

Aileen McGarry

From: vincent lusby <[REDACTED]>
Sent: 27 September 2022 13:58
To: Planning
Cc: planning mailbox; Housing Minister Of State
Subject: LA01/2019/0890/F OBJECTION

Dear Sirs,

I hereby Object to this Planning Application as the Habitats Assessment is significantly flawed to render any subsequent Planning Approval unlawful.

The SES Appropriate Assessment states that "*There can be no likely significant effects alone, the development cannot contribute to cumulative effects.*" This determination by SES is at variance to the European Court of Justice ruling C-418/04 "*the failure to take account of the cumulative effects of projects in practice leads to a situation where all projects of a certain type may escape the obligation to carry out an assessment, whereas, taken together, they are likely to have significant effects on the environment.*"

SES failed to consider the In-combination effects of the Grid Connections and the Cumulative effects with other windfarms, especially but not exclusively regarding Bird Collision. There has been no Cumulative Assessment for any Windfarm Planning Approval in CC&GS Borough Council area or their grid Connections, in contravention of The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

This SES Appropriate Assessment is in contravention of the ECJ ruling C-127/02 which stated "*all aspects of the plan or project which can, either individually or in combination with other plans or projects, affect those (conservation) objectives must be identifiedand take into account the cumulative effects which result from the combination of that plan or project with other plans or projects.*" There is no evidence that a Cumulative Assessment, for this project, has been undertaken by SES.

In addition, SES failed to incorporate HRAs required for Discharge Consents by NIEA WMU and DfI Rivers Agency, in the SES Appropriate Assessment of this project. Whereas, Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, paragraph 47, provides for Coordination, where more than one Competent Authority is involved, it does not provide for these HRAs to be completed post consent of the project under consideration. The failure of SES to not consider the potential adverse environmental impacts of Discharges to waterbodies, in their Appropriate Assessment of this project and to rely upon post Planning Approval HRAs, which may be completed by other Competent Authorities, is in contravention of ECJ ruling C-127/02 which states "*An Appropriate Assessment of the implications for the site concerned of the plan or project must precede its approval...The Assessment must therefore be undertaken before the competent authority decides whether or not to undertake or authorise the plan or project.*"

Furthermore, the SES Appropriate Assessment is flawed as it relied upon post Planning Approval provision of evidence that there will be no adverse environmental impacts in terms of the provision of a Final Peat Management Plan and Final DCEMP. The provision of evidence that there will be no adverse environmental impacts, after the Appropriate Assessment has been completed, is at variance to ECJ ruling C-293/17 which states "*The appropriate assessment of the implications of a plan or project for the site concerned is not to take into account the future benefits of such measures if those benefits are uncertain, inter alia because the procedures needed to accomplish them have not been carried out.*" The ECJ recognised that the measures with which they were concerned had "*not yet been taken or have not yielded any results, so that their effects are still uncertain.*" The specific measures required in these final plans had not been determined at the time of the Appropriate Assessment of this project. Therefore, there is no certainty that these unknown measures will be effective in preventing adverse environmental impacts at this site.

This approach by SES to undertaking an Appropriate Assessment, which relies upon post Planning Approval monitoring, is also at variance to ECJ ruling C-142/16 which states "***As regards, multi-phase monitoring, such monitoring cannot be considered as sufficient to ensure performance of the obligations laid down in Article 6(3) of the Habitats Directive.***"

The SES Appropriate Assessment is flawed as no Collision Risk Modelling was carried out for Whooper Swans. Their determination, not to undertake a risk assessment for Whooper Swans, was based on the NIEA statement dated 14/06/2022 which stated "very little data was collected on these species." This SES determination is at variance to ECJ ruling C-43/10 which states "***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.***"

It is noted that the Avian Surveys undertaken for this project were completed during daylight hours and therefore reported low frequency of observations of Whooper Swans. However, Whooper Swans commute between foraging sites mostly at night-time and at low altitudes (because of their weight as winter progresses). It is well documented that Whooper Swans mostly make landfall near Malin Head with groups splitting up along the west coast of Ireland and others proceeding to at first Lough Swilly and then into Lough Foyle before joining up with other groups on Lough Beg. Throughout the winter, these groups migrate between these foraging sites in ROI and NI depending on food availability and disturbance.

The Cluster of Windfarms from Loughermore to Dunmore increases the risk of a reduction in the natural range of these protected species and with the proposed in perpetuity Planning Permission for this Windfarm, the duration of disturbance is significant. SES failed to consider these risks and lack of evidence in their Appropriate Assessment in contravention of ECJ ruling C-157/96 which states "***The onus is therefore on demonstrating the absence of adverse effects rather than their presence.***"

The failure on SES to consider night-time flight corridors between foraging and roosting sites in ROI and NI is at variance to ECJ ruling C-304/05 which stated "***The Appropriate Assessment should contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt.***" ECJ ruling C-323/17 notes that there cannot be lacunae in the evidence. ECJ ruling C-404/09 also notes that a Consent based on an Appropriate Assessment is unlawful if it contains gaps and lacks complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt. The court identified a number of gaps in the Appropriate Assessment which did not give sufficient consideration to possible disturbances to various species or to the risk of isolating sub-populations by blocking communication corridors linking sub-populations to other populations.

The Planning Officer recommendation for Approval of this project is at variance to ECJ ruling C-127/07 which stated "***Where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation.***"

The Planning Authority is also in breach of the Environmental Impact Assessment Directive Articles 2 (3), (5) & (6) as it failed to consult with relevant Appropriate Authorities in ROI and failed to give an opportunity to the public in ROI to participate in relevant environmental impact assessment procedures. This failure to implement the law is also in breach of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and the United Nations ESPOO Convention.

Yours faithfully,

Vincent