



An  
Bord  
Pleanála

## Board Direction 11.RL3482

The submissions on this file and the Inspector's reports were further considered at a Board meeting of all available Board Members held on July 7<sup>th</sup>, 2020.

The Board decided, as set out in the following Order, that the laying of underground 38kV cables to link the permitted Cullenagh wind farm development (Laois County Council Permission Ref. 13/268 – An Bord Pleanála reference number PL11.242626) to an existing Electric Ireland sub-station at Abbeyleix Road, Portlaoise, Co. Laois, is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether laying a 15.4km underground 38kV grid connection to link the permitted Cullenagh Mountain wind farm (Laois County Council Permission Ref. 13/268 – An Bord Pleanála reference number PL11.242626) to an existing Electric Ireland sub-station at Abbeyleix Road, Portlaoise, Co. Laois, is or is not development or is or is not exempted development.

**AND WHEREAS** Laois County Council referred this question to An Bord Pleanála for determination on the 20<sup>th</sup> day of May 2016.

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2(1), 3(1), 4(4), 172(1) and 177U (9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 3, 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 16 and 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) Schedules 5 and 7 of the Planning and Development Regulations, 2001, as amended,
- (e) the decision of the High Court in *Daly v Kilronan Windfarm Ltd. and, by Order, Derrysallagh Windfarm Ltd.*, [2017] IEHC 308,
- (f) the decision of the European Court of Justice in Case C-323/17 *People over Wind v Coillte*, ECLI:EU:C:2018:244
- (g) the documentation on file and the reports of the Planning Inspector, which included screening for environmental impact assessment and appropriate assessment.

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The laying of the subject underground cable would constitute the carrying out of works, and would therefore constitute development as defined in the Planning and Development Act, 2000, as amended;
- (b) The documentation submitted by and on behalf of Coillte included an appropriate assessment screening report that concluded that the development in question would not be likely to have a significant effect on the River Barrow and River Nore Special Area of Conservation (site code 002162), in the light of the conservation objectives of this site, alone and in combination with the Cullenagh wind farm, on the basis of the distance between the proposed grid connection and the European site, and the protective measures that had been built into the works design of the project.

(c) Having regard to the judgement of the European Court of Justice, these protective measures were measures that are intended to avoid or reduce the harmful effects of the development on the European site concerned, and accordingly could not be taken into account in screening for appropriate assessment. In the absence of these measures, An Bord Pleanála cannot be satisfied that the development in question would not have significant effects on the River Barrow and River Nore Special Area of Conservation, in the light of the conservation objectives of this European site, and accordingly considers that appropriate assessment is required in relation to the development the subject of this referral. Therefore, the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, apply and the development is not exempted development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the laying of underground 38kV cables to link the permitted Cullenagh wind farm development (Laois County Council Permission Ref. 13/268 – An Bord Pleanála reference number PL 11.242626) to an existing Electric Ireland sub-station at Abbeyleix Road, Portlaoise, Co. Laois, is development and is not exempted development.

**Note 1:** The Board noted that the judgement of the European Court of Justice referred to above was made after the Inspector's report in this case, and accordingly did not adopt the appropriate assessment screening carried out by the Inspector (section 9.6 of his report), as this assessment was based on the documentation submitted by Coillte, and took into account the same measures that were the subject matter of the ECJ judgement.

**Note 2.** In not accepting the Inspector's recommendation that the development was not exempted development on the basis of the need for Environmental Impact Assessment, in the light of case law, the Board considered that the circumstances in this case are different to those to which the High Court case relates. In particular,

the Board had full regard to the judgement of the High Court in the case of *Patrick Daly - v - Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308, and accepts that the proposed grid connection is a part of the overall project that includes the Cullenagh windfarm. However, the Board also notes paragraphs 61 and 62 of the judgement, wherein it was stated that “the carrying out of an EIA is a function of the planning authority and one which has not yet been engaged” and “the matter of whether an EIA is required is a matter for the Board”. In this context, the Board noted the detailed Screening for Environmental Impact Assessment carried out by the Inspector, in paragraphs 9.2.1 to 9.2.9 of his report (pages 18 to 31), and concurred with his conclusions that the proposed grid connection would not be likely to have any significant environmental impacts or significant cumulative impacts together with the wind farm development (for which Environmental Impact Assessment had already been carried out by the Board previously under Laois County Council Permission Ref. 13/268 – An Bord Pleanála reference number PL 11.242626)). Accordingly, the Board considers that, in this particular instance, and in the light of the Inspector’s screening assessment, which the Board adopts, the proposed grid connection and associated works would not be likely to have significant impacts on the environment over and above those already considered and assessed as part of the Environmental Impact Assessment for the windfarm, and that therefore the circumstances in this case are different to those to which the High Court case relates. Therefore, it is the considered view of the Board that environmental impact assessment is not required in relation to the proposed development.

*(Secretariat – please send a copy of this Direction to the parties with the Board Order.)*

**Board Member**

**Date:** 10<sup>th</sup> July 2020

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Philip Jones