



An
Bord
Pleanála

Inspector's Report ABP-307080-20

Development	Electrical development associated with a proposed Flexible Thermal Generation Facility (FlexGen) and Battery Energy Storage System (BESS)
Location	Land to the south of the existing Dublin Bay Power Station, Pigeon House Road, Dublin 4
Prospective Applicant	ESB
Planning Authority	Dublin City Council
Type of Application	Pre-Application Consultation under s.182E of the Planning and Development Act 2000, as amended
Date of Site Inspection	27 th August 2020
Inspector	Niall Haverty

1.0 Pre-Application Consultation

- 1.1. The Board received a request on 8th April 2020 from ESB to enter into pre-application consultation under Section 182E of the Planning and Development Act 2000, as amended, in relation to proposed development on lands to the south of the existing Dublin Bay Power Station, Pigeon House Road, Dublin 4.
- 1.2. The Board's representatives met with the prospective applicant on the 13th July 2020. Subsequently, the prospective applicant formally requested closure of the pre-application consultation process in a letter dated 19th August 2020.

2.0 Site location

- 2.1. The site is located to the south of the existing Dublin Bay Power Station (DBPS), on the Poolbeg Peninsula. It comprises part of a larger ESB landholding, and it is bounded by South Bank Road to the south, DBPS and a site leased by the National Oil Reserve Agency (NORA) to the north, DBPS and the Ringsend 220kV Substation to the west, and an access road and the Covanta Waste-to-Energy plant to the east.
- 2.2. The area of the site which is proposed for the BESS development is stated to comprise an area recently converted from a Pitch and Putt course.
- 2.3. The site is not located within or immediately adjacent to any European Sites. I note, however, that the boundaries of the South Dublin Bay and River Tolka Estuary SPA (Site Code 004024) and the South Dublin Bay SAC (Site Code 000210) are located c. 210m to the south of the site.

3.0 Proposed Development

- 3.1. The letter submitted by the prospective applicant states that the ESB is currently designing proposals for a Flexible Thermal Generation (FlexGen) Facility, which will be gas-powered with an electrical generation capacity of 75MW and a 30MW Battery Energy Storage System (BESS) on the lands in question. They state that planning applications for this proposed development will be made to Dublin City Council. The stated purpose of the FlexGen and BESS development is to provide a rapid demand response to allow for increased renewable energy generation to connect onto the

electricity grid. The FlexGen development is anticipated to operate during peak demand period, such as during the morning and evening peak periods or to respond to abnormal fluctuations on the grid network.

- 3.2. The elements of the overall proposed FlexGen and BESS development which form the basis of this pre-application consultation comprise electrical and ancillary development required to connect the FlexGen and BESS developments to the national electricity grid at the existing Irishtown 220kV Substation, which is located immediately to the north of the NORA oil tanks.
- 3.3. More particularly, the proposed development which forms the basis of this request for pre-application consultation comprises:
 - 1 No. 220kV Transformer compound (60m length x 22m width x 5.6m height).
 - 3 No. Modular structures (17.8m length x 5.7m width x 4.7m height) containing control, electrical and building services equipment.
 - 220kV underground cable connection to the existing Irishtown 220kV Substation (c. 400m in length).

4.0 Planning History

4.1. Subject Site

- 4.1.1. **Reg. Ref. 4015/19:** A planning application for development consisting of a 75 MWe (electrical output) aero derivative gas fired turbine for the generation of electricity and associated development on part of the prospective application site was made in September 2019. That application was subsequently withdrawn in March 2020, following a request for further information.
- 4.1.2. **ABP-301236-18:** The Board determined in March 2018 that electrical and grid connection development associated with a Battery Energy Storage System would not comprise Strategic Infrastructure Development. The Board's Direction stated that while it wasn't clear to the Board that the line would constitute 'distribution' infrastructure, the Board agreed with the final page of the inspector's assessment.
- 4.1.3. **Reg. Ref. 3373/18:** Dublin City Council granted permission in March 2019 on the prospective application site for a 30MW BESS facility and associated development. I

note that the permitted layout is different to the layout now proposed as part of the future FlexGen and BESS development proposal.

4.2. **Surrounding Area**

- 4.2.1. **ABP-307081-20:** The Board should note that the ESB has made a concurrent request for pre-application consultation for similar grid connection electrical development associated with a separate proposed FlexGen and BESS development on lands within the Poolbeg Generating Station, also on Pigeon House Road, c. 1km east of the subject site. The proposed connection point in that case is to the Poolbeg 220kV Substation.
- 4.3. **ABP-307228-20:** The Board determined on the 25th June 2020 that proposed development comprising a new Gas Insulated Switchgear (GIS) building and associated development at the existing Ringsend 110kV Substation does not fall within the scope of section 182A of the Act, and that a planning application should be made to Dublin City Council in the first instance.

5.0 **Applicant's Case**

- 5.1. The prospective applicant's case, as set out in their initial letter and elaborated upon at the meeting held on 13th July 2020, can be summarised as follows:
- The 220kV electrical equipment and underground cable only facilitate connection of proposed developments to the national electricity grid. These are generator connections to the transmission grid but do not form part of the grid as controlled by EirGrid.
 - Electrical plant does not constitute transmission infrastructure as it does not function as part of the national electricity grid as controlled by EirGrid.
 - The 220kV grid connection plant/equipment in itself would not:
 - Be of strategic economic or social importance to the State or Region.
 - Contribute substantially to the fulfilment of any objectives of the National Planning Framework or the Regional Spatial and Economic Strategy.

- Have an effect on any area outside of the Dublin City Council administrative area.
- Examples of ancillary grid connections where ABP deemed the works not to be SID: ABP-304794-19, ABP-301420-18, VC0104, VC0100, VC0097.
- ESB submits that the grid connection plant/equipment should not be considered Strategic Infrastructure Development.

6.0 Legislative Provisions

6.1. Planning and Development Act 2000, as Amended

- 6.1.1. Section 2(1) of the Planning and Development Act 2000, as amended ('the Act'), defines 'strategic infrastructure' as including, *inter alia*:

“any proposed development referred to in section 182A(1)”

- 6.1.2. Section 37A of the Act states that:

“(1) An application for permission for any development specified in the Seventh Schedule (inserted by the Planning and Development (Strategic Infrastructure) Act 2006) shall, if the following condition is satisfied, be made to the Board under section 37E and not to a planning authority.

(2) That condition is that, following consultations under section 37B, the Board serves on the prospective applicant a notice in writing under that section stating that, in the opinion of the Board, the proposed development would, if carried out, fall within one or more of the following paragraphs, namely—

- (a) the development would be of strategic economic or social importance to the State or the region in which it would be situate,
- (b) the development would contribute substantially to the fulfilment of any of the objectives in the National Planning Framework or in any regional spatial and economic strategy in force in respect of the area or areas in which it would be situate,
- (c) the development would have a significant effect on the area of more than one planning authority.”

6.1.3. Under subsection 182A(1) of the Act, where a person (the ‘undertaker’) intends to carry out development comprising or for the purposes of electricity transmission, the undertaker shall prepare, or cause to be prepared, an application for approval of the development under section 182B and shall apply to the Board for such approval accordingly.

6.1.4. Subsection 182A(9) states that:

“...‘transmission’, in relation to electricity, shall be construed in accordance with section 2(1) of the Electricity Regulation Act 1999 but, for the purposes of this section, the foregoing expression, in relation to electricity, shall also be construed as meaning the transport of electricity by means of—

(a) a high voltage line where the voltage would be 110 kilovolts or more, or

(b) an interconnector, whether ownership of the interconnector will be vested in the undertaker or not.”

6.2. **Electricity Regulation Act 1999, as Amended**

6.2.1. The following definitions, as set out in section 2(1) of the Electricity Regulation Act, 1999, as amended, are noted:

- **‘Transmission’:**

“...the transport of electricity by means of a transmission system, that is to say a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers but shall not include any such lines which the Board¹ may, from time to time, with the approval of the Commission, specify as being part of the distribution system but shall include any interconnector owned by the Board.”

- **‘Distribution’:**

¹ For clarity, references to the ‘Board’ in this instance relate to the Electricity Supply Board.

“...the transport of electricity by means of a distribution system, that is to say, a system which consists of electric lines, electric plant, transformers and switch gear and which is used for conveying electricity to final customers.”

- **‘Electric plant’:**

“...any plant, apparatus or appliance used for, or for the purposes connected with, the generation, transmission, distribution or supply of electricity other than –

(a) An electric line

(b) a meter used for ascertaining the quantity of electricity supplied to any premises, or

(c) an electrical appliance under the control of a consumer”

- **‘Electric Line’:**

Section 2(1) of the 1999 Act, as amended, states that ‘electric line’ has the meaning assigned to it by section 4(1) of the ESB (Electronic Communications Networks) Act 2014. The definition set out in s. 4(1) of the 2014 Act is as follows:

“...any line which is used solely or amongst other things for carrying electricity for any purpose and as including—

(a) any support for any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line may be supported, carried or suspended,

(b) any apparatus connected to or associated with any such line for the purpose of carrying electricity or electronic communications services, whether such apparatus is owned by the Board or by any company referred to in section 2 or by a company which has been provided access or services referred to in section 3, or

(c) any wire, cable, tube, pipe or similar thing (including its casing or coating) which is used for the purpose of carrying electricity or electronic communications services and which surrounds or supports or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line.”

7.0 Planning Policy

7.1. Project Ireland 2040: National Planning Framework

7.1.1. National Policy Objective 47:

“In co-operation with relevant Departments in Northern Ireland, strengthen all-island energy infrastructure and interconnection capacity, including distribution and transmission networks to enhance security of electricity supply.”

7.1.2. National Policy Objective 55:

“Promote renewable energy use and generation at appropriate locations within the built and natural environment to meet national objectives towards achieving a low carbon economy by 2050.”

7.2. Regional Spatial and Economic Strategy for the Eastern and Midlands Region

7.2.1. Regional Policy Objective 10.20:

“Support and facilitate the development of enhanced electricity and gas supplies, and associated networks, to serve the existing and future needs of the Region and facilitate new transmission infrastructure projects that might be brought forward in the lifetime of this Strategy. Including the delivery of the necessary integration of transmission network requirements to facilitate linkages of renewable energy proposals to the electricity and gas transmission grid in a sustainable and timely manner subject to appropriate environmental assessment and the planning process.”

7.2.2. Regional Policy Objective 10.22:

“Support the reinforcement and strengthening of the electricity transmission and distribution network to facilitate planned growth and transmission/distribution of a renewable energy focused generation across the major demand centres to support an island population of 8 million people...”

7.2.3. Regional Policy Objective 10.23:

“Support EirGrid’s Implementation Plan 2017 –2022 and Transmission Development Plan (TDP) 2016 and any subsequent plans prepared during the lifetime of the RSES that facilitate the timely delivery of major investment projects subject to

appropriate environmental assessment and the outcome of the planning process, in particular:

...

- Support the installation of additional transformer capacity and increased circuit capacity to meet Dublin demand growth to strengthen the network for all electricity users and improve the security and quality of supply

...”

8.0 Assessment

- 8.1. The Board will note previous decisions it has made on strategic infrastructure pre-application consultation requests in relation to electricity transmission infrastructure under section 182E of the Planning and Development Act 2000, as amended.
- 8.2. In this case, electrical development comprising a transformer compound, 3 No. modular structures and a 220kV underground cable is proposed to connect a proposed ‘FlexGen’ electricity generation installation and BESS facility to the national electricity grid at the existing Ringsend 220kV Substation. The FlexGen and BESS proposals do not, themselves, form part of this request for pre-application consultation, and the prospective applicant has advised that they are preparing a planning application to be submitted to Dublin City Council for that development proposal.
- 8.3. I note that the definition of ‘transmission’ set out in section 2(1) of the Electricity Regulation Act, 1999, as amended, refers to “...the transport of electricity by means of a transmission system, that is to say a system which consists, wholly or mainly, of high voltage lines and electric plant and which is used for conveying electricity from a generating station to a substation, from one generating station to another, from one substation to another or to or from any interconnector or to final customers but shall not include any such lines which the Board may, from time to time, with the approval of the Commission, specify as being part of the distribution system but shall include any interconnector owned by the Board” [emphasis added].
- 8.4. At the pre-application consultation meeting, the Board’s representatives queried whether the proposed development, which is to be used for conveying electricity

from a generating station to a substation, would fall within this definition of 'transmission'. In response, the prospective applicant contended that the transmission network began at the existing 220kV Substation, with reference to EirGrid's Transmission Map² and that the proposed development only facilitates generator connection to the transmission grid but does not function as part of the grid as controlled by EirGrid. In support of its position, the prospective applicant draws the Board's attention to a number of previous proposals for ancillary grid connections which were deemed not to comprise SID (see Section 5.1 above).

- 8.5. In addition to these cases, I also note case ABP-301326-18, which related to an earlier proposal for electrical plant and grid connection associated with the provision of a BESS development on the same site as the current proposal.
- 8.6. I consider the Board's determinations in the abovementioned cases to be relevant to the subject case. In each case the Board determined that the development did not fall within the scope of section 182A of the Act and therefore did not constitute strategic infrastructure development.
- 8.7. In such cases, as a result of the lack of clarity in the formulation and interpretation of section 182A, the Board has exercised some discretion and considered the long title of the Planning & Development (Strategic Infrastructure) Act 2006, which provides for "the making directly to An Bord Pleanála of applications for planning permission in respect of certain proposed developments of strategic importance to the state...". In such cases, the Board has also used the 3 No. criteria contained in section 37A(2) for determining whether development constitutes strategic infrastructure, notwithstanding the fact that the section 37A(2) criteria do not explicitly apply to cases falling within the scope of section 182A rather than the Seventh Schedule of the Act.
- 8.8. With reference to the s. 37A(2) criteria, I do not consider the construction of a transformer compound, 3 No. modular structures and a relatively short length of underground cable to be of strategic economic or social importance to the State or the Eastern and Midlands Region. While the proposed development will support the

² Available at: <http://www.eirgridgroup.com/site-files/library/EirGrid/EirGrid-Group-Transmission-Map-January-2020.pdf>

integration of renewable energy projects into the national grid, and thus may be of some strategic importance with reference to National Policy Objectives 47 and 55, and Regional Policy Objectives 10.20, 10.22 and 10.23, I do not consider that the proposal is of a scale or extent to contribute substantially to the fulfilment of any objectives of the NPF or the RSES. I note in this regard that the proposed development is intended to serve a 'FlexGen' electricity generation installation with a capacity of 75MW, which is significantly below the 300MW threshold set out in the Seventh Schedule of the Act for such installations to constitute Strategic Infrastructure Development.

8.9. Finally, having regard to the nature, scale and location of the proposed development, I do not consider that it would have a significant effect on the area of more than one planning authority, being contained wholly within the administrative area of Dublin City Council.

8.10. In conclusion, having regard to: the nature and limited scale and extent of the proposed development; the stated purpose of the 2006 Act, as set out in its long title; and to the criteria for strategic infrastructure development set out in section 37A(2), I conclude that the proposed development does not fall within the scope of section 182A of the Planning and Development Act 2000, as amended, necessitating the making of an application directly to the Board.

9.0 Recommendation

9.1. I recommend that ESB be informed that the proposed electrical plant and grid connection infrastructure associated with the provision of a Flexible Thermal Generation Facility and Battery Energy Storage System on lands to the south of the existing Dublin Bay Power Station, Pigeon House Road, Dublin 4, as set out in the plans and particulars received by An Bord Pleanála on the 8th April 2020 and in the information submitted at the pre-application consultation meeting held on the 13th July 2020, does not fall within the scope of section 182A of the Planning and Development Act 2000, as amended, and that a planning application should be made in the first instance to Dublin City Council.

Niall Haverty

Senior Planning Inspector

August 2020