



An
Bord
Pleanála

Board Order 27.RL.3596

Planning and Development Acts 2000 to 2018

Planning Authority: Wicklow County Council

Planning Register Reference Number: EX26/17

WHEREAS a question has arisen as to whether a 38kV underground electrical connection, and associated works, between a substation to be located within the permitted Ballycumber Wind Farm site and the existing Electricity Supply Board substation at Kilmagig, Avoca, County Wicklow is or is not development or is or is not exempted development:

AND WHEREAS Gerard Dunne care of Fred Roache of Killaduff, Aughrim, County Wicklow requested a declaration on the question from Wicklow County Council and no declaration issued by the planning authority:

AND WHEREAS Gerard Dunne referred the question for decision to An Bord Pleanála on the 22nd day of June, 2017:

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 Environmental Impact Assessment 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 Environmental Impact Assessment 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 2 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, and
- (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 2000 Act, hereby decides that a 38kV underground electrical connection, and associated works, between a substation to be located within the permitted Ballycumber Wind Farm site and the existing Electricity Supply Board substation 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 - 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 Ballycumber windfarm. However, the Board also notes paragraphs 61 and 62 of the judgement, wherein it was stated that “the carrying out of an Environmental Impact Assessment is a function of the planning authority and one which has not yet been engaged” and “the matter of whether an Environmental Impact Assessment 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 13/8043 – An Bord Pleanála reference number PL 27.241827). 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.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018