



An
Bord
Pleanála

Board Direction 27.RL3596

The submissions on this file and the Inspector's report were further considered at a Board meeting held on December 4th 2018.

The Board decided, as set out in the following Order, that a 38kV underground electrical connection, and associated works, between a sub-station to be located within the permitted Ballycumber Wind Farm site and the existing ESB sub-station at Kilmagig, Avoca, County Wicklow, is development and is exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether a 38kV underground electrical connection, and associated works, between a sub-station to be located within the permitted Ballycumber Wind Farm site and the existing ESB sub-station at Kilmagig, Avoca, County Wicklow is or is not development and is or is not exempted development.

AND WHEREAS Gerard Dunne requested a declaration on this question from Wicklow County Council on the 15th day of May 2017, but the Council failed to issue a declaration.

AND WHEREAS Gerard Dunne referred this question to An Bord Pleanála for determination on the 22nd day of June 2017, under Section 5 (3)(b) of the Planning and Development Act, 2000, as amended.

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

- (a) Sections 2, 3, 4, 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended,
- (c) Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site and of the windfarm in question,
- (e) The documentation and submissions on file, including the "*Ballycumber Wind Farm to Kilmagig 38kV substation, Avoca, Co. Wicklow Grid Connection EIA Screening Report*" and the "*Ballycumber Wind Farm to Kilmagig 38kV substation, Avoca, Co. Wicklow Environmental Report*", by Jennings O'Donovan and Partners Ltd, both dated July 2016, submitted to An Bord Pleanála on the 26th day of July 2017,
- (f) The Inspector's report, including his EIA screening assessment, and
- (g) Relevant case law, including in particular *O'Grianna (and Others) - v - An Bord Pleanála (and others)* [2014] IEHC 632, and *Patrick Daly - v - Kilronan Wind Farm Limited and, by order, Derrysallagh Wind Farm Limited* [2017] IEHC 308.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The provision of the underground electricity connection and associated works involves the carrying out of works and therefore constitutes development, under Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) The underground electricity grid connection involves works carried out by an electricity undertaking, and, having regard to the nature of those works, would come within the scope of Class 26 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (c) It is considered that the underground electricity connection and associated works, while forming part of the windfarm project of the Ballycumber Wind Farm, 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 that windfarm, and in combination with the windfarm, and that therefore an Environmental Impact Assessment for the connection and associated works would not be required. Accordingly, the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, do not apply in this instance, and the development is exempted development.
- (d) There are no other restrictions on exemption, set out in the Act and Regulations, that would apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(b) of the Planning and Development Act, 2000, as amended, hereby decides that a 38kV underground electrical connection, and associated works, between a sub-station to be located within the permitted Ballycumber Wind Farm site

and the existing ESB sub-station at Kilmagig, Avoca, County Wicklow, is development and is exempted development.

In deciding not to accept the recommendation of the Inspector that the development would not constitute exempted development, the Board had full regard to the judgement of the High Court in the case of *Patrick Daly - v - Kilonan 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 Ballycumber 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, on pages 22 to 29 of his report, and concurred with his conclusions that the proposed grid connection would not be likely to have any significant environmental impacts or significant cumulative impacts with the wind farm development (for which Environmental Impact Assessment had already been carried out by the Board previously under planning permission register reference number PRR13/8043 – An Bord Pleanála reference number PL27.241827). 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 the provisions of Section 4 (4) of the Planning and Development Act, 2000, as amended, do not apply in this instance, and accordingly that the grid connection and associated works are exempted development.

Note: In reaching its decision in this case, the Board decided not to dismiss the referral, as had been requested by the agents for Ballycumber Wind Farm Limited, noting that, under Section 138 of the Planning and Development Act, 2000, as

amended, such a course of action is at the Board's "absolute discretion". In exercising this discretion, the Board is satisfied that the referrer had the right to request the declaration from the planning authority and, as the authority had not made a declaration, to refer the matter to the Board for determination under Section 5 (3)(b) of the Act. In addition, the Board is satisfied that it is not estopped, or otherwise restricted, from considering and determining this referral, notwithstanding that the question had been put in the original request, by the developer of the windfarm, to the planning authority and that the planning authority had made a declaration under file ref. no. EX 16/15. In this regard, the Board noted the legislative provision whereby referrals may be made by "any person", and also that there are no provisions whereby Section 5 declarations by planning authorities are automatically reviewed by An Bord Pleanála, and there are no provisions for public participation under Section 5 of the Act.

[Please issue a copy of this Direction, with the Board Order, to the parties.]

Board Member

Date: 11th December 2018

Philip Jones