

**Christine Brennan**

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**From:** Elizabeth Davidson <elizabethmccdavidson@gmail.com>  
**Sent:** Monday 23 March 2020 16:01  
**To:** SIDS  
**Cc:** Kieran Somers  
**Subject:** Submission from Concerned Residents of Killakee  
**Attachments:** Submission Concerned Residents of Killakee.doc

Please see attached doc and acknowledge receipt thereof



## FRIENDS OF MASSY'S WOOD

The Secretary  
An Bord Pleanála  
Marlborough Street  
Dublin 1

RE: JA0040

We submit this letter under protest. The Libraries of South County Dublin are closed owing to coronavirus. Many of our Members are elderly and/or do not have internet access and rely upon access to hard copies. We requested an extension of time in order to make a submission until such time as those Libraries reopen. We therefore make this submission without prejudice to our view that no adequate public participation has been provided for.

In relation to the response made by South Dublin County Council on 23/12/19 in respect of Further Information requested by the Board on 08/02/19 Friends of Massy's Wood have a number of observations and submissions to make. In addition to the points made at first instance Friends echo the concerns expressed by the Department of Culture, Heritage and the Gaeltacht, none of which have been adequately addressed:

### **Birds**

The Department has expressed concern that the proposed development may impact on peregrine falcon, woodcock, Merlin and long-eared owl which may be found at the proposed development site or surrounding areas. The Department specifically identified a concern that the development may lead to ex-situ or off-site impacts on peregrine falcon and Merlin which are conservation objectives for the Wicklow Mountains National Park. The Department specifically drew attention to the fact that the EIS did not include "*any survey for birds*" and that therefore the developer could not say whether any Merlin were in fact present on the site, use the site or may be subject to ex-situ impacts. In the absence of any survey information the same observation presumably applies equally to each of the other three species of concern identified by the Department (peregrine, woodcock and long-eared owl). Peregrine Falcon and Merlin are Annex 1 species for the purposes of the Birds Directive and are entitled to strict protection throughout their range.

Rather than address the significant lacunae identified by the Department by, for example carrying out an appropriate survey to identify the presence of avifauna on or around the site it is absolutely remarkable that the developer has reverted in the same laconic fashion which it prepared its original application. For example it notes (p. 2) of its response simply that (emphasis added throughout);

*“Long eared owl and Woodcock are **potentially present** in the Hell Fire / Massy’s Wood area. These areas of woodland are unlikely to support nesting sites of the species because of the current levels of disturbance”.*

In the same vein in relation to Peregrine Falcons and Merlin the FI response states;

*“Peregrine and Merlin are special conservation interests of the Wicklow Mountains therefore the only species relevant to the AA screening. **Both species are likely to hunt within the site.** The site does not provide suitable nesting habitat for Peregrine (cliffs and tall buildings). Merlin may nest in conifer plantations, however given that there are vast areas of heath and blanket bog, the preferential nesting habitat of Merlin close by the conifer plantations are unlikely to provide an important nesting resource for this species”.*

In other-words, the Department has raised a specific query in relation to the four species and has stated that in the absence of any survey information, the species may be present and there may be an impact on them at the site. The Developer, rather than addressing that concern, responded originally by admitting that the species of concern are (or, more accurately, are likely to be as it does not have any hard information by which this could be verified) present on site but because of a perceived unlikelihood by those species to utilize the affected section of the site no question of disturbance arises.

It has submitted a survey in respect of merlin. This survey, which despite acknowledging and sighting the presence of merlin, somehow concluded that Merlin did not breed in the vicinity of the site or the surrounding area. It opined, without any basis, that the sighted Merlin might nest some 10km away. It is equally clear that the Developer has not commissioned any systematic survey of the site for plucking posts, nests or other signs of the Merlin activity. In both the information originally submitted and the new information, despite this lack of survey effort, plucking posts or signs of Merlin usage of the site was identified. On the basis of that identification the Developer should have, but failed to assess the entirety of the site for signs of Merlin usage in order to allow the Board to conduct a Stage 2 Appropriate Assessment. It is our position that the evidence submitted by the Developer unequivocally establishes that Merlin are present on the site.

This is all the more significant in light of the materials relied upon, but materially misrepresented by the Developer in the first place.

The Board will recall that in the first FI Response the Developer cited a paper by Newton, JE Robinson ED. Wyalden (1981) entitled "Decline of the Merlin in the Peak District" to the effect that report concluded "*that recreational walkers were unlikely to have caused a serious decline in Merlin*". Notwithstanding the age of that report, the difficulty in relying on a study carried out in dramatically different conditions (heather moorland), the Report did not in fact reach the conclusion contended for. The Report noted that walkers in the heavy moorland of the Peak District were likely to stay to footpaths as, *inter alia*, walking on open heather is an exhausting pursuit. That is not the case in Massy's Wood or the Hellfire Club where walking through the mature forestry off-pathways is easy and frequently undertaken. More to the point the Report noted that (p. 229) "*a well-used footpath running close to a Merlinnest site is therefore particularly likely to cause disturbance*" and (p.232) "*However, there was a negative correlation between latter-day Merlinsites and nearby footpaths, which might suggest a sensitivity to disturbance*"

In the same fashion the Developer identified in their FI document a paper by E.R Meek (1988) on The breeding ecology and decline of the Merlin Orkney, bird study and states "*Meek suggest little negative impact on Merlinby recreation.*" Meek makes no such statement. Recreational users are not mentioned at any point in that paper and the only reference to anthropogenic disturbance is to turf-cutting where Meek suggests that there may be some correlation between that activity and abandonment of nest sites. It is, with respect to the Developer, utterly unsatisfactory that even the scant scientific basis they identified has now **twice** been mis-represented in this fashion.

Lastly the FI response refers to a Report entitled 'Recreational use of forests and disturbance of wildlife' prepared for the UK Forestry Commission by Marzano & Dandy et al. The Developer quotes this Report as concluding that "*on balance, the available evidence does not indicate significant negative impacts on UK forest birds following "flight" responses to walking including no clear long term or population level impacts*". While this is an accurate quote the Developer leaves out the important point that it is simply a literature review and is not an empirical or peer-reviewed paper in itself. At page v of the review the authors note that while there are a multiplicity of papers generally on the topic they could identify only 5 "*which draw on primary research conducted in UK forests*". References to the dearth of available scientific information, and that that information is concentrated on very particular species, are littered through the Report such as (page 11)(emphasis removed);

*"Within this literature there is once again, however, a very heavy focus upon birdlife (for reviews see Sidaway, 1990; Taylor et al., 2005), which itself focuses substantially upon ground-nesting birds (for a 'systematic review' see Showler et al., 2010) and disturbance by dogs accompanying walkers. Indeed, in their review of the disturbance impacts of dogs, Taylor et al. (2005, p. 56) conclude that 'There is very little relevant research that has focused on the effects of dogs on animal groups other than birds'."*

Friends submits that the Developer;

1. Should have but did not include bird survey data with the original application,
2. Should have but did not respond to the FI request with appropriate bird survey data,
3. Has now mis-represented two primary papers as to the interaction between recreational disturbance and Merlin,
4. Has belatedly carried out an inadequate 3 month survey that demonstrates that Merlin indefinitely use the site (contrary to the entirety of the earlier data) and makes clear that no systematic search for Merlin signs over the site.

Friends submits this is an entirely inadequate response to the Board's two FI requests in relation to the potential impact on avi-fauna as regards Merlin, Woodcock and Long Eared Owl. In respect of the former only an inadequate survey effort was carried out. In respect of the latter two species none at all.

### **Otter**

It is, frankly, astonishing that the Developer can conclude (on the basis of a single day of survey effort by a single person, the hours for which are not provided) that Otter do not use the Glendoo Brook. Members of our group have frequently seen Otter on the river over the years. The Developer's efforts are significantly short of the survey effort required by the Guidelines and the presence of two cameras (the justification for the placement of which has not been provided) is simply irrelevant considering the length of the surveyed River.

It is equally astonishing for the Developer to state that there will be no significant effect on Otter as the habitat will be improved. As is readily apparent from any visit to the River during warm weather it acts as a magnet for families and small children. The very significant increase in visitors to Massy's Wood (by a factor of 1200%) will therefore cause an obvious increase from anthropogenic disturbance on the River.

The Board has absolutely no basis upon which it can screen out the possibility of significant effects on Otter (whether directly via disturbance) or via impacts on water quality downstream.

### **Natura 2000 sites**

The Department expressed a concern that the application had failed to take into consideration the possible impact on surrounding European sites in the immediate vicinity including, Glenasmole valley SAC (site code 001209) circa 1.2 km away, the Wicklow Mountains SAC (site code 002122) circa 0.6 km away, and the Wicklow Mountains SPA (site code 004040) circa 0.9 km away. The Department was of the view that the proposed development could bring greater pressure to bear on these sites as they are close to the Dublin Mountain Way which links or goes close to these 3 sites and which is accessible from the Hell Fire Club. The Board, in its FI Request, echoed that concern and asked for additional information on how the proposed development may impact on those sites via increased visitor numbers.

In response the Developer simply stated that the Dublin Mountain Way does not enter the latter two and therefore impacts on their conservation objectives from the anticipated increased visitor numbers would not occur. However, (and as acknowledged by the developer) the DMW goes very close to both and is linked via well-established trails to both Natura 2000 sites (such as at Cruagh car-park where there are trails linking directly to both the DMW and which lead into the Natura 2000 sites). There was therefore a real basis for the Department's belief that those two Natura 2000 sites will come under increased pressure from recreational users as a result of the development and the Developer has simply failed to include any assessment of that pressure.

The Developer's response to that has been to identify a small increase in usage of Cruagh mountain as a result of the nearly 3 fold increase in visitor numbers forecast as a result of the proposed development. There is no basis for that limited assessment. If 300,000 people are going to visit the relatively small area around the Hell Fire and Massy's Wood it is absolutely certain that they will disperse into the surrounding area in order to avoid congestion and as the most convenient point to access the open mountain side at Cruagh. This is particularly the case for hiking groups using coach transportation. This faulty assumption that three times the numbers of walkers will react in the same way as the current users of the site underpins much of the Developer's analysis. Furthermore, many visitors do not access Massy's Wood currently as the road is unsafe from the car park.

Once that is remedied it is absolutely foreseeable that significantly more numbers of walkers will use Massy's Wood to access Cruagh and the open mountainside beyond and that the demographic using the site will shift from the current position of family groups and short distance walkers to hiking groups to whom 6km represents an insignificant distance to access open moorland in the SAC. This is particularly the case where dedicated trails as a result of the proposed development will make that transit quicker, easier and more attractive. The Developer cannot simply dismiss the effects from disturbance and erosion as a result of an additional 200,000 visits to an area that will be fundamentally altered as a result of the proposed development on the basis of an inadequate extrapolation from current behaviour or to make a

series of unsupported assumptions favourable to the case it is presenting (Walker Survey p. 17):

*"The visitor profile will change from the existing, largely local visitors to include a higher proportion of international and domestic tourists. It is likely that the additional visitor activity will focus entirely on the Hell Fire Club and Massy's Estate. It is very unlikely that these new visitors will extend their walk very significantly to access the wider higher Dublin Mountains area further south via the single linking trail through Massy's Estate."*

This is the opposite of the precautionary principle and there is absolutely no evidence to support the Developer's view on that change in profile. On the contrary it is absolutely foreseeable that the Hell Fire Club will be used by hikers as a very convenient jumping off spot for access to the Wicklow Mountains with dedicated car parking, café, toilets and without the necessity for a long drive towards Laragh or Glenasmole. It is apparent that the Developer does not have any comprehension of the degree to which the construction of the proposed development will have on the interactions, volumes and types of visitors that will now visit the Hell Fire Club.

The NIS notes the presence of North Atlantic Wet and dry heaths which is a Conservation Objective for the Wicklow Mountains SAC becoming potentially affected by walkers (NIS p. 42):

*"The nearest examples of this habitat in the SAC to the proposed development are 1.6km from the southern end of Massy's Estate or 3.4km from the proposed visitor centre car park along the existing trails. There is potential for a small increase in footfall to lead to braiding and erosion of the habitat along the existing trails, reducing the overall area in the SAC."*

### **Red Squirrels**

Red Squirrels are protected under the 5<sup>th</sup> Schedule of the Wildlife Act 1976 and the 3<sup>rd</sup> Schedule of the Berne Convention. Red Squirrels are present in both Massy's Woods and the Hellfire Club. The Developer has very fairly acknowledged that there will be a significant medium term impact on the red squirrels from the proposed development on what they describe as "*an important habitat for Red Squirrels*". A Red Squirrel Conservation Management Plan has been produced. This candidly acknowledges the same significant impacts and notes that the habitat for red squirrel will be degraded by the removal of mature trees at the site of the current car-park, an increase in traffic leading to increased mortality and the likelihood that an increased food supply from the recreational users will attract grey squirrels who will rapidly out-compete and supplant the native reds.

The reality is that there will be a serious impact on red squirrels from the proposed development. On the Developers own submission the development will lead to increased mortality and the likelihood of the introduction of grey



squirrels to the area which will inevitably lead to the destruction of the reds. As above, there is no assessment of the impact of the increased numbers of visitors will have and no appropriate survey data on a multi-day, multi-season, multi-annual basis to assess the number, behaviour and distribution of red-squirrel on the site. Equally there has been no drey count completed or the location of any dreys (beyond the one to be destroyed) identified. A two-day walkabout survey (as referenced in the original application) is a manifestly unacceptable tool with which to assess the potential impacts. Friends of Massy's Wood conducted a two-hour walkabout of the Wood and spotted 18 dreys within 2 hours. Undoubtedly there are many more but, in the absence of any survey data, the Board has absolutely no idea of the population density or distribution of red squirrel and therefore the effect of the proposed development.

### **Pine marten**

Friends have serious concerns about the lack of adequate and proper response by the Developer to the concerns raised by the Department and the Board. Pine Marten are protected throughout their range for the purposes of Annex V and Article 15 of the Habitats Directive. It is also protected under the Wildlife Act 1976.

The Department in its letter identifies the fact that pine martens are important in helping red squirrel populations to grow (by preying on grey squirrels). They state: "*pine marten conservation in the area would also be an important factor to include in any plan*" and that "*it is not clear why this [the pine marten] was not also made a key ecological receptor (KER), particularly in its likely role in controlling grey squirrels as mentioned above*".

As with birds and red squirrels **no survey data** was included by the Developer in relation to pine marten and has never provided any explanation to justify this oversight. In its FI response the Developer simply notes that pine martens are (p. 5) are "*nocturnal and elusive*" and "*are unlikely to be affected by the project as a result of existing disturbance by people and dogs, which may result in them being habituated to human disturbance or nesting away from the area of the development*". With the obvious caveat that the Developer is in no position to make any assessment of impact on pine marten from the proposed development as it has no idea where or how many of the species is present on site, the Developer cannot simply state as fact the likelihood of non-disturbance during a year of continuous construction and when the number of recreational users is forecast to more than triple. Significantly, the Developer identifies absolutely no scientific basis for its optimistic assumptions. These assumptions run counter to, *inter alia*, its own earlier statements (EIAR [Vol 1, p96 6.5.4.5.] where it statement states "*the proposed development will result in habitat loss, disturbance and displacement to the fauna that reside within and adjacent to the proposed development*". Even though the

Developer did not deign to survey them, presumably this also includes the pine marten.

While the same Report does record that *"no suitable den or refuge sites were identified within the study area. It is considered that the proposed development will not impact significantly on the species and, therefore, it is not included as a key ecological receptor and no further surveys are required"* this statement is a tautology. There was no survey or any dedicated assessment effort by the Developer and therefore the fact that no den sites were identified is neither surprising nor evidence of the presence or otherwise of pine marten on site.

The only evidence supplied by the Developer in this regard (although it is not clear to what purpose) is that *"pine martens have large territories"*. In fact Dr O'Mahony's paper says that *"core ranges were small"*, are slow breeders with poor survival rates for kits. The same author in the *"National Pine Marten Population Assessment"* stated that *"there is little or no evidence of any recent expansion from core population areas (18% of land area) on the island of Ireland despite recent increases in forest cover and full legal protection"*. The paper states that *"the pine marten is one of the rarest wildlife species in Ireland and, based on our studies, an evidence-based conservation strategy that promotes a sustainable future for the species needs to be developed"*.

This is exactly the type of information which has not been included by the Developer and it is frankly astonishing that the FI Response was to rely on the results of a bat survey as somehow evidence of an absence of impact on this species.

In its latest submission no effort was made by the Developer to address this deficit and it is clear that no survey effort has been carried out.

## **Bats**

The Department made it clear in their submission that they do not consider the bat survey supplied by the applicant to be adequate. This survey consisted entirely of one two-hour entry survey and one two-hour exit survey carried out at unknown locations at different days by an unidentified number of surveyors. No survey data was supplied and no actual raw data was included in the EIAR or the FI Response other than the bald statement that bat activity was low.

Contrary to the Guidelines cited by the Developer no adequate Bat Surveys were carried out.

Those Guidelines specifically require tree surveys to be carried out and specify a minimum number of survey visits in respect of structures. This ranges from 1 (low likelihood of roost presence) to 3 (high likelihood of roost presence) and which, in any event, do not provide confidence in relation to a negative assessment for trees for which tree specific surveys are required.

That is exactly what should have occurred here. Contrary to the Developer's statement that tree specific reports were not required, the Guidelines make it clear that **only** tree specific reports are adequate when one (as here) is assessing the impact of a proposed development on a potential tree roosts. Equally the Developer has made no effort to remedy what it candidly acknowledges as a deficiency in its own process that (p. 10) "*It is acknowledged that static surveys throughout the site would provide a more detailed picture of use by bats*" on the baffling basis that the mitigation would be the same. This, with respect, entirely ignores the point. A bat survey is designed to place the consent authority in a position to assess whether a development should proceed or not because of, *inter alia*, the impact on bats. It is not a tool simply in order to identify mitigation measures in respect of species which the developer (as with birds, red squirrel and pine marten) simply has no idea of their distribution.

In this regard it is highly significant that all Bat species in Ireland are protected for the purposes of Annex IV of the Habitats Directive and are entitled to strict protection throughout their range. This includes from interference with their breeding, resting and foraging places and disturbance (whether deliberate or not). The Developer in this case has presented no information to the Board which would allow the Board to discharge its obligation of strict protection.

In its latest information no attempt has been made by the Developer to address this deficit.

Elizabeth Davidson  
Coordinator FOMW

