



An
Bord
Pleanála

Inspector's Report PL92.247443.

Development

Permission for solar photovoltaic installation comprising up to 32,00m² of solar panels on ground mounted frames, 4 no inverters in 2 blocks, 1 no 20kV substation, fencing, access track, CCTV and all associated ancillary site development works and services.

Location

Loughloher, Cahir Co Tipperary

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

16/600465

Applicant(s)

Solar Sense Ltd

Type of Application

Permission.

Planning Authority Decision

Grant permission with conditions.

Appellant(s)

Solar Sense Ltd

Type of Appeal

1st Party v Condition 15. Financial Contribution Section 48.

Date of Site Inspection

N/A

Inspector

Bríd Maxwell

1.0 Site Location and Description

1.1. The appeal site has a stated area of 13.28 hectares comprising of three agricultural fields of varied size and bounded by hedgerows interspersed with mature trees located at Loughloher, approximately 2.5km to the east of Cahir, Co. Tipperary. The site is broadly I shaped and is characterised by low lying flat topography at elevations ranging from approximately 88m AOD to 96m AOD. Land use in the vicinity is predominantly agricultural with a dispersed pattern of rural settlement.

2.0 Proposed Development

2.1. The proposed development seeks permission for a solar photovoltaic installation comprising up to 32,500m² of solar panels on ground mounted frames, 4 no inverters in 2 blocks. 1 no 20kV substation, fencing, access track, CCTV and all associated ancillary development works and services.

2.2. The nature of the development and an evaluation of its potential impact on environmental receptors is set out in detail within the application documentation which includes an Environmental Report compiled by Fehily Timony and Company.

2.3. In response to the Council's request for additional information the red line boundary of the site was subject to a minor amendment to exclude an (apparently unauthorised) existing telecommunications structure located towards the north western boundary from the site.

3.0 Planning Authority Decision

3.1. Decision

3.1.1 By order dated 26th September 2016 Tipperary County Council decided to grant permission subject to 15 conditions which included the following:

- Condition 2. Planning permission valid for 10 years.

- Condition 3. Operational permission for a period of 30 years from the date of commissioning.
- Condition 12. Geophysical survey.
- Condition 15. Development Contribution of €51,500 worded as follows:

“Prior to the commencement of development, a payment of a financial contribution shall be paid to the Planning Authority in respect of public infrastructure and facilities benefitting development in the administrative area of Tipperary County Council that is provided, or intended to be provided, by or on behalf of the Authority in accordance with the terms of the Tipperary County Council Development Contribution Scheme 2015-2019 made under Section 48 of the Planning and Development Act, 2000 (as amended). The amount of the development contribution under this condition is €51,500 which is calculated as follows:

Individual Assessment	Charge per MW capacity	MW output	Total Cost
Solar Farm	€10,000	5.15	€51,500

Reason: It is considered reasonable that a contribution be made in accordance with the Tipperary County Council Development Contribution Scheme 2015-2019 made under Section 48 of the Planning and Development Act (as amended).

3.2 Planning Authority Reports

3.2.1 Environment Section report indicates no objection subject to conditions in respect of noise mitigation and operation and maintenance programme.

- 3.2.2 Area Engineer's report on further information notes restricted sightlines in a southerly direction and recommends a temporary traffic management plan for the construction phase.
- 3.2.3 Planner's initial report recommended seeking additional information in respect of a clarification of uses on site noting apparently unauthorised uses including telecommunications pole and storage of end of life vehicles and containers on site, issues with regard to potential impact of glint and glare on adjacent residential properties, assessment of flood risk, sightlines and clarification of a number of errors within the environmental report.
- 3.2.4 Final planner's report notes in relation to development contribution that the Contribution scheme 2015-2019 provides in Section 6 that "The basis for determination will be the rate for developments which are listed in the scheme, and where not specifically listed are deemed closest in nature to the proposed development." The report notes that as the closest class of development to a solar farm is Class 21 "*The provision of a wind farm development*" and as per Section 12 is charged at €10,000 per megawatt capacity" The proposed solar farm will have a MW capacity of 5.15MW. Contributions of €51,500 are therefore required.

3.2. Other Technical Reports

- 3.2.1 Submission from An Taisce asserts that a strategic national and regional strategy is required for solar array development on land with optimum location suitability while at the same time protecting biodiversity and landscape sensitive areas and good tillage.
- 3.2.2 Submission from Department of Arts Heritage Regional Rural and Gaeltacht affairs notes that the site contains recorded monument RMP TS082-002 17th century house. Given the scale of the development and approximately to site of archaeological importance recommend that a geophysical survey of the site by a suitably qualified, licensed archaeologist.

3.3 Third Party Observations

- 3.3.1 Submissions from a number of third parties including local residents, object to the development raising concerns of health impact, visual impact, solar glare, impact on residential amenity, water contamination and inappropriate industrial development on agricultural land. Solar energy is not considered appropriate to the Irish context and the absence of policy is noted. Tipperary already making a considerable contribution to renewable energy. Precautionary principle should apply.
- 3.3.2 A number of third party submissions including from local residents are supportive of the application noting environmental and economic benefit.

4.0 Planning History

- 4.1. No previous applications on the appeal site.
- 4.2. I note similar concurrent appeal case PL93.247589 of a first party appeal of Section 48 financial contribution condition in respect of a solar photovoltaic installation at Monaraha, Cahir Co Tipperary.
- 4.3 I note the following appeal cases for solar energy development which have been determined by the Board in recent years. These appeals were not solely in respect of the Section 48 financial contribution condition therefore the degree of discussion in respect of rates applicable is limited to varied degrees as follows:

PL14.246850 10-year permission granted on 07/11/2016 for solar farm with export capacity of approximately 4.2 MVA and all associated site works at Lisnageeragh, Edgeworthstown, Co Longford. I note that the inspector's report noted the Longford County Council applied a rate as for wind farm development / turbines (€7,110 per MC) as there was no category for solar energy within the Longford County Development Contribution Scheme. The reporting Inspector in this case disagreed with this approach noting solar power being a different method of power generation to wind. The inspector concluded that there was nothing within the scheme to allow

for an alternative development type outside the scheme and therefore recommended that no contribution should apply. The Board apparently concurred with this approach and no contribution condition was attached to the permission.

PL26. 246966 Permission granted 26/11/2016 for a solar pv farm with export capacity of 5 megawatts comprising approximately 24,200 photovoltaic panels on ground mounted frames on site area of 10.28 hectares at Davidstown (The Leap) Enniscorthy Co Wexford. I note that the reporting Inspector recommended the application of a financial contribution of €36,000 as applied in the decision of Wexford County Council. The Board applied a Section 48 financial contribution condition 17 - the amount unspecified.

PL04.244539 Permission granted 7/7/2015 for a solar pv array panel consisting of 5,400 sq. of solar panels on ground mounted steel frame at Ballytrasna, Lissarda, Co Cork. Condition 13 of the permission applied a Section 48 financial contribution - the amount unspecified.

PL04.245862 Permission granted on 16/6/16 for solar PV array consisting of 33,000 sq.m of solar panels on ground mounted steel frames at Knockglass and Kilberriehert, Coachford Co Cork. The reporting Inspector recommended the application of a special contribution in respect of works to the public road network as well as a contribution in accordance with the Development Contribution Scheme. The Board applied the Section 48 Condition with the amount unspecified.

PL24.244351 Permission granted on 9/7/2015 for a solar pv energy development of maximum export capacity of 5MW. The reporting Inspector recommended the application of a condition requiring the payment of a development contribution of €36,000 as calculated by the planning authority on the basis of comparative energy source wind turbines. The basis of the calculation was founded on the finding that most turbines have a generating capacity of 2.5KW and turbines over 50m are charged at a rate of €8,000 each. As the development is for a 5KW capacity the

contribution of €36,000 would apply. The Board applied the condition requiring the payment of €36,000,

PL93.246902 Permission granted 15/11/2016 for a 10-year period for a solar pv energy development within a total site area of 28.8ha and ancillary site development works at Drumroe Cappoquin Co Waterford. I note that the reporting Inspector makes reference to the planning report which finds that a literal application of the scheme (which did not anticipate solar farms) would be unnecessarily burdensome upon the applicant. The scheme allows for discretionary reductions in such circumstances. The Board applied a section 48 condition with unspecified amount allowing the planning authority to calculate the required contribution.

PL27.246527 10-year permission granted on 18/8/2016 for a solar pv energy development on 13.76 hectare site at Ballycooleen Avoca Co Wicklow. Condition 18 required a development contribution in accordance with the scheme. Amount unspecified.

PL26.247179 10-year permission granted on 21/12/2016 for a solar pv energy development within a total site area of 19.9hectares at Tomfarney, Clonroche Co Wexford. Condition 20 requires the payment of a Section 48 Contribution in accordance with the scheme. Amount unspecified.

PL26.247176. 10-year permission granted 10/1/2017 for a solar pv energy development within a total site area of 12.7 hectares at Monfin, Enniscorthy, Co Wexford. Condition 18 requires the payment of a Section 48 Development Contribution amount unspecified.

PL27.246527 10-year permission granted on 18/8/2016 for a solar pv energy development on 13.76 hectares' site at Ballycooleen Avoca, Co Wicklow. Condition

17 requires the payment of a section 48 development contribution in accordance with the scheme. Amount unspecified.

5.0 Policy Context

5.1 Development Plan

The South Tipperary County Development Plan 2009, as varied refers. I note Policy CEF 6 Solar Energy. It is the policy of the Council to promote and facilitate solar energy installations where it is demonstrated to the satisfaction of the Council that there will be no significant adverse impact on the built and natural environment, the visual character of the landscape or on residential amenity.

5.2 The Tipperary County Council Development Contribution Scheme 2015-2019

was adopted on 12th January 2015 and applies from 1st March 2015-31st December 2019. (Relevant extract appended to report). The scheme sets out the Classes of Development at Section 6.0. It is stated “*Development Contributions shall be paid in respect of the following different classes or descriptions of development. The basis for determination will be the rate for developments which are listed in the scheme, and where not specifically listed, are deemed closest in nature to the proposed development.*”

There is no category for solar farms or renewable energy projects more generally within the scheme save for wind farm developments.

Class 21 is “*The provision of a wind farm development.*”

Class 5 refers to “*The use of land for (a) The parking of motor vehicles. (b) The open storage of plant, machinery, equipment, motor vehicles or other objects or substances for sale.*”

The Schedule of contributions is set at section 12.0 and in respect of the aforementioned classis is as follows:

Class 21 Per MW Capacity €10,000

Class 5 Per 0.1ha – Commercial land €460

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 The First party appeal, submitted by Fehiily Timoney and Company is solely in respect of Condition 15 relating to financial contribution under Section 48 of the Planning and Development Act 2000 as amended. The appeal is based on the contention that the Section 48 Contribution has been incorrectly applied on the following grounds:

- Class 21 is not the closest class of development set out in Section 6 for Solar development. The only relationship that the subject development has with class 21 is that there is a charge based on a per MW capacity.
- Solar development is significantly different to windfarm development from a construction and operational impact point of view.
- Solar farm has a significantly less impact in terms of construction engineering and operation.
- Class 5 is a commercial land at a rate of €460 per 0.1hectare is more appropriate. Development comprising of 32,0000 sq.m of solar panels on ground mounted frames therefore generating a total contribution of €14,720.
- Contribution should be based on land cover and not MW capacity. Notably Tipperary County Council accepted fee based on class 13, Schedule 9 of the Planning and Development Regulations 2001 as amended for the statutory planning application fee where a charge per 0.1 hectare applies.

- Note that while the site redline boundary is large, the active or utilised part of the site is significantly smaller with agricultural practices continuing in and around the solar panels. Note approach of Department of Agriculture with regard to the Basic Payment Scheme whereby if 70% or more of a parcel of land is covered by solar panels that parcel will be wholly ineligible for tax relief. However, if less than 70% is covered by solar panels and agricultural activity is not hampered by the presence of the solar panels the area not covered by solar panels may be eligible.
- A conservative calculation would suggest that the solar activity (the panels) occupy only 21% of the site area. Site area 13.1 hectares with panels being 32,000 sq.m.
- Request the Board to consider a suitable and rational argument for applying class 5 of the Development Contribution Scheme rather than Class 21 and to apply Class 5 to the panel area rather than to the site area.
- Note that the proposed development will not generate 5.1 MW of electricity. If the development proceeds in accordance with an Electricity Generation Agreement with ESBN it will have a maximum export capacity of 4MW. Therefore, if Class 21 of the Development Contribution Scheme is applied the development contribution scheme should be reduced accordingly to €40,000.
- Notably Cork County Council who has accepted and permitted the majority of solar energy proposals in the Country do not apply any development contribution charges on such projects.

6.2. Planning Authority Response

6.2.1 The Planning Authority notes that within the Tipperary County Council Development Contribution Scheme 2015, Section 6 outlines that the basis for determination will be the rate for development which are listed in the scheme, and where not specifically listed are deemed closest in nature to the proposed development. It is considered that Class 21 (Infrastructure – The provision of a wind farm development) which also

relates to renewable energy and attracts levies on a MW basis is the closest in nature to the solar farm development. Class 5 (Commercial) refers to the parking of motor vehicles or the open storage of plant, machinery, equipment, motor vehicles or other objects or substances for sale. The solar panels are not being stored on the site and are not for sale and therefore it is not considered that this class is applicable. Furthermore, it is considered that the development contributions should be based on the MW capacity supplied under the planning application. Tipperary County Council considers that the development contribution scheme was correctly applied in this instance.

7.0 **Assessment**

7.1 As the appeal is solely against the contribution condition, the Act provides that the Board shall not determine the relevant application as if it had been made in the first instance but shall determine only the matters under appeal, in effect the condition being appealed against and to considering the proper implementation of the Tipperary County Council's adopted scheme 2015-2019. This scheme was adopted on the 12th January 2015 and was made under Section 48 of the 2000 Act. The Board's remit in appeals against financial contribution conditions is restricted to the proper application of the adopted scheme and any discussion in regard to the merits of the scheme are not necessary on this basis.

7.2 I note the argument set out within the first party appeal in respect of the key differences between a wind energy development and a solar photovoltaic renewable energy proposal both from a construction and operational viewpoint. Such arguments however are beyond the limited remit of the appeal case to hand which poses the question of the proper application of the adopted scheme.

- 7.3 As noted at section 5.2 above The Tipperary County Council Development Contribution Scheme 2015-2019 does not envisage solar energy developments. The scheme sets out the Classes of Development at Section 6.0 and it is stated *“Development Contributions shall be paid in respect of the following different classes or descriptions of development. The basis for determination will be the rate for developments which are listed in the scheme, and where not specifically listed, are deemed closest in nature to the proposed development.”*
- 7.4 I would tend to concur with the planning authority that Class 21 “The provision of a wind farm development.” is the closest in nature to the proposed development and I note the precedent in the decision of the Board in respect of a development at Cooltoe, Tintern, Co Wexford 244351. In that case the calculation for the rate of contribution was on the basis of wind turbines as a comparative energy source. I consider that the alternative development class proposed by the First Party - Class 5 *“The use of land for (a) The parking of motor vehicles. (b) The open storage of plant, machinery, equipment, motor vehicles or other objects or substances for sale”* bears little relevance to the development of a solar farm and is not *“closest in nature to the proposed development”* and therefore could not be adopted as the basis for the determination of the applicable rate.
- 7.5 On the question of the First Party’s preferred approach to omit any development contribution on the basis that the scheme does not specifically provide for solar energy or renewable energy projects generally, I consider this approach is not an option given that the Tipperary County Council Development Contribution Scheme 2015-2019 specifies that where development types are not specifically listed the rate for developments deemed closest in nature to the proposed development should apply. I further note that as set out at section 4 above, the Board in its previous decisions in respect of solar energy developments has in the majority of cases applied a Section 48 development contribution condition with the amount unspecified. The omission of a financial contribution condition in the case of 246850 in respect of solar farm development in Co Longford was based on the reporting

Inspector's finding that there was nothing within the Longford County Council Development contribution scheme to allow for the attachment of contribution to an alternative development type to be applied outside the scheme. This is in contrast to the provision within the Tipperary County Council scheme for developments which are not specifically listed to be determined at the rate for listed development which are deemed closest in nature to the proposed development. Therefore, it is not open to the Board to disregard the provisions of the Tipperary County Council Development Contribution Scheme.

7.6 Having regard to the foregoing I consider that the provisions of the Tipperary County Council Development Contribution scheme have been properly applied in terms of Condition 15 requiring payment of development contribution on the basis of MW capacity. I note that within the grounds of appeal the first party outlines that the maximum export capacity applicable to the proposed development is 4MW and not 5.1MW as outlined in the planning application. Whilst the discrepancy is unexplained, I have no evidence to dispute this figure and as set out in letter from Mullan Grid Consulting the application to ESNB relates to a 4MW grid connection proposal. I therefore recommend that the Board direct the planning authority to attach condition 15 specifying the amount of €40,000 for the following reasons and considerations.

8.0 **Reasons and Considerations**

Having regard to the nature of the subject application, which comprises the provision of solar photovoltaic installation comprising of 32,000 m² of solar panels array to export electricity to the national grid, the Board considered that the terms of the Tipperary County Council Development Contributions Scheme 2015-2019 were correctly applied by the planning authority in basing the determination of the rate on the basis of Class 21 "The provision of a wind farm development." this being the closest in nature to the proposed development. Furthermore, on the basis of details provided in the appeal regarding the export capacity applicable to the development

being 4MW it is recommended that the value of the construction be amended accordingly.

Recommendation

Amend Condition 15 as follows:

The developer shall pay to the planning authority a financial contribution of €40,000 (Forty thousand euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000/ The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement the matter shall be referred to the Board to determine.

Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.

Bríd Maxwell

Planning Inspector

25th January 2017