideration of Dr. Ni Bhroin's observation that "birds move from location to location to forage".

15. Proper consideration of the two ecological reports available to the inspector could not have led to a reasonable conclusion that the development "will not adversely impact on the qualifying interests associated with the nearest SAC or SPA", as found by the inspector. That conclusion is contradicted by the inspector's own endorsement of Dr. McLoughlin's finding that the geese, if they returned, would be "likely to avoid the area" and "simply avoid the spillage and glare". The inspector's finding that the geese will "simply avoid areas of artificial illumination" does not sit comfortably with the requirement in Article 6(3) 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, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public. "

16. Counsel for the Board says that the inspector found that if the geese came back, they would fly away, and the inspector had therefore considered the issue and had concluded that the development would not be a significant effect on the geese. There is no consideration of what might influence a possible recolonisation or restoration of the geese or how this development, which apparently will lead to the area being avoided by the geese, will impact on the prospect of recolonisation or restoration of the geese in the Bellanagare Bog. In those circumstances a consideration of the size and scale of the

development, separation distance between the development and the site and the lack of hydrological connection between them without any consideration of the impact of a possible recolonisation, cannot justify the inspector's conclusions that the development "will not in any way adversely impact on the qualifying interests associated with these Natura 2000 sites. "

17. The inspector was not entitled to simply prefer the views of the notice party's expert, Dr. McLoughlin. This is not a binary exercise of preference or balance between two options, rather it is an exercise of excluding all and any reasonable scientific doubt as Humphreys J. in Reid v. An Bord Pleanå/a [2021] IEHC 362 held at para. 43:

> "... we are not dealing with a question of 'balance'. There is a clear EU law requirement that there be no adverse effect on the integrity of a European site and that al/ reasonable scientific doubt on this point must be excluded. "

He went on at para. 45 to explain what Article 6(3) requires:

> "The test is not whether the applicant has demonstrated that no reasonable decision-maker could have concluded that there was no scientific doubt. The test is whether the applicant has demonstrated that a 'reasonable expert' (a reasonable person with the relevant sufficient expertise and aware of, and in a position to fully understand and properly evaluate, all the material before the decision-maker) could have a reasonable scientific doubt as to whether there could be an effect on a European site. One could, as the board in the present case seemed to be suggesting, turn this into a merely semantic issue by redefining the application of O'Keefe to produce a meaning in which it could make sense in the exclude-all-doubt context, but that would be a fairly tortured exercise. Far better in terms of understandability, transparency, clarity, accessibility of the law and all-round credibility of the intellectual process at stake to accept that 'some material before the decision maker' just isn't enough when the mission statement of the exercise is not 'form a planning judgement' but 'exclude all reasonable scientific doubt'. "

This approach is supported by the views of Barniville J. (as he was then) in Kelly v. An Bord Pleané/a [2019] IEHC 84 where he set out the principles applicable to a stage one screening, including at para. 68(7):

"The 'possibility'" of there being a 'significant effect' on the European site will give rise to a requirement to carry out an appropriate assessment for the purposes of Article 6(3), There is no need to 'establish' such an effect and it is merely necessary to determine that there 'may be' such an effect (para. 47 of opinion of Advocate General Sharpston in Sweetman). " He explained at para. 68(10):

> "Plans or projects or applications for developments which have 'no appreciable effect' on the protected site are excluded from the requirement to proceed to appropriate assessment. If all applications for permission for proposed developments capable of having 'any effect

whatsoever' (sic) on the protected site were to be caught by Article 6(3) (or s. 177U) 'activities on or near the site would risk being impossible by reason of legislative overkill'

(Opinion of Advocate General Sharpston in Swectman, para. 48). "

18. Considering the impact of a development on the restoration of a species is entirely different to a positive obligation on a developer to contribute to the restoration objective, the latter of which was rejected by the Court of Appeal in People Over Wind. The applicant in the case before me has not sought to impose such an obligation on the Board or the notice party. They have simply asked that the Board should consider the impact of the development on the geese, which is far closer to what was endorsed by Hogan J. at para. 12 of People Over Wind:

> "There is no doubt but that a development which compromised the objective of restoration might well affect the integrity of the SAC site within the meaning of Article 6(3) of the Directive. A development which, for example, made the objective of restoration appreciably more difficult might well be thought to be likely to have significant effects in respect of the site. In some circumstances such a development could well compromise the integrity of the site. This very point was acknowledged by the Court of Justice in Case C-127/02 Waddenzee [2004] E.C.R. 1-7448 when it stated (at para. 48) that:
>
> > 'where such a plan or project is likely to undermine the conservation objectives of the site concerned, it must necessarily be considered likely to have a significant effect on the site. '"

He went on to say at para. 22:

> "It is sufficient, therefore, that the applicant for permission demonstrates that the proposed development will pose no threat of the integrity of the SAC. It is not unfair that an applicant demonstrate that the proposed development will not impact adversely on a qualifying species protected by an SAC: it would be quite another matter if the applicant was to be required to contribute positively to the restoration of the protected species. '.

19. The threshold for a stage one assessment is low but it still must be reached. Dr. Ni Bhroin is a reasonable expert (as is Dr. McLoughlin) and she has raised a reasonable scientific doubt that the proposed development could impact the qualifying interest in the nearby SPA. Whilst that conclusion is not shared by Dr. McLoughlin, she does confirm the possibility of an impact in finding that birds that fly on winter nights are likely to avoid this area of artificial illumination. This is, as counsel for the applicant pointed out, a problem rather than a benefit for the site and its qualifying interest, because birds who fly from location to location in order to forage are being diverted from their flight path. Therefore, the development <u>may</u> have the capacity to adversely affect one of the SPA conservation objectives of restoring the favourable conservation condition of the geese and that is something that requires consideration.

20. This SPA has not been delisted, a process which requires specific steps to be taken as per Article 9 of the Directive and Regulations 14 to 18 of S.I. No. 477 of 2011. Nevertheless, the inspector seems to view the absence of the geese as a reason not to be concerned about the potential impact of the proposed development on the qualifying interests of this SPA, including in the event of a recolonisation of the species, and as a reason to grant planning permission without requiring further assessment. This is not correct and does not properly comply with the requirements of Article 6(3).

21. The CJEU have made it clear that the departure of a species does not dilute the need for protecting that species (Case C-477/19 Magistrat der Stadt Wien ('the Hamster case'), Case C535/07 Commission v. Austria, Case C-383/09 Commission v. French Republic). The CJEU in the Hamster case left it to the national courts to determine how to assess the probability of a species returning to an abandoned resting place, but the court has made it clear that this must be done on the basis of best scientific data; Case C-674/17 Luonnonsuojeluyhdistys Tapiola ('the Finnish Wolves case').

22. Dr. Ni Bhroin did more than just raise issues, she raised reasonable scientific doubt. Her concerns were not properly considered by the Board. In Balz v. ABP [2019] IESC 90 the Supreme Court held that central to the public confidence in the planning process is the need for the concerns raised by members of the public to be addressed by the competent authority:

"It is a basic element of any decision-making affecting the public that relevant submissions should be addressed and an explanation given why they were not accepted, if indeed that is the case. This is fundamental not just to the law, but also to the trust which members of the public are required to have in decision making institutions if the individuals concerned, and the public more generally, are to be expected to accept decisions with which, in some cases, they may have profoundly disagree, and with whose consequences they may have to live". The fact that the inspector summarised the points made by Dr. Ni Bhroin does not mean they were properly considered. The absence of a narrative analysis (which is not necessary as confirmed in Ballyboden Tidy Towns Group v. An Bord Pleanå/a [2022] IEHC 7) is not what causes this Court concern. It is the failure to properly consider the reasonable scientific doubt that a reasonable expert's evidence based concerns have raised and the lack of scientific evidence before the Board to facilitate consideration of the positive restoration obligation of the conservation objectives of the

Bellanagare Bog SPA.

Ecological corridors

23. The applicant says an ecological corridor was not properly considered by the inspector. That has not been fully pleaded and the applicant did not have leave to seek judicial review on that ground and it does not, therefore, form part of this decision.

Conclusions

24. For the reasons set out above, I am satisfied that the Board failed to properly apply the relevant provisions of Article 6(3) in not carrying out any or any proper or sufficient screening for appropriate assessment, in spite of the expression of reasonable scientific doubt of the possible impact of the development on the neighbouring Bellanagare Bog SPA, on the restoration of favourable conservative status there for the geese. The Board failed to consider and address whether the development may influence any potential future return of the geese to the Bellanagare Bog SPA. I will hear counsel on what orders might be appropriate in the light of the completion of the development.

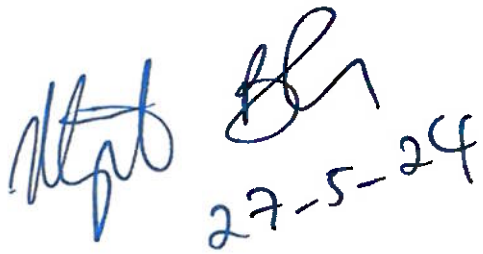
Indicative view on costs

25. As the applicant has succeeded in this application, my indicative view on costs is, in accordance with s. 169 of the Legal Services Regulatory Act 2015, that the applicant is entitled to their costs. I will put the matter in for mention before me on 19 June at 10:30am for the purpose of hearing such further submissions which the parties may wish to make both in relation to costs and the scope and application of the final orders to be made. Any written submissions should be filed with the court at least 48 hours before the matter is back before me.

Counsel for the applicant: Oisin Collins SC, Margaret Heavey BL

Counsel for the respondent: David Browne SC, Ellen O'Callaghan BL

Counsel for the notice party: Alan Keating SC



Appendix 5. Bat and Bird survey conducted by Wild on Foot Ecological Services

WildOnFoot

Ecological Services

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Bat Licence No: DER/BAT 2019-42

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SUMMARY

Site: Farm building, Ardass House, Ardass, Castlerea, Co. Roscommon F45TP93.

Structure: 1 stone granary building with corrugated iron roof (renewed).

Grid reference: M 70911 80314

Bat species present: Common pipistrelle & Myotis bat roosting in the structure.

Common pipistrelle, Soprano pipistrelle, Leisler's and Myotis bats recorded foraging/commuting.

Roost location: Possible holes/cracks in walls, top of wall plate.
Bat access: Open window/ chute to rear, open doorways.

Bird species present: Swallow, wren.

Proposed work: Repair and replace doors and windows. Replace internal upper floor.

Impact on bats: Disturbance to roosting bats.
Impact on birds: Disturbance of breeding birds above.

Number of Habitats present: 3
BL3 (Buildings and artificial surfaces)
WL1 (Hedgerows)
GA1 (Improved Agricultural grassland)

Number of protected species present: 4
Common pipistrelle, Myotis bat, Swallow and Wren

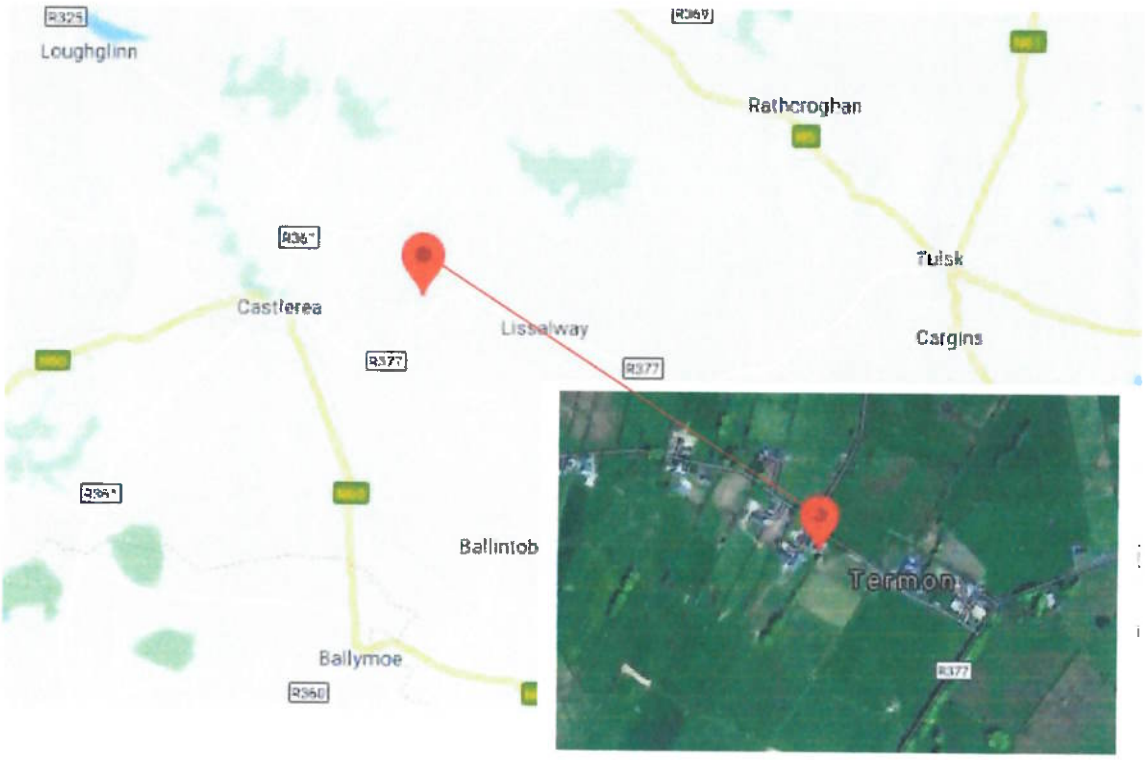
Introduction

Claire Larkin of Ardass House, Ardass, Castlerea, Co. Roscommon has requested a bat and bird survey for an 1800's stone granary/coach house/stable which has been granted funds for restoration from the Heritage Council of Ireland.

The property is located in an open farmland setting, approx. 3 Km north east of Castlerea.

Fig 1: Location of Ardass House, Ardass, Castlerea, Co. Roscommon.

Irish grid reference, M 70911 80314



Bats in Ireland

In summer many of Ireland's nine breeding species of bat use built structures and trees for maternity roosts. Here they raise their pup in a colony of females until the autumn when the young are self-sufficient. In autumn when the young are independent, some or all of the roost disperses into smaller roosts, commonly amongst trees and other structures containing cracks and crevices.

In winter, bats gather for hibernation, often in a separate location from the maternity roost. These locations, such as tree cavities, caves, souterrains, or deep stone walls are chosen because of even temperatures, which allow the bats to stay in torpor and conserve energy.

Due to the roosting behaviour of bats in Ireland, it is appropriate that this site is surveyed for bats. It contains potential in the stone building for roosting bats.

All Irish bats are protected under national and EU legislation (The Wildlife Act 1976, the Wildlife (Amendment) Act 2000, and European Communities (Birds and Natural Habitats) Regulations 2011). Both the animals themselves and their roosts are protected and it is an offence to disturb or interfere with them without a licence.

Fig 4: Sonogram of a Common Pipistrelle (Pipistrellus pipistrellus) recorded foraging at Ardass. This is an image representing the sound a bat emits when echo locating, when they are commuting, foraging and communicating with each other.

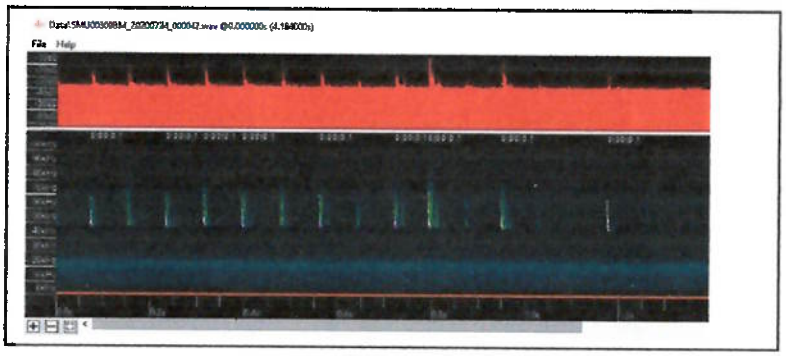


Fig 2: Front / north east view of the stone granary at Ardass

Fig 3: Rear /North West View of the granary with a lean to shed attached.

Methods

A bat and bird survey was carried out on 23.07.2020 at the property at Ardass.

The building was inspected inside and out for signs of use by bats, looking for bat faeces, wall staining, suitable crevices and corpses. All birds using the site were noted and a search for nest sites was carried out.

A bat dusk survey, using bat detectors – Echo Meter touch, and a static Song Meter was carried out. The Song Meter was placed at the rear of the granary/lean to and was set to record from a half hour before sunset until a half hour after sunrise.

A dawn survey was also carried out on the morning of 24.07.2020 to observe any bat activity on the site. Presence of bird activity and other wildlife was also noted.

Weather

The dusk survey work was carried out in winds F1, 100% cloud, and dry with temperatures 14°C. Temperatures at dawn 14.5 °C, winds F1, 100% cloud.

Results

Inspections results

During the inspection of the sheds no obvious sign of bats were found. However the stonework had potential for roosting bats with plenty of holes and entry points into different sections of the structure. The inner upper level was only viewed from the top of a ladder due to the unstable floor and therefore safety reasons.

There was multiple swallow nests on both levels, two of which were recently/currently in use. See fig 5. Swallows were seen flying into the upper level to roost. A wren had built in two of the swallow nests. See fig 6. These were not occupied at the time of survey. Evidence of two other nests were found, the building material of these suggests corvid or starling. Neither of these species were noted at time of survey.

Fig 5: Recently used swallow nest at Ardass

Fig 6: Wren nest on top of swallow nest

Bat activity survey

4 species of bat were encountered during the survey. Soprano Pipistrelle (*Pipistrellus pygmaeus*) Common Pipistrelle (*Pipistrellus pipistrellus*) Leisler's bat *(Nyctalus leisleri)* and Myotis spp.

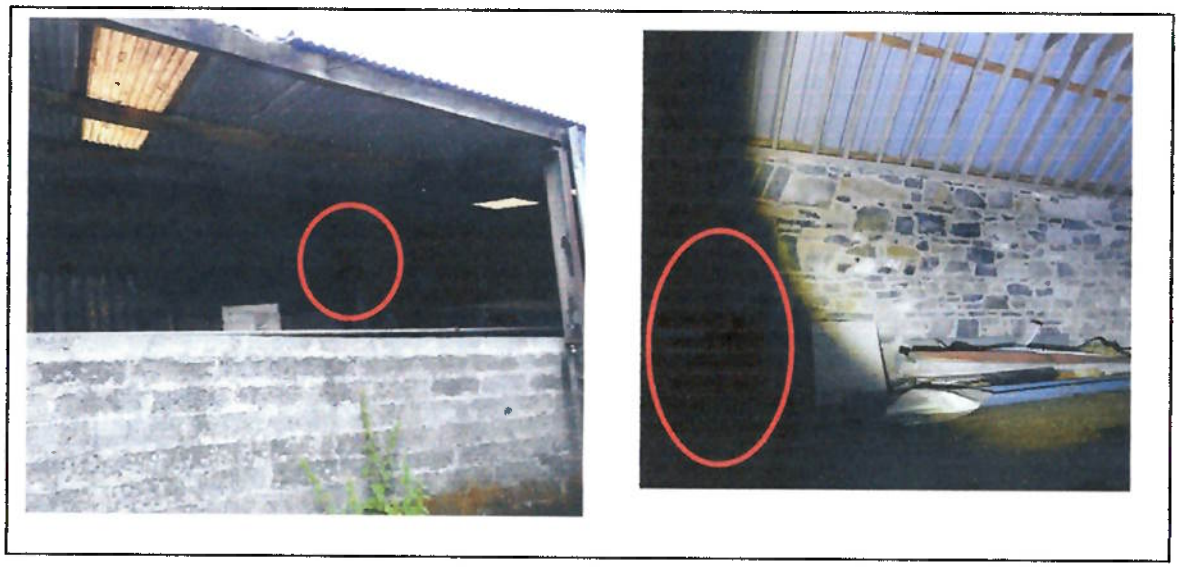
A Leisler's bat first passed over at 21.38 and was only recorded as a pass. It was picked up at 05.04 during the dawn survey, headed in a northerly direction.

At 21.55 a Soprano Pipistrelle was noted and was recorded infrequently to the south of the building during the dusk survey. It was not roosting in the building

At 22.03 a Common Pipistrelle appeared to the rear of the building and foraged in and around the hayshed and the lean to, at the rear of the granary. It was later joined by a second and they foraged throughout the night. At dawn they went through an open hole (chute) in the rear of the granary which led to the top floor. See fig 7. It was not seen exactly where they were roosting.

A Myotis bat was noted at 22.46 to the rear of the building flying around the North West end for a few minutes. A possible second myotis was observed within the lean to, to the rear of the building, where it flew around before leaving to forage. One Myotis bat was observed entering the granary through the chute to the rear at dawn. The exact roost site is not known. As the upper level is well pointed it is likely that bats may be using the wall plate as a roosting point.

Fig 7: Opening in the rear wall of the loft of the building. Fig A looking in from the outside of the lean to at the rear of the building. Fig B, looking from the loft through opening to the lean to. An important bat access point.



Other Wildlife

A dead shrew was noted inside the building.

Summary / Recommendations

It is recommended that:

- No works take place before mid-September. (This was discussed in August and agreed that doorways and window works only could take place immediately).

- The removal of ivy (see fig 8 below) as detailed in the conservation architect report shall be severed at the base at the end of August and allowed to shed all foliage before removing carefully. This is to allow any nesting or roosting birds time to find other cover. A Rowen tree shall be planted close by as a replacement for the lost ivy berries.

- The top of the walls are left as is and no capping or mortar should be added in the future without a bat survey. This is to allow bat access to within the walls.

- The opening to the rear of the building in the loft, which opens into the lean to, shall remain accessible for bats. See fig 6. It has been discussed with the applicant and it seems this opening was a grain chute and will remain as an aperture in the wall.

- Half doors and/or doors with smaller openings shall be fitted to allow access for birds such as the swallows in the future. It has been noted by Bird Watch Ireland that Swallow numbers are in decline and every effort to support a nesting pairs should be made.

- Kent style bat boxes, #2, should be erected to the rear of the building and within the southern end of the hay (turf & logs) barn behind. https://www.tetrixecology.com/post/how-to-make-a-kent-bat-box-step-by-step-instructions

Should any bat be found during the works over the autumn/winter the author or local wildlife ranger should be contacted immediately for advice on how to proceed.

Fig 8: Ivy on the south west end of the granary should be severed at the base in September and allowed to die back before removal.