



An
Bord
Pleanála

Inspector's Report PL92.247589.

Development

10-year permission for the construction, operation and decommissioning of a solar photovoltaic panel array to export electricity to the national grid. The proposed works will include a 19.10 MW solar farm comprising photovoltaic panels on ground mounted frames, 10 no inverter stations, 1 no single storey substation, 5 no field transformer, 1 no single storey communications building, 1 no single storey shed. 1 no battery container, 1 no transformer container. 1 no wc., fencing, temporary construction compound, access track, cctv and all associated ancillary development works.

Planning Authority

Tipperary County Council.

Planning Authority Reg. Ref.

16600565.

Applicant(s)

Light source Renewable Energy Ltd

Type of Application	Permission.
Planning Authority Decision	Grant permission with conditions.
Appellant(s)	Light source Renewable Energy Ltd
Type of Appeal	1 st Party v Condition 17. 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 33.4 hectares comprising of eight agricultural fields of varied size and bounded by hedgerows interspersed with mature trees located at Monaraha, approximately 2km to the east of Cahir, Co. Tipperary. The site lies at an elevation of between 66m and 51m AOD and is within a predominantly agricultural area with other uses including a disused quarry adjacent to the east boundary and a cement works adjacent to the southern boundary and a dispersed pattern of rural settlement. The site is currently accessed by way of an agricultural entrance from the R640 Clonmel Road.

2.0 Proposed Development

2.1. The proposed development seeks a ten-year permission for the construction, operation and decommissioning of a solar photovoltaic panel array to export electricity to the national grid. The proposal involves the erection of photovoltaic (PV) panels, security fencing, substations and other ancillary components. The proposal involves the installation of mounted solar modules and associated equipment covering approximately 11.5 hectares and will have a generation capacity of approximately 19.1 megawatts MW. It is intended that the energy generated will be fed directly into the local power grid network for use by the nearest points of demand.

2.2. The nature of the development and an evaluation of its potential impact on environmental receptors is set out in considerable detail within the application documentation which includes:

- A Planning and Environmental Report.
- Statement of community involvement.
- Landscape and Visual Impact Assessment.
- Ecological Assessment.

- Flood Risk Assessment
- Construction, Decommissioning and Traffic Management Method Statement
- Biodiversity Management Plan
- Cultural Heritage Impact Assessment
- Appropriate Assessment Screening Report
- Noise Assessment
- Clint and Glare Assessment.

3.0 **Planning Authority Decision**

3.1. **Decision**

3.2. By order dated 21st October 2016 Tipperary County Council decided to grant permission subject to 17 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. Archaeological monitoring.
- Condition 17. Development Contribution of €191.000 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 €191,000 which is calculated as follows:

<i>Individual Assessment</i>	<i>Charge per MW capacity</i>	<i>MW output</i>	<i>Total Cost</i>
<i>Solar Farm</i>	€10,000	19.1	€191,000

3.2 Planning Authority Reports

3.2.1 Planner's initial report recommended seeking additional information in respect of boundary treatment and landscaping, issues with regard to potential impact of glint and glare on residential properties to the south and details of entrance sightlines.

3.2.2 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 19.10. Contributions of €191,000 are therefore required.

3.3. Other Technical Reports

3.3.1 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.

3.3.2 Submission from Commission for Energy Regulation acknowledges referral of the application.

3.4 Third Party Observations

3.4.1 Submissions from a number of third parties including local residents, object to the development raising concerns of health impact, 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.

3.4.2 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 PL93.247443 of a first party appeal of Section 48 financial contribution condition in respect of a solar photovoltaic installation at Loughlohery Cahir Co Tipperary.

4.3 I note the following appeal cases for solar energy development cases 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 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.m 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 permission 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 13.76hectare 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 12.7hectares 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 is solely in respect of Condition 17 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 on the following grounds:

- The application of class 21 (wind farm development) level of development contribution to a solar fam is incorrect.
- In applying class 21 as the required development contribution, the Council has concluded that the proposed solar fam is equivalent to a wind farm however there are a number of key differences between a solar farm and a wind farm.
- The rationale for development contributions is to ensure that new development contributions apply equitably to enhancements of existing, or new infrastructure and facilities as necessitated by the demand created by the development.
- Solar farms have a very limited impact on roads and public infrastructure in comparison to a windfarm. The average construction period for a solar fam of 20MW is approximately 4-5 months while the construction timeframe for a similar capacity windfarm would be closer to 12 months.

All equipment and materials required for the construction of a solar farm can be delivered to site on standard 40ft HGVs or smaller, unlike wind farms where oversized vehicles. Therefore, solar farm construction does not typically require material alterations to the public roads. Solar farms unlike windfarms do not require significant volumes of concrete delivery thereby reducing impact on local road infrastructure.

- The Monaraha solar farm requires some minor amendments to the temporary construction access however this has already been conditioned under condition 14. Furthermore, the Council have conditioned a security bond of €15, 000 to secure the satisfactory undertaking of these works.
- Other impacts experienced by communities for windfarm developments are much less significant in terms of visual impact, noise, vibration.
- Generation output of a 20MW solar farm will not be the same as that of a 20MW wind farm.
- Solar and wind energy developments face very different restrictions and operating realities. The capacity factor of each renewable energy technology should be a key consideration in determining the development contribution of each renewable energy project. The capacity factor is the average percentage of hours in the year that a renewable energy project is generating power at 100% of installed capacity. Load factors express the average hourly quantity of electricity generated as a percentage of the average of the capacity at the beginning and end of the year. The load factor cap between onshore wind and solar demonstrates that it is not appropriate or even viable in some instances to have the same level of development contribution for renewable energy source with a significantly higher load factor.
- Development Contribution Guidelines for Planning Authorities Jan 2013 indicate that Planning Authorities should avoid applying contribution that are excessively high. The contribution is excessively high taking account the impacts of the development

on public infrastructure and services and potential profit levels (based on the capacity factor).

- Appendix 2 attached to the appeal provides overview of other local authorities who have approved solar wind farms and the level of contributions applicable. A lack of consistency is evident however Cork County Council's approach is notable many of the approved solar farms had no contribution applied on basis that there is no category or solar farms or renewable energy projects more generally in their development contribution scheme.
- Three possible options available to the Board The first and preferred option is to omit a Section 48 contribution on the basis that solar farms are not specifically identified within the scheme.
- The second and third option would be to apply a development Contribution Under Class 5 *“The use of land for (a) The use of land for (a) The parking of motor vehicles (n) The open storage of plant, machinery, equipment, motor vehicles or other objects or substances for sale.”* The relevant rate for commercial land is €460 per 0.1 ha. In light of the fact that the planning application fee, under use class 13 Section 2 of Schedule 9, is based on site area the relevant calculation is as follows:

Option 2

Class 5 €460 per 0.1 hectare.

Area of site 33.3ha.

Land covered by buildings 0.03ha.

Area of land covered by solar pv panels 11.65ha

Total contribution €116.5 x €460 + 0.3 x €460 = €53,728

Alternatively, Option 3

Class 5 €460. Per 0.1ha

Area of site 33.3ha

Total contribution 333x€460 = €153,180

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. 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 significant analysis 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 in terms of the demand on existing or new infrastructure, restrictions and operating realities and the capacity factor. Such arguments however are beyond the limited remit of the appeal case to hand which relates to 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 option of omission of 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 PL14.246850, 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 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 17 requiring payment of development contribution of €191,000. I therefore recommend that the Board direct the planning authority to attach condition 17 for the following reasons and considerations.

8.0 **Reasons and Considerations/ Reasons**

Having regard to the nature of the subject application, which comprises the provision of solar photovoltaic panel 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.

Bríd Maxwell

Planning Inspector

25th January 2017