



An  
Bord  
Pleanála

## Board Direction

04.RL3531

The submissions on this file and the Inspector's reports were further considered at a 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 provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, Co. Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, Co. Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, Co. Cork; and a 110kV underground electrical connection between Glenlara sub-station at Curraduff, Co. Cork and Ballynahulla sub-station, Ballynahulla, Co. Kerry is development and is not exempted development.

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, Co. Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, Co. Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, Co. Cork; and a 110kV underground electrical connection between Glenlara sub-station at Curraduff, Co. Cork and Ballynahulla sub-station, Ballynahulla, Co. Kerry; is or is not development or is or is not exempted development.

**AND WHEREAS** Cork County Council referred this question to An Bord Pleanála for determination on the 23<sup>rd</sup> day of December 2016.

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

- (a) Sections 2(1), 3(1), 4(4), 172(1), 177U (9) and 182A 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, and
- (g) the documentation on file and the reports of the Senior 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 cables constituted the carrying out of works, and therefore constitute development as defined in the Planning and Development Act 2000, as amended;
- (b) The documentation submitted on file (including the submission by RPS Group Limited, on behalf of Brookfield Renewables) confirmed that the

content of the previous submissions seeking Section 5 declarations in relation to the subject grid connections, under Planning Authority file reference numbers D238/15, D257/10 (An Bord Pleanála reference number 04.RL2789) and D247/16, had included Appropriate Assessment Screening Reports (also cited in the documentation submitted as Natura Impact Statements) that concluded, on the basis of the implementation of mitigation measures, that the development in question would not have significant effects on certain European sites;

(c) Having regard to the judgement of the European Court of Justice in case C323/17, such measures appear to the Board to be measures that were intended to avoid or reduce the harmful effects of the development on the European sites concerned, and accordingly could not be taken into account in screening for appropriate assessment, and in so far as they had been taken into account in previous referral determinations, were incorrectly so taken into account;

(d) In the absence of these measures, An Bord Pleanála cannot be satisfied, beyond reasonable scientific doubt, that the development that is the subject matter of this referral would not have had significant effects the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (site code 004161), the Lower River Shannon Special Area of Conservation (site code 002165) and the Blackwater River (Cork/Waterford) Special Area of Conservation (site code 002170), in the light of the conservation objectives and qualifying interests of these European sites, 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 provision of a 20kV underground electrical connection, between Glentanemacelligot wind farm at Glennakeel South, Newmarket, Co. Cork and Knockacummer wind farm at Meentiny West and Meentiny East, Rockchapel, Kanturk, Co. Cork; a 110kV underground electrical connection between Knockacummer wind farm and Glenlara sub-station at Curraduff, Co. Cork; and a 110kV underground electrical connection between Glenlara sub-station at Curraduff, Co. Cork and Ballynahulla sub-station, Ballynahulla, Co. Kerry is development and is not exempted development.

In not accepting the recommendation of the Inspector that the development in question is exempted development, the Board did not concur with his appropriate assessment screening. The Board noted that the three sections of the grid connection to which this referral refers were the subject of previous determinations by the Planning Authority and, in one case, also on appeal by An Bord Pleanála. In all of these cases, the submissions included Appropriate Assessment Screening reports or Natura Impact Statements, which took into account the provision of mitigation measures which were intended to avoid or reduce the impacts of the development on a number of European sites - that is, the Stacks to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle Special Protection Area (site code 004161), the Lower River Shannon Special Area of Conservation (site code 002165) and the Blackwater River (Cork/Waterford) Special Area of Conservation (site code 002170).

These determinations were based on, and took into account, the submitted measures. Accordingly, these determinations must be considered to be in breach of the judgement of the European Court of Justice, which judgement is declaratory of the law as it always had been, since the enactment of the Habitats and Birds Directives, and does not solely apply to the period subsequent to the making of that judgement. Accordingly, the Inspector's conclusion that the grid connections did not require Appropriate Assessment, as they were carried out prior to the ECJ judgement in question, is incorrect. Furthermore, as the previous exempted

development declarations were similarly incorrect, the Board is not bound by them in reaching a different conclusion in the current case.

**Board Member**

**Date:** 17<sup>th</sup> July 2020

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Philip Jones

Decision Quashed