



An
Bord
Pleanála

Inspector's Report PL26.247801

Development	A solar photovoltaic panel array of up to 130,000 sqm of solar panels, an electricity sub-station compound, and all ancillary equipment and associated site works.
Location	Site in the townlands of Dennistown, Sallystown, Milltown, and Mourntown Lower, near Mourntown, Co. Wexford.
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	2016/1110
Applicant(s)	Harmony Solar Dennistown Ltd
Type of Application	Permission
Planning Authority Decision	Grant, subject to 13 conditions
Type of Appeal	Section 48
Appellant(s)	Harmony Solar Dennistown Ltd
Observer(s)	None

Date of Site Inspection

n/a

Inspector

Hugh D. Morrison

1.0 Site Location and Description

- 1.1. The site is located 7.6 km to the SSW of Wexford town centre and 8.3 km to the W of Rosslare. This site is accessed from the N, via a private road, off the County road, which runs between Piercetown and Murntown. It lies within the townlands of Dennistown, Sallystown, Milltown, and Murntown Lower.
- 1.2. The site is amorphous and it extends over an area of 39.857 hectares. Gradients across this site rise generally in a westerly/north westerly direction and so slopes face east/south east.

2.0 Proposed Development

A ten-year permission is sought for a solar photovoltaic panel array consisting of the following:

- Up to 130,000 sqm of solar panels on ground mounted steel frames,
- A fenced electricity sub-station compound to include an electricity control building and hardstands for ancillary electricity equipment,
- 10 inverter units,
- Underground cable and ducts,
- Internal access tracks and hardstanding areas,
- Boundary security fence, and
- CCTV and all associated site services and works.

3.0 Planning Authority Decision

3.1. Decision

Permission was granted subject to 13 conditions, the eighth and ninth of which requires that development contributions of €64,000 and €80,000 be paid with respect to, variously, the provision or improvement of public roads and community facilities in the County. An accompanying Appendix states that the wind farm provisions of the

Planning Authority's Development Contribution Scheme 2013 have been relied upon for the calculation of the stated sums.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The case planner's report sets out how the above cited development contributions were calculated. Thus, wind turbines over 50m have a generating capacity of at least 2.5MW. Such turbines each attract a development contribution of €8,000 for roads and €10,000 for community facilities.

The proposed solar farm would have a generating capacity of 20MW, i.e. the equivalent of 8 wind turbines and so each of the aforementioned development contributions was multiplied by 8 to give the sums of €64,000 and €80,000, which together total €144,000.

3.2.2. Other Technical Reports

n/a

3.3. Prescribed Bodies

n/a

3.4. Third Party Observations

n/a

4.0 Planning History

No planning history pertaining to the site is of relevance to this appeal. The parties do refer to planning applications/appeals in their submissions and these are referred to in my summaries of the same.

5.0 Policy Context

5.1. Development Plan

Section 18.3 of the Wexford County Development Plan 2013 – 2019 addresses development contributions, which are set by a Scheme made under Section 48 of the Planning and Development Act, 2000 – 2015.

The current Development Contribution Scheme (DCS) for the County was made in 2013. This Scheme does not explicitly refer to solar farms.

5.2. Natural Heritage Designations

n/a

6.0 The Appeal

6.1. Grounds of Appeal

The applicant begins by setting out some background information to their proposal. Under Table 2.2, they go onto summarise 6 solar farm cases, each of which was appealed.

Under Section 48(10) of the Planning and Development Act, 2000 – 2015, the applicant appeals conditions 8 and 9 attached to the draft permission. They cite the following grounds of appeal:

- The planning authority's approach is critiqued on the basis that, while wind farms and solar farms both generate renewable energy, in virtually all other respects they differ. Likewise, their environmental impacts are of a different order, with the former typically requiring EIA, while the latter have yet to yield a case where EIA would be necessary.
- Under appeal PL14.246850, a review of the development contribution was undertaken. The subsequent decision omitted the condition for the same on the basis that the relevant DCS did not refer to solar farms.

- The proposal would not entail any specific exceptional costs in respect of public infrastructure and facilities and so a special contribution under Section 48(2)(c) of the Act would not be warranted. Previous Board decisions (PL06F.212176 and PL06F.229964) are instructive in warning against the arbitrary/cursory use of this Section.
- The Board is invited to consider the application of the development contributions for roads (€6 per sqm) and community facilities (€4 per sqm), under the manufacturing heading, to the proposed sub-station, which would have a floorspace of 318 sqm. A resulting development contribution of €3,180 would arise. Precedence for this approach has arisen in County Cork, where it was evident in two recent applications/appeals (14/6644 & PL04.244539 and 15/5424 & PL04.245862).

6.2. Planning Authority Response

- Attention is drawn to the fact that the current DCS was made prior to the receipt of any applications for solar farms by the planning authority.
- The first application (2014/0392) for a solar farm applied the wind farm provisions in the DCS on a pro-rata basis to this farm. The inspector/Board at the subsequent appeal (PL26.244351) did not overturn this approach.
- The planning authority has since continued, consistently, with this approach.
- Attention is also drawn to application (2016/0811) made by Harmony Solar Ralphtown Ltd, which is the subject of extant appeal (PL26.244351). While equivalent development contribution conditions were attached to the draft permission, these have not been appealed by the applicant.

7.0 Assessment

1. Under Section 48(10) of the Planning and Development Act, 2000 – 2015, the applicant has appealed conditions 8 and 9 attached to the draft permission granted to application 2016/1110, on the basis that the planning authority did not properly apply the terms of its own DCS in attaching these conditions.

2. The applicant contends that, as the DCS does not refer to solar farms and as such farms are clearly distinguishable from wind farms, the planning authority mis-applied the terms of its own DCS in treating the proposed solar farm as if it were a wind farm.
3. The planning authority has responded to this critique by stating that it has consistently adopted the approach thus critiqued in its conditioning of solar farms. In this respect, the first solar farm in Wexford was the subject of an appeal (PL26.244351), under which the said approach was not overruled.
4. The applicant cites a further case, in which the Board omitted a development contribution condition (PL14.246850), on the basis that the relevant DCS did not refer to solar farms. The condition at issue was one in which the planning authority had adopted the same approach as that pursued by Wexford County Council.
5. The parties are agreed that the DCS contains no explicit reference to solar farms. They proceed to cite examples of Board decisions that variously favour the planning authority's approach, in these circumstances, and the applicant's. I consider that the applicant's differentiation of solar and wind farms is valid and so to regard the former as if it were the latter for the purpose of applying the DCS is not warranted.
6. The applicant has invited conditioning on the basis that the proposed sub-station could be assessed under the manufacturing heading of the DCS. As sub-stations are also included within wind farm proposals, I consider that in this respect they are directly comparable.
7. Proposals that comprise wind turbines and sub-stations, typically, are assessed for development contribution purposes on the basis of the number of wind turbines only, presumably because sub-stations are considered to be an ancillary form of development. (Proposals for sub-stations on their own are, typically, assessed for development contributions on the basis of their floorspace). Accordingly, following this pattern and notwithstanding the applicant's invitation to have the floorspace of the proposed ancillary sub-station assessed for development contribution purposes, I consider that under

the planning authority's current DCS there is no basis upon which to attach conditions 8 and 9 to the draft permission in question.

8. I, therefore, conclude that the planning authority has improperly applied its own DCS in attaching conditions 8 and 9 to the draft permission granted to application 2016/1110.

8.0 Recommendation

In the light of my assessment, I recommend that the planning authority be directed to omit conditions 8 and 9 from the draft permission granted to application 2016/1110.

9.0 Reasons and Considerations

Having regard to the Wexford County Development Plan 2013 – 2019 and Wexford County Council's Development Contribution Scheme 2013, it is considered that, in the absence of any reference to solar farms in this Development Contribution Scheme, the attachment of conditions 8 and 9 to the draft permission granted to application 2016/1110 constitutes an improper application of the Scheme to the said proposal and so these conditions should be omitted from this permission.

Hugh D. Morrison
Planning Inspector

24th February 2017