

The Administrative Officer,
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RE: Draft Ministerial Direction dated 19th of May 2016, in the matter of section 31 – Notice of Intent to issue a Direction relating to the Variation No. 1 to the Westmeath County Development Plan 2014-2020

Dear Sir / Madam,

[Insert a short description; name of your stud farm, and type of activity, number of years in business, whether you employ staff, whether you export, etc.]

We wish to make the following submission in response to the Draft Direction issued by Minister Coveney to Westmeath County Council which states;

“The Westmeath County Development Plan 2014-2020 is to be amended by deleting:

That in order to protect human health and the quality of life of the population, Westmeath County Council will, within the provisions of the existing designations incorporate into its County Development Plan, a night time noise limit of limit of 30db of Lnight outside from wind energy developments.

That registered equine facilities be regarded as noise sensitive receptors”

We are against the proposed Ministerial Direction and set out below our reasons as follows:

That registered equine facilities be regarded as noise sensitive receptors:

This provision affords the protection provided by the Wind Energy Guidelines (2006) to existing “Noise Sensitive Receptors” such as dwellings, to equine facilities. It is based on the fact that horses, and particularly thoroughbred horses, are noise sensitive and are easily spooked, putting the safety of horses, riders and handlers at risk. It was adopted in the context of the prevailing Wind Energy Guidelines (2006) not providing an equine policy whatsoever, and therefore, there being no planning guidelines governing the proper and sustainable development of wind energy in conjunction with existence of registered equine facilities.

The Draft Direction seeks to delete the equine policy and a “Statement of Reasons” is given. However, no specific reason is given whatsoever justifying the proposed deletion of provision that registered equine facilities be regarded as noise sensitive receptors.

There is a broad, unspecific contention that Variation 1 is “*in conflict with Government policy supporting renewable wind energy*”. There is also reference to the Wind Energy Development Guidelines (2006) being “*appropriate*”, but this is specifically addressed in terms of the night noise limit for protection of human health. Therefore grounds for the proposed Ministerial Direction have not been provided.

As stated, the Wind Energy Development Guidelines (2006) does not provide an equine policy, and therefore there is no planning guidance in this area whatsoever. Westmeath County Council is both correct and obliged to ensure appropriate planning Guidance is provided.

As horses are noise sensitive, Westmeath County Council are also correct in recognising this in the policy. Horses’ visual and auditory sensitivity is recognised as having been developed to respond to their disposition as “prey” animals. In addition to having keener hearing than humans (able to hear infrasonic sounds used to repel rodents) they are “easily spooked” by sudden noise or noise that they perceive as threatening. They have a strong “flight” response and respond with speed.

As Ashley Griffin, MS, University of Kentucky (Horse hearing) identifies; “*A horse's hearing is much keener than humans. They use their hearing for three primary functions: to detect sounds, to determine the location of the sound, and to provide sensory information that allows the horse to recognize the identity of these sounds. Horses can hear low to very high frequency sound, in the range of 14 Hz to 25 kHz (human range = 20 Hz to 20 kHz).*”

Wind turbine noise contains a high proportion of low frequency noise and infrasound, and wind turbine noise can commence suddenly when the wind begins blows suddenly. Modern 2MW + wind turbines emit noise levels of 105dB at source, which is louder than the noise of a “Jet take off (at 305 meters)” (Source: Industrial noise Control).

Horses’ auditory and visual skills combine to identify perceived threats. Their peripheral vision enables them to see 350 degrees, with peripheral vision which is better than that of humans. It is recognised that horses “*can readily pick up motion and contrasts off to the side, even though they can't see a lot of details. This is why they tend to spook when they catch something out of the corner of the eye.*” They are “*less able to adjust to sudden changes of light, such as when moving from a bright day into a dark barn. This should be taken into consideration during training, as certain tasks, such as loading into a trailer, may frighten a horse simply because he cannot see. It is also important in riding, as quickly moving from light to dark or vice-versa will temporarily blind the horse, and makes it difficult for him to judge what is in front of him.*”

As wind turbines can commence making noise suddenly when the wind begins to blow, and as wind turbines cast shadows and shadow flicker from rotating blades, they are a particular threat to spooking and / or temporarily blinding a horse. This threatens the safety of rider and handlers.

In context of the compatibility of horses and wind turbines, it is relevant that the Wind Turbine Developers' "Option Agreement" (including those in use in Westmeath) expressly forbid the keeping of horses on leased lands. The land owner receives an annual annuity to cover encumbrances, however, without a proper and appropriate policy, neighbouring equine facilities face dangerous and harmful risks to the life and health of horses, their riders and handlers, or face displacement. Therefore it is essential that equine facilities are properly regarded as noise sensitive receptors.

B: "That in order to protect human health and the quality of life of the population, Westmeath County Council will, within the provisions of the existing designations incorporate into its County Development Plan, a night time noise limit of limit of 30db of Lnight outside from wind energy developments"

Many of those involved in the equine sector work and live on the equine holding full time. The Draft Direction contends that the Wind Energy Development Guidelines 2006 provide a night noise level as being "*appropriate*" to protecting human health. As confirmed on the Dáil Record, the 2006 Guidelines were not subjected to a health assessment nor was there any input provided from the Department of Health. Furthermore, the 2006 Guidelines selectively overlooked the updated and prevailing 1999 World Health Organisation night Noise Guidelines which identifies that exposure to environmental night noise of 30dBLAeq can give rise to adverse health effects. The Wind Energy Guidelines 2006 do not provide a Health-Based Limit Value.

Therefore, the Draft Ministerial Direction, if confirmed, would be ultra vires the Minister's powers because it would be in breach of Article 40.3 of the Constitution, EU law and the European Convention on Human Rights.

The detailed reasons for this statement are set out below:

- i. Article 40.3 of the Constitution guarantees the personal rights of citizens, including the right to bodily integrity. In *Ryan v Attorney General* [1965] IR 294, this was defined as requiring that "*no process which is or may, as a matter of probability, be dangerous or harmful to the life or health of the citizens or any of them may be imposed (in the sense of being made compulsory) by an Act of the Oireachtas.*" The right to bodily integrity must be protected by the State "*as far as practicable*". We suggest that the State would find it difficult to argue that it has protected its citizens to the standard required by Article 40.3 when WHO findings highlighted, as far back as 1999 and reiterated in 2009, that exposure to environmental night noise of 30dBLAeq can give rise to adverse health effects (see table below), and that this is so especially in the case of children, older people and those with existing chronic illnesses. It is difficult to see how a Ministerial Direction requiring planning authorities to remove this WHO derived standard from the County Development Plan and therefore as a result clearly require the Council to use a noise limit for wind turbine noise that exceeds the 'health-based

limit value' identified by WHO in 1999, and again in 2009, would be consistent with the duty of the State to protect "as far as practicable" the right to bodily integrity.

- ii. In terms of EU law, such a Direction would be in conflict with the EIA Directive. This view was confirmed by the CJEU in *Leth v Republik Österreich Land Niederösterreich* (Case C-420/11) in which the Court stated (at para 28) that:

"It follows from Article 1(1) of, and from the first, third, fifth and sixth recitals in the preamble to, Directive 85/337 that the purpose of that directive is an assessment of the effects of public and private projects on the environment *in order to attain one of the Community's objectives in the sphere of the protection of the environment and the quality of life. The information which must be supplied by the developer in accordance with Article 5(1) of, and Annex IV to, Directive 85/337, as well as the criteria which enable Member States to determine whether small-scale projects, meeting the characteristics laid down in Annex III to that directive, require an environmental assessment, also relate to that purpose.*" (emphasis added)

- iii. In terms of the European Convention on Human Rights, the WHO, in its *Night Noise Guidelines for Europe 2009*, cited the decision of the European Court of Human Rights (ECtHR) in *Hatton v United Kingdom* (2003) 37 EHRR 28, in which the ECtHR recognised the right to sleep as comprising part of the right to privacy and family life in Article 8 of the European Convention on Human Rights. This underlines that WHO recognised the direct link between environmental noise and the State's responsibility for the protection of fundamental rights.

Having given consideration to the Department of Environment's letter dated March 2016, and having considered its legal obligation to protect health, Westmeath County Council adopted the "health based limit value" of "30db of L_{night} outside" based on authoritative evidence of the World Health Organisation, who identify;

"For the primary prevention of subclinical adverse health effects in the population related to night noise, it is recommended that the population should not be exposed to night noise levels greater than 30 dB of L_{night}, outside during the night when most people are in bed." (emphasis added)

Conclusion:

Westmeath County Council has provided authoritative, evidence based guidance in terms of protecting the health of citizens. They have also provided an appropriate equine policy specific to the noise sensitivity of the equine, in circumstances where the 2006 Guidelines does not contain an equine policy.

Therefore, the Draft Ministerial Direction, if confirmed, would be ultra vires the Minister's powers because it would be in breach of Article 40.3 of the Constitution, EU law and the European Convention on Human Rights.

Yours sincerely,
