



An  
Bord  
Pleanála

## Inspector's Report ABP-300334-17

---

<b>Development</b>	Solar PV Energy Development
<b>Location</b>	Ballyvenaghty, Tralee, County Kerry
<b>Planning Authority</b>	Kerry County Council
<b>Planning Authority Reg. Ref.</b>	16/1123
<b>Applicant(s)</b>	Terra Solar Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Terra Solar Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	18 <sup>th</sup> April, 2018
<b>Inspector</b>	Kevin Moore

## **1.0 Site Location and Description**

- 1.1. The proposed development would be located within the townland of Ballyvenaghty in a rural location and on agricultural lands approximately 2km west of the town centre of Tralee in County Kerry. The site, with a stated area of 29.9 hectares, is accessed from two existing private farm roads that have access onto the local road network.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a Solar PV Energy Development consisting of the installation of c. 93,588 square metres of photovoltaic panels on ground-mounted frames/support structures, underground cabling and ducting, 7 inverter/transformer cabins, two MV substations, two communication masts, and ancillary development. The proposed development is intended to be connected to the ESB grid network via Ballyrickard ESB 38kV substation approximately 0.5km to the south-east of the site. The proposed development does not include the connection corridor or method of routing to the existing substation.
- 2.2. Application details included a letter of consent from the property owner permitting the making of the application, a Planning and Environmental Report, an Ecological Assessment, an Appropriate Assessment Screening, a Landscape and Visual Impact Assessment, a Glint and Glare Assessment, a Hydrology/Flood Risk Assessment, a Traffic and Transport Assessment, an Archaeological Assessment Report, and an Outline Construction Environmental Management Plan.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

On 3<sup>rd</sup> November 2017, Kerry County Council decided to grant permission for the proposed development subject to 23 conditions.

Condition 2 was as follows:

“2. Prior to the commencement of development, the developer shall pay a contribution of **€420,000** to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development.

*This contribution is broken down as follows:*

Roads & Transport	-	€63,000
Community & Amenity	-	€147,000
Tralelee Levy	-	€210,000

*The amount of this contribution is calculated in accordance with the Council’s prevailing Development Contribution Scheme and may be increased from January 1<sup>st</sup> 2018 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further development Contribution Scheme adopted by the Council.*

***Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in ten manner specified in that Scheme.”***

Condition 3 was as follows:

3. “Prior to the commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to the value of **€300,000** to secure the satisfactory reinstatement of the site on cessation of the project, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development.

***Reason: To ensure the satisfactory completion of the development.”***

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planner noted policy and development plan provisions and reports received. A request for further information was requested relating to a wintering bird survey and Natura Impact Statement, access at the construction phase, and pre-development archaeological testing.

#### **3.2.2. Other Technical Reports**

The Roads Development Office stated it had no observations to make.

The Tralee Municipal District Technician requested further information relating to access and drainage.

The Fire Officer had no objection to the proposal and set out requirements to be met under the Building Control Regulations.

### **3.3. Prescribed Bodies**

Inland Fisheries Ireland requested that the site development does not give rise to silt contaminated runoff.

The Commission for Energy Regulation acknowledged receipt of details on the application.

The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs requested further assessment of the development's impact on the Tralee Bay Special Protection Area and details of the route options for the powerline to export the generated electricity.

The Biodiversity Officer requested a wintering birds survey and a Natura Impact Statement.

3.4. Further information was requested by the planning authority in accordance with the Planner's recommendation on 18<sup>th</sup> January 2017 and a response to the request was received from the applicant on 28<sup>th</sup> August 2017, providing further information on ecology, access and traffic management, and archaeological testing.

3.5 Following receipt of this information, the following reports were received:

- The County Archaeologist recommended that the proposed archaeological mitigation be made a condition of any grant of permission.
- The Tralee Municipal District Technician set out access requirements.
- The Biodiversity Officer concluded that no adverse effects on the integrity of a European Site are considered likely and requested that general ecological mitigation measures proposed by the applicant should be conditioned if a grant of permission is considered.
- The Planner considered the internal reports received on the further information response and recommended that permission be granted subject to conditions.

## 4.0 **Planning History**

I have no record of any previous planning application or appeal relating to this site.

## 5.0 **Policy Context**

### 5.1. **Kerry County Development Plan 2015-2021**

The site is zoned 'Rural General'.

Objective ZL-1 seeks to protect the landscape of the County as a major economic asset and an invaluable amenity which contributes to people's lives.

### 5.2. **Natural Heritage Designations**

Tralee Bay SPA and Tralee Bay & Magharees Peninsula, West to Cloghane SAC lie approximately 1.2km from the proposed site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The first party appeal relates to the attachment of Condition nos. 2 and 3 with the decision of the planning authority. The grounds of the appeal may be summarised as follows:

#### Condition 2

- The contribution of €210,000 (Tralee Levy) represents a double charge which is inconsistent with the terms of the Council's Development Contribution Scheme 2017.
- Solar farms and renewable energy projects are not categories of development where the Tralee Levy applies. The Council's Development Contribution Scheme rigidly identifies the appropriate development types and there is no discretion to deviate from these.

#### Condition 3

- The bond is unduly onerous and not justified.
- The financial strategy for solar farms includes requisite mechanisms for decommissioning and site reinstatement. Under the terms of the legal land lease agreement with the landowner, the applicant is legally bound to reinstate the subject site to its original condition at the end of its operational life. Thus, there is full legal surety in place.
- The constituent components of a solar farm are valuable tangible assets. Thus, there is no scenario whereby this infrastructure would be left in situ once the solar farm stops generating power.
- The planning authority has not provided any quantified justification for the specified bond figure. It was noted that the Planner initially sought a bond of €100,000 consistent with that applied to other permitted solar farms under P.A. Refs. 16/201 and 16/689 and that this was revised to €300,000 without any explanation.

- The planning authority has conditioned smaller amounts elsewhere (P.A. 16/802 – bond of €50,000), even where the site area was greater than the two proposals referenced above.
- It is noted that solar farms have been permitted across Ireland without any bond requirement and, where bonds have been sought, some have been significantly less than the specified sum (Waterford County Council Ref. 15/770 and a bond of €20,000 is noted).
- It is noted that Condition 11 of the planning authority’s decision provides for an appropriate approach to decommissioning and site restoration.

## 6.2. Planning Authority Response

I have no record of any response to the appeal from the planning authority.

## 7.0 Assessment

### 7.1. Introduction

7.1.1 The appeal relates firstly to the proper application by the planning authority of the terms of its development contribution scheme adopted under section 48 of the Planning and Development Act with regard to Condition 2 of the planning authority’s decision. It is considered appropriate that the Board determines the appeal in relation to the disputed condition (which relates to that part of the financial contribution of €210,000 being sought and referred to as the ‘Tralee Levy’). The provisions of section 48(10)(b) and (c) apply in this instance.

7.1.2 The appeal also relates to the attachment of Condition 3, which seeks a cash deposit, bond or security to the value of €300,000. I am satisfied, having examined the details of the application and having visited the site, that the determination of the application by the Board, as if it had been made to it in the first instance, would not be warranted. Accordingly, I consider that it is appropriate to use the provisions of section 139 of the Local Government (Planning and Development) Act, 2000, as amended, and to consider the issues arising out of the disputed condition.

## 7.2. Condition 2

7.2.1 The current Kerry County Council Development Contribution Scheme is the 2017 Scheme. Page 9 of the Scheme sets out schedule of the contributions required to be made for a range of development types. This includes the following:

	Roads & Transport	Community & Amenity	<b>Total</b>
Renewable Energy Development	€3,000	€7,000	<b>€10,000</b>
	per MW	per MW	<b>per MW</b>

7.2.2 As part of the Development Contribution Scheme, further Development Contributions are required to apply to the towns of Tralee and Killarney to assist in the delivery of supporting infrastructure in these towns, referred to in the Scheme as the 'Tralee & Killarney Levy'. The Scheme states that these contributions are in addition to the standard development contributions. The Scheme includes a Tralee Environs Map. The site of the proposed development is located within the boundaries of the Tralee Environs Map. The contributions to apply in the form of the 'Tralee Levy' are to apply to 'Residential', 'Commercial', 'Office', 'Industrial', and 'Govt., Health & Education Buildings, and Other Buildings for Social Use', with the levy calculated on a per m<sup>2</sup> basis.

7.2.3 I note the schedule of developments on Page 9 of the Scheme references an extensive range of development types, each with differing charges to be applied. It is particularly notable that this schedule includes 'Residential' developments, 'Office Buildings', 'Industrial Buildings', and 'Govt., Health & Education Buildings, and Other Buildings for Social Use' requiring charges based on per m<sup>2</sup> of development. Further to this, it is noteworthy that 'Renewable Energy Development' is not categorised as any of these development types, is a separate development category, and the associated levy is not calculated on a per m<sup>2</sup> basis.

7.2.4 It is my submission to the Board that 'Renewable Energy Development' does not fall within the categories of development to which the 'Tralee Levy' applies, which are clearly buildings of certain development types, and that this part of the development contribution requested by the planning authority is not in accordance with Kerry



County Council's Development Contribution Scheme. The 'Tralee Levy' component of the development contribution should be omitted. Condition 2 of the planning authority's decision should, therefore, be revised accordingly.

7.2.5 Finally, I note that there is no dispute over the application of the remainder of the development contribution sought.

### 7.3. Condition 3

7.3.1 I first note that the principle of attaching a condition requiring a cash deposit, bond or other security for solar farms is common within the administrative area of County Kerry and the first party has demonstrated this in the appeal submission by highlighting some examples. Further to this, I note that the Board, in its decisions on solar farm development, consistently attaches a condition when issuing a grant of permission for such development requiring the payment of a cash deposit, bond or other security. I also note that it is practice for the Board to require decommissioning plans and restoration details by way of condition in addition to the requirement for the lodgement of a security. Having regard to such established practice, I consider it is reasonable to conclude that the attachment of a condition requiring the lodgement of a cash deposit, bond or other security with the planning authority is established best practice. Such a requirement ultimately seeks to make provision for the final reinstatement of the lands affected by the development when the solar farm ceases to function. The purpose and meaning of such a condition are clear. This condition is necessary to ensure reinstatement is undertaken in a complete and satisfactory manner. Such a condition can, therefore, be seen to be compatible with the *Development Management Guidelines for Planning Authorities*, as published by the Department of the Environment, Heritage and Local Government in 2007.

7.3.2 Accepting the above, the main issue is, thus, the value of a security being requested. While the planning authority's condition requires a security of €300,000, it is clear that changes arose in the detail of the Planner's report leading to the final figure. Initially and within the body of the report, the 'Restoration Bond' was determined by applying a rate of €7,812 per hectare, which was calculated to give a required bond of €233,593 for the 29.9 hectare site (notably not €233,578.80 that would result based upon that actual rate). This part of the report was altered, increasing the

security to €300,000, based upon a rate of €10,000 per hectare (notably not €299,000 that would result based upon that actual rate). The third condition attached with the Planner's recommendation to grant permission specified a figure of €100,000 to be the value of the security and this was again altered in the report to be €300,000. The final Order was issued by the planning authority and Condition 3 specified the value of the security to be €300,000. It would appear from the changes made in the Planner's report and from the final decision issued that the calculation of the security had increased from a rate of approximately €7,812 per hectare to a rate of approximately €10,000 per hectare. In each instance there is no understanding as to where these rates are derived from and why changes to the initial value of the security were made.

7.3.3 In seeking to come to a reasonable conclusion on determining what the value of the security should be, without any benefit of the costings that may be understood in the local context in which the proposed development would be set, I consider that reference should first be made to the consistency previously applied by the planning authority in recent decisions within its administrative area as highlighted by the appellant, namely Planning Authority Refs. 16/201 and 16/189. In each instance a security of €100,000 was applied to ensure the reinstatement of the sites. No explanation of how the value of the security was calculated was provided by the planning authority in each instance. It is very notable that this presents itself as some form of a standard value of security, notwithstanding the variation in land areas affected by the proposed developments. Planning Application 16/201 applied to a site area of 10.16 hectares. Planning Application 16/189 (which was subject to appeal – ABP Ref. PL 08.247778) applied to a site area of 8.8 hectares. Over and above this, it appears that the Planner's initial consideration was to apply a similar value of security.

7.3.4 Having regard to the above, I consider that it is reasonable to determine the value of the security to be set at €100,000 to reflect a previously consistent approach by the planning authority. In addition, and equally as important when considering this issue, it is my submission to the Board that, while the site is extensive, the likely physical impact on the land itself would be quite minimal by the installation of the proposed panels. Thus, the value of such a security should be adequate to address reinstatement sufficiently.

7.3.5 I appreciate that the above is not based upon a detailed calculation of costs to undertake the restoration of the lands in question but rather it is a figure determined to be consistent with the planning authority's previous determinations and considered adequate to return the lands to agricultural use in a satisfactory manner, having regard to the likely physical impact. In conclusion on this matter, I note that the planning authority did not respond to the first party appeal and, thus, did not avail of the opportunity to refute the arguments made by the first party.

## 8.0 Recommendation

8.1. I recommend that Conditions 2 and 3 of the planning authority's decision be revised in accordance with the following:

Having regard to the nature of condition numbers 2 and 3 the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 to:

A) REVISE Condition number 2 as follows:

2. Prior to the commencement of development, the developer shall pay a contribution of **€210,000** to Kerry County Council (Planning Authority) in respect of Roads & Transport and Community & Amenity infrastructure benefiting the development.

This contribution is broken down as follows:

Roads & Transport	-	€63,000
Community & Amenity	-	€147,000

The amount of this contribution is calculated in accordance with the Council's prevailing Development Contribution Scheme and may be increased from January 1<sup>st</sup> 2018 and annually thereafter (unless previously discharged) in line with the Wholesale Price Indices – Building and Construction (Capital Goods) as published by the Central Statistics Office unless the Scheme is superseded by a further development Contribution Scheme adopted by the Council.

**Reason: It is considered appropriate that the Developer should contribute towards the cost of public infrastructure and facilities benefiting the development, as provided for in the Councils prevailing Development Contribution Scheme, made in accordance with Section 48 of the 2000 Planning and Development Act (as amended) and that the level of contribution payable should increase at a rate in ten manner specified in that Scheme.**

B) REVISE Condition number 3 as follows:

3. Prior to the commencement of development, the developer shall lodge with the Planning Authority a cash deposit, a bond of an insurance company, or other security to the value of **€100,000** to secure the satisfactory reinstatement of the site on cessation of the project, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development.

**Reason: To ensure the satisfactory completion of the development.**

### **Reasons and Considerations**

It is considered that the proposed development does not come within the scope of the 'Tralee Levy' as set out in Kerry County Council Development Contribution Scheme 2017. Furthermore, having regard to the likely impact of the proposed development on the lands affected, it is considered that the value of the security required by Condition 3 is excessive and it is also considered that the value of security sought is inconsistent with previous security required for similar developments in the county.

---

Kevin Moore  
Senior Planning Inspector

3<sup>rd</sup> May 2018