

Laura Crawford

From: Gwyneth McQuiston
Sent: 20 March 2022 19:40
To: Planning
Subject: Fwd: Rigged Hill windfarm up for Approval on Wednesday

Good evening

I would appreciate if this email could be submitted as an objection to planning and sent to all planning committee members as I understand it is in front of them this Wednesday 23 March 2022 and I am concerned regarding the short timeframe remaining.

I would appreciate confirmation that this has happened

Thank you
Gwyneth

Dear Sirs,

I hereby Object to Planning Application LA01/2019/0890/F as the HRA, dated 08/03/2022, is still significantly flawed and therefore it will be unlawful for the Planning Authority to approve this project.

The outcome of the Shared Environmental Services (SES) Appropriate Assessment is dependent on the post Planning Consent and Approval by the Planning Authority of a Final Construction Environmental Management Plan and a Decommissioning Construction Environmental Management Plan.

The outcome of the SES Appropriate Assessment is dependent on post Planning Consent of applications for Discharge Consents for discharges to waterbodies during Construction, Operation and Decommissioning for foul Sewage, Drainage and use of coagulation and Flocculants. Separate post Planning Approval Discharge Consents are also required for septic tanks and wash facilities discharging into waterbodies.

These post Planning Consent documents have not been assessed by SES for this Planning Approval, which is in contravention of European Court of Justice ruling in case C-142/16, paragraph 37-45 regarding the need for definitive data at the time of authorisation.

This unlawful practice by the Planning Authority is also in contravention of ECJ C-127/02, paragraph 42 which notes that these assessments must be undertaken before the competent authority decides whether or not to authorise a project or plan. In addition, ECJ ruling C-127/02 stated: "an Appropriate Assessment of the implications for the site concerned of the plan or project must precede its approval and take into account the cumulative effects."

The exact location for each new Wind turbine or settlement lagoons is unknown as "all turbines are proposed to be micro-sited up to a distance of 50 metres from the indicative footprint" and therefore they could be located within 50m and 20m exclusion zones from waterbodies as advised by NIEA in their response dated 02/03/2022. The SES Appropriate Assessment notes that "all Construction works associated with the removal of the 10 existing and erection of 7 new Turbines are all over 30m from any watercourse." If the exact locations of Turbines and lagoons has not been identified, how can SES assess their impact with any degree of confidence?

SES states in Stage 2 of their HRA that "The principle contractor will decide what surface water management measures are best suited for the site." This statement confirms that at the time of SES Appropriate Assessment, SES were unaware of which surface water management measures will be implemented and at which location. Therefore, how can SES determine that there will be no adverse effects if they do not have this data at the time of their Assessment?

NIEA in their response dated 02/03/2022 stated: "It is the responsibility of the Planning Authority to ensure that all risks to the environment and requirements under environmental legislation and Planning Policy have been considered." They note that the Environmental Statement solely outlines Principals and that they require further details and Discharge Consents.

The NIEA response dated 25/05/2021 stated: "Detailed avoidance and mitigation measures should be proposed and provided for any impacts identified." How can SES, in their Appropriate Assessment, conclude that "There will be no adverse effects to any designated European Sites" if they have not assessed the Final CEMP and Decommissioning CEMP nor the various Discharge Consents of potentially polluting chemicals to waterbodies? The absence of this information in the SES Appropriate Assessment is in contravention of ECJ case ruling C-304/05 paragraph 115: "The appropriate assessment should contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt."

The NIEA response dated 23/09/2020 stated: "No collision risk modelling was carried out for Whooper Swans or Greylag Goose"..."No adequate pre-construction baseline exists for the original development."

SES stated in Stage 1 Appropriate Assessment: "Therefore potential impacts to mobile avian features associated with construction (operation) can be ruled out".

SES Appropriate Assessment based on these findings is contra to ECJ Court C-43/10, paragraph 115 which noted: It cannot be held that an assessment is appropriate where information and reliable updated data concerning the Habitats and Species in the site are lacking.

The Appropriate Assessment of potential impacts on avian species, in particular Whooper Swans is significantly flawed as no account has been taken of Transfrontier impacts and there has been no Transboundary EIA consultation in contravention of the EIA Directive and the ESPOO Convention.

Whooper Swans move frequently from Lough Swilly in ROI to the River Foyle & Tributaries SAC, Lough Foyle SAC, SPA, RAMSAR, Lough Beg SAC, SPA and Lough Neagh SAC, SPA. Throughout the winter, groups frequently move in both directions between Lough Foyle and Lough Beg and Lough Swilly.

The avian collision risk assessment notes groups of Swans avoiding the existing windfarm site. However, the collision risk assessment failed to consider the cumulative impacts for all avian species and bats from B/2007/0563/F, B/2009/0070/F, B/2012/0268/F, B/2007/0560/F, B/2013/0241/F, LA01/2016/0061/F, LA01/2017/1124/F, LA01/2018/0200/F, LA01/2019/052/F and LA01/2019/0890/F. These sites are all in close proximity to the Roe Valley forming a "wall of disruption"!

In particular, the cumulative collision risk, mortality and disruption from a ring of adjacent windfarms stretching from Binevenagh to Benbradagh mountains, including Dunmore (7 Turbines), Dunbeg (14), Dunbeg extension (8), Dunbeg extension (3), Keady (?), Smulgedon (?), Craiggore (10), Evishargaran (?) has not been assessed by SES for this Planning Application on Rigged Hill.

In addition, Glenconway, Slievekirk, Brockaghboy and Crocandun windfarms were also omitted in the assessment of disruption to avian species travelling between Lough Swilly, Lough Foyle, Lough Beg and Lough Neagh. There are now no flight corridors free from Wind Farm developments and none of these have had a Cumulative Assessment completed for Planning Approval as required by law!

NIEA in their response dated 23/09/2020 stated: "Windfarm construction is predicted to cause displacement of 14.7% of Meadow Pipit pairs within 500m". Regarding Snipe populations which are in decline, NIEA stated: "Between 7-22% of territories in the wider survey area would potentially be impacted by proposed turbine array." There has been no cumulative assessment of displacement of avian species by this proposal and other windfarms in this cluster from Binevenagh to Benbradagh mountains as required by law!

NIEA recommended habitat improvement to compensate for species loss. However, compensatory measures cannot be considered in an Appropriate Assessment as per ECJ ruling C-387&388, paragraph 64. In addition, multi-stage monitoring cannot be considered sufficient to ensure performance of the obligations laid down in Article 6 (3) of the Habitats Directive as per ECJ case ruling C-142/16, paragraph 43. Monitoring can not be considered mitigation, especially when Planning Consent is not conditional on Critical Thresholds with requirements for immediate cease of operations if breached.

In terms of hydrological hazards and risks, there has been no cumulative assessment of impacts from Evishargaran, Craiggore, Smulgedon, Dunmore, Dunbeg 1, Dunbeg 2, Dunbeg 3, Keady and LA01/2019/0890/F on the River Roe & Tributaries SAC.

There has been no cumulative assessment of Discharge Consents as well as Planning Approvals for windfarms within this SAC catchment. A Drainage Plan, including discharges to waterbodies has not been assessed by SES. The application claims that the proposed scheme description describes maximum design parameters but these parameters failed to identify the exact locations of turbines, settlement lagoons and discharge points and water quality/pollution discharges to waterbodies.

These parameters also failed to take account of Climate Change and risk of wetter Winters, dryer summers and more frequent extreme flooding as experienced recently in Plumbridge, Tullyalley Faughan Bridge, Campsie Bridge and at Meenbog Windfarm, Donegal which resulted in a Peat Slide. The Environment Statement relied upon historic flood maps and not on future trends.

NIEA stated in their response dated 23/09/2020: "Fisheries assessment that all 5 streams have high Water Framework Directive status and contain juvenile Salmon with good abundance and brown trout with moderate abundance." Whereas SES Appropriate Assessment concluded Fisheries interests were at 2km distance. This SES conclusion is at variance with NIEA who note salmon and trout on the windfarm site!

SES in their Appropriate Assessment refer to the Applicant's Cumulative Assessment, which excluded many of the nearby windfarms and only considered some hydrological hazards and stated: "Scheme is unlikely to contribute to cumulative hydrological effects due to attenuation and dilution over distance to potentially polluting chemicals."

However, these chemicals were not specified and in particular the potential risk of Bioaccumulation of Flocculants and their neurotoxin and carcinogen derivatives was not considered. NIEA in their response dated 23/09/2020 stated: "NED consider that these findings indicate waterbodies of high ecological status" within the site and given the presence of designated protected species, negate the applicants assertion of "dilution over distance".

Regarding collision and mortality risks for Bats, NIEA stated: "Survey findings concluded that Leisler's Bats are present in sufficient abundance that the development is considered to pose a high risk to Leisler's Bats during Windfarm operation." SES failed to undertake a Cumulative Assessment of the impact of this Windfarm proposal with the impact of other windfarms on Bat species. I also draw your attention to ECJ case C-404/09 where an Appropriate Assessment did not give sufficient consideration to the possible disturbances to various species on the site in question, such as noise and vibrations or to the risk of isolating sub-populations by blocking communication corridors linking those populations to other populations. The Bat survey failed to include a comprehensive identification of all the potential effects of the project on Bat populations.

NIEA stated in their response dated 23/09/2020: "Construction of the existing Windfarm and past land management practices have significantly affected the quality of the blanket Bog and upland heathland."

This project, on a significant priority habitat site of 188 acres, is proposing to destroy 45,471 Tonnes of protected bog in addition to the volume of bog already destroyed by the construction of the existing windfarm, yet SES failed to undertake a cumulative assessment of the irreversible loss of this habitat and the species which depend upon it.

SES failed to undertake a Cumulative Assessment of Bog Habitats and Species loss from the construction of windfarms in the Roe and Foyle catchments. These upland blanket Bogs are the pristine headwaters of Salmon spawning catchments and as such their destruction have an irreversible impact on Salmon populations which have shown significant decline.

NIEA stated: "NED has concerns with the proposal and considers it contrary to the Strategic Planning Policy Statement for Northern Ireland and Planning Policy Statement: Natural Heritage in that the development may have significant effects on priority habitats, including active peatland."

SES failed to undertake a cumulative of the introduction of 2100 Tonnes of concrete and 630 Tonnes of steel into this sensitive habitat In-combination with the impact

from the existing windfarm and adjacent windfarms, as cited, on the River Roe catchment and Salmon spawning grounds.

SES failed to consider the cumulative impact of 9 km of overhead Grid Connection to the windfarm despite NIEAs advice regarding case law and EU advice regarding Wind Energy Development and Natura 2000 sites:

"With regard to assessing the impact of wind farms on European designated sites (Natura 2000) the European Commission has published detailed guidance entitled Wind Energy Developments and Natura 2000. This states that: the assessments must cover not only the impacts related to the wind turbines but the whole wind farm development including associated infrastructures and installations such as access roads, site access (e.g. for maintenance works or during construction), anemometer masts, construction compounds, concrete foundations, temporary contractors facilities, electrical cabling (e.g. overhead wires) for access to the grid, spoils, and/or possible a substation, control building etc."

NIEA stated that: "Windfarm development and its connection to the electricity grid are integral parts of one overall project and cannot lawfully be separated for the purposes of an EIA. Therefore, an Appropriate Environmental Assessment must be carried out on both elements of the project taking into account cumulative impacts before planning permission is granted."

SES failed to consider the cumulative effects on avian populations of grid connection for this windfarm and other windfarms as cited including the Transfrontier electricity interconnectors potentially affecting the Foyle and Swilly SPA.

NIEA stated: "EIA has not consider the significant effects of the proposed 9km overhead power line for the grid connection". SES wrongfully determined that it was not possible to undertake an assessment of the Grid Connection as the NIE preferred route was unknown. However, three alternative routes were known and no assessment was undertaken by SES.

Inperpetuity permission has been accepted by SES to avoid any Appropriate Assessment of the Decommissioning of the proposed windfarm. SES stated: " Given the fewer number of turbines in the recovered scheme, the potential effects arising from its Decommissioning will be less than the effects arising as a result of the initial Decommissioning." In this statement SES admits that there will be effects on the environment from Decommissioning of the proposed windfarm, but they failed to identify and quantify these effects. It is still unknown if the existing wind turbine bases will be left in situ to deteriorate or if they will be removed and the land re-instated. Therefore, the SES Appropriate Assessment is incomplete.

ECJ case ruling C-127/02 noted: "Where doubt remains as to the absence of adverse effects on the integrity of the site linked to a plan or project being considered, the competent authority will have to refuse authorisation."

Yours faithfully

Gwyneth McQuiston

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