**Laura Crawford**

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| **From:** | Save The Moat |
| **Sent:** | 26 August 2026 09:00 |
| **To:** | Planning |
| **Subject:** | For today -LA01/2023/0008/F – Further Submission re DAERA/NIEA Response (22 Dec 2025) |

Application Ref: LA01/2023/0008/F – Brishey (Benbradagh) Wind Farm

Dear Planning Officer and Members of the Planning Committee,

We write further to Addendum 4, dated 26th August 2026. The latest report itself identifies a number of unresolved matters which, in our view, require clarification and further assessment before any lawful and properly informed determination can be made.

Paragraph 8.66 states that much of the site supports blanket bog priority habitat and that a large proportion is considered “potentially active” peat. It further confirms that the access track towards WTG6 must cross blanket mire containing potentially active peat.

Paragraph 8.68 then expressly recognises a wider zone of influence, stating that NED is concerned with the hydrological integrity of the area as a whole and with the effect that hydrological changes could have on active peat. Paragraph 8.69 refers to “any area of impacted peat that is active”, while paragraph 8.70 proposes compensation for the loss of potentially active peat beneath the floating track.

Despite this, paragraph 8.72 concludes that because “no active peat has been identified within the footprint of the development”, there will be no unacceptable impact on active peat.

That conclusion appears to be unduly narrow, because the report itself acknowledges that the relevant environmental issue extends beyond the precise construction footprint and includes the hydrological zone of influence and effects upon active peat elsewhere within that hydrological unit. SPPS Edition 2 requires active peatland to be given significant weight. It is therefore not sufficient simply to establish whether peat directly beneath a turbine or track has been categorised as active. The Committee must also be satisfied as to effects on hydrologically connected active peat.

NED states that detailed construction methods and mitigation measures for the floated track “must be provided” through a final CEMP and Construction Method Statement.

Condition 8 would leave until after permission the final construction methodology, Pollution Prevention Plan, Site Drainage Management Plan and SuDS, Peat/Spoil Management Plan, detailed floated track method statements, Water Quality Monitoring Plan and Environmental Emergency Plan.

Likewise, Condition 12 leaves the final Habitat Management Plan until after permission, including baseline habitat conditions, detailed restoration methodology, success criteria and legally binding landowner arrangements.

Conditions can properly secure implementation details, but there is an important distinction between securing the implementation of mitigation which has already been sufficiently assessed and leaving material parts of the mitigation design and evidence base to be worked out after the principle of development has been approved.

This is particularly important because the site is hydrologically linked to the River Roe and Tributaries SAC and the Council relies upon mitigation to reach its conclusion that significant effects will be avoided.

Council's own report states that flood risk has not been dealt with satisfactorily. Paragraph 8.102 records that the site contains numerous undesignated watercourses of which DfI Rivers has no record.

Paragraph 8.103 then states:

"DfI Rivers advise that commenting on the efficacy of the proposed SuDS is outside DfI Rivers area of knowledge and expertise and until the SuDS design has been fully appraised, the potential flood risk to the development and elsewhere has not been dealt with satisfactorily."

Nevertheless, the following paragraph states that detailed drainage management and SuDS will be submitted later through the final CEMP and concludes that the proposal complies with FLD3.

This concern has not been resolved by anything subsequently placed before the Committee. Addendum 5 does not contain any further drainage assessment, fully appraised SuDS design or updated DfI Rivers response. It simply records an additional objection and maintains the recommendation to approve.

Addendum 5 therefore provides no new technical evidence which alters or resolves the position expressly recorded at paragraph 8.103 of Addendum 4.

The latest technical position before the Committee therefore remains the statement recorded in Addendum 4 that, until the SuDS design has been fully appraised, "the potential flood risk to the development and elsewhere has not been dealt with satisfactorily."

We respectfully ask how the Committee can presently conclude that the proposal complies with flood risk policy when its own report expressly records that the relevant flood risk has not been dealt with satisfactorily and no subsequent document appears to resolve that position.

This is particularly concerning when Condition 8 proposes to leave the final Site Drainage Management Plan, including SuDS and silt-management measures, to be submitted and approved after planning permission has already been granted.

This matter should be resolved before determination rather than transferred to a post-permission condition.

-The dismissal of contaminant mobilisation as speculative is not supported by the wider peat science.

At paragraph 8.134 Council accepts that upland peat retained Cs-137 following Chernobyl, but argues that remaining material is heavily immobilised and bound to organic matter and therefore presents no significant pathway. Council further relies upon sediment controls to prevent peat, sediment and any bound Cs-137 entering watercourses.

There is an important scientific issue with treating contaminants being bound within organic peat as equivalent to there being no mobilisation pathway.

McKinley, Grunsky and Mueller's Northern Ireland Tellus study explains that regional soil surveys are used to establish baseline element concentrations and normal background contaminant concentrations. The Northern Ireland Tellus survey comprised 6,862 rural soil samples collected at 20 cm and 50 cm depth and analysed for 60 elements and inorganic compounds. (Queen's University Belfast)

This demonstrates that a substantial Northern Ireland geochemical evidence base already exists which could be interrogated when considering whether site specific investigation is warranted.

Queen's University Belfast is also presently leading the PIPES project, "Pollutants In PEatlands: from sink to Source". (Queen's University Belfast) Related 2024 research involving Professor Graeme Swindles explains that peatlands can act as contaminant sinks and that, when degraded and exposed to further disturbance such as erosion, previously sequestered contaminants can be released into the environment and drinking water. (Research Explorer)

Peer reviewed UK blanket-peat research provides evidence of the actual transport mechanism. Rothwell et al. found that previously deposited metals can leach from contaminated blanket peat into headwater streams and that dissolved organic carbon can itself assist mobilisation and transport of certain metals. (ScienceDirect) Other Rothwell research records erosion of contaminated blanket peat releasing previously deposited lead into the fluvial system. (ScienceDirect)

These studies relate primarily to heavy metals, not Cs-137, and we do not suggest otherwise. Their relevance demonstrates that contaminants being retained or bound within organic peat does not, by itself, establish the absence of a transport pathway once peat is disturbed or eroded.

The correct question is therefore whether contaminants are present at this site, at what concentrations, and whether the proposed excavation, drainage, peat handling and hydrological changes could mobilise them. That question cannot simply be dismissed as speculative by assuming that sequestration within peat permanently removes the pathway.

Council's reliance on the Scottish position is incomplete. Paragraph 8.134 states that regulatory bodies including SEPA have concluded that excavation of peat for wind-farm infrastructure does not pose a plausible radiological risk.

SEPA's July 2025 assessment does indeed conclude that its modelling indicates no realistic public risk from Cs-137 associated with wind-farm construction in Scotland. However, SEPA also states that it is undertaking a sampling programme of peat soils at four locations near proposed wind farms specifically to check actual environmental Cs-137 concentrations against its theoretical modelling. Those monitoring results are due to be published with 2025 RIFE data in October 2026. (SEPA)

There is a further inconsistency which requires explanation. In previous correspondence, NIEA's Chief Industrial Pollution & Radiochemical Inspector, Dr Gillian Wasson, stated:

"We have not adopted or relied upon SEPA's July 2025 report in any capacity, either formally or informally."

NIEA also stated that it "will not rely on SEPA's July 2025 report in any future decision-making."

Against that background, it is unclear why the Council is now relying upon the Scottish/SEPA position as part of its reasoning for dismissing the Cs-137 concerns in this application. If the relevant Northern Ireland environmental regulator has expressly said that it has neither adopted nor relied upon the SEPA report, and will not rely upon it in future decision making, the Committee should be told what independent evidential basis allows the Council to place weight upon it here.

At minimum, Council should clarify whether it is relying on SEPA as substantive evidence in its own right, or merely referring to it as background material. If it is being relied upon substantively, Council should explain why that approach differs from NIEA's stated position and how it has satisfied itself that the Scottish evidence is appropriately transferable to this Northern Ireland site.

The asserted absence of a source pathway-receptor linkage also requires closer examination. Council concludes that no plausible source pathway receptor linkage has been established and therefore characterises the concerns as speculative.

Yet its own report recognises:

-upland peat containing residual Cs-137;

-excavation and movement of peat and spoil;

-potentially active peat and hydrologically connected peat units;

-numerous watercourses within the site;

- a hydrological connection to the River Roe and Tributaries SAC;

-the need for sediment controls specifically to prevent peat and sediment entering watercourses; and

-the need for a future Water Quality Monitoring Plan.

The issue requiring evidence is therefore not whether a conceivable source and transport pathway can be identified. The issue is whether concentrations and mobilisation would be environmentally significant. That is exactly  why site specific evidence is so important.

Human health conclusions should not substitute absence of objection for positive evidence. Paragraph 8.22 states that there is no indication that the proposal will cause detriment to human health, relying significantly upon the absence of objection from Environmental Health. However, a consultee raising no objection is not itself evidence that every specific pathway raised through representations has been assessed and excluded.

In relation to Cs-137, NORM, radon, peat disturbance and contaminant mobilisation, the Committee should identify the actual evidence upon which it is satisfied that effects on human health and water are unlikely to be significant, rather than treating an absence of objection as equivalent to a positive site specific assessment.

The report itself acknowledges continuing AONB and skyline harm. The development is within the Sperrins AONB. The report expressly acknowledges that SPPS Edition 2 requires a cautious approach within landscapes of significant value and that the relevant landscape guidance identifies Benbradagh's prominent skyline and advises particular care to avoid adverse impacts upon it.

The report also acknowledges that the four remaining 150 metre turbines will extend the concentration of turbines westwards and to higher elevations on Benbradagh and diminish the spatial gap between Brishey and Evishagaran.

Most importantly, paragraph 8.44 states that the Planning Department itself “still has concerns” regarding visual amenity and landscape character, including views from Legavallon Road and the A6 where the tips of three turbines remain visible above the Benbradagh ridge and where there will be a high number of receptors. The report nevertheless gives determining weight to the LVIA and NIEA response.

The Committee is the decision-maker. A no-objection response from a consultee is a material consideration but it does not remove the Committee’s responsibility to reach its own planning judgment as to whether acknowledged harm within an AONB is unacceptable under SPPS Edition 2.

The cumulative landscape reasoning is also questionable. Paragraph 8.45 accepts that cumulative impact is evident but concludes that it is not significant because Brishey will appear as an extension of Evishagaran rather than as a separate wind farm.

We do not consider that conclusion logically follows. The fact that two developments may visually merge (in your opinion) into one enlarged industrial grouping, does not establish that cumulative landscape harm is insignificant. Indeed, the report itself acknowledges that Brishey will increase the concentration of turbines within this part of the AONB. The relevant issue is the resulting effect on landscape character, visual dominance, the distinctive Benbradagh skyline and the purposes for which the AONB is designated, not simply whether an observer perceives one cluster or two.

The relevant issue is the resulting effect on landscape character, visual dominance, the distinctive Benbradagh skyline and the purposes for which the AONB is designated, not simply whether an observer perceives one cluster or two. Paragraph 6.233 of SPPS Edition 2 requires consideration of “the level to which the proposed development will become a significant or dominant characteristic of the landscape” and expressly recognises that “the cumulative impact will increase, for example, as the number of wind turbines and/or solar farms in an area increases.”

This must also be read alongside paragraph 6.225, which states that “there are landscapes where their intrinsic value should be protected against inappropriate development” and that a “cautious approach” applies within designated landscapes of significant value, including Areas of Outstanding Natural Beauty and their wider settings.

-Proposed noise conditions contain material internal drafting errors. We have also examined the proposed conditions and identified three apparent cross reference errors which should be corrected before the Committee is asked to approve them.

Condition 25 states that any Amplitude Modulation penalty is to be calculated using procedures “described in condition 8”. Condition 8 is the CEMP condition and contains no Amplitude Modulation methodology. Condition 30 is the condition which actually deals with assessment and regulation of AM.

Condition 26 requires operational noise monitoring across “the range of wind speeds referred to in Condition 3”. Condition 3 does not contain any wind-speed provisions; it concerns daily inspection of construction traffic routes.

Condition 27 again refers to noise assessment procedures “described in Condition 8”, although Condition 8 contains no such noise-assessment procedure.

These are conditions intended to supposedly protect residents from operational noise and Amplitude Modulation. Their operative requirements should be clear, certain before a decision is made. We respectfully request that officers explain to Members what the intended references are and provide corrected wording before any vote to approve.

There is a further apparent difficulty with Condition 34. It states that the “development shall not be occupied” until the surface water drainage works on-site and off-site have been submitted, approved and constructed. Given that this is a wind-energy development rather than a conventionally occupied development, Council should clarify what event constitutes “occupation” for the purposes of this condition. More importantly, drainage and flood-control infrastructure may be required during the construction phase itself. We therefore ask Council to explain whether an occupation-based trigger provides an effective and enforceable mechanism for ensuring that the necessary surface-water drainage works are in place at the stage when they are actually required.

There is also the unresolved issue of the long established paths across Benbradagh and the current Public Right of Way investigation. This cannot simply be treated as peripheral to the planning decision. The Council’s own report acknowledges that, because the route has not yet been formally asserted, the normal safety setback from a public right of way has not been applied in the assessment.

Public Right of Way – Northern Ireland statutory and case-law position

Paragraph 8.130 states that paragraph 1.3.54 of the SPG requires turbines to be set back at least fall-over distance plus 10% from the edge of any public road, right of way or railway line. For the proposed 150 metre turbines, that distance is 165 metres. The report then states:

“As the track has not been formally asserted as a right of way, the safety distance does not apply and has not been considered as part of the assessment.”

It further records that McIvor Farrell Solicitors Ltd, on behalf of Save Benbradagh Group, requested that the application should not proceed until the investigation into rights of way over pathways on Benbradagh Mountain is completed, but that the Planning Department considers the application should instead be assessed within the “prevailing circumstances where there is no asserted public right of way”.

We respectfully submit that this reasoning risks conflating two legally distinct matters: the existence of a Public Right of Way and the subsequent administrative act of formally asserting and recording that right.

Article 3(1) of the Access to the Countryside (Northern Ireland) Order 1983 provides that a district council “shall assert, protect and keep open and free from obstruction or encroachment any public right of way”.

In Newry and Mourne District Council v Hamill [2017] NIQB 94, the Northern Ireland High Court confirmed that a public right of way may arise through express or implied dedication, including dedication inferred from public user. Critically, at paragraph [20] the Court stated:

“the assertion itself does not create the right.”

The Department’s own Guide to Public Rights of Way and Access to the Countryside is equally clear in the development context. It states that the granting of planning permission does not affect any public right of way that exists over the land, nor does it give a developer authority to divert or close the path, and expressly adds:

“This principle applies whether or not the right of way has been asserted.”

The significance of this for paragraph 8.130 is substantial. The wind-energy guidance refers to a “public road”, “right of way” or railway line. It does not state that the safety recommendation applies only to a right of way which has already completed the Council’s formal assertion process.

If the Council’s ongoing investigation ultimately establishes that a Public Right of Way exists through historic dedication and public user, Hamill makes clear that the underlying right was not created on the date of formal assertion. It may already have existed at common law.

There is therefore a material question as to whether it is appropriate to determine this application and expressly disapply a public-safety separation on the factual assumption that no relevant right exists while the statutory authority’s investigation into precisely that issue remains unresolved.

This also raises a planning public-law issue. In Re Duff’s Application [2022] NIQB 37, the Northern Ireland High Court reiterated the Tameside principle that a planning decision-maker must ask itself the correct question and “take reasonable steps to acquaint itself with the relevant information to enable it to answer the question correctly”.

We are not asking the Committee to determine conclusively whether a common-law Public Right of Way exists over Benbradagh. Our submission is narrower. Where the status of the long-established route is already under investigation, and the outcome of that investigation is capable of determining whether an expressly safety-related turbine separation applies, we respectfully question whether it is rational or properly informed to determine the application first, expressly disapply that safety separation because the route has “not been formally asserted”, and establish the underlying legal and factual position afterwards.

Indeed, Addendum 5 again expressly identifies “the impact of the proposal on the walkway which crosses in proximity to the proposed site” as an issue before Members, but provides no further information concerning the outstanding Public Right of Way investigation and does not revisit the decision in paragraph 8.130 to disapply the turbine safety separation solely because formal assertion has not yet occurred.

We respectfully submit that the Council cannot lawfully or rationally proceed on the basis that the public-safety separation is inapplicable merely because the route has not yet been formally asserted. The unresolved Public Right of Way investigation is an additional material deficiency in an application which, for the reasons set out throughout this objection, should be refused. The existence of an unresolved investigation cannot properly be used to assume away a potential pre-existing legal right, particularly where that assumption has resulted in an expressly safety-related separation distance being excluded entirely from the assessment. We therefore maintain our request that planning permission be refused.

Conclusion

Taken together, these matters are quite significant. Council’s own report records potentially active peat, hydrological effects beyond the development footprint, outstanding detailed peat and drainage mitigation, numerous unrecorded watercourses, a SuDS system whose efficacy has not yet been fully appraised, continuing landscape concerns within the Sperrins AONB, and proposed noise conditions containing erroneous internal references.

Importantly, nothing subsequently placed before the Committee appears to resolve the outstanding SuDS issue. Addendum 5 contains no further drainage assessment or confirmation that the SuDS design has been fully appraised, yet the recommendation remains approval.

In addition, Council's dissmissal of contaminant mobilisation as speculative is difficult to reconcile with established peatland science demonstrating that peat can act both as a contaminant sink and, when disturbed or degraded, as a source and transport medium. This research demonstrates why the absence of site-specific evidence should not be converted into a categorical finding that no relevant pathway exists.

For all of the reasons set out above, we respectfully request that the Planning Committee refuses planning permission for LA01/2023/0008/F.

The unresolved issues identified in the Council's own report go directly to peatland impacts, hydrology, flood risk, water protection, human health, landscape and residential amenity and an unresolved Public Right of Way investigation which will have direct implications for public access and safety.

These matters cannot properly be overcome by reliance on future conditions or by leaving essential detail to be worked out after permission has been granted.

We therefore respectfully submit that the proposal should not be approved and that planning permission should be refused.

**Ann-Louise Bresnahan**
**Secretary**
**On behalf of Save the Moat – Save the Sperrins**